

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

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

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

HELD IN DUBLIN CASTLE  
ON THURSDAY, 13TH FEBRUARY 2020 - DAY 138

138

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Services certify the  
following to be a  
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action.

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1 THE HEARING RESUMED, AS FOLLOWS, ON THURSDAY, 13TH  
2 FEBRUARY 2020:

3  
4 CHAIRMAN: Yes, Mr. Marrinan.

5 MR. MARRINAN: The next witness is former Acting 10:32  
6 Commissioner Donal Ó Cualáin.

7 CHAIRMAN: Thanks very much.  
8

9 FORMER ACTING COMMISSIONER DONAL Ó CUALÁIN, HAVING BEEN  
10 SWORN, WAS DIRECTLY-EXAMINED BY MR. MARRINAN, AS 10:33  
11 FOLLOWS:

12  
13 THE WITNESS: Donal Ó Cualáin.

14 CHAIRMAN: Good morning, commissioner. Thank you.

15 1 Q. MR. MARRINAN: I think you have set out your history in 10:33  
16 An Garda Síochána at page 7307 of the material. I will  
17 just go through it, because that is how we have dealt  
18 with every other witness up until now.

19 A. Yes.

20 2 Q. If we scroll down there to line 16. Your first 10:33  
21 assignment was to Donnybrook Garda station in 1983,  
22 that was following your attestation, isn't that right?

23 A. That's correct.

24 3 Q. I think you were there until 1987, when you were 10:34  
25 transferred to the Garda Headquarters Technical Bureau  
26 and you had an administrative function for  
27 approximately a year and they were advertising for the  
28 Garda college staff under a new training regime  
29 outlined in the Walsh report. I think that you wanted

1 at that time to broaden your experience and decided to  
2 go to Templemore and spent four years, from 1988 to  
3 1992, in the Garda college. I think you were promoted  
4 to sergeant rank in the Irish section. Then you  
5 transferred from the college to Galway west division 10:34  
6 and then transferred to the Aran islands?  
7 A. That's correct, Chairman.  
8 4 Q. I think there was a vacancy in the in-service school  
9 and you were successful in your application for that  
10 and you went back to Galway city in that function, 10:35  
11 where you spent another year, and in 1994 you were  
12 promoted to the rank of inspector and you were  
13 transferred to Ballyshannon?  
14 A. That's correct, Chairman.  
15 5 Q. I think then you point out that under a then recently 10:35  
16 published Garda Corporate Strategy, an organisation  
17 development unit was proposed and you transferred to  
18 Garda headquarters in late 1994 to assist in the  
19 establishment of that unit. I think in 1996 the  
20 organisation itself was broken into six regions and an 10:35  
21 assistant commissioner was put in charge of each region  
22 and you transferred to the western regional office and  
23 you worked there for a number of years, isn't that  
24 right?  
25 A. That's correct, Chairman. 10:36  
26 6 Q. I think that you were promoted to superintendent and  
27 you spent two and a half years in Donegal at that time,  
28 is that correct?  
29 A. That's correct.

1 7 Q. In 2002 you went to Ennistimon district in County Clare  
2 and then back to Galway city as superintendent in 2003.  
3 You were promoted to chief superintendent rank in 2006  
4 and you spent a short time in Mayo and then in Sligo,  
5 before returning to the Galway division at the end of 10:36  
6 2006. I think you were chief superintendent for a  
7 number of years, until you were promoted again to  
8 assistant commissioner in 2012. And your first  
9 allocation as assistant commissioner was to the  
10 Southern Region, but you transferred back to the 10:37  
11 Western Region in late 2011 you have here, but that  
12 must be --  
13 A. That's 2012.  
14 8 Q. -- 2012. Yes. I think when former Commissioner Nóirín  
15 O'Sullivan was assigned at that time as interim 10:37  
16 commissioner in March of 2014, there were two vacancies  
17 at deputy commissioner level. You say:  
18  
19 "In July 2014, I was directed by the Commissioner to  
20 take charge in an administration capacity of the 10:37  
21 strategy and change management portfolio."  
22 A. That's correct, for the lion's share of that portfolio,  
23 there was another aspect that was given to another  
24 assistant commissioner. And the other vacancy, which  
25 was for deputy commissioner operations, that portfolio 10:37  
26 was filled by a colleague of mine, Assistant  
27 Commissioner John Twomey at the time, yes.  
28 9 Q. So you took up that responsibility in July 2014, some  
29 three months after the protected disclosure of Garda



1           Keogh, isn't that right?

2           A.    That's correct.

3   10   Q.    How much of an additional responsibility was this for  
4           you?

