

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 WEDNESDAY, 12TH FEBRUARY 2020 - DAY 137

137

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

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1 THE HEARING RESUMED, AS FOLLOWS, ON WEDNESDAY, 12TH
2 FEBRUARY 2020:

3
4 CHAIRMAN: Good morning, detective superintendent.
5 Thank you very much. 10:31

6
7 DETECTIVE SUPERINTENDENT DECLAN MULCAHY CONTINUED TO BE
8 DIRECTLY-EXAMINED BY MR. MCGUINNESS, AS FOLLOWS:

9
10 1 Q. MR. MCGUINNESS: Good morning. 10:31

11 A. Good morning.

12 2 Q. Yesterday, we had just started looking at some of the
13 events in early 2015, and I think, as you say in your
14 statement at page 3906, you interviewed the former
15 chief superintendent from Athlone, Chief Superintendent 10:32
16 Glacken, and he later provided you with billing
17 records?

18 A. Yeah, the former superintendent of Athlone.

19 3 Q. Yes.

20 A. Yeah. 10:32

21 4 Q. And they were the billing records that had been
22 obtained at that time and hadn't been specifically
23 obtained by you in the course of your investigation?

24 A. No, they had been obtained the superintendent at the
25 time. 10:32

26 5 Q. Yes. And they related to the same phone that you had
27 seized?

28 A. They did, indeed, yeah.

29 6 Q. In particular to the use of it in a specified period?

1 A. Yes.

2 7 Q. In 2010, I think.

3 A. Correct, yeah.

4 8 Q. In any event, could we look at a report then, just
5 moving on a little bit in time. We know obviously that 10:33
6 Superintendent McBrien had been replaced by
7 Superintendent Murray?

8 A. Correct.

9 9 Q. I think you became aware of that obviously at the time?

10 A. I became aware that a change was about to happen, yes. 10:33

11 10 Q. Yes. Did you have occasion to phone Superintendent
12 Murray on the 4th March? We have an entry in your
13 diary that hasn't yet been circulated, but it appears
14 to be related to a phone call with Superintendent
15 Murray on the 4th March, have you any recollection of 10:33
16 that?

17 A. The 4th March, that would be some time maybe before he
18 came to Athlone, was it?

19 11 Q. CHAIRMAN: Just before.

20 A. Just before. 10:33

21 12 Q. CHAIRMAN: He came on the 8th, isn't that right?

22 A. Maybe if I could just see the entry.

23 CHAIRMAN: Yes, you need to see the entry, yes. Maybe
24 you will come back to that.

25 MR. McGUI NNESS: We will come back to that. 10:33

26 CHAIRMAN: Yes. It's very difficult without actually
27 seeing it, so maybe we can come back to that,
28 Mr. McGuinness, that's the best way to deal with that.

29 MR. McGUI NNESS: Yes.

1 CHAIRMAN: I don't think there is anything particularly
2 significant about it except for the fact that it was a
3 phone call.

4 A. Yeah, I would have my original notes here, if I can
5 check them. 10:34

6 13 Q. CHAIRMAN: Chief superintendent, my own notion is,
7 unless counsel thinks there is a better way to do it,
8 my own notion is to wait until everybody has the
9 document, including you. Isn't that probably the best
10 way to do it, Mr. McGuinness? 10:34

11 MR. McGUI NNESS: Yes.

12 CHAIRMAN: So we will proceed for the moment and it may
13 even have turned up even as we speak.

14 MR. McGUI NNESS: We will just fast forward to the --

15 CHAIRMAN: Yes, carry on, we will come back to that. 10:34

16 14 Q. MR. McGUI NNESS: To the 1st April then. Well, perhaps
17 we will go to the 5th March. You have provided a
18 witness statement, your diary entry for the 5th March.

19 A. The 5th March.

20 15 Q. At page 3924, we will look at that perhaps just before 10:35
21 we proceed on. That's at page 3924. You have an
22 attempt to ring him twice there, with no answer. And
23 then you rang the superintendent to look for a number
24 and it appears that he was out sick and you got that
25 information from Inspector Farrell, it would seem? 10:35

26 A. Yeah. I think there what I was doing was I was trying
27 to make contact with Garda Keogh but unfortunately I
28 was unable to make contact and out of fear that maybe
29 something was wrong, I rang the superintendent just to

1 see what the story was.

2 16 Q. Yes.

3 A. And she came back to me to say that he had been out
4 sick and that the inspector was aware of it.

5 17 Q. Yes. In any event, Garda Keogh called you back that 10:35
6 evening?

7 A. Yes.

8 18 Q. Just after nine o'clock, or just before ten o'clock, it
9 would appear. Could you just talk us through what he
10 told you there? 10:36

11 A. From my notes what I have here is:

12

13 "Nick Keogh called back at 21:56. Obviously the call
14 lasted until 22:06

15 10:36

16 "Stated he was out on stress sick for a few weeks.
17 Under pressure there. Going into toilets. Nothing had
18 happened but feels there is a possibility of something
19 happening. Enquired how long the investigation was
20 going to take. I said that would determine how 10:36
21 long --" sorry.

22

23 "He said that that would determine on how long he would
24 be out. His main fear is regarding the two that went
25 to McHugh. 'Pile of shite'. Complaint - meeting these 10:36
26 lads in corridors. They went to McCabe. He, Nick,
27 knew --"

28 CHAIRMAN: McHugh, I think you mean.

29 A. Yeah, he knew that person.

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" -- from the beat. "

19 Q. MR. McGUI NNESS: "Asked who they were. "

A. And he gave Garda A's name and another member's name.

10:37

"He presumes it was them. They hadn't done anything other than the complaint. Can't think of anyone else that would have done it. His sick was nothing to do with my investigation - they could have got a better witness. Spoke to him re new Superintendent Pat Murray. Said he knew him from his time as a kid in Wicklow. He said that he would meet him. "

10:37

20 Q. "Spoke about his welfare" is it?

A. Yeah. I lost where I was there a minute now.

10:38

"That he would meet him. Spoke about his welfare. Availability of welfare officer. Stated... "

21 Q. That's Carina Friel?

A. "... Carina Friel did not tell him she was working out of the same office as -- "

10:38

A superintendent there, that complaint had been made against. I can't make out what the last line says.

22 Q. But just to focus on a couple of matters there. He was relating that his stress wasn't related to your investigation?

10:38

A. Yes.

23 Q. Did you enquire or was there any discussion about what

1 was causing stress?

2 A. No. That's my notes as what was said.

3 24 Q. Okay.

4 A. I didn't go into any detail in relation to stress or
5 otherwise. 10:39

6 25 Q. Okay. The fourth line that you read there:
7
8 "Spoke to him re new superintendent."
9

10 So that would appear that you were telling him 10:39
11 something about the new superintendent.

12 A. Basically I told him about the new superintendent,
13 yeah. That the new superintendent -- out of courtesy,
14 there was going to be a change, that there was a new
15 superintendent. I do recall, however, that he asked me 10:39
16 what was he like and I think my exact words were that
17 he was very fair but firm. I think they are the words
18 I recall exactly as I would have said to him. Now,
19 whether that was on that particular occasion or not,
20 I'm not a hundred percent certain. 10:39

21 26 Q. Yes.

22 A. But I did advise him that Pat Murray was a very fair
23 but firm person.

24 27 Q. Okay. Just going on then to the 1st April, on the next
25 page that we are concerned with, 3925, at the bottom of 10:40
26 that, there's an entry in your diary there:
27
28 "1/4/15."
29

1 Could you just talk us through that entry?

2 A. Okay. "1/4/15 Nick Keogh rang him regarding progress.

3 Outlined..."

4

5 28 Q. It's something to do with the investigation? 10:40

6 A. Yes. Okay. "Outlined persons to be interviewed."

7

8 Obviously we had to interview and then we had intended

9 interviewing Garda A.

10 29 Q. Okay. 10:40

11 A. "Stated he had no choice with the stuff yesterday.

12 Felt pinned in and I asked him how. He said the craic

13 with the tax on the car and the surgeon. Referral

14 because he was out sick with stress. Asked if there

15 was a welfare problem. He said was out sick on stress, 10:41

16 went back on drink, won't do full weeks. Other fella,

17 Garda A, in on Sunday, not working, not saying

18 anything, just whistling and humming."

19

20 I think my recollection is -- I can't read the bottom 10:41

21 of it but my recollection is that I asked him did he

22 say it to his superintendent and I think he said that

23 he said something but not about the whistling and the

24 humming.

25 30 Q. The entry seems to continue up the side of the page. 10:41

26 Could you help us with that?

27 A. "Was happy with investigation."

28 31 Q. Yes. "Appreciated the call."

29 A. "Appreciated the call."

1 32 Q. If you have your original diary?
2 A. I have, yes.

3 33 Q. Would you perhaps just compare it, it might help?
4 A. Okay. "Was happy with investigation. Appreciated the
5 call and thanked me. If you were in my shoes you would 10:42
6 see the difficulty. It's not with ye, just in
7 general."

8 34 Q. So he seemed to be appreciative of the investigation
9 and being kept up-to-date, is that fair?
10 A. That's true, yeah. 10:42

11 35 Q. In reference to what he stated, that he had no choice
12 with the stuff yesterday.
13 A. Yeah.

14 36 Q. Can you just help us, the context of that?
15 A. Yes. My recollection is that I think there was some 10:42
16 mention in the Dáil in relation to harassment of a
17 guard and being harassed about tax and something like
18 that. I'm not sure, but I think that's what the
19 reference was.

20 37 Q. Yeah. Well, had you received a phone call from the 10:43
21 Park, whether it was Assistant Commissioner Ó Cualáin
22 or Superintendent Murray, about it?
23 A. My recollection is, now I don't have a note of it, but
24 my recollection is that I received a call from AC
25 Ó Cualáin asking me what was that about. I wasn't 10:43
26 aware what it was about and I think I rang -- I'm not a
27 hundred percent sure, but I think I rang Pat Murray.

28 38 Q. Yes.
29 A. I spoke to Garda Keogh at some stage as well and I was

1 able to get back to the AC to tell him that it would
2 appear to be that it was Garda Keogh that was behind
3 the matter that was risen in the Dáil.

4 39 Q. Perhaps we will look, there is a note, 2491, from
5 Superintendent Murray's notes. The first note at the 10:43
6 top is a call that he received from the assistant
7 commissioner.

8 A. Okay.

9 40 Q. Or calls at different times. We know from the evidence
10 that Superintendent Murray had sent a letter and had a 10:44
11 conversation with Garda Keogh about these matters, the
12 car tax in particular. It would appear that you called
13 Superintendent Murray then, if this note is accurate,
14 just to read it:

15 10:44
16 "Calls from D/Super Mulcahy, 10:00pm and 2:32. He made
17 contact with Garda Keogh, who told him he raised issues
18 with M Wallace as he felt job was supporting CS Glacken
19 when his tax CMO mentioned to him. Explained to
20 D/Superintendent Mulcahy my conversation with Garda 10:45
21 Keogh. He explained their investigation was nearly
22 finished and Garda Keogh was anxious it be finished as
23 soon as possible as this was a source of his concern as
24 well."

25 10:45
26 Now there's no reference in your diary note to Deputy
27 Wallace.

28 A. No.

29 41 Q. But the stuff going on, is that what it related to;

1 what Deputy wallace had said?

2 A. Yeah, it was now -- just from my recollection, now that

3 I see it, see it again, it was in relation to a matter

4 that was raised.

5 42 Q. Yes. 10:45

6 A. I think the question I was asked was in relation to the

7 outburst in the Dáil by Mr. wallace.

8 43 Q. Yes. But was he complaining, was Garda Keogh in the

9 conversation complaining that he had been referred to

10 the CMO for stress? 10:45

11 A. Just going back to my notes that particular day.

12 44 Q. Yes. Just reading it there again?

13 A. Yeah.

14 45 Q. He seemed to be justifying what happened yesterday

15 because of what the superintendent had done to him; is 10:46

16 that the reading of it?

17 A. Basically what he says, yeah.

18 46 Q. "Stated he no choice --"

19 A. Sorry.

20 47 Q. Go ahead. 10:46

21 A. "He had no choice with that stuff yesterday. He felt

22 he was pinned in and I asked him how. He said the

23 craic with the tax on the car and the surgeon.

24 Referral because he was... "

25 10:46

26 48 Q. "... out sick with stress."

27 A. Yeah. He was out sick with stress. I asked him the

28 question:

29

1 "Asked if there was a welfare problem and he said he
2 was out sick on stress, went back on drink, went on
3 full weeks. . ."
4

5 49 Q. "Won't do full weeks." 10:46
6 A. Sorry "won't do full weeks", yeah. That's what he was
7 saying to me basically. I took that as probably maybe
8 doing light duties or confined to light duties.

9 50 Q. Yes. In any event, I think at a later stage you made
10 arrangements for him to engage with the welfare 10:47
11 service, isn't that correct?
12 A. That was, yeah, sometime afterwards, yeah. It was
13 continuously my agenda, on every occasion which I met
14 him I think we discussed welfare.

15 51 Q. Yes. 10:47
16 A. And that was because AC Ó Cualáin had instructed me on
17 every meeting with him to ensure that his welfare was
18 looked after from our point of view.

19 52 Q. Yes. Did you understand that those instructions were
20 coming from the Commissioner's office through the 10:47
21 deputy commissioner then or the assistant commissioner?
22 A. Well I would have had sight of the document that would
23 have said that on it as well, yeah.

24 53 Q. In any event, the assistant commissioner sent up a
25 report to the Commissioner on the 1st April. Could we 10:48
26 look at page 10851? Again, this goes through the
27 private secretary?
28 A. Okay.

29 54 Q. On the 2nd paragraph it says:

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"By way of additional information, I wish to inform you Detective Superintendent Mulcahy has been in regular contact with the confidential reporter both in person and on the phone. During all of these meetings and conversations Detective Superintendent Mulcahy has enquired about the confidential reporter's welfare and made him aware of all the services available to him if required. The confidential reporter has consistently indicated that he does not want to engage with any of the welfare services offered by An Garda Síochána."

10:48
10:48

That was the position at that time?

A. It was.

55 Q. Is that right?

10:48

A. Yeah.

56 Q. The next paragraph goes on to say:

"The most recent communication between Detective Superintendent Mulcahy and the confidential reporter was on today's date, 1st April 2015. Following this communication, Detective Superintendent Mulcahy is of the belief that the comments made by Mr. Michael Wallace TD in the Dáil on 31st March 2015 regarding the bullying and harassment of whistleblowers may have emanated from the above mentioned confidential reporter."

10:49
10:49

That's the reference to the stuff that Garda Keogh had

1 referred to?

2 A. Yeah.

3 57 Q. Is that right?

4 A. Yes.

5 58 Q. "In his conversation with D/Superintendent Mulcahy, the 10:49
6 confidential reporter intimated he had no choice given
7 recent interventions by Superintendent Murray in
8 raising issues over his car tax and also the question
9 of him having him referred to the CMO for stress
10 related illness." 10:49

11

12 Going on to the next page then.

13

14 "Following the conversation Detective Superintendent
15 Mulcahy contacted Superintendent Murray and outlined 10:49
16 the issues raised by the confidential reporter. At the
17 end of today's communication the confidential reporter
18 thanked D/Superintendent Mulcahy for contacting him and
19 expressed his satisfaction with the investigation to
20 date. With the investigation ongoing further 10:50
21 communication is expected between D/Superintendent
22 Mulcahy and the confidential reporter. I have
23 instructed D/Superintendent Mulcahy to ensure that any
24 welfare issues highlighted will be communicated to
25 local management for attention as appropriate. 10:50

26

27 Developments of significance in this regard will be
28 further reported."
29

1 Now, shortly after this I think you accompanied
2 Detective Inspector Coppinger on the 9th April to
3 attempt to speak to Ms. B in the matter, isn't that
4 right?

5 A. I'm not sure of the dates but we did make an effort to 10:50
6 contact her, yes.

7 59 Q. You have set out the details of that at page 3906
8 onwards, on to 3907. I don't intend to go through the
9 detail of that. But at the same time, you were putting
10 in place the arrangements to go to meet with Garda A, 10:51
11 isn't that correct?

12 A. That would be correct, yeah.

13 60 Q. And you met with Garda A on the 24th April?

14 A. Okay.

15 61 Q. You handed Garda A the prepared document; isn't that 10:51
16 right?

17 A. Yeah, we had a document prepared for him, yes.

18 62 Q. Why did you prepare that in advance? Did you intend to
19 hand it to him or did you intend to question him about
20 it there and then? 10:51

21 A. There was contact with -- wait now, if I can refer to
22 my original notes.

23 63 Q. Yes.

24 A. Okay. We met him I think initially on the 24th.

25 64 Q. Yes. 10:52

26 A. He handed over a notebook on that particular day. I'm
27 not sure did we actually give him the prepared document
28 on that day or not. I would have to read my statement.

29 65 Q. Well if you want to refresh your memory, look at page

1 3907. The second paragraph there. In the third line
2 you say:

3
4 "I handed Garda A a prepared document containi ng 19
5 allegations. "

10:52

6
7 And you have made that Exhibit 7 in your statement, at
8 page 3949, it's a three-page document.

9 A. Okay.

10 66 Q. This account reads as if you arranged to meet him and
11 intended to question him there and then about these
12 matters, is that right?

10:53

13 A. The arrangement was made through his solicitor, Mr. Dan
14 O'Gorman, to meet him. We had that prepared, outlining
15 the allegations that was made against him.

10:53

16 67 Q. Yes.

17 A. Now at some stage we asked Garda Keogh if he wished to
18 disclose his statement to him and he refused. So from
19 that, we took the various allegations that were made
20 against him.

10:53

21 68 Q. Yes.

22 A. And it was our intention to get a response in relation
23 to those.

24 69 Q. Yes. But I mean, there you are, you have turned up by
25 appointment or he has turned up by appointment?

10:53

26 A. Yes.

27 70 Q. To Oranmore Garda station. You are the detective
28 superintendent, you've got your detective inspector
29 with you.

1 A. Okay.

2 71 Q. You must have been intending to question him about the
3 allegations in the document?

4 A. That would be the -- that would be the thing. But in
5 fairness to him, due process had to prevail, as it did 10:54
6 for everybody else in the investigation. And I had to
7 be very conscious of where the information that this
8 investigation was based on had come from.

9 72 Q. Yes.

10 A. As Garda Keogh had outlined, the information that he 10:54
11 had put on the Pulse system back on the, was it around
12 the 18th May, that it had come from this particular
13 person in Galway. Now, I looked at this particular
14 person. This person was a convicted criminal, a heroin
15 dealer, a heroin addict, he was the partner of Ms. B. 10:54

16 73 Q. CHAIRMAN: There were circumstances about his situation
17 that you thought were relevant. We don't need to -- I
18 don't want to go into too much detail.

19 A. Okay.

20 74 Q. CHAIRMAN: Because I mean -- 10:54

21 A. Very relevant.

22 75 Q. CHAIRMAN: There were circumstances that caused you to
23 consider they might be relevant to the veracity of the
24 information that was coming?

25 A. Absolutely. 10:55

26 76 Q. CHAIRMAN: In other words, his previous history, his
27 relationship and in a sense what one might call the
28 emotional context perhaps in the circumstances. There
29 were circumstances that were relevant in your view?

1 A. That's correct.

2 77 Q. CHAIRMAN: Perhaps also the fact that he may have given
3 up all that material. That would also be relevant. If
4 you were satisfied of that.

5 A. Yes. 10:55

6 78 Q. CHAIRMAN: Okay. So, bearing in mind this was somewhat
7 complicated.

8 A. Yeah.

9 79 Q. CHAIRMAN: That was something you thought was relevant
10 to your approach to Garda A? 10:55

11 A. Absolutely, yes.

12 80 Q. CHAIRMAN: Is that a fairway of saying it?

13 A. Yes.

14 81 Q. CHAIRMAN: I hope everyone doesn't think I am jumping
15 the gun or reaching conclusions but I think I am 10:55
16 reading your mind. Am I reading it reasonably
17 accurately?

18 A. You are reading it reasonably accurate, Chairman, but
19 there was one other aspect to it as well.

20 82 Q. CHAIRMAN: Yes. 10:56

21 A. Garda Keogh had informed me that Ms. B had conspired
22 with Garda A --

23 83 Q. CHAIRMAN: Yes.

24 A. -- to have this man caught for selling heroin as part
25 of Operation Loki. 10:56

26 CHAIRMAN: Right, thank you.

27 84 Q. MR. McGUI NNESS: In any event, it appears from your
28 statement that he requested time. Now that the
29 solicitor or Garda A?

1 A. I think -- I think it was by Garda A in relation to
2 time, that he wanted to cooperate with it, he wanted to
3 answer it but he needed time to go over it.

4 85 Q. Yes. Was it not unusual that you would present a
5 document like this to a suspect and then give them 10:56
6 time, you didn't want to confront them there and then?
7 A. Well at that time we didn't have any concrete evidence
8 as such. We had the word from this man, who I was
9 sceptical about.

10 86 Q. Yes. And not included in a statement obviously? 10:57
11 A. No, statement, no.

12 87 Q. So are you saying you had very little to request him
13 about then at that time?
14 A. Well we had the allegations that Garda Keogh had made.

15 88 Q. Yes. 10:57
16 A. And that's what we were questioning him about.

17 89 Q. In any event, you acceded to the request and you're
18 justifying that in the circumstances?
19 A. I think under the circumstances that fair procedure
20 needed to prevail and in the interest of justice. 10:57
21 90 Q. You met again on the 16th June, according to your
22 statement, and there was a document that had been
23 prepared in response and you took that then without any
24 questioning on that day?
25 A. Yeah. There was some contact in between with the 10:57
26 solicitor. There were dates that weren't kept. I
27 recall Inspector Coppinger was questioned yesterday in
28 relation to the timeframe, but there was three contacts
29 that I had documented on my diary in relation to

1 Mr. O'Gorman and on one particular day he was supposed
2 to turn up and he told me he wouldn't be available or
3 whatever until the following week.

4 91 Q. But the substance of what happened on the next meeting
5 was that they did turn up on the 16th. This document 10:58
6 was produced from their side and Garda A was cautioned
7 and it was read over and signed and there was no
8 questioning, as I understand it, in relation to that at
9 that time?

10 A. In reply to the -- we took time out then to examine the 10:58
11 answers that he had given. We looked at them to see
12 where we could corroborate and where we could get
13 evidence to further question him on. And that was the
14 subject of the further meeting with him.

15 92 Q. Okay. But do you think it was advantageous then to 10:58
16 adjourn it to another meeting so that you could assess
17 what had been presented to you?

18 A. Matters came up that we wouldn't have had knowledge of
19 and that we needed to corroborate or attempt to
20 corroborate, to I suppose just to look at his story to 10:59
21 see that it was correct.

22 93 Q. In any event, you reassembled then for a third time on
23 the 24th June?

24 A. The 24th June.

25 94 Q. Is that right? 10:59

26 A. The 24th June. Yeah, that's the note I have here.

27 95 Q. There were some questions answered then, isn't that
28 right?

29 A. Yeah. The allegations were put to him. He requested

1 time to consider them on the 24th, yes.

2 96 Q. There was no answer which constituted an admission in
3 any way?

4 A. From my recollection, the only thing that he did accept
5 was that Ms. B was a drug dealer. 11:00

6 97 Q. That's something he accepted, is that right?

7 A. That was something he had said, yeah.

8 98 Q. All right. But in terms of progressing the
9 investigation towards evidence that would support a
10 prosecution, did anything emanate that would support a 11:00
11 prosecution?

12 A. No, he denied the allegations that were put to him.

13 99 Q. I think in the interim, before the interviewing of
14 Garda A had taken place, I think the assistant
15 commissioner sent a further report up to the 11:00
16 Commissioner on the 21st April. Perhaps we will just
17 look at that, at page 10860. I'm sorry, perhaps 10859.
18 If we can go back up a page. That's attaching the
19 report which was being sent to GSOC, which is an update
20 to GSOC at that stage. If we just go back down to page 11:01
21 10860. That is setting out the lines of inquiry at
22 that stage. The third paragraph refers to the
23 statement in the Dáil by Deputy Wallace. If we can go
24 down to the next page. It outlines the satisfaction of
25 the confidential reporter with the investigation and 11:02
26 then your contact with Garda Keogh at that point in
27 time. If we just look at the date of that, at the
28 bottom. It appears to be in fact dated the 21st April.
29 So that was the position at that point, is that right,

1 it's sent by the Commissioner's private secretary.

2 A. Now, I don't recall having sight of that particular
3 document at the time.

4 100 Q. All right.

5 A. But it appears to relate to the position at the time, 11:02
6 yeah.

7 101 Q. One issue that appears to have arisen between the time
8 of your first interview of Garda A and your second
9 interview with Garda A is the issue of the status of
10 the inquiry. This appears to have been addressed with 11:02
11 the Commissioner on the 13th May. Could we look at
12 page 10822. This is a document that is coming from the
13 assistant commissioner. Just scroll down.

14 CHAIRMAN: No, it's sent to him.

15 102 Q. MR. MCGUINNESS: I'm sorry, it's sent to him. That's 11:03
16 an earlier report from you?

17 A. Yes.

18 103 Q. Perhaps I will skip ahead to 10882, I beg your pardon.
19 This is a direction from the Commissioner to the
20 assistant commissioner and it says: 11:04
21
22 "The Commissioner directs that you continue with your
23 investigation into the criminal element of this matter
24 and that you make the necessary arrangements for an
25 appointment under the disciplinary regulations through 11:04
26 the member's divisional officer."
27
28 Now, can I just ask for your view on this? When this
29 investigation started, it started under the

1 confidential reporting regulations 2007?

2 A. Right.

3 104 Q. But it was an investigation into those allegations made
4 by Garda Keogh and it was therefore, was it not, a
5 criminal investigation from the beginning? 11:04

6 A. It would have been conducted as a criminal
7 investigation, yes, because that's how we would
8 operate.

9 105 Q. Yes.

10 A. We would conduct that and see what the evidence brings 11:05
11 and that would determine the course of it down the
12 line.

13 106 Q. Yes. The various applications that were made, whether
14 for warrants or data, they were all made because you
15 were investigating suspected crimes, isn't that 11:05
16 correct?

17 A. That's correct, yeah.

18 107 Q. CHAIRMAN: what is the significance, detective
19 superintendent, what is the significance of the
20 distinction between a criminal investigation and a 11:05
21 disciplinary investigation. Obviously I know what it
22 means.

23 A. Yeah.

24 108 Q. CHAIRMAN: If I am investigated for a disciplinary
25 matter I am liable to be disciplined under regulations 11:05
26 and so on and receive some kind of sanction,
27 disciplinary sanction. I'm not in danger of being
28 prosecuted, isn't that right?

29 A. That's right, yeah.

1 109 Q. CHAIRMAN: But I am getting the impression here that
2 there is a sort of rigid distinction, it's either a
3 criminal or a disciplinary, is that right?
4 A. Yeah, that would be fair to say. With criminal
5 obviously they can end up in the courts. With the 11:06
6 discipline, it's internal, it would be dealt with
7 locally or nationally, whatever the case may be. Yeah.
8 110 Q. MR. MCGUINNESS: But whilst it was being reported
9 obviously that the reporter, Garda Keogh, was happy
10 with your investigation, it appears that he had written 11:06
11 to the Minister on 26th May 2015 complaining about it
12 in a number of respects. Have you seen that letter?
13 A. I've seen it, my recollection of what's on it, I'm not
14 sure of.
15 111 Q. Perhaps we will look at that. 11:06
16 A. No, I'm sorry, I haven't seen it. He told me that he
17 had written to the Minister and he told me that he was
18 going to write attacking the investigation but not
19 attacking me or Inspector Coppinger.
20 112 Q. Yes. 11:07
21 A. I think that might have been the same reference.
22 113 Q. When did he tell you that.
23 A. Again, I don't know. He told me at some stage.
24 114 Q. Okay.
25 A. I have no doubt it would be disclosed in my notes. 11:07
26 This is six years ago now.
27 115 Q. I understand that.
28 A. Unfortunately.
29 116 Q. If we look at the letter at 11625. I think I have

1 given the wrong date, that's the 26th July, if we just
2 go back up to the top there, 2015. It's addressed to
3 the Minister but I think it was also cc'd to other
4 parties?

5 A. There wasn't a copy sent to me. 11:07

6 117 Q. It wasn't sent to you directly?

7 A. No.

8 118 Q. Yes.

9 A. No.

10 119 Q. In the second paragraph it says: 11:08

11

12 "A criminal investigation was conducted by Assistant
13 Commissioner Ó Cualáin. However, I feel obliged to
14 point out a number of serious and deliberate flaws with
15 regard to this investigation." 11:08

16

17 we will just look at those in due course now. But did
18 Garda Keogh ever indicate to you that you had made a
19 number of serious or deliberate flaws, and deliberate
20 flaws? 11:08

21 A. He did mention in relation to the commissioner coming
22 back to him, he mentioned that, the timeframe. But my
23 understanding was that on the date the Commissioner
24 wrote to him, I think it was the 15th May, whatever it
25 was, '14. 11:08

26 120 Q. The 15th May, yes.

27 A. That he had written to him and that he had also sent
28 him a letter. My understanding was it took Garda Keogh
29 sometime to come back to the Commissioner. Obviously

1 between them then they arranged a date, which was the
2 6th/7th June, you know.

3 121 Q. Yes.

4 A. Now, that seems to be -- who was waiting for whom, I'm
5 not sure. 11:09

6 122 Q. We will hear the assistant commissioner's evidence.
7 That's the first point there made. But my question was
8 related to it in a general way. Over the course of the
9 investigation did Garda Keogh say or make it clear that
10 he regarded the investigation that you were conducting 11:09
11 on behalf of assistant commissioner as having been
12 flawed by some deliberate actions on your part to --

13 A. On my part.

14 123 Q. Yes.

15 CHAIRMAN: To frustrate it, yes. 11:09

16 MR. McGUI NNESS: Yes.

17 A. No, definitely not on my part, no.

18 124 Q. CHAIRMAN: Mr. McGuinness is focusing, chief
19 superintendent, on the word deliberate.

20 A. Yeah. 11:09

21 125 Q. CHAIRMAN: That's what is he focusing on, because what
22 Garda Keogh says in his letter is it was
23 deliberately -- whatever it was, serious and deliberate
24 flaws, that's what he is focusing on. And what he is
25 asking you is: Did Garda Keogh ever say to you, leave 11:10
26 anybody else out of it, that you're deliberately
27 messing this up or whatever it was?

28 A. I never recall Garda Keogh using the word deliberate to
29 me.

1 CHAIRMAN: I think that is what you are exploring,
2 Mr. McGuinness.

3 MR. McGUI NNESS: Yes.

4 126 Q. The first one there:

5
6 "The fact that it took assistant commissioner one month
7 to meet with myself being his informant. There is an
8 unofficial storeroom in Athlone Garda Station which
9 believe contained strong tangible evidence which was
10 deliberately emptied in around the second week in May 11:10
11 2014 and evidence vital to the case disappeared."

12
13 Now, obviously the Commissioner can answer for himself,
14 but have you anything to say about the second sentence
15 in that suggestion? 11:11

16 A. Well, in relation to the official storeroom in Athlone
17 Garda Station, we picked up on that and I can't say
18 that it was an unofficial store. It was a store that
19 was used, it had a high security door and the key left
20 with the D/Sergeant only, to ensure the safe custody of 11:11
21 the operation Loki files in particular. That was the
22 operation ongoing and that was the operation that Garda
23 Keogh had complained about in his affidavit.

24 127 Q. The second issue raised there:

25
26 "In or around 10th June 2014 the suspect garda had his
27 State mobile phone seized. This mobile phone had been
28 wiped of its information which could have been
29 potentially vital and unlike any other criminal 11:11

1 investigation where evidence is seized, the suspect
2 garda was given a replacement State mobile phone. It
3 is worth noting that most sergeants in An Garda
4 Síochána do not have State mobile phones."

11:11

5
6 would you like to comment on that in any respect?

7 A. Again, it was nothing to do with me, it seemed to be a
8 local issue. But I know one thing, is that when
9 Superintendent Murray became aware that Garda A had a
10 State phone, he immediately removed it and he rang me
11 to say that he had taken the phone from him and he
12 offered it to me in evidence to support Garda Keogh's
13 allegations.

11:12

14 128 Q. The next paragraph, number 3. I think it's out of
15 sequence here, so if we go down to the second next
16 page. This relates to the issue of suspension.

11:12

17 A. Mm-hmm.

18 129 Q. Just at the time we're talking about, immediately prior
19 to this here, and when Garda A was being interviewed, I
20 think the issue of suspending Garda A was reconsidered
21 in April/May '15, isn't that correct?

11:12

22 A. It was, yeah.

23 130 Q. Could you just outline the circumstances in which that
24 came about?

25 A. Again, the suspension would obviously come down to
26 local management, but on that particular time new
27 information had come to light and we -- as a result of
28 that we went for the District Court for information and
29 obtained a warrant in relation to the information which

11:13

1 suggested that Garda A was in possession of a private
2 phone which would contain evidence to support Garda
3 Keogh's allegation.

4 131 Q. We have jumped ahead now to October '15?
5 A. Is that October, sorry. 11:13

6 132 Q. I am asking you about the period in April/May '15?
7 A. April/May '15.

8 133 Q. Was there not consideration given then to Garda A being
9 suspended?
10 A. Well, I know we met before Christmas '14 with Chief 11:13
11 Superintendent Curran, Superintendent McBrien,
12 Assistant Commissioner Ó Cualáin and myself, we met in
13 Dublin in relation to it and we spoke in relation to
14 the possible suspension at that stage.

15 134 Q. Yes. Maybe you weren't involved in any consideration 11:14
16 of it?
17 A. If this was a local issue I wouldn't have been
18 involved.

19 135 Q. So you have no recollection of being asked about it or
20 discussing the suspension of Garda A in April or May 11:14
21 2015?
22 A. Honestly --

23 136 Q. Or an application being resurrected?
24 A. I cannot recall at the moment. I am not saying it
25 didn't happen. 11:14

26 137 Q. CHAIRMAN: No, if the documents show it you are happy
27 with that, but you don't remember it.
28 A. I don't remember it.

29 138 Q. MR. McGUI NNESS: Point 4 then is the issue about the

1 statements. It obviously relates to Garda A being on
2 duty and the assertion in the second last sentence:
3
4 "He was able to see every person that was called in to
5 make statements and in a position to eyeball members of 11:15
6 An Garda Síochána. I believe this was deliberately
7 facilitated in an effort to suppress honest statements
8 being made by way of informal intimidation."

9 A. I totally refute that allegation.

10 139 Q. Totally refute it? 11:15

11 A. Totally.

12 140 Q. "5. A crucial witness had come forward with vital
13 information. The investigation team met this man
14 namely in around 3rd July 2014 but did not go back to
15 speak with him for about six months as he did not trust 11:15
16 the investigation team and was in fear of the suspect
17 garda who was still armed on duty."
18
19 would you like to comment on that?

20 A. I think what we covered earlier, in relation to my 11:15
21 efforts to contact this man, that I went far beyond the
22 ordinary call to try and get him on board.

23 141 Q. Number 6:

24
25 "One of the allegations involves the suspect garda 11:15
26 getting an unregistered informant to plant drugs in a
27 car. On 7th December 2014 the said unregistered Garda
28 informant was arrested by his handler, the suspect
29 garda, for possession of approximately €4,000 worth of

1 heroin. This now put the garda under investigation in
2 a position of influence over another suspect/witness in
3 the case."

4

5 A. That is totally new to me now. I will just read it 11:16
6 again.

7 142 Q. Do you recall Garda Keogh ever bringing that to your
8 attention?

9 A. I haven't a clue what that's about. Absolutely not.

10 143 Q. I think you meet him in December and a statement was 11:16
11 taken from him, isn't that correct?

12 A. There was a lot of people met as a result of this
13 allegation.

14 144 Q. Yes.

15 A. And a lot of stuff came forward. But that does not 11:16
16 ring any bell with me. It does not.

17 145 Q. Number 7:

18

19 "Around 24th April 2015, the allegations were put to
20 the garda under investigation, where he was given over 11:17
21 a month to seek legal advice. Cautioned statements
22 were taken from him between 16th June 2015 --"

23

24 Then if we go back to the preceding page.

25

26 " -- the 24th June 2015. This is unusual as in any
27 other criminal investigation the suspect would be
28 arrested and interviewed without delay."

29

1 Have you any other comment you would like to make in
2 relation to that?

3 A. Again, the evidence dictated our investigation and
4 where we were going with our investigation. As I say,
5 I had no concrete evidence other than what the reporter 11:17
6 had said. Now, while I believed everything he said, I
7 needed to support it in some way from where it was
8 emanating from.

9 146 Q. Yes. I suppose in relation to an arrest, he was never
10 in fact arrested? 11:18

11 A. He was never in fact arrested, no.

12 147 Q. And therefore never detained or questioned in custody?

13 A. No.

14 148 Q. Obviously there are time limits relating to custody
15 detentions? 11:18

16 A. There is, indeed, yeah.

17 149 Q. They can obviously be of benefit if there is the
18 possibility of taking forensic samples?

19 A. Exactly.

20 150 Q. Etcetera, isn't that right? 11:18

21 A. That's correct, yeah.

22 151 Q. But you could also question him and invoke the
23 provisions relating to inferences under sections 16, 18
24 and 19 of the Criminal Justice Act. Did you consider
25 that as something -- 11:18

26 A. If it would have applied in the case.

27 152 Q. Pardon?

28 A. If would have applied in the case, we would have. But
29 here was a man who was totally cooperating with our

1 every question, made himself available to every
2 request. And if you just maybe look at the last
3 interview, you may note there that I said to him,
4 you're not under arrest, you're free to leave at any
5 stage if you wish. He those to remain. Now, 11:19
6 hypothetically if he got up and walked out, maybe, I
7 don't know, maybe our approach might have been
8 different. But he was cooperating and that's what we
9 worked on at the time.

10 153 Q. Number 8 then: 11:19
11
12 "It is my understanding that the investigation team
13 could not retrieve text messages over two years from
14 the seized State mobile phone. Text messages for the
15 period around 2010 are vital and I do not know if every 11:19
16 effort was made to retrieve them."
17
18 would you like to comment on that any further?

19 A. well, the network providers, they're only obliged under
20 law to keep their records for two years, and in 2010 it 11:19
21 was well outside of that. We still made the
22 applications.

23 154 Q. Yes. I think even if the applications are made, you
24 cannot retrieve the substance of any text passing from
25 one phone to another subscriber, isn't that correct? 11:20
26 A. unless that it was retained on the phone.

27 155 Q. Yes. That requires possession of the phone?
28 A. It did, yeah.

29 156 Q. There are two separate issues?

1 A. Yeah.

2 157 Q. The metadata doesn't give you the content of a text in
3 any event, it only gives you the fact that a text has
4 been sent?

5 A. Sent, yeah. 11:20

6 158 Q. From one person to another, without content, isn't that
7 right?

8 A. Yeah. The substance of the contact is different.

9 159 Q. Number 9:
10
11 "In June 2015 the suspect garda stopped [blank], a
12 witness in the case without having committed an offence
13 and checked her tax and insurance and asked for her
14 drivers licence. I believe this was an attempt to
15 intimidate the witness." 11:20
16
17 Have you any knowledge of that?

18 A. Absolutely no knowledge of it.

19 160 Q. He goes on then to point out about him having to serve
20 in the same station at the same time, etcetera. We 11:21
21 don't need to deal with the rest of that at present.
22 Could we go back then to your diary for the 4th March?
23 I think documents, Chairman, relating to that have been
24 circulated. Page 16298.

25 CHAIRMAN: Have you got a copy of that now? 11:21

26 A. I haven't. It's not coming up there.

27 161 Q. MR. McGUINESS: It should come up on the screen?

28 A. What date in March?

29 162 Q. 16298?

1 CHAIRMAN: Thanks.

2 MR. McGUI NNESS: Hard copies have been --

3 CHAIRMAN: We will give you a copy of that.

4 MR. McGUI NNESS: All the parties should have copy of

5 that. 11:21

6 CHAIRMAN: Yes.

7 163 Q. MR. McGUI NNESS: The first one relates to the 4th March

8 and there is an entry there:

9

10 "Pat Murray briefing on Athlone investigation 10:00am." 11:21

11 A. Okay.

12 164 Q. So that would appear to indicate that you phoned him to

13 give him a briefing, is that correct?

14 A. I'm not sure. I have a feeling I met him in Oranmore

15 station that morning. 11:22

16 165 Q. You think you met him?

17 A. Yeah, I'm nearly certain I met him that morning now.

18 166 Q. Okay.

19 A. Yeah.

20 167 Q. Can you recall then what was the purpose and the 11:22

21 content of the discussion about the briefing?

22 A. It was basically just to let him know that we're

23 investigating the complaint of the other confidential

24 recipient in Athlone and the fact that he was going to

25 Athlone, just to put him in the picture. Because 11:22

26 maybe, I'm not sure, he wasn't aware of who might have

27 been investigating it. But I am aware that he was

28 aware of what was going on. I didn't go into the

29 details of the investigation or anything like that with

1 him.

2 168 Q. Yes. But did you discuss Garda Keogh as being the
3 confidential reporter?

4 A. I don't think I mentioned Garda Keogh's name, because
5 it was common knowledge who was at the end of it. What 11:23
6 I said to him, or not my direct words, but I advised
7 him that I was involved in that investigation, that we
8 were visiting Athlone in relation to different aspects
9 of it and not to be surprised if he saw us. Something
10 -- they may not be my exact words but something along 11:23
11 those lines.

12 169 Q. Yes.

13 A. As I said, we didn't get into the details of the
14 investigation, nor he didn't ask me the details of it.

15 170 Q. With your statement you've also provided a copy of your 11:23
16 diary entry for the 19th April, but there's also a long
17 entry relating to the 18th and a short entry relating
18 to the 20th?

19 A. No, I think in fact it was on the 19th, if I can refer
20 to my original notes. 11:23

21 171 Q. CHAIRMAN: Yes, take your time.

22 A. I think it might have been all captured in the... It
23 might have been captured -- if I show you where,
24 Chairman.

25 172 Q. CHAIRMAN: Yes. 11:24

26 A. The note started on the 19th and there is an arrow
27 drawn over to this page, so there was actually two
28 pages of notes in respect of the 19th.

29 173 Q. CHAIRMAN: So it's all on the one day.

1 A. All on the one.

2 174 Q. CHAIRMAN: And the way it sometimes happens with a
3 diary, you start on the one day and then you run out of
4 space, so you go back to the previous day, which is
5 blank, and you continue the note? 11:24

6 A. That's what happened.

7 175 Q. CHAIRMAN: And it's pretty obvious when one looks at
8 it. Okay. Thank you very much.

9 176 Q. MR. MCGUINNESS: would you start on the 19th then, if
10 you just help us deal with the substance of the whole 11:24
11 of the entry?

12 A. Okay.

13

14 "At 22:28 text from Nick Keogh. Super, can you call
15 me? We're nearly at crunch time. PS I do respect 11:24
16 you."

17 177 Q. And two missed called?

18 A. "Plus two missed calls."

19

20 Then: 11:25

21

22 "22:39 call, sorry for annoying you."
23

24 where he apologised to me for annoying me.
25 11:25

26 "But what the fuck is going on? I advised him not to
27 speak to me like that. Stated he did not mean it like
28 that. Advised him that I had told him before not to
29 address me like that. Said, I want to know have you

1 gone for him yet?"

2

3 178 Q. Was that a reference to Garda A?

4 A. Yes.

5

11:25

6 "I have no war An Garda Síochána or on members. I am
7 ready to do that. There is a need for me to go down
8 that road. All out attack. Not good. Told him about
9 investigation around the phone traffic plus the new
10 records."

11:26

11 179 Q. Were they the billing records?

12 A. Yeah, possibly, I would imagine. I brought him
13 up-to-date in relation to the investigation basically.

14

15 "Stated GSOC will be talking to him soon."

11:26

16

17 That's him stating that.

18 180 Q. Yes.

19 A. "And he will be upfront with them. I then advised him
20 to be and he said technically not."

11:26

21 181 Q. What does that refer to?

22 A. I didn't question him on it, but it kind of suggested
23 to me that he mightn't give them the full facts or
24 something to that -- I didn't push him on it. But
25 basically when I said to him -- I advised him to be
26 upfront with them, he said "technically not."

11:26

27 182 Q. Yes.

28 A. "Advised him we were meeting with [named person] and
29 the fact that she didn't show up. Stated he had

1 nothing bad to say about you or Coppinger. "
2
3 well, basically me and Coppinger.
4 183 Q. Yes.
5 A. "He said Ó Cualáin, I have to shoot this down. Stated 11:27
6 [particular person] will record you dangerous fish.
7 Legal. "
8 184 Q. Be wary, is it?
9 A. "Be wary. Legals. Stated he was on the brink of going
10 all out with Garda Síochána. Gone into politics now. 11:27
11 You can't touch Garda A basically. "
12 185 Q. Is that government?
13 A. "Gone into politics"?
14 186 Q. You can't?
15 A. No, that is a reference to Garda A. 11:27
16 187 Q. "Said he was going to recommend."
17 A. Sorry.
18 188 Q. CHAIRMAN: Hold on.
19 A. "Said he was going to recommend that Garda A would be
20 suspended. Advised him that the assistant commissioner 11:27
21 said he would look at that aspect and he did. Stated
22 that when we went to the station during our
23 investigation Garda A should not have been there. It
24 was not good practice. Not having a go at you. Need
25 to know where this is going. There are things I need 11:28
26 to know. I then asked him, what do you need to know?"
27
28 So he said:
29

1 "Where are we at? I filled him in as to where we were
2 at. Asked, are you going to arrest him? I asked him,
3 for what? And he stated, over 30 offences. Advised
4 him the evidence will dictate how we move. Again
5 stated he had no problem with me. Stated his career 11:28
6 had changed because of taking this on. It's him plus
7 Commissioner. Massive problem. Stated he did not like
8 my tone and asked if there was friction. Advised him
9 no friction. He asked me if I knew a Garda Síochána."
10
11 He named a guard there in Oranmore Garda Station. 11:29
12
13 " -- who he was with in Bray. "
14
15 I understand, I think it was him that spoke about this 11:29
16 guard.
17
18 "That he had got chief's permission and he backed a car
19 into a wall and he was grounded and blocked. Stated
20 that he knew --" if I can mention the name, another 11:29
21 guard there.
22
23 " -- Harrison going out with same girl. "
24
25 He mentioned the girls name. 11:29
26
27 "Harrison ditched by her. Fell out with her. Did ring
28 Harrison regarding Garda A drunk driving. "
29

1 And I understand there.

2

3 "GSOC interview him."

4

5 My understanding was that that was Garda Harrison. 11:30

6 189 Q. If we then go back to the 18th?

7 A. The 18th is a continuation of the 19th, yes.

8 190 Q. There is a reference to another officer up there at the

9 top. I don't think we need to refer to that?

10 A. Okay. 11:30

11 191 Q. Unless it's relevant.

12 A. Right. "Stated case nearly a year old on 8/5/15."

13 192 Q. Yes.

14 A. "Wants to leave things on a good note. No gripe with

15 you or the DI. He is razor sharp. Will be going to 11:30

16 GSOC plus will attack the investigation. Does not want

17 to make a stupid move. Advised him about Operation

18 Loki. Stated he had spoken with Hugh Cullen, GNDU, to

19 tell him what he was going to do. Did not want to see

20 anything happen to the GNDU lads. I basically told him 11:31

21 then he could not be selective."

22

23 Now in relation to Operation Loki, we had uncovered

24 some problematic areas in relation to it.

25 193 Q. Yes. 11:31

26 A. And there was a possibility sanction would have

27 followed in relation to it. But I basically told him

28 he couldn't be selective in relation to that aspect of

29 it.

1 194 Q. Yes.

2 A. "Stated he presumed you're going to have to arrest that

3 guy."

4

5 He refers to Garda A. 11:31

6

7 "Any other police force in the world would have

8 arrested him. Don't know what you're doing. Advised

9 him that the evidence would dictate the investigation

10 course. Stated he did not want to fall out with Garda 11:31

11 Síochána but stated about a full attack. If he did, he

12 would take Nóirín O'Sullivan down. Did not want to go

13 into that now. Stated Alan Shatter found out about the

14 penalty points from family members. Stated he had

15 pointed them out." 11:32

16

17 I think that was he himself had pointed them out.

18

19 "You can check that. We're going to take him down. It

20 was his idea." 11:32

21

22 Garda Keogh's idea.

23

24 " -- that he was found out. [Blank] is pro guard in

25 certain ways. There is a breakdown in communication 11:32

26 with whistleblowers. Ten other lads have contacted

27 Wallace and Daly and he asked me did I hear about a

28 shooting in a Garda station? He didn't elaborate on

29 that. Stated I was the only link he had with

1 authority. Does not trust the new super. Trusted the
2 old one. His uncle, Ted Fennelly, was kidnapped,
3 stripped and a gun to the head. He had a long history
4 in his family and his grandfather was number 51."

11:33

5
6 That refers to his grandfather was number 51 in the
7 Garda Síochána.

8

9 "Change has to happen in certain ways."

10 195 Q. Detective superintendent, I don't know, are you reading
11 from the original diary?

11:33

12 A. Original document, yes.

13 196 Q. Would you omit any names unless they are directly
14 relevant?

15 A. Okay.

11:33

16 197 Q. CHAIRMAN: If you just collate it, if you have the
17 thing, you will see that it is blacked out.

18 A. Oh yeah, sorry.

19 198 Q. CHAIRMAN: There's no big deal.

20 A. Yes.

11:33

21 199 Q. CHAIRMAN: But if you can just go from one to the other
22 and just check that it's been blacked out.

23 200 Q. MR. McGUINESS: Could you resume then after number 51
24 there?

25 A. Okay. "Change has to happen certain ways. He wants to
26 do change."

11:33

27

28 CHAIRMAN: Well, you better leave Nóirín in, having
29 told you not to mention names. But it's not blacked

1 out and clearly the Commissioner is relevant to the
2 story. Sorry. "He wants to do change..."
3
4 A. "Nóirín not fit for purpose. She talks change but did
5 not do anything. Stated he had met [a member] plus 11:34
6 Clare Daly, plus Wallace. Only met Wallace after the
7 story..."
8 201 Q. Spoken to?
9 A. I think that was in relation to, he only met wallace
10 after we had spoken to him about the article in the 11:34
11 newspaper.
12 CHAIRMAN: "After being spoken to."
13
14 Is that right "only met Wallace after being spoken to"?
15 A. I think that is we had spoken to him in relation to a 11:35
16 newspaper article in November.
17 202 Q. MR. MCGUINNESS: In November.
18 A. I think that's what he's is saying there, that he
19 hadn't contacted him before that and he only met him
20 after that. That's my understanding of that. 11:35
21
22 "Need to finish on a good note. Stated that it is a
23 major problem what he had ID'd. Major problem in life.
24 If he is going to do an attack it will be with AC, not
25 you. I respect you and Coppinger." 11:35
26
27 Reference to a previous superintendent.
28
29 " -- should not be in that position. He should not be

1 in the position he is in. Inspector is the highest
2 rank he should have got. His father was a chief.
3 Circus of madness. Will make a film about him
4 sometime."

5 203 Q. "About it all", is it? 11:36

6 A. "Heard that there was no prosecution in respect of --"
7 a named person who he had made an initial complaint
8 about. He makes reference to that same person:

9

10 " -- being a drug dealer. State he was playing around 11:36
11 with his computer, putting pictures of rats on."

12

13 Again, I can mention the name, can I? Nóirín
14 O'Sullivan?

15 CHAIRMAN: Yes. 11:36

16 204 Q. MR. McGUINESS: Yes. That's what he said he was
17 doing, is that right?

18 A. That's what he said he was doing, yeah.

19 205 Q. Does that end the note for the conversation?

20 A. No, no. It goes up to the top bit then. 11:37

21 206 Q. Yes.

22 A. "He stated that that man from Galway that was the
23 provider of the information was back in Athlone. He
24 said he was going to get talking to him. He had a row
25 with his mother. He stated that Nóirín is talking 11:37
26 about promoting [a particular superintendent]. He said
27 he can't allow that to happen. [Blank] rang and told
28 him. He then stated that his present superintendent,
29 Pat Murray, was on about the surgeon. He was going to

1 tick back. "

2

3 And then I have just "not kickback".

4

5 "Out sick on stress. Had good time for Noreen MCB. " 11:37

6

7 His previous super.

8

9 "Had respect for authority.

10 11:38

11 And at 23:05, the call started at 22:29. And if I may

12 add to that?

13 207 Q. Yes.

14 A. That particular call, he was literally shouting down

15 the phone to me. It was a Sunday evening, I was at 11:38

16 home sitting with my wife and she actually took

17 exception to it and asked me what was going on. It was

18 just one of those occasions where I bent over backwards

19 to be available to him.