5           A.    Well, I was already running a region and that involved, 10:38  
6           I suppose, the implementation of a Commissioner's  
7           policing plan for the western Region and the proper  
8           management of both, all criminal investigation and the  
9           administration of that region behalf of the  
10          Commissioner. So I didn't lose any of that 10:38  
11          responsibility but I took on another chunk of work,  
12          which was at a more strategic level in An Garda  
13          Síochána, at a time of huge change, where there was --  
14          our Commissioner of the day had embarked on a very  
15          ambitious change programme, which most of it would have 10:39  
16          fallen to my side of the house in the context of  
17          planning for that and getting the financial approval to  
18          ensure that we could make the requisite investment in  
19          some of the areas that we had become wanting in by some  
20          of the problems that had arisen around that time and 10:39  
21          before that time with regard to, say, our computer  
22          systems, IT, etcetera.

23   11   Q.    Yes.

24          A.    So there was lots of work and that was in addition to  
25          the normal, I suppose, responsibilities of that time, 10:39  
26          which was not insignificant in the context of running  
27          an organisation of over 16,000 people.

28   12   Q.    That is a reference to the controversy in relation to  
29          the penalty points system?

1 A. The penalty points and breathalyser test, all of that  
2 were in around the same time, which in effect, you  
3 know, in order to address the issues that caused all of  
4 that, we needed to look at root and branch, our  
5 processes in relation to different matters and ensure 10:40  
6 that we got investment in the required areas to, I  
7 suppose, future proof those areas. And that took a  
8 number of years to, I suppose, plan for, because it was  
9 very ambitious. One of the most ambitious change plans  
10 ever implemented in An Garda Síochána. That was 10:40  
11 launched in 2016, but from the time I went to Garda  
12 Headquarters in that acting capacity, as it were, a lot  
13 of my days were spent -- what I used to do was, maybe I  
14 would leave home in Galway on Monday morning, I would  
15 go to my Galway office, deal with aspects in relation 10:40  
16 to the Western Region on the morning of the first day,  
17 travel to Dublin later that day, I would spend Tuesday,  
18 Wednesday and Thursday in my Dublin office and then  
19 return to Galway on Friday morning and spend Friday in  
20 Galway. That was generally my pattern of work for the 10:41  
21 following year.

22 13 Q. I suppose there were a number of controversies that  
23 arose in 2014 concerning An Garda Síochána, not merely  
24 the penalty points issue.

25 A. Yes. 10:41

26 14 Q. But in January we know that former Commissioner Martin  
27 Callinan had made some comments --

28 A. That's correct.

29 15 Q. -- before the Public Accounts Committee that gave rise

1 to disquiet and concern. And another issue arose at  
2 the end of March that caused him to retire, isn't that  
3 right?

4 A. Yes, that's correct. Yes.

5 16 Q. What impact did those public controversies have on 10:41  
6 members of An Garda Síochána in the higher ranks, as it  
7 were?

8 A. Well, it was a hugely busy time and it was very much in  
9 the public gaze or the public eye.

10 17 Q. Yes. 10:42

11 A. We had lots of outings to different Dáil committees,  
12 the Justice Committee, the Accounts Committee, at which  
13 were called to account in relation to the different  
14 matters that had become controversial, as well as the  
15 normal day-to-day management of An Garda Síochána and 10:42  
16 other issues. So it was a very busy time for everyone  
17 involved. But it didn't remove at the time the  
18 responsibility and the onus to ensure that, you know,  
19 the responsibilities that I had in Galway had to still  
20 be delivered. 10:42

21 18 Q. Yes.

22 A. In the context of my appointment to do the CR  
23 investigation, that wasn't unusual in the context of  
24 assistant commissioners around the country. There  
25 would always be something on your table in addition to 10:43  
26 what your day job was, whether it be some  
27 investigation. And the Commissioner of the day would  
28 deal those jobs out on the basis of, you know, making  
29 sure it was fairly distributed as well as, you know,

1 that nobody was getting an unfair slice of the work  
2 that was being given out.