20 208 Q. But did you get any impression that he had been 11:38

21 drinking that evening perhaps?

22 A. Most definitely, yeah. Most definitely.

23 209 Q. Did he tend to be apologetic on later calls for that

24 type of --

25 A. There was some call later where he apologised for 11:38

26 previous behaviour, yes.

27 210 Q. There's an entry then that we have also provided

28 relating to the 20th April, where you rang Pat Murray?

29 A. Yes.

1 211 Q. would you just explain that entry?
2 A. That was basically in relation to, where he made a
3 reference there to:
4
5 "Ring Pat Murray and advised him re Nick Keogh and 11:39
6 welfare worries. He said in 1940 two Garda Síochána
7 members were shot in a station. He spoke about Garda A
8 having a gun and he could shoot Nick plus himself."
9
10 212 Q. Was that your opinion or was that something -- 11:39
11 A. No, that's what he said.
12 213 Q. That's what Garda Keogh said?
13 A. That's what Garda Keogh said.
14 214 Q. CHAIRMAN: And you were reporting that to
15 Superintendent Murray? 11:39
16 A. Yes.
17 CHAIRMAN: Okay.
18 215 Q. MR. McGUIINNESS: we will come back to some other phone
19 calls of a welfare nature that you had with him later,
20 but just to go back to the investigation, it would 11:39
21 appear that subsequent to the conclusion of the
22 attempts to interview Garda A, that the investigation
23 was coming towards a conclusion, is that right?
24 A. Em...
25 216 Q. Were there other steps taken? 11:40
26 A. I'm trying to think. As I suggested, we did it on a
27 modular basis. The first module was around obtaining
28 the information from the person that spoke to Garda
29 Keogh.

1 217 Q. Yes.

2 A. And to try and get that down into evidence. Secondly,
3 in relation to Ms. B, what we could get from her. And
4 there was a vast investigation around Operation Loki,
5 which was the part that formed the basis of his 11:40
6 affidavit. There was an awful lot of work then around
7 that.

8 218 Q. Yes.

9 A. And moving on, I personally would have to refer to
10 notes to see exactly what came after Garda A. 11:40

11 219 Q. Yes. Well, if you wish to refer to any particular note
12 of anything that was done thereafter, please do so?

13 A. Yeah. I would say my statement probably covers it. If
14 I can get a hard copy of my statement.

15 220 Q. Yes. Have you got a copy of your statement? 11:41

16 A. I may have a copy of the original statement.

17 CHAIRMAN: Maybe you could get one.

18 221 Q. MR. McGUI NNESS: In terms of the sequence, you appear
19 to have --

20 A. Okay, I have it here, yeah. 11:41

21 222 Q. -- you appear to have referred to Garda Keogh on the
22 29th July, regarding a matter that came to light in the
23 investigation concerning a lift that had been given to
24 a certain person?

25 CHAIRMAN: What page is that, Mr. McGuinness? 11:41

26 223 Q. MR. McGUI NNESS: That's page 3908, the second
27 paragraph.

28 A. 39 --

29 224 Q. 3908 of the statement.

1 A. Yeah. That was a matter that came to light during the
2 investigation.

3 225 Q. Yes.

4 A. I'm not sure if it was as a result of Garda A's
5 interview. I would have to look back at the file. But 11:42
6 basically what it did there was, that it made contact
7 with him in respect of this particular person.

8 226 Q. I don't think we need to go to the detail, I am just
9 drawing it to your attention from the point of view of
10 the chronology. 11:42

11 A. Okay.

12 227 Q. It would appear from your own statement that that was
13 the next thing of significance that you referred to?

14 A. That arose from that, yeah.

15 228 Q. That appears to have been an attempt to corroborate an 11:42
16 account given by somebody else about dealings with
17 Garda A?

18 A. Yes.

19 229 Q. And perhaps other members. But I think the next
20 significant step was the provision of information in 11:42
21 October 2015?

22 A. Okay.

23 230 Q. Isn't that correct?

24 A. That's correct.

25 231 Q. which led to warrants being obtained by yourself and 11:42
26 Detective Inspector Coppinger?

27 A. That's correct.

28 232 Q. We heard about those. Nothing evidential I think
29 actually came of that, is that correct?

1 A. That's correct.

2 233 Q. In any event, the assistant commissioner submitted his
3 report to the Director of Public Prosecutions?

4 A. Correct.

5 234 Q. Presumably you were centrally involved in helping 11:43
6 prepare the drafts of that and any conferences that
7 took place in relation to it?

8 A. Well, yeah, a number of us had sat down, including
9 Inspector Coppinger and myself and the incident room
10 manager. 11:43

11 235 Q. Yes. We have referred to Garda Keogh's letter to the
12 Minister and I think he told you about that in a phone
13 conversation on the 30th July?

14 A. Yeah, he mentioned that.

15 236 Q. A date after he had written the letter. You say in 11:43
16 your statement at page 3914 that:

17
18 "He stated he was not entire happy wi th peopl e hi gher
19 above me. "

20 11:44

21 He then went on to outline his concerns. I think you
22 attached your diary note of that at page 3928.

23 A. 3928. Okay.

24 237 Q. If we just look at that. It starts there:
25 11:44

26 "Ni ck Keogh - want to be honest. Wrote l etter about
27 i nvestigation. Mi ni ster and DPP. Not enti rely happy
28 wi th hi gh up above you. 100% trust. "
29

1 Could you just help us with the remaining of the entry
2 then?

3 A. "Knock investigation."

4 238 Q. Thorough, is that thorough?

5 A. Pardon. 11:44

6 239 Q. "100% trust", what is after that then?

7 A. "Knock investigation."

8 240 Q. Knock investigation?

9 A. Knock.

10 11:44

11 "AC over month to meet. Unofficial storeroom cleared
12 out. Athlone cleared out. Gear bag --" no, not gear
13 bag.

14 241 Q. Something handwritten in hospital to a named member?

15 A. Yeah. Unfortunately I can't read my own writing. 11:45

16 242 Q. Yes. Anyway, it goes down to:

17

18 "Phone seized and wiped."

19

20 Did you ever tell him that the phone had been wiped? 11:45

21 A. No, I would never have used that word.

22 243 Q. Can you remember how you would have described --

23 A. I would have said any reference in respect of the
24 person he had named and his initial statement, giving a
25 short abbreviation of her name, any text message in 11:45
26 relation to that person or sorry any contact, there was
27 nothing there in relation to it.

28 244 Q. There was no contact for that named person?

29 A. There was no contact on the phone, yeah.

1 245 Q. Okay. It goes on then:
2
3 "Statement taken a few months. Suspect guard did
4 not..."
5 11:46
6 Can you read that? Can you help us read that? "Did
7 not leave statement"
8 A. Talk about replacement phone, 18/6/14.
9 246 Q. Yes. "No suspension" then?
10 A. Yeah, no suspension, he mentions. 11:46
11 247 Q. "Statements taken from members. Suspect guard did not
12 leave station. Frustrate investigation."
13 A. Yeah.
14 248 Q. "Witness gave team..."
15 A. "Investigation team issues not met six months." 11:46
16
17 Now, I'm not sure, I could have been pulled in to the
18 side of the road or something writing down these.
19 249 Q. It says:
20 11:47
21 "...24/4 allegation put to suspect. Text could not be
22 restored. Guns."
23
24 And then:
25 11:47
26 "Attempted to intimidate witness."
27
28 Then there seems to be advice given by you in the text
29 section, is that correct, at the bottom?

1 A. Yeah.

2

3 "Advised re discipline investigation. Two other

4 investigations re."

5 11:47

6 I presume he had a medical complaint about.

7

8 "with GSOC."

9

10 CHAIRMAN: with GSOC. 11:47

11 A. "With GSOC. Super forwarded --"

12

13 Or:

14

15 "Forced green to hand over to insurance company. 11:47

16 Complicated. Best policeman. Drink driving. 60?

17 Work..."

18

19 250 Q. MR. McGUINESS: Perhaps the rest isn't relevant.

20 A. Okay. 11:48

21 251 Q. You seem to be in a position there to advise him about

22 the discipline investigation?

23 A. That seems to be what the kernel of it, yeah.

24 252 Q. Had you been informed that an assistant commissioner

25 was being appointed in relation to disciplinary aspects 11:48

26 of the matter?

27 A. Yeah, I was aware that AC Jack Nolan had been

28 appointed.

29 253 Q. Yes. Did you have discussion with Assistant

1 Commissioner Ó Cualáin about whether the disciplinary
2 investigation should start or proceed or whether it
3 should be put in abeyance?
4 A. I didn't, because often you see investigations running
5 parallel. 11:48
6 254 Q. Yes. Do you know whether Assistant Commissioner Nolan
7 had started his investigation in any respect at this
8 point?
9 A. I understood it was started and that some discipline
10 papers had been served on some members. 11:49
11 255 Q. Yes. Do you know whether it had got any further than
12 that at this point in time?
13 A. I never got any feedback afterwards.
14 256 Q. In any event, the file went in and the file in the end
15 didn't recommend any criminal charges be preferred? 11:49
16 A. Correct.
17 257 Q. In those circumstances, is it normal to submit a file
18 where you're not seeking to recommend any charges?
19 A. No, under the circumstances and because of the
20 background to it, I think it was important to get an 11:49
21 independent decision in relation to any charges that
22 may or may not be preferred.
23 258 Q. Yes. Just going back to page 3914, you refer to a call
24 from Garda Keogh on the 18th November, which you
25 describe there, if we go down the page. You then refer 11:50
26 to your contacting the reporter on the 7th January and
27 updating him.
28 A. Yes.
29 259 Q. He told you of his going out on long-term sick and he

1 describes what he was doing at that point in time?

2 A. Yes.

3 260 Q. Okay.

4 A. That was the first reference there in relation to

5 taking the tablets that I was aware of, that he said it 11:50

6 to me in that particular thing. He was apologising to

7 me basically for his previous behaviour and that was

8 the first time that I was aware that he had been taking

9 tablets.

10 261 Q. Yes. On the 22nd June he rang you and stated that he 11:50

11 had drink taken. If we go down to the bottom of the

12 page there.

13

14 "I had no drink for the last six weeks."

15 11:50

16 CHAIRMAN: The 22nd May.

17 MR. MCGUINNESS: The 22nd May, I'm sorry.

18 A. Yeah, that's what he said to me, yes.

19 262 Q. You record there that you advised him that you had been

20 trying to make contact with him? 11:51

21 A. Yeah.

22 263 Q. You refer to his reply there. Just to be clear, are

23 you recording here that he was drunk during this

24 conversation?

25 A. Em, no. what he is saying here was that -- I told him 11:51

26 I had been trying to get to him and he told me that he

27 had "been fucking around with phones" and they're his

28 exact words. I think he was changing his number or

29 somewhat.

1 264 Q. He made a number of comments which are recorded there,
2 is that correct?
3 A. Yes.

4 265 Q. You have included those as notes. But very shortly
5 afterwards, on about the 7th April, you were aware of 11:51
6 the director's decision, as it were, in the matter?
7 A. Yes.

8 266 Q. I think that had issued to the commissioner and the
9 assistant commissioner in March in fact, isn't that
10 correct? Perhaps it hadn't come to you? 11:52
11 A. I'm not sure of the actual dates, to be honest.

12 267 Q. In any event, did you ring him on the 7th April?
13 A. The 7th, contact established with the reporter and
14 advised him that I needed -- yes, it would be a phone
15 call. 11:52

16 268 Q. Did you discuss the directions on that evening with
17 him?
18 A. Basically, I wanted to meet him to discuss them in
19 person with him. I didn't want to talk to him over the
20 phone about the directions. 11:52

21 269 Q. Yes. And he rang you back the next day, is that
22 correct?
23 A. "The following morning the reporter rang me."
24
25 Yes. 11:52
26
27 "And basically outlined that he couldn't meet me."

28 270 Q. Did you ever meet him in fact to go through --
29 A. No.

1 271 Q. Or to inform him face-to-face of the directions?

2 A. No.

3 272 Q. Is what he said reported there accurately?

4 A. Is what he said reported --

5

6 "Told me that he could not meet with me as he was
7 going on the tear with another lad. He accepted he was
8 an alcoholic."

9

10 That is the first time that he has accepted that to me. 11:53

11

12 "I again asked him if he would contact his welfare
13 officer. He told me he was going to the press and just
14 wanted to tell me that he was going to bring down
15 Nóirín O'Sullivan. I advised him that the DPP had 11:53
16 directed no prosecution. He told me he had 15 years
17 good service and I advised him that he could have
18 another 15 years good service but not necessarily in
19 Athlone. He mentioned Birr. He rang me back later and
20 spoke about drinking and his head not being correct and 11:53
21 that every Irish family had it."

22

23 And by that I understood to be that every Irish family
24 had a drink problem. He would have been sincere in
25 relation to his comments at that point. 11:53

26 273 Q. You refer to the welfare officer there. I think
27 following a text message from him on 21st April 2015,
28 he had indicated his willingness to accept an offer of
29 help --

1 A. Correct, yes.

2 274 Q. -- via the welfare officer.

3 A. Yeah.

4 275 Q. I think at the top of page 3910 you detail what you did
5 in relation to that, in relation to the welfare 11:54
6 officers Landy and Malone?

7 A. Yeah.

8 276 Q. CHAIRMAN: That's how Garda Quinn came into the
9 picture.

10 277 Q. MR. McGUI NNESS: He was assigned to liaise with the 11:54
11 reporter. Did he liaise with you then regularly about
12 the reporter?

13 A. No.

14 278 Q. Garda Keogh.

15 A. No, he didn't basically, because, as you know, it's a 11:54
16 confidential service.

17 279 Q. Yes.

18 A. And the only time I met Mick Quinn was at a conference
19 in the medical centre -- well, it wasn't the medical
20 centre in Dublin, but it was with the Garda doctor and 11:54
21 other persons. That was the only time I ever met him.
22 And the only other contact I had with him was when I
23 retired, that he sent me a retirement card.

24 280 Q. Now, a supplementary report went in to the director's
25 office, isn't that right, arising out of the results of 11:55
26 the searches that had occurred?

27 A. Oh correct, yes.

28 281 Q. Were you involved with that, the submission of that
29 report?

1 A. That was a short enough report. Basically, at the end
2 of the first report, we had highlighted to the DPP's
3 office that other matters had come to light and we had
4 taken action and rather than delay the file --

5 282 Q. Yes. 11:55

6 A. -- we just made reference to it.

7 283 Q. Yes.

8 A. I don't believe I had any direct input in relation to
9 the second file.

10 284 Q. You became aware of the fact that no progress from an 11:55
11 evidential or prosecutorial --

12 A. No, I was fully aware of that at all times, yeah, we
13 would have discussed that in our conferences and such,
14 yes.

15 285 Q. We have heard obviously that you retired in 2018? 11:55

16 A. Yes.

17 286 Q. And Inspector Coppinger, I don't know if you knew, he
18 sent in a third submission, as it were.

19 A. No, I wasn't aware of that until yesterday.

20 287 Q. In any event, Garda Keogh refers to you in a letter to 11:56
21 the Minister on 16th May 2016, at page 11632. Perhaps
22 we will look at that. This is the paragraph in the
23 letter where he refers to you and he says:
24

25 "I acknowledge Detective Superintendent Mulcahy offered 11:56
26 to go through the findings with me. However, I
27 declined as I believe the Garda investigation was
28 flawed from the very start."
29

1 Now, is that a reference to your phone calls with Garda
2 Keogh on 7th and 8th April of 2016? Or was that some
3 subsequent occasion that you offered to go through the
4 findings with him?

5 A. I presume that's what he was saying, that he declined. 11:57
6 He's corroborating what I had said basically; that he
7 didn't want to meet me in relation to going through the
8 findings.

9 288 Q. Just to be clear, did you offer to go through the
10 findings with him in either of those phone calls or 11:57
11 subsequently?

12 A. Basically I told him that I wanted to meet him, I said
13 a direction had been received and I wanted to meet him
14 to discuss it with him.

15 289 Q. Yes. 11:57

16 A. And on the second day then, because of his attitude,
17 the fact that he had said he was going drinking on
18 whatever, I then gave him the thing because I thought
19 it was going to be impossible for me to have anything
20 to do with him at that stage. He wasn't very impressed 11:57
21 with the fact that the DPP had directed, I would
22 imagine. That was his problem, why he didn't want --
23 probably didn't want to hear the results. But I was
24 adamant that I wanted to tell him. But unfortunately
25 it didn't allow me to under the circumstances. 11:57

26 290 Q. Now there is a distinction between two different
27 matters; informing him of the decision of the DPP and
28 of the basis for it and going through the findings.
29 Was it your intention to go through the findings of the

1 investigation with him?

2 A. Well, it would be my intention to highlight everything
3 that was highlighted to the DPP.

4 291 Q. Yes.

5 A. And to give the direction. I would basically let him 11:58
6 know the exact direction, what the DPP would have said,
7 and probably would have given him a copy if he made
8 himself available.

9 292 Q. I mean, it does appear that you were, in fact, updating
10 him in terms of the progress of the investigation and 11:58
11 the steps that you were going to take even before you
12 took some of them?

13 A. Continuously, yes.

14 293 Q. Is that right?

15 A. Continuously, yes. 11:58

16 294 Q. So would you have had any difficulty, as it were, in
17 going through the findings of the investigation with
18 him and the directions of the DPP?

19 A. I would have had -- I would have had no difficulty in
20 going through the findings with him. But unfortunately 11:58
21 the situation didn't lend itself, due to the fact that
22 he said he was going out on whatever he said he was
23 going out on, he was going drinking and stuff like that
24 and the atmosphere around him at the time.

25 295 Q. Yes. 11:59

26 A. I would like to have, I absolutely would have loved to
27 sit down and discuss it with him.

28 296 Q. I don't intend to go through any of the other earlier
29 contacts that you had with him in 2015 or in '16, but

1 was the last occasion that you spoke to him about the
2 investigation on the 7th and 8th April?

3 A. I believe it was. I'm not a hundred percent sure but I
4 think it may have been, yeah.

5 MR. MCGUINNESS: Thank you, detective superintendent. 11:59

6 THE WITNESS: Thank you.

7

8 END OF INVESTIGATION

9

10 CHAIRMAN: Thanks very much. Now, Mr. Kelly? 11:59

11 Mr. O'Brien?

12 MR. KELLY: Thank you, Chairman. Chairman, I have just
13 been provided with that additional diary material.

14 CHAIRMAN: Yes.

15 MR. KELLY: I really ought to go through that first. 12:00

16 It shouldn't take me more than 10 or 15 minutes.

17 CHAIRMAN: Okay. If I said 12:15.

18 MR. KELLY: It's unfortunate. I have just been handed
19 it.

20 CHAIRMAN: Don't worry in the slightest, Mr. Kelly. It 12:00

21 is important that you should -- even if you conclude

22 that it doesn't have any relevance, it's still

23 important that you should actually look at it to

24 satisfy yourself. Well, I mean, I can say 12:30, is

25 that convenient? 12:00

26 MR. KELLY: That's fine.

27 CHAIRMAN: Okay, let's say 12:30 and we will resume

28 then and we will get in half an hour before lunch. I

29 mean, it's not long enough that you need from now until

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lunchtime to do it?

MR. KELLY: No, no, it's not. I would hope to have it done before 12:30.

CHAIRMAN: Perfect. Very good. Thanks very much. So we will say 12:30 then. Thanks very much.

12:00

THE HEARING THEN ADJOURNED BRIEFLY AND RESUMED AS FOLLOWS:

CHAIRMAN: Thanks very much. Now, Mr. Kelly.

DETECTIVE SUPERINTENDENT DECLAN MULCAHY WAS CROSS-EXAMINED BY MR. KELLY, AS FOLLOWS:

MR. KELLY: Thank you very much, Chairman.

12:32

297 Q. Just before I go through these recent diary entries, there is one matter that I want to ask you. This morning you were asked by Mr. McGuinness, it's the transcript beginning at page 29 of the live feed, I will read you the question. The question begins at line 11, question 5:

12:33

"A crucial witness has come forward with vital information, the investigation team met this man, namely around 3rd July 2014, but did not go back to speak with him for about six months as he did not trust the investigation team and was in fear of the suspect Garda who was still on duty."

12:33

1 You were asked would you like to comment on that. Your
2 answer was:

3
4 "I think what we covered earlier, in relation to my
5 efforts to contact this man, that I went far beyond the
6 ordinary call to try and get him on board."

7
8 You were then asked in respect of Nick Keogh's
9 criticism number 6:

10
11 "One of the allegations involves a suspect Garda
12 getting an unregistered informant to plant drugs in the
13 car, was arrested by his handler, the suspect garda,
14 for possession of approximately €4,000 worth of heroin.
15 This now put the garda under investigation in a
16 position of influence over the suspect witness in the
17 case." 12:34

18
19 Can you remember being asked that question?

20 A. I do, yeah. 12:34

21 298 Q. To which your answer was:

22
23 "That's totally new to me now. I will just read it
24 again.

25 Q. Do you recall Garda Keogh ever bringing that to
26 your attention?" 12:34

27
28 Your answer was:

29

1 "I haven't a clue what that is about. Absolutely not."
2
3 Do you remember that?
4 A. I do, yeah.
5 299 Q. Would you please look at page 328 in the bundle. It 12:35
6 will be brought up on the screen for you. It's volume 1.
7 Have you seen this letter before?
8 A. One moment.
9 300 Q. Take a moment to read it.
10 A. Yes. 12:35
11 301 Q. That's a letter sent to you by Nick Keogh dated 17th
12 December 2014; is that right?
13 A. I'm not sure of the date, but yes, I'll accept it.
14 302 Q. Well, you can see the date at the top, it's stamped.
15 If Mr. Kavanagh can move it up so the superintendent 12:35
16 can see the date?
17 A. 17th December, okay, yes.
18 303 Q. Yeah. If you look down, it says:
19
20 "I have kept notice Pulse incident." 12:35
21
22 And gives a number, which he attaches.
23
24 "I have kept my distance from important persons for a
25 fair investigation. Garda A is the investigating garda 12:36
26 now in a case involving heroin €4,200. Suspect
27 offender who was his informant and is a suspect."
28 A. I'm just sorry now --
29 304 Q. "Garda A is now in a position of influence over him.

1 It will be interesting to see if there is a prosecution
2 on this one."
3
4 would you firstly accept that this was brought to your
5 attention? 12:36

6 A. The start of it is very similar to another letter I
7 received about a man coming into the station and
8 stating -- but I cannot recall having seen that letter,
9 that aspect of it previously.

10 305 Q. You have never seen this letter before? 12:36

11 A. I cannot recall it. Initially in relation to the first
12 few lines I have an idea who he is speaking about. But
13 in relation to the bottom aspect of it, I have no
14 recollection whatsoever.

15 306 Q. If we then turn over, if it's moved up, if we move down 12:37
16 to page 332. This is a Pulse report. There are a
17 number of pages before it, the key one is here. It
18 bears the Pulse number 1448235.

19
20 "21:30 Garda A and Lyons carried out a followup search 12:37
21 of the shed and discovered what appears to be an amount
22 of heroin concealed behind a roof raft of drugs to
23 property, 7th December '14."

24
25 And then a receipt number. You say you haven't seen 12:37
26 this before?

27 A. No, I have absolutely no recollection of that.

28 307 Q. Are you sure about that?

29 A. I have absolutely no recollection of seeing that aspect

1 of it. I'm aware who he is speaking about and I'm
2 aware of the bit in relation to coming into the station
3 suggesting that the guards had met him and he told them
4 about the stuff and things like that. But in relation
5 to that aspect of it, I have no knowledge. 12:38

6 308 Q. So you say you are right, that you were never told
7 about the planting of the €4,200 of heroin on a
8 suspect?

9 A. Planting?

10 309 Q. Sorry? 12:38

11 A. Planting of heroin on this suspect?

12 310 Q. Yes.

13 A. No.

14 311 Q. On any suspect?

15 A. Oh, yes. Part of the initial allegation was in 12:38
16 relation to planting of drugs on a suspect, but that
17 related to €75,000 worth of heroin.

18 312 Q. Yes. But this one. So this morning that allegation 6
19 that I have taken you through in the transcript, do you
20 still stick by your answer? 12:38

21 A. As I said to you, I have absolutely no knowledge of
22 that and I have no recollection of ever seeing that
23 before.

24 313 Q. Okay. So I will leave it there for the moment?

25 A. Yeah. 12:39

26 314 Q. You have never seen this letter before?

27 A. As I said, I have no recollection of ever seeing this
28 before. The letter seems similar to one when I read
29 the first couple of lines but as I went down into it, I

1 cannot recall absolutely anything in relation to that.

2 315 Q. You have no recollection of being told about the search
3 and the seizure of 4,200?

4 A. This one, I have no recollection of.

5 316 Q. None? 12:39

6 A. None.

7 317 Q. I want to ask you about the diary entry that you have
8 here for wednesday, 4th March 2015. It's at page
9 16298.

10 A. Yeah. 12:39

11 318 Q. This is your diary?

12 A. Yes, correct.

13 319 Q. It's for 4th March 2015, is that right?

14 A. Correct.

15 320 Q. And if I am reading that correctly, it says: 12:39
16
17 "Pat Murray briefing on Athlone situation."
18

19 CHAIRMAN: Investigation.

20 A. Investigation. 12:40

21 321 Q. MR. KELLY: "Investigation. 10:00am."
22 A. 10:00am, that's correct. Yeah.

23 322 Q. So that was you ringing Pat Murray to brief him on the
24 situation, is that right?

25 A. I'm not sure if I rang him. There's something in the 12:40
26 back of my mind to suggest that I might have met him
27 that particular morning in Oranmore.

28 323 Q. But this is your diary entry?

29 A. It's my diary entry.

1 324 Q. Is's accurate?
2 A. That I briefed Pat Murray --
3 325 Q. No, is your diary accurate?
4 A. Pat Murray briefing on Athlone investigation 10:00am,
5 yes. 12:40
6 326 Q. So what is written here is accurate?
7 A. Is accurate.
8 327 Q. So Pat Murray was briefed on 4th March 2015 by you
9 about the Athlone investigation?
10 A. Well, when I say briefing, what I did was to let him 12:40
11 know that I was involved in an investigation in the
12 station that he was now going to and that some of my
13 team might be around and not to be alarmed, etcetera.
14 I didn't go into the details of the actual
15 investigation with him. 12:41
16 328 Q. So in this entry briefing means just saying, well, I
17 spoke to him by phone and told him that we would be
18 about and that's it.
19 CHAIRMAN: He didn't say by phone, Mr. Kelly.
20 MR. KELLY: That's right. 12:41
21 CHAIRMAN: He said that his recollection was that he
22 met him in the station in Oranmore.
23 329 Q. MR. KELLY: I am grateful, yes. So briefing is just
24 that you meet him and you just say, we're going to be
25 over there. 12:41
26 A. Basically I told him I was involved in the
27 investigation and that my team would be over there, you
28 know. So that -- it was out of courtesy I told him,
29 that he wouldn't be surprised when a crowd of people

1 appear in an office, something like that, you know.

2 330 Q. And the investigation being?

3 A. Yes.

4 331 Q. What investigation were you referring to?

5 A. Well, the confidential reporter investigation. 12:41

6 332 Q. Yes. Was that made clear to Pat Murray?

7 A. I don't think it had to be necessarily made clear to
8 him, I think he understood quite exactly what I was
9 talking about.

10 333 Q. You see, Chief Superintendent Murray told us on an 12:42
11 earlier occasion that he had started work on 9th March
12 2015 in Athlone and that he had not -- just hold on one
13 moment. It's Day 123, page 11 of the transcript. I
14 just want to draw your attention to that. At line 8,
15 question -- this is the evidence of Superintendent Pat 12:43
16 Murray:

17
18 "Did you know that Assistant Commissioner Donal Ó
19 Cualáin was conducting an investigation in relation to
20 matters concerning Athlone Garda Station? 12:43

21 A. Not before going to Athlone, no."

22

23 Have you any comment to make on that?

24 A. When did he go to Athlone, actually?

25 334 Q. The 9th March. 12:43

26 A. The 9th March. This is the 4th March. I don't know, I
27 cannot comment in respect of Superintendent Murray.
28 But that is my recollection here and I am happy that
29 they are accurate.

1 335 Q. I see. I want you now to look, if you would, at your
2 diary entry for 18th April 2015. This is page 16299.
3 This is the documents we got this morning.
4 A. Okay.
5 336 Q. This goes over on to two pages, doesn't it? 12:44
6 A. It does, indeed, yeah.
7 337 Q. It's a very long note.
8 A. Yes.
9 338 Q. Or is it on to three pages.
10 A. No, it's two pages I think. 12:44
11 339 Q. Right. Did you make this contemporaneously?
12 A. I did actually, yes. It was a Sunday evening, I was at
13 home with my wife sitting down when the phone rang, I
14 had my diary with me and made it there and then.
15 340 Q. It's a pretty long and detailed one. 12:44
16 A. It is indeed.
17 341 Q. Did you record the conversation?
18 A. Record it, no. I recorded absolutely no conversation
19 with Nick Keogh at any time.
20 342 Q. You say that this long, detailed note was prepared 12:45
21 contemporaneously?
22 A. Yes.
23 343 Q. It's clear during the course of that, that Nick Keogh
24 presumed that Garda A was going to be arrested, isn't
25 it? 12:45
26 A. That was his presumption, yes.
27 344 Q. In fact, he had asked you I think at least on one
28 occasion, if not more, were you going to arrest Garda
29 A?

1 A. He did, yes.

2 345 Q. And your reply?

3 A. I think it may have been, for what?

4 346 Q. Again, if I may ask you on that, I see from it that you
5 also phoned on 20th April 2015, Pat Murray, is that 12:46
6 right?

7 A. The 20th, hang on.

8 347 Q. 16301. The diary entry for 20th April 2015. It's one
9 that I got this morning.

10 A. Okay. 12:46

11 348 Q. Do you see that up there now?

12 A. I do, yeah.

13 349 Q. What have you written in?

14 A. I Have "Rang Pat Murray and advised him re Nick Keogh
15 welfare worried. Injured party said in 1940 two GS 12:47
16 shot in station. Garda A has a gun. He could shoot
17 Nick plus then himself."

18 350 Q. Again, you spoke to Pat Murray, according to the
19 documents we got this morning --

20 A. Yeah. 12:47

21 351 Q. -- at 16302, again on the 19th November. Did you call
22 him or did he call you?

23 A. I would imagine that it was I called him on that
24 particular one.

25 352 Q. What was discussed then? 12:47

26 A. Basically the welfare of Nick Keogh, because of what
27 was outlined to me and my concerns for him.

28 353 Q. Was there any other contact with Pat Murray?

29 A. There was numerous contacts with Pat Murray, but are

1 you saying around this time?

2 354 Q. Or at any time? Well, why was there even the contact
3 we discussed just now with Pat Murray at all?

4 A. Pat Murray was Garda Keogh's superintendent, the person
5 who would have responsibility for welfare. I noticed 12:48
6 that there was a possible welfare issue and I brought
7 that to the notice of Pat Murray, having been
8 instructed by my AC to ensure that his welfare needs
9 were met at all times.

10 355 Q. I wanted to try and get a timeframe for this. We know 12:48
11 that Nick Keogh's initial disclosure was on 8th May
12 2014.

13 A. Correct.

14 356 Q. Assistant Commissioner Ó Cualáin was appointed to
15 investigate the following day, the 9th May? 12:49

16 A. I think that's correct, yes.

17 357 Q. And then you and Inspector Coppinger were appointed in
18 turn by Mr. Ó Cualáin on 15th May 2014?

19 A. Correct, yes.

20 358 Q. Is that right? 12:49

21 A. Yes.

22 359 Q. The first contact you had with Nick Keogh was I think
23 then on 15th May 2014?

24 A. The 15th May, em... Do you mean the 15th May was the
25 meeting with -- 12:49

26 360 Q. Sorry, Assistant Commissioner Ó Cualáin --

27 A. Yeah.

28 361 Q. -- met him on the 15th May and then you met him I think
29 on the 7th June?

1 A. The 7th June.

2 362 Q. Is that right?

3 A. No, the 15th May was when Ó Cualáin met both Michael
4 Coppinger and myself and he briefed us in relation to
5 what he had been appointed to, yes. 12:49

6 363 Q. Okay. So you get the briefing on the 15th May and then
7 you meet Nick Keogh on the 7th June?

8 A. The 7th June.

9 364 Q. And then between 11th and 18th June, Nick Keogh's
10 statement is taken? 12:50

11 A. Correct.

12 365 Q. Is that right?

13 A. Yeah.

14 366 Q. You then met I think on 14th July 2014 with
15 Mr. Ó Cualáin to discuss the investigation, in 12:50
16 particular the issue of Olivia O'Neill and the MCHugh
17 issue, is that right?

18 A. I'll just have to get my notes, if that is okay,
19 Chairman.

20 367 Q. Yes. 12:50

21 A. Sorry, what date did you say?

22 368 Q. The 14th July. Perhaps those two issues weren't
23 included?

24 A. Sorry?

25 369 Q. Were those two issues included, O'Neill and MCHugh, at 12:50
26 that meeting?

27 A. Wait until I get my other notes in respect of the same.
28 I have no note in my actual diary in relation to that
29 for the 14th July. No, I have no note for the 14th

1 July.

2 370 Q. Okay. Did you ever contact, in the course of this
3 investigation, Inspector Minnock?

4 A. Contact him?

5 371 Q. Yes. 12:51

6 A. I don't honestly know that I actually contacted him. I
7 know I spoke to him one day while we were in Athlone.
8 I'm not sure that I made actual contact with him,
9 whether by phone or otherwise. No, nothing to my
10 recollection. No. 12:52

11 372 Q. You didn't see him as someone who might be able to give
12 you relevant help or evidence?

13 A. I know there's something in my mind to suggest that we
14 did meet him in Athlone at one stage. I don't know or
15 I can't recall exactly what it was about now. 12:52

16 373 Q. Is there anything in your diary about it?

17 A. I would have to go through it from start to finish.
18 Can you give me an idea of dates?

19 374 Q. Okay.

20 A. This is six years ago and I have retired from An Garda 12:52
21 Síochána.

22 375 Q. Of course?

23 A. You know, it's difficult.

24 376 Q. I understand that.

25 A. Yeah. 12:52

26 377 Q. But to the best of your recollection, you think you
27 might have met him but you're not sure?

28 A. I'm not sure, and if I did meet him I don't even know
29 what it was about. I do recall meeting him at some

1 stage in Athlone. Now, I think the same day I might
2 have been looking for Superintendent Murray, he took me
3 to his office or something like that. There's some
4 recollection there in relation to actual contact with
5 him in the station. But phone wise, I don't believe -- 12:53
6 I cannot recall anything.

7 378 Q. Yeah. Then at the end of July I think you and
8 Mr. Ó Cualáin met and had a briefing?

9 A. We had numerous briefings throughout the investigation,
10 yeah. 12:53

11 379 Q. I see, yes. Then the 13th August, you met Nick Keogh
12 at Portumna, is that right?

13 A. The 13th August, yeah that's correct, yeah.

14 380 Q. Yes.

15 A. That was in response to a letter that we had received 12:53
16 from him or that I had received from him, I think it
17 was on the 11th maybe.

18 381 Q. Right. On 28th September 2014, I think you phoned Nick
19 Keogh, this was to get his consent to disclosure of a
20 statement to Human Resources? 12:54

21 A. Correct, yeah.

22 382 Q. And he didn't give you his consent?

23 A. No.

24 383 Q. Did you explain to him that without he giving his
25 consent, Garda A couldn't be suspended? 12:54

26 A. No. I wouldn't have put anything like that matter.

27 384 Q. Why not?

28 A. Because I didn't realise there was a requirement for
29 Garda A's statement to be made available before a

1 decision could be made on his suspension. I'm not
2 aware of any regulation in that regard.

3 385 Q. Because at that stage you had the statement, there were
4 serious allegations, you regarded them as evidence, and
5 he could have been suspended in your book? 12:54

6 A. No, I spoke to Garda Keogh in relation to it and I
7 advised him that it may assist him in making a
8 decision, but I never said that they couldn't suspend
9 him, absolutely not.

10 386 Q. Yeah, that's what I am getting at. So from your 12:55
11 perspective, you saw no reason why Garda A couldn't be
12 suspended then, given the material you had accumulated?

13 A. Well, in relation to the criteria that's required for
14 suspension, I think on the day that we met him in
15 Portumna, AC Ó Cualáin explained to him that there was 12:55
16 a very high bar there in relation to it and he asked
17 him was there any other reasons that we should be aware
18 of on that date.

19 387 Q. But at that stage you felt you had enough to justify
20 the suspension of Garda A? I know it wasn't your 12:55
21 decision.

22 A. No, it was never going to be my decision in relation to
23 it. But what I would do was offer what I had that
24 might justify a suspension.

25 388 Q. Well, presumably you wouldn't have offered it if you 12:55
26 didn't think a suspension was justified?

27 A. Well, you would give what you had and where you stood
28 with it, you know. As I say, there's a number of
29 criteria there, there are a number of points that need

1 to be addressed if you make an application to have
2 someone suspended.

3 389 Q. Yes, I understand that. But you wouldn't make an
4 application to have someone suspended unless you
5 thought that suspension was justified, would you? 12:56

6 A. Well, it's always best to get an independent view in
7 relation to some of that. It's like sending a file to
8 the DPP, you have an independent view in relation to
9 it. That would be my view with most of these
10 decisions, you know. 12:56

11 390 Q. I understand. Please try and focus on the question I
12 am asking. In your mind was the suspension of Garda A
13 justified?

14 A. At the time -- I think it's unfair for me to give an
15 opinion in relation to whether it was justified or not. 12:56

16 391 Q. But you must have thought that there was some
17 justification, otherwise why bother with even thinking
18 about suspension?

19 A. Well, I had to think about it because Garda Keogh had
20 raised it. 12:57

21 392 Q. Look, you were the lead investigator in this, weren't
22 you?

23 A. AC Ó Cualáin was appointed as investigator, as the SIO,
24 senior investigating officer. He appointed me to
25 assist him with the investigation. I was the man on
26 the ground, we'll say, for him. 12:57

27 393 Q. Okay. So at this stage, around about September, in
28 your mind the suspension of Garda A was on the cards?

29 A. Around about September. But I know that AC Ó Cualáin

1 and myself met with Chief Superintendent Curran and
2 inspector -- or Superintendent Noreen McBrien in Dublin
3 in respect of that and it was discussed on that date.
4 394 Q. So it was on the cards, is the simple straightforward
5 answer? 12:58
6 A. You can play with words, but that's what -- we met with
7 him to discuss it.
8 395 Q. I'm not playing with words, with respect. What I am
9 saying to you is, at this stage you, senior Gardaí,
10 were considering the question of the suspension of 12:58
11 Garda A?
12 A. We were considering the question of suspension of Garda
13 A since Garda Keogh first arose it.
14 396 Q. And it became apparent, didn't it, to you that in order
15 to have Garda A suspended it would be necessary for 12:58
16 Nick Keogh to give his consent to his statement being
17 disclosed to Human Resources?
18 A. That's not correct.
19 397 Q. That's not correct, is it?
20 A. No. There was no requirement there that we needed 12:58
21 Garda Keogh's statement. It was suggested that it
22 might advance it, to Garda Keogh.
23 398 Q. Was that why you were asking?
24 A. Yes. I had asked Garda Keogh for permission to use his
25 statement on a number of times. He consented to using 12:59
26 it with DPP. He refused to allow to be used in respect
27 of the superintendent who the complaint was made
28 against and he refused to allow it to be used to HR.
29 And I think that refusal was based on that he may not

1 have trusted them.

2 399 Q. But no one, to your knowledge, ever said to Nick Keogh,
3 look, hang on, Garda Keogh, look, if you don't actually
4 let us use this, saying who you are, he's never going
5 to be suspended? 12:59

6 A. No, that was never said to him, like. And we couldn't
7 say that, because that's not the way it works.

8 400 Q. There's other evidence to the contrary.

9 A. Okay.

10 401 Q. That no doubt will be dealt with again. Chairman, I am 12:59
11 just looking at the time.

12 CHAIRMAN: Very good. Very good. Thank you very much.
13 Two o'clock or as close as we can to it.

14

15 THE HEARING THEN ADJOURNED FOR LUNCH AND RESUMED, AS 12:59
16 FOLLOWS:

17

18 CHAIRMAN: Thank you. Yes, Mr. Kelly. Thank you.

19 402 Q. MR. KELLY: we have been to the point, I was covering
20 the timeframe, you may recall. If I just move on to 14:03
21 the end, you conduct, together with Inspector
22 Coppinger, under the supervision of Assistant
23 Commissioner Ó Cualáin, this investigation. The report
24 is eventually produced, collectively compiled, is that
25 right? A report goes to the DPP? 14:03

26 A. Yes.

27 403 Q. You collectively compile that?

28 A. Well, it would -- it was our inputs that formed the
29 basis of the report, yes. And would I have reviewed it

1 as well.

2 404 Q. Well, it's a straightforward question. Was it you,
3 Inspector Coppinger and Assistant Commissioner Ó
4 Cualáin who compiled it, the report? I understand you
5 each had input? 14:04

6 A. As I say, we compiled the report. I didn't
7 physically --

8 405 Q. But those people I named.

9 A. I didn't physically write the report, if you can
10 understand that. I provided, I suppose, input to it. 14:04
11 If I found something that I didn't agree with, we would
12 discuss it and see whether it was to be left in or left
13 out. So it was then sent for typing, having done up
14 the draft in that regard.

15 406 Q. So I guess the answer to my question is, yes, we did 14:04
16 collectively compile it?

17 A. Yes, we were involved in relation to the collation of
18 the report.

19 407 Q. Right. Then the DPP is given a supplemental report, we
20 know, later. But anyway, the decision of the DPP is 14:05
21 not to prosecute, is that right?

22 A. That's correct.

23 408 Q. That was based upon the view expressed in the report,
24 that there was insufficient evidence in the author's
25 view to bring home a conviction on the criminal 14:05
26 standard?

27 A. That was the recommendation, yeah.

28 409 Q. And that is the recommendation that the DPP accepted?

29 A. The DDP obviously formed their own opinion and come

1 back in relation to it.

2 410 Q. But they would have formed their view, I take it, on
3 the basis of your report?

4 A. Yes, that's what they had to hand, yes.

5 411 Q. Fine. I want to ask you about, if I may, Garda A's 14:05
6 phone. We note that you seized it, you had it
7 analysed. The records -- Ms. B wasn't on that form, is
8 that right?

9 A. Correct.

10 412 Q. And the relevant records in fact, such as the provider 14:06
11 would have had, weren't available because they only
12 kept them for two years; is that right?

13 A. That's right, because the providers are only obliged
14 by law has to keep them for two years.

15 413 Q. However, you were able from other material which you 14:06
16 obtained, I think from Superintendent Glacken?

17 A. Yes. As part of the investigations into the
18 allegations against him, we were able to retrieve phone
19 records, the billing details basically in relation to
20 that particular phone and which actually covered the 14:07
21 time in question that we were looking at.

22 414 Q. That was it?

23 A. Sorry.

24 415 Q. How that came about, as I understand it from the
25 evidence, is Superintendent Glacken had on a previous 14:07
26 occasion seized the phone and had it analysed and
27 retained the data that he filed?

28 A. Oh, I am not sure if that would be correct. Billing
29 details is different from phone data. I wasn't aware

1 that he had seen the phone at that stage.

2 416 Q. It's straightforward enough, superintendent. I'm
3 asking you, you found there was 1,672 contacts between
4 A and B between 27th May 2010 and 3rd October 2010, do
5 you agree with that? 14:07

6 A. Sorry, are we talking about the billing details or are
7 we talking about the contacts?

8 417 Q. Look, there was contacts found between -- 1,672
9 contacts between Garda A and Ms. B between 27th May
10 2010 and 3rd August 2010. Do any of those numbers ring 14:08
11 a bell with you at all?

12 A. Yes, there was in around that number of calls in
13 relation to that phone, and that was from my
14 recollection of the billing details.

15 418 Q. Yes. And you got those from Glacken, didn't you? 14:08

16 A. We got those from Superintendent Glacken, yes.

17 419 Q. Good, we got there. So getting the contacts, it was
18 important then to contact Superintendent Glacken and
19 get what material he had?

20 A. Yes. 14:08

21 420 Q. How did he come about that material?

22 A. I understand that there was a complaint made in or
23 about -- now I may not be correct on the time, but I
24 think around maybe 2010 at some stage. And as a result
25 of that he sought billing details in relation to that 14:09
26 particular phone.

27 421 Q. And he got them?

28 A. He got them, yes.

29 422 Q. He sought them, got them?

1 A. Yeah.

2 423 Q. Right. You got them analysed. Look, somebody had to
3 go through them.

4 A. They were documented when we got them.

5 424 Q. Oh they were documented? 14:09

6 A. Yeah, that is my understanding.

7 425 Q. Right.

8 A. Yeah.

9 426 Q. Okay. Do you know when that documentation was done,
10 that is somebody counting up -- 14:09

11 A. This is billing details, and when you apply for billing
12 details it comes back with the contacts and contact
13 number basically.

14 427 Q. Please, chief superintendent, look, what I am asking is
15 in respect of the 1,672, who counted those up? 14:09

16 A. Who what? Counted them. Garda Barry Walsh, who was
17 our telephone liaison officer.

18 428 Q. Right. And that was done at your direction?

19 A. Yeah.

20 429 Q. When was that done? 14:09

21 A. Again, I won't have the exact date, but it was sometime
22 afterwards, having seized the phone, obviously.

23 430 Q. How long after?

24 A. I don't have the date to hand but I have no doubt that
25 his statement would probably cover that. 14:10

26 431 Q. But having got this, it was something obviously of
27 importance and you would want to find out what it says?

28 A. Of course, yes.

29 432 Q. So may we take it that that's what you did?

1 A. Sorry.

2 433 Q. May we take it that that is what you did?

3 A. Yes, that I would have given it to him with the purpose
4 of getting feedback from him in respect of what was
5 happening. 14:10

6 434 Q. What was the significance to you of that number of
7 contacts between Garda A and Ms. B?

8 A. If I put it to you now, it was contacts with a phone
9 but it was registered to a daughter of Ms. B.

10 435 Q. I know that. 14:11

11 A. No, but just to put things in perspective. What was
12 the significance? It rang a bell.

13 436 Q. And what bell did it ring?

14 A. To say that they contacted -- this amount of contact
15 with somebody. 14:11

16 437 Q. It was extraordinarily high, wasn't it?

17 A. It was very high, I agree with you.

18 438 Q. So in your previous answer, you say it rang a bell,
19 means it was extraordinarily high and thought, oh, this
20 was really high? 14:11

21 A. It was for the time period, absolutely, yes.

22 439 Q. I see. So far as you know, that analysis that you got
23 Garda Barry White to undertake had not been undertaken
24 previously, is that right?

25 A. Sorry, I'm finding it slightly difficult to hear you, 14:11
26 Mr. Kelly. I have a hearing problem.

27 440 Q. That data which was produced as a result of the
28 analysis undertaken by Garda Barry White was
29 undertaken, we established, at your direction?

1 A. Barry walsh.

2 441 Q. Sorry, Barry walsh?

3 A. Yeah, correct.

4 442 Q. To your knowledge had it been analysed previously?

5 A. Had the phone been analysed previously? 14:12

6 443 Q. Yes.

7 A. I don't believe it had. I don't know.

8 444 Q. As I understand it, you and Inspector Coppinger

9 searched the locker in Athlone station on 26th June

10 2014? 14:12

11 A. Again, it wasn't a locker, it was kind of a storeroom.

12 445 Q. What were you looking for?

13 A. Basically Garda Keogh had indicated that local files

14 were stored there and that there was also a video

15 library that was made up of DVDs that Garda A would 14:13

16 have taken during the courses of searches.

17 446 Q. You were looking for files in relation to Operation

18 Loki, is that right?

19 A. Well, I already had spoken with D/Sergeant M Curley and

20 asked him to take sight of any files, original files in 14:13

21 relation to Loki preserved for me.

22 447 Q. When you were conducting this search, were you looking

23 for any files in connection with Loki, amongst other

24 things?

25 A. No. We had -- we had arranged for the possession of 14:13

26 the Loki files.

27 448 Q. You do know that one of the allegations Garda Keogh was

28 making was that a file, a crucial file in relation to

29 that operation had been taken from him?

1 A. Yeah. That was, I understand, Garda Keogh's working
2 file in respect of that.

3 449 Q. Yes.

4 A. Yes.

5 450 Q. Were you looking for that file? 14:14

6 A. We sought that file, yes.

7 451 Q. And you didn't find it?

8 A. That didn't form part of that particular room where we
9 were or what Garda Curley had sorted for us.

10 452 Q. I think you said yesterday that the file wasn't stolen, 14:14
11 rather it was given to Inspector Farrell by Garda A?

12 A. That's our instructions as to how Inspector Farrell
13 came into possession of it.

14 453 Q. Yeah.

15 A. And I think it was in respect of a civil action that 14:14
16 was being taken by the person who was mistakenly
17 arrested.

18 454 Q. Yeah. What I am going to suggest is that whilst that
19 is your understanding, it may not have been correct.
20 Garda Nick Keogh is saying that the file which had been 14:15
21 removed from the desk had a statement of a person who
22 was innocent in it, it was the working file?

23 A. I don't know if originals were in it.

24 455 Q. But that's what he told you, isn't it?

25 A. He said it was his working file and that -- he said the 14:15
26 statements were in it, but I'm not sure if he is
27 talking about the original actual witness statements.

28 456 Q. Yes. But the file which you got was one which Garda A
29 had given to Inspector Farrell --

1 A. Correct.

2 457 Q. -- on the 9th May?

3 A. Correct.

4 458 Q. That was held in the storeroom?

5 A. No, no, that was held in Inspector Farrell's office, 14:15
6 under lock and key in his desk.

7 459 Q. So you say that wasn't in the storeroom at all?

8 A. No. I don't know where it was previously or anything
9 like that, but on the day we came Inspector Farrell
10 took it from his desk. 14:16

11 460 Q. We can go back over the evidence on it, but my
12 understanding was that it came from the storeroom,
13 Garda A got it in the storeroom, gave it to Inspector
14 Farrell on the 9th May. But you don't know about that?

15 A. That would be before we ever visited Athlone. 14:16

16 461 Q. But the implication of that, if that is right, it means
17 that Garda A was in the storeroom either on the night
18 of the 8th May or the early morning of the 9th May, is
19 that right?

20 CHAIRMAN: Where is that evidence, Mr. Kelly? 14:16

21 MR. KELLY: That comes I think from Inspector Farrell,
22 is it? From Inspector Farrell.

23 CHAIRMAN: That Garda A gave him the file having
24 removed it from the storeroom?

25 MR. KELLY: Yes. 14:17

26 CHAIRMAN: Because I didn't think that was the
27 evidence. Maybe I'm wrong.

28 MR. MURPHY: I would be grateful if he could identify
29 where in the evidence is.

1 CHAIRMAN: Yes, maybe you would check that, Mr. Kelly.
2 If it's important, I think we should check it. It is
3 certainly not my recollection of the evidence. Because
4 I know that the question -- my recollection is
5 Inspector Farrell said that Garda A gave him this file. 14:17
6 But the storeroom question is the one that I am
7 certainly not sure of.
8 MR. KELLY: Okay. What I am proposing, someone here
9 will check that.
10 CHAIRMAN: Yes. 14:17
11 462 Q. MR. KELLY: So I will come back to that.
12 A. In any event, this would have happened before we even
13 appeared on the scene in Athlone.
14 463 Q. Yes, I know that.
15 A. Yeah. 14:17
16 464 Q. Could you agree this with me, as to what you understand
17 now, that on the 8th and 9th Garda A was about Athlone
18 station?
19 A. I have to accept that, if you say it, yeah.
20 465 Q. Yes, well it is clear from the records? 14:17
21 A. Yeah.
22 466 Q. I think you've given evidence already that there were
23 attempts made to meet with Ms. B?
24 A. Yes.
25 467 Q. Quite a few attempts actually? 14:18
26 A. It was indeed, yeah.
27 468 Q. And she wasn't actually being cooperative, was she?
28 A. She agreed that she would meet us and she made promises
29 that she would come to the station and stuff like that,

1 but she failed to keep all of those promises.

2 469 Q. Now, you then met with -- we have been through that.
3 Together with Inspector Coppinger you met with Garda A
4 and a solicitor on 24th April '15, is that right?

5 A. Correct, yes. 14:18

6 470 Q. You had a list of these allegations made?
7 A. Yes.

8 471 Q. Which you gave to him. He was given time then to study
9 them and reply?

10 A. He was. 14:19

11 472 Q. Is that not very unusual when you have someone come
12 into the station, to put allegations to them?

13 A. I won't say it was unusual, but it was -- it was dealt
14 with as a result of the circumstances we found
15 ourselves in and from the provider of the information. 14:19
16 And having looked at that information, that is where we
17 found it. It wasn't a situation where I could justify
18 an arrest based on the information I had got and where
19 it had come from.

20 473 Q. You see, what I am wondering about is, you're 14:19
21 conducting a criminal investigation, aren't you?

22 A. Yes.

23 474 Q. Right, you have a suspect come in?
24 A. Yeah.

25 475 Q. And you have got all the allegations written out? 14:19
26 A. Mm-hmm.

27 476 Q. Why not put just those allegations to him there and
28 then?

29 A. I have no doubt -- the reason we did it was to give him

1 an opportunity, because fair procedure needed to be
2 applied in all cases here, not just in respect of our
3 complaint received but also the person that the
4 complaint was made against. Because the information we
5 had got, it was very hard to base a decision to arrest, 14:20
6 first of all, Garda A. So it was felt that due process
7 should prevail and that he should be given an
8 opportunity to see the allegations that were made
9 against him.

10 477 Q. Oh, I am all for due process, but I am suggesting to 14:20
11 you it's a highly unusual course to take. You had this
12 man attend with a solicitor, you had the allegations,
13 and rather than just get on and put them to him and
14 forget about arrest, you instead gave him time to go
15 off and think about it. I am putting to you that's 14:21
16 highly unusual?

17 A. It may be highly unusual for some people but not for
18 me.

19 478 Q. Have you done that --

20 A. Yeah. 14:21

21 479 Q. -- with many suspects you've had occasion to interview?

22 A. At this stage we're looking at Garda A as a possible
23 suspect.

24 480 Q. Yes.

25 A. We investigated Operation Loki, in which the main 14:21
26 allegation was against Garda A and his false
27 identification of a particular person, who the reporter
28 had arrested. Now, having looked at that file in
29 relation to that, there was a mistake made and the

1 reporter agreed that there was a mistake made. And
2 that Garda A should have been strong enough to put up
3 his hand and say he made a mistake. Garda Keogh also
4 agreed that it wasn't deliberate but that there was a
5 mistake made. Operation Loki, in respect of that -- 14:22
6 the rest of that reprimand, could have been avoided
7 because Garda Keogh, if I give you this evidence,
8 received a working document, a briefing pack in
9 relation to the arrest of this particular man.
10 Contained in that document was subscriber details in 14:22
11 relation to the phone that was used for that
12 transaction. And if it was read, it would appear the
13 proper name and address appeared on it. But
14 unfortunately somebody -- Garda A identified this
15 person as who he was, but unfortunately when it went to 14:22
16 Pulse it wasn't associated correctly because there's
17 two persons of the same name in Athlone. And it was
18 associated to the wrong person. So is there intent
19 there straightaway on the part of A to cause a problem?
20 It was Garda A then that realised that there was a 14:23
21 problem and said, listen, we have arrested the wrong
22 man here. When he was released, Garda A subsequently
23 down the road arrested the proper person. Now, both
24 persons have the same name. The person that should
25 have been arrested had a second name because he was in 14:23
26 care at one stage and had dropped that name. So the
27 identification was correct, but unfortunately whoever
28 went to Pulse and associated the incident with the
29 person, did it incorrectly.

1 CHAIRMAN: Are we getting slightly away?
2 MR. KELLY: Yes.
3 481 Q. CHAIRMAN: I mean, I think I understand that, detective
4 superintendent.
5 A. Yes. 14:23
6 482 Q. CHAIRMAN: And certainly I have that picture. There
7 was a misidentification and, rightly or wrongly, in
8 fairness to Garda A, he did point out --
9 A. Yes.
10 483 Q. CHAIRMAN: And so on. And Garda Keogh was already 14:23
11 realising at the time, because he was interviewing the
12 misidentified person. We have had that. How is that
13 material relevant to the due process question of giving
14 Garda A the -- do you understand? Mr. Kelly is
15 exploring, okay, he is suggesting it's very unusual? 14:24
16 A. Mm-hmm.
17 484 Q. CHAIRMAN: To give somebody the allegations and then
18 to -- that's what he is suggesting. So how is that
19 particularly relevant? Is it because the time involved
20 or whatever? 14:24
21 A. No, it's because of the allegation that was made
22 against Garda A, having done wrong in this respect.
23 485 Q. CHAIRMAN: Yes.
24 A. And that formed part of the questioning that we were
25 putting to him. 14:24
26 486 Q. CHAIRMAN: Okay.
27 487 Q. MR. KELLY: Okay, I understand that. So I'm just going
28 to go back to the question and thank you for that very,
29 very long answer on it.

1 A. Sorry.

2 488 Q. Just a simple, straightforward question. You have
3 suspect in, you have your allegations, you want to know
4 what he has got to say about it. Are you in agreement
5 with me so far? 14:25

6 A. I am, yes.

7 489 Q. You have him in, he is there with his solicitor. Why
8 didn't you just put the allegations to him? You have
9 already decided what it was you were going to ask him
10 about, why not ask him there and then? 14:25

11 A. We put the allegations to him that day and we gave him
12 the copy of it.

13 490 Q. Yes.

14 A. Yes.

15 491 Q. And he said, I want time to go away off and think about 14:25
16 this?

17 A. Yes.

18 492 Q. You said, oh, of course, you can have that time, six
19 weeks, see you in six weeks?

20 A. Sorry, it wasn't said in that manner. We accommodated 14:25
21 his solicitor. If you look at my diary, you will see
22 that there were, I think, three contacts with the
23 solicitor in between, where I had got back to him to
24 arrange a date in relation to it. On the day that they
25 were supposed to come back, he put it back for another 14:25
26 week because he wasn't ready.

27 493 Q. Well, I am suggesting to you, I will have to do it
28 bluntly, that you were affording him favourable
29 treatment?

1 A. I wouldn't say I was affording him favourable
2 treatment, I was trying to see that natural justice
3 would prevail.

4 494 Q. Can you identify another case from your own experience,
5 say in the preceding 12 months, where you had afforded 14:26
6 another suspect the same courtesy?

7 A. To hand I'm not in a position. But I remember at the
8 same time, I ran in tandem with that, it was an
9 investigation in relation to stuff that appeared in the
10 media following the Prince Charles thing. I was 14:26
11 appointed to investigate that. The suspect in that, if
12 you wish to call him, had put pictures on the internet
13 and there was some adverse comments in relation to it.
14 I didn't arrest that suspect.

15 495 Q. Is that a guard? 14:26

16 A. It was a guard.

17 496 Q. Right.

18 A. Yeah.

19 497 Q. Somebody who is not a guard afforded the same --

20 A. Nothing comes to mind at the moment. We were dealing 14:26
21 with a guard and I thought you meant a guard and I was
22 giving you something guard to guard, guard and guard.
23 But look it, I'm retired since 2014 -- sorry, 2018, and
24 something just doesn't come to mind at the moment, you
25 know. 14:27

26 498 Q. Okay.

27 A. But if I have time, I might be able to think.

28 499 Q. Okay. We will just continue with my timeframe.

29 A. Okay.

1 500 Q. That is the 24th April. He is given time. It's 16th
2 June --

3 A. It wasn't until 16th June, as I pointed out, there was
4 a previous date earlier fixed to do it. But it
5 eventually ended up on the 16th June, yes. 14:27

6 501 Q. Six weeks later.

7 A. Yes.

8 502 Q. He then turns up and gives you his response in writing?

9 A. Yes.

10 503 Q. You then agree to meet again on the 24th June? 14:27

11 A. Yes.

12 504 Q. Why not finish the business that day, on the 16th June?

13 A. Because having read through it that day, a number of
14 matters came up that we needed to look at and seek
15 corroboration on. 14:27

16 505 Q. Then following that, in October you get a warrant to
17 search Garda A's house?

18 A. Correct, yes.

19 506 Q. You seize two mobiles?

20 A. Correct. 14:28

21 507 Q. When were they examined?

22 A. I'm not sure when exactly they were examined, but they
23 were handed over to the exhibits officer and he did
24 whatever had to be done following that.

25 508 Q. Was there anything of relevance? 14:28

26 A. No, nothing of evidential value was got from those
27 phones.

28 509 Q. Yeah.

29 A. Just in relation to that, where Superintendent Murray

1 had rang me in relation to the person had gone to him
2 in relation to this information, and he rang me to ask
3 me if it would add credence to Garda Keogh's complaint.
4 So I was in total agreement and I got -- we met the
5 person, I took a statement and subsequently swore 14:28
6 information following that.

7 510 Q. This particular aspect of -- I am going to take you
8 through -- you have been through it already with
9 Mr. McGuinness and I apologise to do it again, the
10 substance of the criticisms made of your investigation 14:29
11 by Garda Keogh. That's to be found, if we call it up,
12 at page 10929. It's volume 38?

13 511 Q. CHAIRMAN: would you like to have that in front of you?
14 A. Absolutely, yes. Thanks very much.
15 MR. KELLY: It's being gotten. 14:29
16 CHAIRMAN: 10929, I think, is that right, Mr. Kelly.
17 MR. KELLY: It is, yes.
18 CHAIRMAN: Thank you.

19 512 Q. MR. KELLY: Two, one on the screen and one on the paper
20 copy. Use whatever one you are most comfortable with. 14:30
21 Have you got it? I think you have seen this this
22 morning.

23 A. Yes, I saw this this morning.

24 513 Q. Yes?
25 A. Yes. 14:30

26 514 Q. Firstly, the:
27
28 "The fact that it took a month to meet with Garda
29 Keogh. It goes on to say:

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"There was an unofficial storeroom in Athlone Garda Station which I believe contained strong and tangible evidence. . . "

14:30

And so on. Do you accept that?

A. No.

515 Q. "In around the 10th June, the suspect garda had his State mobile phone seized. He said it had been wiped of the information which could have been potentially be vital and unlike any other criminal investigation where evidence is seized, the suspect garda was given a replacement State mobile. "

14:30

Now, the point he's making there is, it took them until the 10th June to seize the phone. He says that was a criticism of your investigation, what do you say about that?

14:31

A. That phone was seized before we even sat down to make a statement.

14:31

516 Q. That is 10th June, he made disclosures and everyone knew he made disclosures back at the beginning of May, over a month before?

A. We met him on the 7th June, which was a Saturday evening, at six o'clock, in Portumna Garda station. And on the 10th, I made contact with Superintendent McBrien --

14:31

517 Q. I am sorry to cut across you, but I will try again. This is a month after the allegations have been made,

1 what do you say to that?

2 MR. MURPHY: sorry, Chairman, I wonder would this
3 witness be allowed to complete the answer he was
4 giving. The witness was answering the previous
5 question and he was interrupted. with your permission, 14:32
6 I would ask that he be allowed answer the question or
7 complete the answer he was seeking to give, the
8 sequence of events.

9 CHAIRMAN: Yes.

10 MR. KELLY: By all means complete whatever it is you 14:32
11 want to say, then I will ask this.

12 CHAIRMAN: I am slow to intervene in cross-examination,
13 Mr. Murphy, but I did spend most of my life
14 cross-examining.

15 MR. MURPHY: May it please you, Chairman. 14:32

16 A. On the 7th June we met at six o'clock on the Saturday
17 evening. On the Tuesday I made contact with the
18 superintendent of Garda A and asked for the phone to be
19 seized. I did that because I didn't want to cause
20 alarm bells by going over around Athlone and the word 14:32
21 would get out very quick that I was around and things
22 would happen. Unfortunately it wasn't seized on that
23 date. I went to the station, it was actually the 13th
24 when I seized the phone and I took it from Garda Keogh
25 himself. Or sorry, Garda A. 14:32

26 518 Q. MR. KELLY: It would have been much better, would it
27 not, with the benefit of hindsight, if someone had
28 seized that state phone that Garda A held within a
29 matter of days certainly of the allegations being made?

1 A. But I wasn't aware of anything of the phone --

2 519 Q. I know.

3 A. -- until I met with Garda Keogh on the 7th.

4 520 Q. As an investigator, would it not have been better if
5 that phone had been seized earlier? 14:33

6 A. It would have been lovely to have that phone seized
7 earlier, but unfortunately Garda Keogh, despite his
8 warning from the Judge, he went to the Dáil, through
9 Ming Flanagan, with this and I think that that put us
10 on the back foot in relation to anything we might have 14:33
11 got.

12 521 Q. But you eventually got around to it a month later, and
13 seized the phone?

14 A. Now --

15 522 Q. When I say you, I mean An Garda Síochána? 14:33

16 A. We have to put things in perspective here. In relation
17 to it, Commissioner Ó Cualáin made contact with him on
18 the 5th May by phone and by letter.

19 CHAIRMAN: No, it must have been on the 15th May.

20 A. 15th -- 14:34

21 523 Q. CHAIRMAN: The protected disclosure is made on the 8th
22 May?

23 A. The 8th May, yeah. And we met with Commissioner
24 Ó Cualáin on the 15th May.

25 524 Q. CHAIRMAN: Yes. 14:34

26 A. He briefed us in relation to the affidavit, he gave us
27 a copy of the affidavit and he told me that he was, on
28 that date, ringing Garda Keogh and that he would also
29 write to him on the same date to try and set up a

1 meeting where we could meet him. And the next contact
2 I had with that was that the meeting was set up for the
3 7th June. I don't know was it Garda Keogh's request or
4 was it Commissioner Ó Cualáin's or whether it was both,
5 but that's where we came into it.

14:34

6 525 Q. MR. KELLY: what we do know is, as the Chairman has
7 pointed out, the original complaint was made on the 8th
8 May?

9 A. I accept that.

10 526 Q. I think Assistant Commissioner Ó Cualáin was appointed
11 the next day?

14:35

12 A. Yeah, in or about that, yeah.

13 527 Q. I am putting to you a simple question, would it not
14 have been more sensible if this phone had have been
15 seized earlier than it was?

14:35

16 A. We knew nothing about a phone at the stage.

17 528 Q. I see. Okay, right. Then it took to the 18th June to
18 complete Garda Keogh's statement?

19 A. Yeah.

20 529 Q. He is saying that during that, nobody was suspended at
21 any point during the investigation? That's the
22 criticism.

14:35

23 A. If it is a criticism that it took until the 18th June
24 in relation to Garda Keogh's statement, there was
25 absolutely no way we could sit down with Garda Keogh
26 and take his statement in one day. I think the first
27 day it lasted for about four and a half hours and to
28 have regard to Garda Keogh, we took a break. I think
29 the next day could have lasted for six, six and a half

14:35

1 hours. That is a pretty good strain on anybody. And
2 the third day was at his convenience, when he came to
3 Oranmore, where we would have hoped that we could have
4 put the combined dates and everything on video and that
5 it would have been available on video. However, he 14:36
6 declined that.

7 530 Q. With respect, I think you are misunderstanding me.
8 CHAIRMAN: That is because the statement doesn't make
9 sense. It's two entirely separate statements. What he
10 is really saying is, that you didn't suspend Garda A 14:36
11 during the investigation.

12 MR. KELLY: Yes.

13 531 Q. CHAIRMAN: It is to do with the statement. It says it
14 took that long, the statement, but that has nothing to
15 do with the next sentence. The reality is, he is 14:36
16 saying that he didn't suspend -- nobody was suspended.

17 A. Yeah.

18 532 Q. CHAIRMAN: But that Garda A wasn't suspended, i.e. you
19 didn't suspend Garda A, that's the complaint he makes.

20 A. Well I just covered the first section of it in relation 14:37
21 to --

22 533 Q. CHAIRMAN: I understand. I'm telling you, because it
23 doesn't make sense, the actual essence is suspension?

24 A. Yes.

25 CHAIRMAN: And it's not nobody, it's Garda A. That's 14:37
26 what he's saying.

27 534 Q. MR. KELLY: I think the only relevance of that is what
28 he is saying is, on the 18th June I completed the
29 statement and during the whole of the investigation

1 that followed, Garda A was never suspended.
2 CHAIRMAN: Yes, sorry, from the 18th onwards.
3 MR. KELLY: The 18th.
4 CHAIRMAN: Sorry, that's correct.
5 MR. KELLY: That is what he is saying. 14:37
6 CHAIRMAN: So it does make sense. I'm wrong in
7 thinking that the first thing has nothing to do with
8 the second. It does. He says from the 18th, look, the
9 case I was making on the 18th June and you didn't
10 suspend. That's his criticism, that you didn't suspend 14:37
11 Garda A.
12 A. Yeah.
13 535 Q. MR. KELLY: what do you say about that?
14 A. On the 18th June he finished and signed his statement
15 regarding very serious -- nobody was suspended at any 14:38
16 point during the investigation. well, that's
17 incorrect, because Garda A was suspended.
18 536 Q. When was he suspended?
19 A. He was suspended in 2015.
20 537 Q. Yes. And the statement was completed in June '14? 14:38
21 A. '14, yes.
22 538 Q. Was that a good investigation? Was that good
23 investigative practice; to fail to have him suspended
24 until the following year?
25 A. Again, the suspension had nothing to do with me and 14:38
26 that would be something for a local matter. But at the
27 time of writing of this letter, 25th -- 26th July '15,
28 I would imagine, maybe I'm wrong, was Garda A suspended
29 at that stage?

1 539 Q. CHAIRMAN: No. 14th October 2015.
2 A. Shortly afterwards, yeah. No, he wasn't suspended at
3 that stage then, it was in October that he was
4 suspended.
5 540 Q. MR. KELLY: All right. 14:39
6 A. And was suspended on the request of local management.
7 541 Q. Not your request?
8 A. No.
9 542 Q. Did you at any point make a request for him to be
10 suspended? 14:39
11 A. No.
12 543 Q. why not?
13 A. Because it wasn't my duty to make a request to have him
14 suspended.
15 544 Q. So you thought it would be -- it didn't occur to you, 14:39
16 look, there's this guy who a lot of allegations are
17 made about, here he is in Athlone station, Garda Keogh
18 is there as well, others who may be witnesses are
19 there, you didn't think, it would be a good idea to
20 suspend him, pending your investigation, get him out of 14:39
21 there in the meantime?
22 A. I couldn't suspend him.
23 545 Q. You could have requested that he be suspended?
24 A. We sat down and we spoke in relation to the criteria
25 that was required and to see had we reached that far 14:39
26 and it didn't appear that we had at the time.
27 546 Q. I see.
28
29 "During the investigation statements were taken from

1 members of An Garda Síochána while they were in Athlone
2 Garda Station and, more critically, when the suspect
3 garda was on duty. On these occasions I am aware that
4 the suspect garda did not leave the Garda station while
5 the investigation was being conducted. He was able to 14:40
6 see every person that was called in to make statements
7 and in a position to eyeball members of An Garda
8 Síochána."

9
10 Firstly, I will just stop there. what do you say about 14:40
11 that?

12 A. Well, I personally took no statement in the Garda
13 station. Of all the times I was in the Garda station,
14 I met Garda A once in passing. There was no complaint
15 made to me in relation to him eyeballing people there 14:40
16 and that he was present there. And there was no
17 complaint from any member to say that they were
18 intimidated by his presence or otherwise in the
19 station. Nobody said anything. And there was no
20 complaint made locally to the local management in that 14:41
21 regard.

22 547 Q. Who decided that the statements should be taken in in
23 Athlone station?

24 A. Who decided?

25 548 Q. Yes. 14:41

26 A. Which statement or all statements?

27 549 Q. All the statements that were taken in Athlone Garda
28 Station during the course of this investigation, who
29 made that decision, to take the statements in Athlone?

1 A. But that was up to the individual members, whatever
2 suited them best and whatever suited the people best
3 that they were interviewing.

4 550 Q. But you were attending there, weren't you?
5 A. I was attending there from time to time. I was there 14:41
6 on a few occasions.

7 551 Q. You could, if you had wanted, said to yourself, well
8 look, this concerns events in Athlone, it might be
9 better, I might get more traction in this, if I
10 interviewed guards away from this station. Did that 14:41
11 ever occur to you?

12 A. It didn't really because, as I said, I didn't interview
13 anyone there. I made up my mind and we met Garda
14 Keogh, we interviewed him outside and any people we met
15 were outside of the station when we took the statements 14:42
16 from them. The investigation team obviously met some
17 of the people in the station. I'm not sure they met
18 them all. I think Inspector Coppinger gave a list of
19 what statements were taken inside and outside of the
20 station. But nothing came to light to us during the 14:42
21 course of that that there was any significant problem
22 or otherwise.

23 552 Q. Right. I will try again: This investigative team of
24 which you were a member, can you tell me who it was who
25 decided that it would be safe or sensible or good 14:42
26 investigative practice to take statements from
27 witnesses at Athlone Garda Station?

28 A. There was no decision.

29 553 Q. But there must have been a decision because you

1 actually met people there?

2 A. Any decision that was made was made by those respective
3 members themselves.

4 554 Q. Right. Okay. Because we have got --

5 A. Allowing for time, location, place, whatever. 14:43

6 555 Q. Right. Volume 55, page 15526, if that can be called
7 up. That's a list that has been supplied to us by the
8 Chief State solicitor's Office, which details who was
9 interviewed and where they were interviewed and when
10 they were interviewed? 14:43

11 A. Okay, I can go through --

12 556 Q. Do you see that?

13 A. Sorry. I can go through --

14 557 Q. You are free to check any of these numbers, anyone is.
15 I counted it up. I counted that there -- that 14:43
16 reflects, that page and subsequent pages, which goes
17 through to 15531, reflects 81 meetings. Of those 81
18 meetings, 38 were with witnesses. There was 38
19 witnesses, and 25 of those interviews took place at
20 Athlone. 14:44

21 A. Athlone or Athlone Garda Station.

22 558 Q. Athlone Garda Station?

23 A. That's my first time having seen that document. I
24 wasn't aware of it actually.

25 559 Q. The point is a simple one. I am putting it to you that 14:44
26 as the chief superintendent it was a terrible mistake
27 to have made the decision to interview people, serving
28 guards there whilst Garda A was on duty at Athlone
29 station?

1 A. Maybe if I can go through them and see exactly what the
2 story is. Would that be fair enough?

3 560 Q. By all means go through them?

4 A. The first one is Detective Sergeant Tom Judge, that was
5 taken by -- 14:45

6 561 Q. No, I don't want you to read out to me all of that.
7 You familiarise yourself.

8 A. Okay.

9 562 Q. We would be here all day otherwise.

10 MR. MURPHY: Chairman, I wonder if the witness could be 14:45
11 shown a hard copy of this document?

12 CHAIRMAN: Yes, because it's impossible to look at it
13 on the screen.

14 MR. MURPHY: Thank you, Chairman.

15 563 Q. CHAIRMAN: Does the hard copy have the highlighted 14:45
16 ones?

17 A. It does.

18 564 Q. CHAIRMAN: Okay. The highlighted ones are the ones
19 taken in Athlone.

20 A. Okay. The first one I see there is Garda Turner. NOW 14:45
21 Garda Turner was part of the drugs squad. Obviously he
22 may have to refer to material within the station. I
23 don't think if we requested anything he would bring it
24 away with him. I don't know if there is any particular
25 reason in relation to that. 14:46
26

27 Inspector Aidan Minnock, I'm not aware of who took that
28 statement actually, and I am not aware of what it is
29 about. Statement taken in the station. Again,

1 possibly Inspector Minnock might have preferred to be
2 interviewed in the station, I don't know.
3
4 Garda Mick Ryan. Again, Mick Ryan was part of the
5 drugs squad at that time. He may have had to refer to 14:46
6 data there. I don't know.
7
8 Mark Lucas was also a member of the drugs squad at some
9 stage there. Again, I don't know why it was taken
10 there. It may have been -- 14:46
11 565 Q. MR. KELLY: And what squad was Garda A a member of?
12 A. Garda A was a member of the drugs squad.
13 566 Q. Yes.
14 A. Yeah.
15 567 Q. I see also there in that first page, Garda Aidan Lyons 14:46
16 was interviewed --
17 A. At the station?
18 568 Q. -- at the station as well?
19 A. It's not highlighted.
20 569 Q. On the first page there? 14:47
21 A. It's there but it's not highlighted, yes. Garda Aidan
22 Lyons, yes. Now, I wasn't instrumental in the taking
23 of any of those statements.
24 570 Q. Sorry, Garda Aidan Lyons, 10th August 2014.
25 CHAIRMAN: There is one that should be highlighted, 14:47
26 isn't that right?
27 A. Should be highlighted.
28 CHAIRMAN: It should be highlighted. That is 26?
29 571 Q. MR. KELLY: well that's right, yeah.

1 A. Yeah. I don't know if they had to refer to material
2 within the station at the time when their statements
3 were taken or not. I didn't receive any complaint from
4 any of those to suggest that they were eyeballed or
5 otherwise while their statements were taken. And I 14:47
6 didn't get anything from the persons who took the
7 statement to suggest there was any problem with it.

8 572 Q. Right. So anyway, look, what it comes to is, you as
9 chief superintendent didn't think there was a problem
10 interviewing these people at Athlone station whilst 14:47
11 Garda A was still a serving member of the drug squad?

12 A. Garda A was a serving member, he wasn't suspended. I
13 didn't see any particular problem in relation to
14 interviewing people there if they wished to be
15 interviewed and it was the most convenient place for 14:48
16 them.

17 573 Q. We know that when this criticism was pointed out to
18 Assistant Commissioner Ó Cualáin, he said that they
19 should take place elsewhere?

20 A. Yeah, no, Garda Keogh wrote to me in relation to it and 14:48
21 as a result of that we met with Garda Keogh and
22 Commissioner Ó Cualáin and we moved the focus of the
23 investigation as best we could from the station.

24 574 Q. But up until that point it never occurred to you, this
25 perception that I am putting to you? 14:48

26 A. No, there was nothing, as I said, said to me that there
27 was a problem. I'm not aware that Garda A was working
28 at the time these statements were taken or anything to
29 that effect.

1 575 Q. Well, did you look to see whether he was or not?

2 A. I didn't look to see.

3 576 Q. Right.

4 A. No.

5 577 Q. Let's just carry on through this.

14:48

6

7

"5. A crucial witness had come forward with vital information. The investigation team met this man in or around the 3rd July but did not go back to speak to him for about six months as he did not trust the investigation team and was in fear of the suspect garda, who was still armed and on duty."

14:49

12

13

14

what do you say about that?

15

A. Well, I say, it ended up that it was nearly that period

14:49

16

of time before we got to talk to him. But it wasn't

17

from the want of trying. He changed his number to

18

avoid me contacting him. We had to go to great

19

extremes in relation to finding him and eventually,

20

when I rang Garda Keogh, Garda Keogh seemed to have his

14:50

21

new number. He had changed his number. Garda Keogh

22

gave me that and I subsequently made contact with the

23

man and between comings and goings and he ducking me

24

and so forth, it took us quite a long time before we

25

actually got to him and got to see what he had to say.

14:50

26

578 Q. In fairness, I should have put this to you in relation

27

to the last topic, I was asking about, 5, we have moved

28

on, about the interviews being conducted in Athlone

29

Garda Station. I asked Sergeant Haran, when he gave

1 evidence here, about that. That was on Day 121, page
2 77. I said:

3
4 "This touches on another issue but I will deal with it
5 now because it may be appropriate. The Ó Cualáin 14:51
6 investigation were conducting interviews in Athlone
7 Garda Station, is that right?

8 A. Yes.

9 Q. How did you feel about that at the time?

10 A. Do you mean in relation to the investigation at all 14:51
11 or its location?

12 Q. Its location.

13 A. Well, it was an appalling idea to have it in
14 Athlone Garda Station.

15 Q. Why do you say that? 14:51

16 A. Well the idea that you might make an investigation
17 on behalf of one person but accusing another where both
18 parties were in the station and both still working in
19 the station it seems to me -- to me it seemed
20 unprofessional. Seemed to attempt to get the best and 14:51
21 to get the best evidence and answers from everybody it
22 would have been done properly to have been taken
23 completely away from Athlone Garda Station, to put
24 people on both sides and I just don't talk about
25 protagonists, I am talking about the people accused, it 14:52
26 would have put everybody in a better place because it
27 didn't particularly make a decision that someone was
28 right or wrong but in the interests of best practice
29 all parties were affected by the Ó Cualáin

1 investigation taking place in Athlone Garda Station."
2
3 what do you say about that?
4 A. who is this person talking on behalf --
5 579 Q. This is Sergeant Haran. 14:52
6 A. Sergeant Haran.
7 CHAIRMAN: Sergeant Andrew Haran of Athlone Garda
8 Station.
9 A. Okay. I didn't meet Sergeant Haran or he never rose
10 that issue. 14:52
11 580 Q. MR. KELLY: He was the sergeant on the ground in
12 Athlone?
13 A. I know he is. I said I have never met him and he never
14 made any representation to me that there was any
15 problem. And I am not aware that he made any 14:52
16 representation to his local management staff that there
17 was any problem. However, maybe he did. Is this the
18 first time that it appears that there was a problem?
19 581 Q. well, we will carry on where we were looking at, on
20 that transcript? 14:53
21
22 "Q. Did witnesses who were called in to make
23 statements express concern to you?
24 A. Not to me because I was a witness so I had my own
25 concerns. I felt everything that I felt everyone else 14:53
26 felt. So if I was feeling all the angst about going
27 from a building to a room to make a statement about a
28 person and both parties were working in the Garda
29 station, I felt it was very much on the back foot and I

1 wasn't happy with it at all. I then knew from other
2 witnesses, it's not that they made a complaint to me,
3 but they felt, specifically some of them said to me
4 they felt in the interests of them making statements in
5 that location. "

14:53

6
7 I put it to you fair and square: This was a really bad
8 decision to have conducted these interviews and take
9 statements in Athlone Garda Station.

10 A. I don't agree.

14:54

11 582 Q. I will go back to where it was. Number 6. Page 10930.

12
13 "One of the allegations involves the suspect garda
14 getting an unregistered informant to plant drugs in a
15 car. On 7th December 2014 the said unregistered garda
16 informant was arrested by his handler, the suspect
17 garda for possession of approximately €4,000 worth of
18 heroin. This now put the garda under investigation in
19 a position of influence over another suspect/witness in
20 the case. "

14:54

21
22 What do you say about that?

23 A. Knew nothing about it.

24 583 Q. Right.

25
26 "7. Around 24th April 2015, the allegations were put
27 to the garda under investigation, where he was given
28 over a month to seek legal advice. "

14:54

1 I think we have covered that already.

2

3

"8. It is my understanding that the investigation team could not retrieve text messages over two years from the seized state mobile phone. Text messages for the period around 2010 are vital and I do not know if every effort was made to retrieve them."

14:55

6

7

8

I think we covered that as well. You got them from Superintendent Glacken, is that right?

14:55

10

11 A. He's talking about text messages.

12 584 Q. Yes.

13 A. We didn't get text messages.

14 585 Q. Sorry, you're right, that's the data. So they weren't got, the text messages?

14:55

15 A. Correct.

16 586 Q. Because the billing records, I think you said this morning, only showed what number called what number?

17 A. Yes.

18 587 Q. Not what was said --

14:55

19 A. No, it showed the contacts, not necessarily what number called.

20 588 Q. Yeah, they wouldn't give you the text of the message?

21 A. No, correct.

22 589 Q. Finally:

14:56

23

24

"In June 2016, the suspect garda stopped a witness in the case without having committed an offence and checked for tax and insurance and asked for a drivers

25

26

1 licence. I believe this was an attempt to intimidate
2 the witness."
3
4 A. Absolutely no knowledge of that.
5 590 Q. Can I put it to you this way: This whole investigation 14:56
6 was under the watch of a very senior guard, yourself a
7 very senior guard, and an inspector, that's right,
8 isn't it?
9 A. Yes.
10 591 Q. Yes. And if what he is saying is right, this would all 14:56
11 be quite discrediting of him, wouldn't it?
12 A. Sorry, say that again now.
13 592 Q. If he is right in these criticisms?
14 A. He's entitled to his criticism, yes.
15 593 Q. But if those were right, it would be very discrediting 14:57
16 of him, wouldn't it?
17 A. I presume so, yeah, yeah.
18 MR. KELLY: Just bear with me for a moment, Chairman.
19 CHAIRMAN: No problem.
20 MR. KELLY: It will speed it up. 14:57
21 594 Q. Yesterday you told us, I think, about a meeting that
22 you had with Nick Keogh in Athlone, is that right?
23 This is the one where the question of his car tax --
24 A. Oh yes, yes, yes.
25 595 Q. Yes. Now, forgive me, I am probably the only person 14:58
26 unfamiliar with it, but on the windscreen of a vehicle
27 here in Ireland there's usually three discs shown,
28 aren't there? There's an NCT, there's a tax and an
29 insurance disc, isn't that right?

1 A. Certificate, yeah. That would be on an older vehicle.
2 CHAIRMAN: If it's under four years old it wouldn't
3 have the NCT.
4 596 Q. MR. KELLY: Yes. But that would be the normal course.
5 That is what I normally see. I have looked at these 14:58
6 cars in Dublin, that's what I see all the day. That's
7 right, isn't it.
8 A. Sorry?
9 597 Q. There's no trick question.
10 A. As I pointed out earlier, I have a difficulty with 14:58
11 hearing at times.
12 598 Q. On the windscreen of a vehicle, a car?
13 A. Yes.
14 599 Q. You would normally see three, if it's more than four
15 years old, three discs shown, won't you? 14:58
16 A. Correct.
17 600 Q. A tax disc, an NCT and an insurance disc?
18 A. Yes.
19 601 Q. Help me with this CVR ticket or badge, where am I going
20 to see that? 14:59
21 A. In place of the NCT.
22 602 Q. Right. So that's quite a -- they're all of equal size,
23 aren't they?
24 A. It's what?
25 603 Q. They are all of equal size? 14:59
26 A. Yes. Exactly, yeah.
27 604 Q. So the CVR, is that the right name for it. The
28 commercial vehicle registration?
29 A. I think it is, yeah.

1 605 Q. That is not of an inordinate size that would leap out
2 at one, is it?
3 A. It's what?
4 606 Q. It's not of an inordinate size?
5 A. No. 14:59
6 607 Q. CHAIRMAN: The disc is the same size, they're all the
7 same size.
8 A. They're all the same size.
9 MR. KELLY: Right. Good.
10 CHAIRMAN: It's just that they look different. 14:59
11 608 Q. MR. KELLY: Right. And that's what drew your attention
12 to it?
13 A. The NCT cert and CVR cert, they're different colours,
14 they're the same size, they're both in the same shape
15 as a tax disc but they've a different face. 14:59
16 609 Q. CHAIRMAN: The question: what is it about the
17 commercial tax disc that's different from the private
18 one? How do you know it's commercial rather than
19 private?
20 A. Because I had -- at the very same time -- 15:00
21 610 Q. CHAIRMAN: what does it look like? what does it say?
22 I mean, does it say commercial? Is there some code?
23 A. I just know the difference between them.
24 611 Q. CHAIRMAN: You just know the difference.
25 A. I just know the difference, yeah. 15:00
26 612 Q. MR. KELLY: It's not some odd colour that leaps out at
27 you?
28 A. No, no.
29 613 Q. It just looks like a disk. Anyway you saw it?

1 A. I did, I saw that.

2 614 Q. Were you particularly looking for it?

3 A. No. Absolutely not.

4 615 Q. Right. And subsequent to that, you met Noreen McBrien
5 in Athlone and you told her just to have a look at his 15:00
6 car tax?

7 A. I said to her you might have a look at Nick's tax.

8 616 Q. That, I take it, would mean what, the same day or
9 shortly thereafter when you spoke to her?

10 A. I am not sure if it was the same day, I was in Athlone 15:00
11 that day, but it wasn't too far from that particular
12 day, I'd imagine.

13 617 Q. Yeah, very close.

14 A. Yeah.

15 618 Q. Would this be a fair way to put it, it might either 15:01
16 have been that day or a couple of days later?

17 A. Yeah, and I'm not sure, it was in around the time,
18 yeah.

19 619 Q. She says this thing occurred because she happened to
20 run into you as you walked down the street in Athlone; 15:01
21 is that right?

22 A. Yeah, I met her in Athlone for some particular reason
23 and I just said it to her in passing.

24 620 Q. Why didn't you at that time, you had seen this, you
25 were talking to Nick Keogh after you had seen it, is 15:01
26 that right?

27 A. I wasn't talking to him after I had seen it. As he
28 drove away, got into his vehicle, I spotted it.

29 621 Q. Right.

1 A. He was parked beside me.

2 622 Q. But you decided not to mention it directly to him?

3 A. I did, yes.

4 623 Q. why?

5 A. Because I felt that if I was to do that, that I would 15:01
6 probably end up being accused of targeting him. I felt
7 that the easiest way to deal with it at the time was to
8 say it to his supervisor, who he said he had good time
9 for and that respected and got on well with.

10 624 Q. You told us yesterday that really all you were 15:02
11 concerned about was that if he was driving around in
12 this he might not have been insured and if he had an
13 accident that he would be grateful.

14 A. What I said, I said that he was coming to me using this
15 vehicle. 15:02

16 625 Q. Yes.

17 A. Out of more concerned for him should anything happen.

18 626 Q. Well, out of concern for him, if that was your concern,
19 why didn't you just contact him, ring him, speak to him
20 and just say, Nick, you better sort that out? 15:02

21 A. I took the decision not to do that because I didn't
22 want to end up being in a situation where he thought I
23 might be investigating him. I was investigating his
24 complaint and I was focused on that.

25 627 Q. And what did you think Noreen McBrien would do about 15:02
26 it?

27 A. Well, he had said to me that he got on well with her
28 and that he trusted her and that he had good time for
29 her. I can't say what they might have done or

1 otherwise but I was hoping that the matter would be
2 addressed.

3 628 Q. Did you think it would result in him being disciplined?
4 A. At the time I didn't. I didn't realise anything
5 happened until he told me that Pat Murray had been on 15:03
6 to him about the tax and I asked him what was the
7 problem with his tax and he told me that he had his
8 private vehicle taxed as a commercial and that a number
9 of other people in the station had done the same. So I
10 asked him if he had brought this to the notice of the 15:03
11 superintendent and he said he had.

12 629 Q. Right. So you did speak to Pat Murray about this, did
13 you?
14 A. I spoke to Pat Murray about it in around, was it around
15 the 1st April. When something came up in the Dáil, 15:03
16 Commissioner Ó Cualáin rang me to find out what was
17 that about. I rang Pat Murray. Pat Murray presumed
18 that he had been disciplined for the tax, that that was
19 the issue.

20 630 Q. So you only spoke to Pat Murray after he had been 15:04
21 disciplined in respect of this?
22 A. Yeah. To the best of my recollection, yeah.

23 631 Q. I see.
24 A. Was he disciplined or was he in the process of being
25 disciplined? I don't know at the time. But I know -- 15:04
26 CHAIRMAN: I don't want to intervene. But I know
27 there's a different, slightly different chronology.
28 MR. KELLY: Right.
29 CHAIRMAN: We know that Garda Keogh was spoken to, I

1 think, on the 26th March. He corrected the tax. He
2 went to see Mick Wallace on the 31st. And when he next
3 spoke to Superintendent Murray, the Regulation 10
4 notice was given. So when he spoke to Mick Wallace he
5 had not been disciplined but he had been told to 15:04
6 correct the tax and he regarded that, as he has told us
7 in evidence, as targeting and that's why he complained
8 about it to the TD.

9 A. Yeah.

10 632 Q. CHAIRMAN: That's the sequence of events. So when he 15:05
11 went back to Superintendent Murray, according to Garda
12 Keogh, that's what happened. According to
13 Superintendent Murray he had discussed the Regulation
14 10 on the 26th March and said, I will give you a
15 Regulation 10 and that'll be the end of the matter. 15:05
16 Garda Keogh does not agree with that conversation about
17 the Regulation 10 took place and he really found
18 himself rather surprised to find that he was subject --
19 even though it is a minor discipline, he found himself
20 rather surprised and rather resentful, I think it is 15:05
21 right to say, of the disciplinary procedure even though
22 it was a slight one. But I think that's the sequence.
23 I may be quite wrong and somebody -- well, I don't
24 believe I am wrong but I will be corrected if I am
25 wrong. But I am not. 15:05

26 MR. KELLY: You're absolutely right. You're absolutely
27 right.

28 CHAIRMAN: Sorry.

29 633 Q. MR. KELLY: Yesterday, we will just call it up, that is

1 Day 136. If we have the page number. You were asked
2 about this. Let me see if I can get the page number.
3 Well, look, perhaps we will try and get it up and do it
4 from memory. If I am wrong, people will point it out
5 to me. You said that you had three meetings, this was 15:06
6 in response to a question from I think Mr. McGuinness,
7 in Athlone, 26th June '14, 16th July '14 and 6th August
8 '14, meetings with Nick Keogh in Athlone. Yeah, there.
9 It's called up now. Mr. McGuinness asked you, it's on
10 the screen in front of you: 15:07

11
12 "Q. Okay. Can you help us fix the date of that?
13 Because we know obviously from your statement you were
14 in Athlone on 26th June, 16th July and again on 6th
15 August 2014." 15:07

16
17 Right? Your response:

18
19 "It was in relation to a day that we met Garda Keogh in
20 a car park up by B&Q. I think it is B&Q." 15:07

21 A. Yes.

22 634 Q. That's right. So it's around about those dates, you
23 weren't sure?

24 A. I couldn't swear if it was one of those dates or was it
25 another day. 15:07

26 635 Q. How many times did you meet him in Athlone?

27 A. How many times did we meet Garda Keogh in Athlone?

28 636 Q. Yeah.

29 A. Oh!

1 637 Q. In 2014?
2 A. I was meeting Superintendent Noreen McBrien one day by
3 appointment and he presented himself to me in relation
4 to a notebook that was missing. I met him another day
5 in the station, not by appointment. I don't know -- I 15:08
6 met him on the 10th in the station and we arranged a
7 date for his interview. The other dates were at hits
8 home, Oranmore, and that particular car park,
9 Ballinasloe and Portumna.

10 638 Q. That sounds like about three if I got that right, in 15:08
11 Athlone?
12 A. I think in the station I might have --

13 639 Q. Three, possibly four?
14 A. I don't think it was four, to be honest.

15 640 Q. Three, okay. 15:08
16 A. Definitely two, I would imagine, possibly three, I'm
17 not certain.

18 641 Q. Two, three times, right?
19 A. Yeah. And they may have coincided with one of these
20 dates with an appointment I had with Superintendent 15:09
21 McBrien.

22 642 Q. You had an arrangement to meet him in the car park of
23 B&Q, that's right, isn't it?
24 A. Yeah, the car park off the motorway.

25 643 Q. Perhaps page 13281, volume 47, can be called up. It's 15:09
26 Nick Keogh's diary. 13281. If you move it over. The
27 15th. Let me see where it is. I think it's on the
28 left-hand side further down. Keep going. Yeah, there
29 it is. Do you see the Wednesday?

1 A. See the what, sorry?

2 644 Q. Do you see Wednesday?

3 A. Yeah.

4 645 Q. There's something that is blanked out. But this is for
5 15th November 2014. Do you see there it says: 15:09
6
7 "12 midday, met detective superintendent in B&Q. He
8 said they have over 70 statements taken."
9
10 And so on. 15:10
11
12 "Leave the big ones till last."
13
14 That's not what I am interested in. What I suggest is,
15 Nick Keogh's diary records a meeting in the B&Q carpark 15:10
16 on 15th November 2014. Have you any reason to doubt
17 that date?
18 A. I honestly don't, no.

19 646 Q. If that is so, that would have been the day you saw the
20 disc we're talking about? 15:10
21 A. It possibly would. As I said at the time, I didn't
22 know the date but I thought it was nearer the date.

23 647 Q. I am corrected by my junior, it's in fact the 5th?

24 A. The 15th November was a Saturday.

25 MR. KELLY: Yes, I am corrected by my junior. It is 15:10
26 indeed the 5th, because it one looks further up, it's
27 Tuesday 4th and Monday the 3rd.

28 CHAIRMAN: That's right, Thursday 6th.

29 648 Q. MR. KELLY: Even I recognise the 5th follows on from

1 the 4th. So that probably was the date of the meeting
2 in the car park, B&Q.

3 A. I have interview written in in my book here now, I'm
4 not sure what's that about. Whether I was in Athlone
5 or not on the day. 15:11

6 649 Q. That's what Nick Keogh's diary recorded; that he met
7 you in the B&Q car park that day?

8 A. No, I cannot dispute that. As I had said, I would have
9 thought it was a lot nearer to the initial side of the
10 investigation, but the only thing I have written into 15:11
11 my own thing for November 14th, it's on a Friday, I
12 have interview written in.

13 650 Q. Look at the 5th November in your diary?

14 A. In my diary, the 14th November, interview.

15 651 Q. The 5th November? 15:12

16 A. The 5th November. Yeah. I have:

17

18 "Met with Nick Keogh in Athlone."

19

20 Yeah. 15:12

21 MR. KELLY: Chairman, that completes the questions I
22 wanted to ask of that witness. It does however leave
23 outstanding that other matter which we have to clarify.
24 I have asked to get it done, but we haven't actually
25 got the chance. 15:12

26 CHAIRMAN: Oh that's the question of the evidence.

27 MR. KELLY: That's right.

28 CHAIRMAN: Of Inspector Farrell and whether he said
29 that Garda A had taken the file from the storeroom in

1 the station and given it to him.

2 MR. KELLY: Yes.

3 CHAIRMAN: So that's to be checked up. But it's to be
4 checked up as a fact, if you like, and then we can all
5 agree on what the evidence was. 15:12

6 MR. KELLY: Exactly, Chairman.

7 CHAIRMAN: Okay.

8 MR. KELLY: I was going to say there's not much point
9 in my keeping the chief superintendent here just for
10 that. It can be checked. Thank you. 15:13

11 CHAIRMAN: Yes.

12 MR. McGUI NNESS: Just on that point, Inspector
13 Farrell's notes are in the papers relating to that,
14 volume 3.

15 CHAIRMAN: What are they saying, Mr. McGuinness. 15:13

16 MR. McGUI NNESS: Page 362.

17 CHAIRMAN: Take us out of our misery.

18 MR. McGUI NNESS: "Garda A handed over a box containing
19 files relating to clean street. I secured these files
20 without checking them in a steel locker." 15:13

21

22 That's in an entry relating to the 9th May.

23 CHAIRMAN: Yes.

24 MR. McGUI NNESS: 2014. And then another entry reads:
25 15:13

26 "Garda A handed over a further box containing files
27 relating to clean street, as he believed they may
28 relate to allegations of Garda Keogh."
29

1 There's nothing there as to where either box came from.
2 CHAIRMAN: Okay. So as far as you're aware that's the
3 best. It doesn't mean that that is the end of the
4 matter, there may be some other references which Garda
5 Keogh's team may wish to explore. Do you want to say 15:14
6 anything about that, chief superintendent?
7 A. No. Just again, it was between the period that Garda
8 Keogh had made his disclosure and before we had met
9 Garda Keogh.
10 CHAIRMAN: Don't worry about that. It's only a 15:14
11 question as to what was said previously and we were in
12 doubt about that and Mr. McGuinness has ascertained
13 certain information about it and that may be the only
14 information or there maybe some further information,
15 which we will in due course ascertain? 15:14
16 MR. KELLY: Yes. Chairman. I am totally prepared to
17 accept what Mr. McGuinness has said, if there is any
18 other further fact, I can check it.
19 CHAIRMAN: On people checking, they may find something
20 else that is illuminating in some way, shape or form. 15:14
21 MR. KELLY: In my view it's a fact. That's fine.
22 Thank you.
23 MR. MCGUINNESS: Chairman, we have now also now checked
24 Inspector Farrell's evidence to the Tribunal, Day 121.
25 He is asked about these matters on page 97 and he gives 15:15
26 an account in accordance with his notes, with no
27 additional information concerning where the files are
28 from.
29 CHAIRMAN: Okay. So as far as we know that is the

1 complete evidence on the subject. As far as we know.
2 And subject to checking. May I, before -- okay. It's
3 all right, take your time.

4 MR. KELLY: For my part, I have no more questions.

5 652 Q. CHAIRMAN: No problem. Just let me ask a question that 15:16
6 may or may not assist. I am looking at items in the
7 complaint list, items 6 and 9, and as I understand,
8 detective superintendent, you and Inspector Coppinger
9 completed taking the statement of Garda Keogh on the
10 18th June. It took a number of days in circumstances 15:16
11 that you've described and was fairly heavy going in
12 taking detailed statements. That was completed on the
13 18th June.

14 A. Correct, yes.

15 653 Q. CHAIRMAN: Now, item number 6 refers to an incident 15:16
16 alleged to have taken place on 7th December 2014 and
17 item 9 refers to an incident alleged to have taken
18 place, by saying alleged I am just being as neutral as
19 possible, I am not saying that it is not reliable, in
20 June 2015. They would have involved, if they were to 15:17
21 come under your remit, they would have involved extra
22 statements being furnished to you, I take it, or a
23 further interview?

24 A. They would, indeed.

25 654 Q. CHAIRMAN: Is that correct? 15:17
26 A. Correct, Judge.

27 655 Q. CHAIRMAN: And did Garda Keogh -- I have only just
28 noticed these dates frankly as we are going through
29 this, and obviously that's why I raise it now, because

1 counsel may wish to explore it. If those dates are
2 correct, it would mean they would have to have been
3 brought to your attention quite separately and later
4 than the completed statement?

5 A. Correct. 15:17

6 656 Q. CHAIRMAN: Was that done?

7 A. No. That was the first --

8 657 Q. CHAIRMAN: So that you would have had no opportunity of
9 investigating that. You say, look, I know nothing
10 about it? 15:18

11 A. Yeah.

12 658 Q. CHAIRMAN: I appreciate that. And I know there is at
13 least one incident that is similar in some respects --

14 A. Yeah.

15 659 Q. CHAIRMAN: -- to a description but not as to date. Is 15:18
16 that right?

17 A. Correct.

18 660 Q. CHAIRMAN: Okay.

19 A. Chairman, yes.

20 661 Q. CHAIRMAN: Now, I raise that, Mr. Kelly and Mr. Murphy, 15:18
21 I raise that because I have only frankly, it's my
22 fault, I only just noticed it at this point. But if
23 anybody wants to ask anything about that, please feel
24 free to do so. Mr. Kelly, do you want to ask anything
25 arising out of that? 15:18

26 MR. KELLY: No. I do not, Chairman.

27 CHAIRMAN: I am assuming my dates are correct. I mean,
28 I know about the statement taking a number of days and
29 being finished on the date I gave in June of 2014, but

1 it would seem to follow that those would have required
2 a quite separate complaint, a quite separate statement
3 with detail and circumstance to go to the chief
4 superintendent, if he is to be criticised.

5 MR. KELLY: Yes. 15:19

6 CHAIRMAN: And if Commissioner Ó Cualáin is to be
7 criticised for not investigating it, that would appear
8 to follow.

9 MR. KELLY: Absolutely, Chairman. Given that you are
10 so remarkably right on dates, I have no desire -- 15:19

11 CHAIRMAN: I am only looking at what's written down, it
12 doesn't follow, do you know what I mean. I have no
13 basis for thinking otherwise. Anyway, there it is.

14 MR. KELLY: You're right. Thank you. I don't actually
15 wish to ask any questions arising out of that. 15:19

16
17 END OF EXAMINATION

18
19 CHAIRMAN: Thank you very much. Thanks for your
20 assistance on that. Now, who have we got? Who wants 15:19
21 to -- well, you don't want to, Mr. McGarry, do you,
22 you're for Commissioner Fanning, isn't that right?

23 MR. MCGARRY: No, thank you, Chairman.

24 CHAIRMAN: Okay. I didn't he came into the picture
25 here. Who else is here? Nobody else wants to ask 15:20
26 questions. Mr. Murphy wants to be sure that he has a
27 clear field. So nobody else, the field is yours
28 Mr. Murphy.

29 MR. MURPHY: Thank you, Chairman.

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DETECTIVE SUPERINTENDENT DECLAN MULCAHY WAS EXAMINED BY
MR. MURPHY, AS FOLLOWS:

662 Q. MR. MURPHY: Detective superintendent, I wonder if you could please be shown document number 3901, please. I wonder would you please scroll down to a paragraph beginning "on Saturday". Further down again, please.

CHAIRMAN: I am not seeing on Saturday, Mr. Murphy. 15:21

MR. MURPHY: No, sorry, we have the wrong reference. Perhaps I will come back to that. It's just a starting point for the witness. Chairman, with your permission, I might go back to the question.

CHAIRMAN: You can come back to that one when you identify the right thing, Mr. Murphy. If you want to go on to something else. 15:21

663 Q. MR. MURPHY: Thank you. Detective Superintendent Mulcahy, you have given evidence in relation to meeting with Garda Keogh on 7th June of 2014 at Portumna Garda station. 15:21

A. The 7th June, correct, yes.

664 Q. Yes. And I think also you have been asked questions about that. I think you have also confirmed that side by side, in tandem with the taking of statement, which took a number of days, you also took steps in relation to the telephone? 15:21

A. I did, indeed, yeah.

665 Q. I think on 13th June 2014 you met with Garda A at

1 Athlone Garda Station and he handed you the official
2 State mobile phone?

3 A. He did, indeed, yes.

4 666 Q. I think you've referred to Garda Barry Walsh, who was a
5 trained telephone liaison officer? 15:22

6 A. Correct.

7 667 Q. I think that he carried out an examination of the phone
8 and found it didn't contain any text messages or any
9 contact details for a person of interest?

10 A. Correct. 15:22

11 668 Q. And that person of interest was a person to whom Garda
12 Keogh had made reference to?

13 A. That was the person that he had made reference about in
14 his statement.

15 669 Q. I think it's after that point that you have given 15:22
16 evidence that in order to establish the full picture of
17 the contact, you sought the call related data from the
18 service providers?

19 A. Okay. Just in relation to when Garda Walsh had
20 finished it, I also sent it to Dublin, just to be 15:22
21 doubly sure that we couldn't obtain anything.

22 670 Q. Is it the case that you took steps to secure --

23 A. Absolutely.

24 671 Q. Even before the statement of Garda Keogh had been
25 completed? 15:22

26 A. Absolutely, yeah.

27 672 Q. In terms of your interactions with Garda Keogh over the
28 period of your investigation, I think you became aware
29 of his personal circumstances and he spoke frankly to

1 678 Q. "Since I joined the Gardaí I was not one for going
2 sick"?

3 A. Correct, yeah.

4 679 Q. So is it fair to say that at the outset Garda Keogh
5 indicated to you that he had had an alcohol problem 15:24
6 since 2009?

7 A. He did, indeed, yes.

8 680 Q. I think you were solicitous for his welfare during the
9 course of your investigation, isn't that correct?

10 A. Absolutely, and that was my instructions from my 15:24
11 assistant commissioner throughout the investigation.

12 681 Q. In terms of the communications that you've mentioned
13 with him throughout the course of that time of the
14 investigation, did you seek to ensure that he was kept
15 au fait with what you were doing in your investigation? 15:24

16 A. I did, indeed.

17 682 Q. Throughout 2014?

18 A. I tried to update him on every contact I had, where we
19 were, what we were doing and what we were about to do.

20 683 Q. In terms of his relationship with you, through his 15:25
21 evidence here he seems to have indicated that he had a
22 good working relationship with you, was that your
23 impression at the time?

24 A. It was, in fairness, yes.

25 684 Q. In terms of the work which was done, you have been 15:25
26 asked questions about the level of work conducted by
27 your team. Could I ask you to be shown page 10822
28 please. This is a letter which you wrote on 25th
29 November 2014, addressed to the assistant commissioner

1 in the western Region?

2 A. Okay.

3 685 Q. Is that Assistant Commissioner Ó Cualáin?

4 A. It is Ó Cualáin, yes.

5 686 Q. And again, just to give the Tribunal a view of the work 15:25
6 that you had done by that date?

7 A. Correct.

8 687 Q. I think you say:

9

10 "I am to report at the time of my writing some 139 jobs 15:25
11 have been created, with 55 of these jobs being
12 completed."

13 A. Correct.

14 688 Q. Again, just for the record, can I ask you to briefly 15:25
15 outline to the Chairman the position in relation to
16 jobs as part of a Garda system of investigations?

17 A. Jobs came about as a result of statements that we would
18 take. We would go through them and we would outline
19 what jobs would have to be done in respect of them to
20 move it onto the next stage. 15:26

21 689 Q. CHAIRMAN: What's the next action arising out of the
22 statement?

23 A. Correct.

24 690 Q. CHAIRMAN: Okay. So it's actions, things to do list?
25 MR. MURPHY: Yes. 15:26
26 CHAIRMAN: Jobs to do list.

27 691 Q. MR. MURPHY: I think also that jobs list is monitored
28 on a close basis through the operation of a jobs book.

29 A. Yes.

1 692 Q. Insofar as you are referring to the completion of jobs,
2 that's something that you would deduce from the jobs
3 book itself?

4 A. Correct.

5 693 Q. Then moving on to the next paragraph, you made
6 reference to the fact that:

15:26

7
8 "Also 75 statements have been taken from 66
9 interviewees. A further 47 exhibits have been seized
10 to support the investigation to date."

15:26

11
12 Does that reflect the position as of November 2014?

13 A. Absolutely.

14 694 Q. Then you refer then to the fact that in November there
15 was a case conference and this was attended by all
16 members of the investigation team. Can I ask you
17 briefly to explain to the Chairman how often there
18 would be case conferences of the investigating team?

15:26

19 A. If I could say that whenever possible we tried to meet,
20 we mightn't have the full team but we would always try
21 to and keep up-to-date in relation to it. I would
22 imagine there was a log kept in relation to the number
23 of actual conferences we had and the people who
24 attended them.

15:27

25 695 Q. Yes.

15:27

26 A. Unfortunately, while I was based in Oranmore I was away
27 from my office an awful lot of the time. So whenever I
28 was around I would try to meet with the lads in
29 relation to it.

- 1 696 Q. And again, just from the point of view of the record,
2 to help us to understand, at such a conference
3 investigative strategies were discussed and were
4 outlined, several new lines of enquiries were
5 established to assist the investigation going forward? 15:27
- 6 A. Correct.
- 7 697 Q. Did you also log the fact that Garda Keogh had been
8 spoken to again as regards further information that he
9 provided concerning medical records?
- 10 A. Correct. 15:27
- 11 698 Q. And did that reflect your ongoing constructive
12 engagement with Garda Keogh throughout 2014?
- 13 A. Absolutely.
- 14 699 Q. I think there is also been a reference to multiple
15 requests, 12 in number, being forwarded to Crime and 15:28
16 Security concerning telephone data. Did that connect
17 with the earlier evidence you have given today in
18 relation to the telephone?
- 19 A. Correct, yes.
- 20 700 Q. And again, without going into specific detail, what 15:28
21 general assistance is provided by Crime and Security
22 branch of a technical nature?
- 23 A. It's through Crime and Security we make our
24 applications and they will look at them, sanction them
25 and forward them onto the judge, provided that we have 15:28
26 the appropriate information in relation to them.
27 That's the way they come in in relation to the phone
28 applications.
- 29 701 Q. I think in the same paragraph you also refer to the

1 fact that there were a number of applications
2 concerning CHIS matters which had been forwarded to
3 NSMU for assistance in the investigation?

4 A. Yeah.

5 702 Q. Would you just explain to the Chairman, what does that 15:28
6 involve procedurally?

7 A. Basically our CHIS office is based in Dublin, our
8 national office, and it was through those that we were
9 able to make thing around people that were propping up
10 in our investigation and that maybe Garda Keogh might 15:28
11 have given us evidence of. We checked those in
12 relation to their standing in our society, so to speak.

13 703 Q. So side by side with the interviews on the ground, the
14 collection of information, the discussions with Garda
15 Keogh, the references to crime and security branch, the 15:29
16 CHIS inquiries, you're effectively also monitoring all
17 these with a view to progressing the investigation?

18 A. Absolutely.

19 704 Q. In the last paragraph you say:

20
21 "As this is a very complex investigation, it appears
22 that as each potential witness line of inquiry is
23 pursued they have potential to open further avenues of
24 investigation and the investigation team have no choice
25 but to enter and peruse that line of inquiry. A number 15:29
26 of witnesses, including civilians and Garda members
27 have yet to be interviewed. Some of these witnesses
28 are currently seeking legal advice prior to indicating
29 to investigating members whether or not they will

1 engage or cooperate with the investigation. Until such
2 time it is known their intentions, it is difficult to
3 establish what, if any, lines of inquiry the
4 investigation team may recover."

15:29

6 Just pausing there, I think that is your summary view
7 at that time in November 2014?

8 A. Yes.

9 705 Q. Now, just pausing for a moment, you have been asked a
10 number of questions about why people weren't arrested,
11 in particular why Garda A wasn't arrested in 2014. You
12 recall those questions? 15:30

13 A. I do, yeah.

14 706 Q. I think in response to those questions you indicated
15 that there were complexities involved in the
16 investigation, that you had to be careful about that
17 issue? 15:30

18 A. Correct.

19 707 Q. As of November 2014, would you agree with me that it
20 would appear on the papers that we have seen, that
21 there was no direct civilian witness who made a witness
22 statement against Garda A at that time? 15:30

23 A. That's true.

24 708 Q. Is it correct that there was no direct evidential,
25 forensic evidence, fingerprints, scientific testing or
26 any material of that kind, that was available to you as
27 part of your investigation? 15:30

28 A. Correct.

29 709 Q. Mr. McGuinness I think asked you a question as to

1 whether an arrest would have facilitated the exercise
2 of powers where inferences could be drawn, do you
3 recall those questions?

4 A. I do, yeah.

5 710 Q. Would you agree with me, those type of inferences are 15:30
6 usually related to items found in the possession of
7 somebody at the time of their arrest?

8 A. Yeah.

9 711 Q. Or items found in their possession at the time of the
10 Commission of an offence? 15:31

11 A. Yes.

12 712 Q. Or items found in their possession which are
13 scientifically connected which DNA or otherwise to
14 them?

15 A. Yes. 15:31

16 713 Q. And they are being asked to comment on those particular
17 items in a custody situation?

18 A. Yes.

19 714 Q. And any silence is something from which a court can
20 draw an inference later on? 15:31

21 A. Yes.

22 715 Q. Did any of that type of evidence exist in your control
23 in November 2014?

24 A. As I said today, expressly it didn't apply in this
25 case. 15:31

26 716 Q. So again just to help the Chairman understand the
27 nuance and subtlety of the position you found yourself
28 in, is it the case as we are moving to 2015 that there
29 are at least two potential civilians witnesses who you

1 are very anxious to interview?

2 A. Correct.

3 717 Q. And they're not confirming as at that stage whether
4 they are willing to cooperate or not?

5 A. Correct.

15:31

6 718 Q. Did you consider those civilian witnesses to be
7 integral to the hopes of any successful investigation
8 and prosecution?

9 A. Yes.

10 719 Q. The same document, could I ask you please to be shown
11 page 10823, which is the following page. Having
12 rehearsed the difficulties of confirming whether
13 witnesses will give evidence, I think you say:

15:31

14

15 "The basis of the confidential recipient's complaints
16 can essentially be summarised into six allegations.

15:32

17 However, further allegations may be brought to the
18 attention of the investigation team as inquiries
19 progress. Each allegation is being investigated

20 individually and a preliminary report will be will

15:32

21 forwarded at their conclusion once the complete

22 investigation file, the findings, recommendations are

23 forwarded, once inquiries of all the allegations have

24 been exhausted. At this stage it would be difficult to

25 identify exact timeframes for the conclusion of the

15:32

26 investigation. However, every effort will be made to

27 have the matter concluded in the most sufficient and

28 effective manner."

29

1 Just pausing there for a moment, there has been some
2 questions asked which indicate expressions of criticism
3 of delay in relation to the investigation. Is it your
4 case that this memorandum reflects the level of
5 technical difficulty which confronted your 15:32
6 investigation team at that time?

7 A. Indeed, yes.

8 720 Q. Can I just pause there for a moment, please, detective
9 superintendent. Looking at all those tasks, were those
10 tasks, such as interviews and jobs, followed up by 15:33
11 persons under your command and under your control?

12 A. Yes.

13 721 Q. Did you experience any wrongful interference by
14 Commissioner Ó Cualáin in relation to the conduct of
15 this investigation? 15:33

16 A. Absolutely not. He was more than helpful to the
17 investigation whenever possible.

18 722 Q. If we pause and deal with the question of interviews,
19 for example, I will come to the criticisms document in
20 a moment, can you indicate to the Chairman how in the 15:33
21 course of your investigation individual interviews were
22 organised? was there a collective decision to
23 interview people in a particular way or individual
24 interviewers sent out to conduct interviews?

25 A. Basically what we would do, during one of our 15:33
26 conferences we'd look at our actions, as you say,
27 Chairman, and I would appoint somebody to go and do
28 that. They would make their arrangements in relation
29 to how they do it, where they do it and come back. I

1 would set a date maybe that I want a statement or I
2 want it returned by, next Tuesday, when I'd be around
3 again or something like that.

4 723 Q. Yes.

5 A. That's the way it more or less worked.

15:34

6 724 Q. Just to be clear, we will come back to this in a few
7 moments, but was there any dictat given by Assistant
8 Commissioner Ó Cualáin to you that all investigations
9 had to be conducted in Athlone Garda Station?

10 A. No, there was nothing to suggest that, no.

15:34

11 725 Q. I will come back to the specific point later on. Just
12 in terms of the progress of the investigation by that
13 stage, can I ask you please to be shown document 326.
14 I think this is a letter from Garda Keogh to you and
15 it's 17th October 2014 when it's received?

15:34

16 A. Correct.

17 726 Q. Can I just draw your attention to the first few lines.
18 It says:

19

20 "Detective Superintendent Mulcahy, I am writing to say
21 I appreciate that you have kept your word and have
22 thoroughly investigated my complaint."

15:35

23

24 Is it fair to say that reflected Garda Keogh's views
25 and expressing them to you about the quality of the
26 work he saw you were doing as of October 2014?

15:35

27 A. And that's not the only time, Garda Keogh has said that
28 to me on several occasions when he spoke to me.

29 727 Q. Just taking that particular time, because we know that

1 most of the interviews were taking place in Athlone,
2 after he raised the point earlier, in the summer --
3 A. Oh, correct, yeah.
4 728 Q. -- that was sought to be addressed by your team, albeit
5 not completely, did you receive any subsequent 15:35
6 complaints in September or October from Garda Keogh
7 that people were being interviewed in Athlone Garda
8 Station? For example, in this letter, is there any
9 complaint about that?
10 A. No, not there, no. 15:35
11 729 Q. I think you will agree with me that the letter confirms
12 the view that as far as he was concerned you weren't
13 just investigating his complaint, you were thoroughly
14 investigating his complaint?
15 A. Absolutely, yes. 15:35
16 730 Q. If I could ask you then, please, to come back to the
17 complaints document for a moment, which is document
18 10929, please. Both Mr. Kelly and Mr. McGuinness have
19 taken through you each of these in some considerable
20 detail. The Chairman has seen them, I don't propose to 15:36
21 replicate territory. Can I identify a number of
22 factors in this letter? First of all, on page 10929,
23 will you agree with me that the letter is addressed
24 "Dear madam". And if you turn forward, registrar, to
25 page 10932. 15:36
26 CHAIRMAN: This is the letter to the Minister.
27 MR. MURPHY: It is. There is also another addressee as
28 well, Chairman. I think at the bottom of page 10932,
29 it appears that the letter is written, it seems, to the

1 DPP first of all, Claire Loftus, and then cc'd to the
2 Minister.

3 CHAIRMAN: I'm sorry, yes. The DPP letter.

4 MR. MURPHY: Yes. Going back please, registrar, to
5 page 10929. 15:37

6 CHAIRMAN: Yes.

7 731 Q. MR. MURPHY: Can I just draw your attention to the
8 third paragraph, where Garda Keogh writes this:

9

10 "A criminal investigation was conducted by Assistant 15:37
11 Commissioner Ó Cualáin, however I feel obliged to point
12 out a number of serious and deliberate flaws with
13 regard to the investigation."

14

15 Do you see those words? 15:37

16 A. I do, yeah.

17 732 Q. Can I ask you then to turn forward please, registrar,
18 to page 10930? If we could take number 4 by way of the
19 complaints, this is the eyeballed complaint. Can I
20 just draw your attention to the last two lines. Garda 15:38
21 Keogh said there to the Minister and to the DPP:

22

23 "I believe this eyeballing was deliberately facilitated
24 in an effort to suppress honest statements being made
25 by way of informal intimidation." 15:38

26

27 Do you see that?

28 A. I do, yes.

29 733 Q. When did you first become aware that this letter had

1 been written to the DPP and to the Minister?

2 A. I have never seen sight of this letter. Now, he wrote

3 to me saying that he was complaining about a number of

4 things.

5 734 Q. Yes. 15:38

6 A. But I never actually saw the letter that was written.

7 735 Q. Did he complain to you in 2014 that you or Assistant

8 Commissioner Ó Cualáin were deliberately suppressing or

9 facilitating efforts to suppress honest statements or

10 were engaging in informal intimidation of potential 15:38

11 witnesses?

12 A. No. No.

13 736 Q. I see. Is it your evidence to the Chairman that the

14 first time you saw this particular phraseology was in

15 these papers before this Tribunal? 15:39

16 A. Yes.

17 737 Q. I think you have answered each of the different points,

18 I don't propose to deal with those. But can I ask you

19 in summary to confirm that you reject any of the

20 criticisms that are made within these particular 15:39

21 complaints?

22 A. Well, the two that I have previously spoken about, I

23 had no knowledge of either of those.

24 738 Q. In terms of the letter itself, can I ask you just to

25 move forward to page 10931? Just the very last line, 15:39

26 please. First of all, on the second last paragraph,

27 Garda Keogh addresses the Minister by saying:

28

29 "I have not been allowed to view the investigation file

1 into my allegations. "

2

3 Is that correct?

4 A. That would be standard practice, yes.

5 739 Q. Yes. "However, my understanding is that every effort 15:40
6 was made to discredit me, the whistleblower. On
7 hearing that word Garda management blinded themselves
8 to [inaudible] I do not want to be dismissive of every
9 part of the Garda investigation. I do believe if
10 Detective Superintendent Mulcahy and Detective 15:40
11 Inspector Coppinger were investigating -- "

12

13 Please turn forward to page 10932. It's slightly out
14 of sequence. Registrar, 10932, please. Thank you.
15 It continues there: 15:40

16

17 " -- the case without the interference of senior
18 management. "

19

20 CHAIRMAN: Hold on, we haven't got it. 15:40

21 MR. MURPHY: Sorry, Registrar, just scroll down.

22 CHAIRMAN: I don't have a hard copy.

23 MR. MURPHY: Thank you.

24

25 "-- the case without the interference of senior 15:41
26 management this could have been a very different
27 investigation. "

28

29 Do you see that?

1 A. I do, yes.

2 740 Q. So would you agree with me, that seems to suggest that
3 Garda Keogh was saying to the Minister at that time
4 that if you had been allowed to carry out the case,
5 investigation without the interference of senior 15:41
6 management, this would have been a different
7 investigation?

8 A. There was absolutely no interference or hindrance in
9 any way whatsoever had from senior management in
10 relation to this investigation. Nothing but help, I 15:41
11 may add. That's all we got from our senior management,
12 help.

13 741 Q. Again, just taking the language used in this letter,
14 can I ask you to confirm for the Chairman that there
15 was no deliberate attempt to suppress honest statements 15:41
16 or to exercise any form of informal intimidation?

17 A. Absolutely none.

18 742 Q. There is a strangeness in this letter, which again will
19 be a matter for the Chairman to consider, but there
20 appears to be a difference of views even within Garda 15:42
21 Keogh's own expressions from time to time of perception
22 and reality.

23 A. Yeah.

24 743 Q. But in reality, is it the case that in 2014/'15 from
25 what he told you, you had a good working relationship? 15:42
26 A. Absolutely, yeah.

27 744 Q. Is it the reality at that time that you were concerned
28 for his welfare and wellbeing?

29 A. I had a general concern for his welfare throughout the

1 investigation.
2 745 Q. Now, can I ask you please to be shown page 13299? This
3 is a February 2015 extract from Garda Keogh's diary,
4 which I presume you have not seen before. You see
5 there:

15:42

6
7 "Thursday, 19th February 2015.

8
9 It is very much me versus AGS (An Garda Síochána) Donal
10 Ó Cualáin is along with Detective Superintendent
11 Mulcahy attempting to cover up. [Blank] was right!"

15:43

12
13 Can I ask you whether in February 2017 you were trying
14 to do anything to cover up any matter affecting Garda
15 Keogh in conjunction with Assistant Commissioner Ó
16 Cualáin?

15:43

17 A. Absolutely not.

18 746 Q. In that period of time, as I say, January and February,
19 into March of 2015, did Garda Keogh ever express such
20 criticisms to your face?

15:43

21 A. No.

22 747 Q. And insofar as there is a reference to [Blank], is that
23 [Blank] -- I beg your pardon, sorry, I void that last
24 question. Insofar as there is reference to any other
25 person present, that person is a civilian, a former
26 member of the force?

15:43

27 A. A former member, yeah.

28 748 Q. Can I ask you then please to move forward to page 2492,
29 please? I think you have been asked questions in

1 relation to your own notes concerning the large phone
2 call that's referred to at page 16299, that we
3 discussed this morning?

4 A. Okay.

5 749 Q. This is the phone call you received at home? 15:44

6 A. Yes.

7 750 Q. From Garda Keogh?

8 A. Yeah.

9 751 Q. This is a note from an extract from Chief
10 Superintendent Murray's diaries, recording I think his 15:44
11 conversation with you, on 20/4/15. Do you agree that
12 is the date when had you the consultation, the
13 discussion?

14 A. Yeah, that was the one today in relation to the double
15 page and the following day, yeah. 15:45

16 752 Q. He records that you told him that Garda Keogh rang you
17 the night before drunk and began to give out about
18 delays to the investigation?

19 A. Correct.

20 753 Q. That he said to you that he wanted Garda A to be 15:45
21 arrested?

22 A. Yes.

23 754 Q. That he said to you that he will bring down the
24 Commissioner?

25 A. He did, yes. 15:45

26 755 Q. That he said to you that he would bring down the
27 assistant commissioner and An Garda Síochána through
28 Mick Wallace and Clare Daly?

29 A. Yeah. Maybe not the exact words that he used but the

1 terminology is much the same.

2 756 Q. which words were used?

3 A. I'm saying it's not the exact words, it's not the exact
4 wording that he would have used but it's covering the
5 same points. 15:45

6 757 Q. Yes.

7 A. Yeah.

8 CHAIRMAN: This doesn't mean, Mr. Murphy, that what
9 Superintendent Murray records was what Garda Keogh
10 said. 15:45

11 MR. MURPHY: No.

12 CHAIRMAN: It merely means the communication between
13 the chief superintendent and Superintendent Murray, he
14 is ringing him the next day to say this.

15 MR. MURPHY: Yes. 15:46

16 CHAIRMAN: What Superintendent Murray wrote down was
17 his impression of what you were saying. So we don't
18 want to get too remote.

19 MR. MURPHY: No.

20 CHAIRMAN: It's just following up that he has this 15:46
21 phone call over the weekend, the chief superintendent
22 says, I'm ringing the local superintendent to let him
23 know I had what I thought was a very fairly bizarre
24 conversation and I'm letting him know. But we don't
25 want him to think that that is an accurate reflection 15:46
26 of what Garda Keogh actually said, because we have that
27 evidence; isn't that right?

28 MR. MURPHY: Yes, absolutely. But I think based on
29 your reportage to the superintendent --

1 CHAIRMAN: Exactly, he is doing his best to remember.

2 758 Q. MR. MURPHY: I think there is reference also to issues
3 that you refer to in your evidence, reference to rats
4 running around his computer and the superimposed head
5 on the Commissioner? 15:47

6 A. Yes.

7 759 Q. CHAIRMAN: But, for instance, the description of the
8 psychiatric condition was Superintendent Murray's
9 interpretation. I don't recall that word being used in
10 the Chief Superintendent's note of the conversation, 15:47
11 i.e. psychotic. Maybe you did mention it, I don't
12 know.

13 A. To be honest, I don't remember.

14 CHAIRMAN: I didn't remember it from the thing but
15 then, I have been wrong before about these things. I 15:47
16 am thinking that's what he's putting down and that's
17 why I am a little careful, if you like, or trying to be
18 a little careful about who said what and whom, you
19 know.

20 A. Yes. 15:47

21 CHAIRMAN: Sorry, Mr. Murphy, I am probably just being
22 over cautious or else it's quarter to four and I'm just
23 -- I'm finding it hard to not to interfere. Sorry.

24 760 Q. MR. MURPHY: Can I ask you just to confirm that the
25 conversation you had with Garda Keogh was an unusual 15:47
26 conversation?

27 A. It was very unusual.

28 761 Q. Did you find it a disturbing conversation?

29 A. And disturbing. And, as I mentioned earlier, my wife

1 was present and unfortunately she bore the brunt of it
2 as well.

3 762 Q. CHAIRMAN: What's going on, yeah, what's happening
4 there? We're sitting in front of the television,
5 what's happening? What are you at?

15:48

6 A. Correct, Chairman.

7 763 Q. MR. MURPHY: So again is it fair to say that at the end
8 of that conversation both Superintendent Murray and
9 yourself had enhanced concerns for Garda Keogh's
10 welfare?

15:48

11 A. Absolutely.

12 764 Q. Could I ask you please to be shown document 10866,
13 please? This is an e-mail which I think you sent on
14 30th April 2015, to the assistant commissioner Western
15 Region.

15:48

16 A. Correct.

17 765 Q. I think you refer to a conversation on 19th April 2015
18 with Garda Keogh?

19 A. Correct.

20 766 Q. I think you say:

15:49

21
22 "I was of the opinion he was under the influence of
23 alcohol and appeared irrational when communicating with
24 me."

25 A. Yes.

15:49

26 767 Q. You say:

27
28 "On noticing this behaviour I offered him the services
29 of the Garda welfare office, to which he declined."

1 A. Correct.

2 768 Q. I think you then in the next paragraph make reference
3 to the details, which you have spoke about earlier in
4 your evidence. On the 21st April, I think you say that
5 you received an SMS text message from Garda Keogh? 15:49

6 A. Correct.

7 769 Q. You immediately made contact with him?

8 A. That's right.

9 770 Q. He indicated to that he would be interested in
10 utilising the services of the Garda welfare officer but 15:49
11 was reluctant to utilise the appointed officer.

12 A. Yes.

13 771 Q. Again, I think you recorded that Garda Keogh was under
14 the influence of alcohol, was your impression, during
15 the course of that conversation? 15:49

16 A. Yes.

17 772 Q. Just pausing here at this at this particular point in
18 time, by now we're at the end of April 2015. Can I ask
19 you in relation to what's being suggested, is that your
20 treatment of Garda Keogh during that time in certain 15:50
21 ways amounted to targeting or discrediting?

22 A. Absolutely not. Absolutely not. I was more than
23 helpful to him. I bent over for every request he had,
24 I was available for every phone call, no matter what
25 hour of the day it came. And I listened to him every 15:50
26 single time it happened.

27 773 Q. Just in terms of communications, could I ask you to be
28 shown page 12877, please? If we move forward here to
29 16th May 2016. This is a letter from Garda Keogh to

1 the Minister for Justice. Do you see that?

2 A. Yes.

3 774 Q. Can I ask you just to look at the first paragraph?
4 This is what Garda Keogh was saying to the Minister at
5 that stage?

15:51

6 CHAIRMAN: what is the date of that, Mr. Murphy?

7 MR. MURPHY: The date is 16/5/2016, Chairman.

8 CHAIRMAN: Thank you.

9 775 Q. MR. MURPHY: Do you see where Garda Keogh is saying:

10

15:51

11 "Dear Minister for Justice, Francis Fitzgerald.

12

13 Further to my letter of 26th July 2015 (see also
14 attached). On 2/10/2015 I made a protected disclosure
15 to GSOC regarding a flawed Garda criminal investigation
16 into a conspiracy to supply heroin involving members of
17 An Garda Síochána."

15:51

18

19 Do you see that?

20 A. I do, indeed.

15:51

21 776 Q. Specifically, do you see in the middle of the
22 paragraph, it says:

23

24 "Which I believe was no more than a deliberate and
25 unmitigated cover up by Deputy Commissioner Donal
26 Ó Cualáin."

15:51

27

28 Do you see that?

29 A. Yes.

1 777 Q. Can I ask you in response to that accusation, as
2 somebody who is deeply involved in the investigation
3 that is being carried out under Assistant Commissioner
4 Ó Cualáin, what do you have to say in relation to that?
5 A. That is a very hurtful comment to put to people that 15:52
6 were doing their utmost to try to bring his complaint
7 to a successful conclusion. And actually, I am
8 disappointed.
9 778 Q. When did you see that for the first time?
10 A. When did I see this first? 15:52
11 779 Q. Yes.
12 A. Unfortunately I didn't avail of a lot of the material
13 that was made available and I'm only reading it now.
14 780 Q. For the purpose of this Tribunal?
15 A. Yeah. 15:52
16 781 Q. Could you answer please --
17 CHAIRMAN: You didn't read all the materials?
18 A. No, I have to be honest.
19 782 Q. MR. MURPHY: Can I take it from that answer that you
20 never saw this kind of material in 2016? 15:52
21 A. No.
22 783 Q. Or 2015?
23 A. No.
24 784 Q. Or 2014.
25 CHAIRMAN: Okay. 15:52
26 785 Q. MR. MURPHY: Moving forward please to page 12880. And
27 before we just deal with this point, I think you
28 remember this morning that you were shown a document,
29 there is no need to bring it up on the screen, which

1 was document 11258, where you indicated in a report
2 that on 8th April 2016 you made contact with Garda
3 Keogh and you offered to meet him to talk through the
4 directions for the DPP's office?

5 A. Correct.

15:53

6 786 Q. And the response I think that you recorded was that
7 Garda Keogh told you that he couldn't meet because he
8 was going on the tear with another lad?

9 A. That's correct, yeah.

10 787 Q. And again this morning questions were asked about this.
11 Moving please back to the document on the screen at
12 page 12880, in the last paragraph, Garda Keogh I think
13 here is writing to the Minister. He says:

15:53

14

15 "I acknowledge Detective Superintendent Declan Mulcahy
16 offered to go through the findings with me. However, I
17 declined as I believe the Garda investigation was
18 flawed from the very start."

15:53

19

20 Can I ask you, back in 2016, when you offered to meet
21 him, is that what he said to you or did he say to you
22 that he was going on the tear with another lad?

15:53

23 A. He said he was going on the tear with another lad,
24 yeah.

25 788 Q. Well again, just to come back to the questions you were
26 asked this morning, can you confirm to the Chairman
27 that you were willing to meet with him and to discuss
28 with him the --

15:53

29 A. Absolutely, I would loved to have been able to sit down

1 and discuss with him and from my point of view, in
2 relation to our relationship, that we would finish on a
3 high point.

4 789 Q. Yes. But for the reasons you've described this
5 morning, that didn't happen?

15:54

6 A. Yeah.

7 790 Q. Could I ask you, please, to be shown page 10818? We
8 have gone back slightly in time here, but it relates to
9 an issue I am going to come to in a moment, which is
10 the DPP's decision. This is a report I think from you
11 up to the assistant commissioner Western Region. And
12 it seems to take place after August 2014. Do you see
13 that?

15:54

14 A. I do, yeah. Yeah.

15 791 Q. The most recent date referred to at the top of the
16 page. Turning over to page 10819 please, do you see
17 there it says:

15:54

18
19 "While these allegations are very serious in nature,
20 they remain allegations. The investigation is
21 endeavouring to corroborate or indeed disprove the
22 veracity of these allegations. As a result, I believe
23 at this juncture it would be both unfair and unsafe to
24 consider suspending Garda A on what are still
25 unsupported allegations of misconduct and possible
26 criminality."

15:55

15:55

27
28 Do you see that?

29 A. Yeah.

1 792 Q. So coming back to something you said to the Chairman
2 earlier, and we're back now in 2014, the quality of the
3 information available to you at that time, was that as
4 reflected in a that suggestion?

5 A. Yes, yes. 15:55

6 793 Q. In other words, you felt that you were at an early
7 stage of the investigation and were still trying to
8 develop further leads?

9 A. Yes.

10 794 Q. Could I ask you please to be shown the document at page 15:55
11 10816? This is a letter written by Commissioner
12 Ó Cualáin, dated 21st August 2014. Do you see this?

13 A. Mm-hmm.

14 795 Q. Could I ask you please to turn over to page 10817? The 15:56
15 last paragraph. I think by this stage Garda Keogh has
16 raised the question of suspension, isn't that so?

17 A. Yes.

18 796 Q. I think Assistant Commissioner Ó Cualáin says:
19
20 "The issue of suspending Garda A is something which now 15:56
21 requires considering. However, while these allegations
22 are very serious in nature, they remain allegations.
23 The investigation is endeavouring to corroborate or,
24 indeed, disprove the veracity of those allegations. I
25 am seeking your views on this matter and the 15:56
26 appropriate course of action to be adopted."
27

28 CHAIRMAN: He adopts your view, in other words, he
29 agrees with it and he adopts it. He quotes pretty well

1 exactly what you were saying.

2 A. Yes.

3 797 Q. MR. MURPHY: So that's a view you formed independent of
4 him, I would say?

5 A. Absolutely. 15:57

6 798 Q. Could I ask you please to be shown page 10870? This is
7 a letter of 5th May 2015, written by you to Assistant
8 Commissioner Ó Cualáin. Could I draw your attention to
9 the third paragraph, beginning with the words "at the
10 outset"? Do you see those? 15:57

11 A. Yes.

12 799 Q. I think there you wrote:

13

14 "At the outset of this investigation advice was sought
15 from assistant commissioner at Human Resource 15:57
16 Management, which advice was sought as regards whether
17 or not consideration should be given to the suspension
18 of Garda A pending the outcome of this investigation.
19 The advices at the time were noted but I am now seeking
20 that the matter be revisited surrounding this new 15:57
21 evidence that has been unearthed, which clearly points
22 to inordinate contacts between the official phone that
23 Garda A had access to and a phone registered to [blank]
24 daughter of Ms. B, which strongly supports the
25 allegations made by the confidential reporter 15:58
26 concerning Ms. B."

27

28 So taking that point, did that indicate or reflect a
29 progression in the information available to your

1 investigation by that date?

2 A. It did, indeed.

3 800 Q. Could I ask you then please to be shown page 10887?
4 This is a letter from Assistant Commissioner Ó Cualáin,
5 8th May 2015. In the very last paragraph, can I draw 15:58
6 your attention to the sentence beginning "advice was
7 previously sought" three lines in from the end?

8 A. Yeah.

9 801 Q. There I think he said:
10
11 "Advice was previously sought from assistant
12 commissioner Human Resource Management regarding the
13 suspension from duty of Garda A and given the recent
14 developments in this matter will now be revisited."
15 A. Yes. 15:59

16 802 Q. Do you recall seeing that correspondence at that time?
17 A. Yes.

18 803 Q. So in terms of the overall assessment of matters, is it
19 your case that your evidence had progressed between
20 2014 and 2015? 15:59

21 A. Absolutely, yes.

22 804 Q. Is it the case that your view of the strength of your
23 case had changed from 2014, 2015?

24 A. Yeah, we had picked up a bit of momentum.

25 805 Q. Then in terms finally, the execution of what needed to 15:59
26 be done on this issue, could I ask you to be shown
27 10889? This is a letter dated 11th May 2015, from you.
28 Can I just draw your attention to the middle of the
29 page, where you wrote:

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"There may be other matters that should be considered and may be best addressed by the local divisional officer prior to consideration being given of any possible suspension of Garda A. At this point of the investigation Garda A has not been given the opportunity of addressing those allegations made against him. He has, however, been given a summary of the allegations. Garda A has met with his solicitor and is represented by a solicitor based in Limerick. The investigation team must also be conscious of the requirement of due process being observed and afforded to the member concerned together with any personal issues the member may be affected from or experiencing. Forwarded for your attention, please."

15:59
16:00
16:00

Did that letter in terms express some of the concerns you articulated earlier today?

A. It does, indeed, yes.

806 Q. In relation to how you were conducting the investigation at that stage?

16:00

A. Yes.

807 Q. We have dealt with 2014 and into 2015. Can you just confirm to the Chairman, what if anything took place in relation to suspension decisions concerning Garda A in 2015?

16:00

A. In 2015?

808 Q. Yes.

CHAIRMAN: well, we know that in October 2015 Garda A

1 was suspended.

2 A. Yeah.

3 809 Q. CHAIRMAN: Isn't that right. I think on the 15th
4 October?

5 A. Yeah. Following the search of Garda A's house in 16:00
6 October of '15. In fairness again, it was the super
7 that had rang me in relation to the new evidence that
8 might support Garda Keogh's complaint. He also rang me
9 in relation to details of Garda A on a particular day,
10 what time he was working, what time he was finished, so 16:01
11 that we could be available, having got our warrants and
12 visit the premises.

13 810 Q. CHAIRMAN: Yes.

14 A. Following the thing, I rang him, told him that we had
15 got the warrants from the judge, that we had searched 16:01
16 the premises and that we had taken possession of
17 things. I think based on that, the fact that we now
18 had a judicial section in our investigation, that we
19 had gone and got warrants, that we had potential new
20 information I think he went from there with a decision 16:01
21 in relation to the suspension of Garda A.

22 CHAIRMAN: Thank you.

23 MR. MURPHY: Chairman, I have literally five minutes
24 Chairman?

25 CHAIRMAN: It's all right, Mr. Murphy, don't be under 16:01
26 any pressure. I would hope that we could finish with
27 Detective Superintendent Mulcahy this afternoon. But
28 if that means sitting on for a while, I have no problem
29 with that. If we can complete his evidence. He may

1 want to come back or not want to come back, a matter
2 entirely for himself, but he won't have to come back
3 for any official purpose or for giving evidence. So if
4 you are happy with that. I mean, I know it has been a
5 long day for you. 16:02

6 THE WITNESS: Absolutely, Chairman.

7 CHAIRMAN: But if you are happy with that, I am happy
8 with that. So be under no pressure, Mr. Murphy. Up to
9 a point, I suppose.

10 811 Q. MR. MURPHY: I will be 10 minutes. Thank you. Please, 16:02
11 registrar, could I have document number 11225, please.
12 This is a letter which I think is written in September
13 of 2016. I don't propose to go through this letter in
14 every detail, but this letter again is written to
15 Assistant Commissioner Ó Cualáin; isn't that right. 16:03

16 A. Yes.

17 812 Q. And the confidential reporter referred to at the top of
18 that page is Garda Keogh?

19 A. Yes.

20 813 Q. You say that you refer to correspondence received, 1st 16:03
21 September, you say:
22
23 "While I don't have sight of correspondence forwarded
24 to the DPP and copied to the Tánaiste, I will outline
25 the facts available as requested." 16:03
26
27 Does that help you to remember why you were writing
28 this letter?
29 A. I wonder is it in reply to the letter we saw earlier

1 today that Garda Keogh wrote or something, is it?

2 814 Q. CHAIRMAN: Yes, it would appear to be.

3 A. Yeah.

4 815 Q. CHAIRMAN: You say you hadn't seen the correspondence.

5 A. I haven't, yeah. 16:03

6 816 Q. CHAIRMAN: Ms. Fitzgerald was of course the Tánaiste as

7 well as the Minister for Justice. So this was the

8 letter to the Minister for Justice/Tánaiste plus the

9 DPP, it looks like.

10 817 Q. MR. MURPHY: Very swiftly scrolling down to the next 16:03

11 three pages, under various headings, Operation Loki,

12 theft during searches, allegation of inappropriate

13 contacts, you list the complaints made by Garda Keogh,

14 which were investigated.

15 A. Yes. 16:04

16 818 Q. Then moving down to 9, you make references to

17 allegations of interference with criminal

18 investigations and destruction of evidence. There you

19 show steps taken, the jobs carried out. Just for the

20 assistance of the Tribunal, that probably reflects a 16:04

21 very clear statement of the breakdown and structure of

22 your investigation?

23 A. Yes.

24 819 Q. Then turning over to page 1129, please, in the second

25 paragraph you say: 16:04

26

27 "Where the reporter (Garda Keogh) sets out that he

28 considers that this allegation was flawed, I am unaware

29 as to the basis of the allegation."

1

2 Is that correct?

3 A. That's correct.

4 820 Q. "The reporter (Garda Keogh) never raised this matter
5 with the investigation team."

16:04

6

7 Is that correct?

8 A. Correct.

9 821 Q. "I am satisfied that each allegation raised by Garda
10 Keogh was investigated in full by the inquiry team."

16:04

11

12 Is that correct?

13 A. Correct, yes.

14 822 Q. Then you went on report:

15

16:04

16 "I am unable to comment further as the reporter (Garda
17 Keogh) had always outlined to me that he was satisfied
18 with the investigation, had no difficulty with the
19 direction of same."

20 A. Correct.

16:05

21 823 Q. It has been put to you that, for example, Sergeant
22 Haran may have had an opinion as to whether it was
23 suitable to interview people in Athlone Garda Station?

24 A. Yeah.

25 824 Q. Just taking that example: Did Sergeant Haran ever
26 express that opinion to you during the course of the
27 investigation?

16:05

28 A. Absolutely not.

29 825 Q. In terms of views or opinions that people may have, and

1 it is entirely a matter for the Chairman to decide at
2 the end of this process what to make of things, but can
3 I just ask you in terms of the criticisms made by Garda
4 Keogh, is there any basis in your experience and
5 understanding, or is there any evidence that you have 16:05
6 seen to demonstrate there was a deliberate targeting of
7 Garda Keogh by your team or by you?

8 A. There was absolutely no deliberate targeting or
9 otherwise of Garda Keogh. As I have said previously,
10 we were nothing but helpful to Garda Keogh in the hope 16:05
11 that we would get a conclusion to his complaint.

12 826 Q. If we move from the allegations of deliberate
13 targeting, which is made in the correspondence, down to
14 the allegations made today, which is that somehow the
15 investigation was flawed. 16:06

16 A. Yeah.

17 827 Q. Or mistakes were made. Do you believe that any of
18 those mistakes, if they were so found by the Chairman,
19 had any impact on Garda Keogh whatsoever?

20 A. Absolutely not. 16:06

21 828 Q. In terms of the interviewing of witnesses, were you
22 satisfied from your professional experience that the
23 witnesses in your investigation were interviewed fairly
24 and in accordance with standard procedure?

25 A. I am. 16:06

26 829 Q. Were any of those witnesses subject to pressure or
27 attempted interference?

28 A. I have no knowledge that any of them were subject to
29 anything.

1 830 Q. In particular, can I ask you in terms of the
2 superintendents, of your efforts, did you see anything
3 in the conduct of Assistant Commissioner Ó Cualáin
4 which represented targeting or discrediting of Garda
5 Keogh? 16:06

6 A. Absolutely not.

7 831 Q. In your communications with Assistant Commissioner Ó
8 Cualáin, did he share your concerns in relation to
9 Garda Keogh's welfare?

10 A. He does. 16:06

11 832 Q. Did he give you indications and directions that you
12 were to keep a watchful eye on Garda Keogh in relation
13 to his welfare issues?

14 A. Absolutely.

15 833 Q. And did you do so? 16:07

16 A. I did, indeed. He was adamant of that on every
17 occasion that I met him.

18 834 Q. And finally, insofar as Garda Keogh has seen fit to
19 write to the Minister for Justice and to the DPP and/or
20 to anybody else, making criticism of these kind against 16:07
21 you, do you accept or reject those criticisms?

22 A. I absolutely reject those criticisms. Absolutely.

23 835 Q. Thank you.

24

25 END OF EXAMINATION 16:07

26

27 CHAIRMAN: Now, Mr. McGuinness, any questions?

28 MR. MCGUINNESS: Yes, just a few short matters.

29 CHAIRMAN: Okay.

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DETECTIVE SUPERINTENDENT DECLAN MULCAHY WAS RE-EXAMINED
BY MR. MCGUINNESS, AS FOLLOWS:

836 Q. MR. MCGUINNESS: In your statement you describe visiting Athlone Garda Station on the 6th August for the purposes of examining a number of exhibits?

A. Yes.

837 Q. You also say that you met on that date the reporter, that is Garda Keogh, and examined his notebook in respect of entries for a particular date in October.

A. Yes.

838 Q. Do you recall whether that was a meeting in the station with him or outside the station?

A. On one particular day, I'm not sure which, but I know I was coming back after having a cup of tea with the superintendent and he came up behind me, we met on the street. That particular day, it wasn't by appointment, we were in the station.

839 Q. Yes.

A. And I think he made contact with me. Now, I'm not one hundred percent sure, but I think that was the sequence of events on that day.

840 Q. Yes. You seem to be slightly more sure in your evidence that the sighting of his car and the disk on it was earlier in the summer than November?

A. Yes, I would have thought that.

841 Q. Do you have any memory of what the purpose of your

1 meeting on the 5th November was with Garda Keogh?

2 A. I have no notes of it, unfortunately. But in relation
3 to Garda Keogh, he said I updated him in relation to
4 the investigation basically, you know.

5 842 Q. On a different topic, Mr. Kelly, on behalf of Garda 16:08
6 Keogh, was asking you about a letter that Garda Keogh
7 wrote dated 17th December 2014. Now, that was included
8 in Garda Keogh's documents to the Tribunal?

9 A. Yes.

10 843 Q. As an appendix to his statement of March of 2017. It's 16:09
11 described as a letter to D/Superintendent Mulcahy with
12 attachments. You appeared to be saying to Mr. Kelly
13 that you don't believe you had received that. Now,
14 could I ask you to look at the letter and all of its
15 attachments, starting from page 328. And it might be 16:09
16 easier if you looked at the paper volume, in Volume 2.
17 I asked Detective Inspector Coppinger about this letter
18 yesterday and in particular about the last two
19 paragraphs and what had been done in relation to the
20 issues raised in the last two paragraphs. And he 16:10
21 appeared to accept that the letter had been received,
22 from his answers. But can I just ask you about the
23 first paragraph? It says:
24

25 "As you are aware [blank] called to Athlone Garda 16:10
26 Station on 28/11/14 and when signing the bail book I left
27 a message for Garda A that he was two and a half hours
28 with members of your investigation team and told them
29 nothing. "

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Now, can I just stop there? The next page is page 329 of our volume and it appears to be a signing on on that date, from the bail book. Do you recall seeing that at any stage?

16:10

A. No.

844 Q. Okay. The next sentence goes on:

"I now wish to bring to your notice Pulse incident 11448852 (attached)."

16:11

There follows then a number of Pulse sheets, three in number. Could I ask you to look at those? The first one relates to a different Pulse identification number, relating to a search under the drugs act on 7th December 2014. That was a day in fact on which you had met Garda Keogh and taken a statement, isn't that correct? In any event, the two other Pulse documents have the Pulse number referred to in Garda Keogh's letter and refer to Garda A and Garda Lyons conducting a follow up search and recovering a small quantity of heroin concealed behind a roof rafter. What he then says in the letter is:

16:11

16:11

"I have kept my distance from important persons for a fair investigation. Garda A is the investigating garda now in a case involving heroin, €4,200 suspect defender [blank] who was his informant and a suspect for placing heroin for Garda A, who is now in a position of

16:12

1 influence over [blank]. It will be interesting to see
2 if there is a prosecution in this case."

3
4 Seeing those documents, does that refresh your memory
5 in any way as to whether you received this letter 16:12
6 yourself?

7 A. The only part of it is the first paragraph, in relation
8 to the man calling to the station, if I understand it's
9 the same person, I think it is.

10 845 Q. Yes. 16:12

11 A. And that his is telling somebody that he was with
12 Guards and he told them nothing. I got that in some
13 shape or form but it wasn't part of this letter.

14 846 Q. Okay.

15 A. I would imagine it's disclosed in my notes someplace, 16:12
16 because I remember reading it.

17 847 Q. Yes.

18 A. Yeah.

19 848 Q. I opened the following two paragraphs to Detective
20 Inspector Coppinger yesterday. The first one related 16:13
21 to his lack of knowledge that your team hadn't in fact
22 taken statements from a number of persons who were
23 important witnesses and that they were eight months
24 into the investigation and then what was done. Does
25 that help you refresh your memory, having received this 16:13
26 letter?

27 A. No.

28 849 Q. Or whether you did anything on foot of it, this
29 concern?

1 A. No.

2 850 Q. The third one relates to --

3 A. Now just in relation to the first paragraph, there was
4 a pretty substantial investigation carried out around
5 this person. 16:13

6 851 Q. Yes.

7 A. But it was something that came up during the course of
8 it, the course of our investigation, that we went a
9 little further in relation to it. And he was met
10 during the course of the investigation. 16:13

11 852 Q. Yes. The last paragraph again relates to the official
12 State mobile phone and his concern in relation to that.
13 Reading that, does that affect your view as to whether
14 you received this?

15 A. The mobile phone was the centre of our investigation 16:14
16 anyway.

17 853 Q. I know that.

18 A. Yeah. No, I have not. I cannot recall ever seeing
19 this.

20 854 Q. There's two further documents which appear to be part 16:14
21 of an attachment, at page 333 and 334, which appear to
22 be lists of members on traffic or perhaps out on duty
23 in a patrol car. Do you recall seeing that at the
24 time?

25 A. I think that might have something to do in relation to 16:14
26 the first person mentioned there.

27 855 Q. Okay.

28 A. From the point of view is that there was an allegation
29 that he had a number of charges before the Court and

1 that he was showing favouritism. We gathered every
2 single file in relation to him and went through them
3 and if any didn't come to conclusion, we got in touch
4 with that person and interviewed them as to why it was
5 outstanding, whatever. There was a suggestion along 16:15
6 the lines that there was favouritism shown to this
7 person and that they were assisting the Guards
8 unofficially. So that was fully investigated. But as
9 for the letter, I have no recollection of seeing that
10 letter. 16:15

11 856 Q. The copies of the Pulse records appear to have been
12 printed out in July 2015. So they may not be copies of
13 the original ones sent in?

14 A. Okay.

15 857 Q. But it doesn't jog your memory in any event? 16:15

16 A. No. No.

17 858 Q. Okay. Mr. Kelly was asking you why you phoned
18 Superintendent Pat Murray on 18th November 2015, by
19 reference to your diary, which records such a phone
20 call. You in fact describe receiving a call in your 16:16
21 statement to the Tribunal, isn't that correct, on 18th
22 November 2015? You say you:

23
24 "...received a call from the reporter, he was drunk and
25 told me he been drinking. Advice was again given by me 16:16
26 regarding welfare."

27
28 Now, that appears to be noted in Garda Keogh's diary.
29 Perhaps we could look at just 13338. If we go over the

1 page there, if we perhaps look on the left-hand side
2 first of all. If we scroll down the page there.
3 wednesday, the 18th:

4
5 "Sick drink. "

16:17

6
7 He has a reference to ringing Superintendent McBrien
8 and then ringing the AC's office. Then, on the top of
9 the next page, for the 19th, he says he is still
10 drinking there. Your note that you were cross-examined 16:17
11 about shows that you phoned Superintendent Murray.
12 Could I ask you to look at Superintendent Murray's
13 note, at page 16210? The 19th November:

14
15 "Call to D/Superintendent Mulcahy re car checks. He 16:18
16 told me Garda Keogh phoned him last night drunk,
17 criticising me. "

18
19 The reference there to car checks, can you recall the
20 context in which that might have been discussed between 16:18
21 the two of you, at that point in time?

22 A. I don't think it has anything to do with this
23 investigation. From my memory, I think what it was, it
24 was a matter that Pat Murray was investigating a member
25 in relation to shoplifting and the member had a car and 16:18
26 he asked me to check the number of the car because I
27 would have had --

28 859 Q. An entirely separate matter?

29 A. Totally separate, yeah, absolutely. Nothing to do with

1 this investigation.

2 860 Q. In any event, you told him about Garda Keogh?

3 A. Yes.

4 861 Q. And how he was?

5 A. Yeah. 16:19

6 862 Q. That was part of your normal reporting to him in
7 relation to his welfare?

8 A. As I say, in fairness to Pat Murray, well, I would
9 spend a lot of time in Athlone outside of the
10 investigation because our original meetings would be on 16:19
11 there and it's a forum where you would meet. In
12 fairness to him, he always brought it up and he would
13 ask me how was Nick Keogh getting on, you know.

14 863 Q. Yes. Mr. Murphy opened your report to the Commissioner
15 in relation to the substantive investigations on foot 16:19
16 of a request made by the Commissioner for an update,
17 isn't that correct?

18 A. Yeah, it would be Commissioner Ó Cualáin's report.

19 864 Q. I think you had previously been asked separately for an
20 update into the welfare contact that you had with him 16:19
21 and you furnished a report on the 3rd September. Could
22 we look at page 10946, just so you can confirm that.
23 This is in 2015. That sets out on that page and on the
24 following page, the details of your contact with Garda
25 Keogh, concerning your welfare calls with him, isn't 16:20
26 that correct?

27 A. Correct.

28 MR. McGUI NNESS: Thank you, detective superintendent.

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END OF EXAMINATION

CHAIRMAN: very good. Thank you very much. You're free to go. Obviously you're welcome to come back if you want to but thanks very much for your assistance. very good.

16:20

THE WITNESS THEN WITHDREW

CHAIRMAN: okay, tomorrow. Thank you very much.

16:20

THE HEARING ADJOURNED TO THURSDAY, 13TH FEBRUARY 2020
AT 10:30 A.M.

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