3 19 Q. I think you continue on and say in early 2015 the  
4 deputy commissioner role was advertised and you applied  
5 for that and you were successful. You were assigned by 10:43  
6 the Commissioner to the strategy and change management  
7 function full-time. I think you were there in that  
8 position until September 2017. You would have been  
9 acting commissioner for Commissioner Nóirín O'Sullivan,  
10 who was on leave during that period of time, and during 10:43  
11 the summer of 2017 you were also acting commissioner  
12 from mid July until the end of August. The  
13 Commissioner returned in early September and shortly  
14 after that she retired. You were then asked by the  
15 government to take on the role of acting commissioner 10:44  
16 and you agreed. You were then heading up the  
17 organisation, isn't that right?

18 A. That's correct, Judge.

19 20 Q. I think it took a year to fill the role permanently, at  
20 which point you retired? 10:44

21 A. That's correct, Chairman.

22 21 Q. Obviously one of the matters that became somewhat  
23 controversial in 2014 and, indeed, were the  
24 subject-matter of remarks by former Commissioner  
25 Callinan, was in relation to how An Garda Síochána 10:44  
26 viewed whistleblowers, to use that rather inelegant  
27 description, but nevertheless, that was the issue that  
28 arose, isn't that right?

29 A. Yes.

1 22 Q. In actual fact, An Garda Síochána had prior to that put  
2 in place a charter, isn't that right?

3 A. That's correct, Chair. I know that as early as 2008, I  
4 think, arising out of that legislation that I was  
5 actually nominated as a confidential recipient on 10:45  
6 behalf of the organisation. There would be one picked  
7 in each region I think at the time. I never got any  
8 calls in that capacity.

9 23 Q. Yes.

10 A. But I was appointed by the Commissioner sometime, it 10:45  
11 could have been around 2010 or '11, to investigate a  
12 matter that was from a confidential reporter.

13 24 Q. Yes. There were a number of appointments to that role  
14 as confidential recipient under the 2007 Act, most of  
15 chief superintendent rank? 10:46

16 A. They were all of chief superintendent rank, I think  
17 there may have been some civilians as well at that  
18 level appointed. And, of course, there was a the  
19 confidential recipient, the judge at the time, who  
20 would have been our -- you know Judge McMahon was in 10:46  
21 that role.

22 25 Q. Yes, he took on that role?

23 A. Yes. But there was also a confidential recipient in  
24 each of the regions, so that gave a choice to the  
25 individual gardaí as to where they wanted to go with 10:46  
26 their complaint.

27 26 Q. Perhaps we will just briefly have a look at the charter  
28 that was then in place. If we perhaps in the first  
29 instance look at page 7843. This is addressed to each

1 member and civilian employee of An Garda Síochána and  
2 is from the Assistant Commissioner Walter Rice. If you  
3 just scroll down to the third paragraph, he says:

4  
5 "The Charter has been developed in line with the Garda 10:47  
6 policy of encouraging ethical behaviour within An Garda  
7 Síochána and in compliance with the Garda (confidential  
8 reporting of corruption or malpractice) regulations  
9 2007.

10  
11 There already exists an obligation on members of An 10:47  
12 Garda Síochána to report criminal or suspect activity  
13 on the part of any person, including a member or  
14 civilian member of An Garda Síochána."

15  
16 I think that is a matter that may be lost in relation 10:48  
17 to some of these matters. There is actually an  
18 obligation on each member and civilian member to report  
19 any wrongdoing, isn't that right?

20 A. Of course, but maybe what didn't exist previously was 10:48  
21 this safety net or protection for the individual.

22 27 Q. Indeed.

23 A. Yes.

24 28 Q. Then it says:

25  
26 "The aim of this Charter is to create an environment in 10:48  
27 which members and civilian staff members are encouraged  
28 to report incidents of corruption or malpractice."  
29

1           Isn't that right?

2           A.    That's correct, Chairman.

3   29   Q.    Then if we just turn over to the Charter itself, it's  
4           at page -- the introduction, foreword is at page 7845  
5           of the material. We see there the foreword that is  
6           penned by former Commissioner Fachtna Murphy and if we  
7           scroll down to the last three lines of that, we see:

10:48

8  
9           "The aim of this charter is to create an environment in  
10          which sworn members and civilian employees are  
11          encouraged to report incidents of corruption or  
12          mal practice."

10:49

13  
14          Then if we can perhaps just look at some of the  
15          relevant sections of it and we go to page 7847, under  
16          the introduction there we see, three lines down:

10:49

17  
18          "Its purpose is to provide mechanisms to bring genuine  
19          concerns or allegations of corruption and/or  
20          mal practice within An Garda Síochána to notice at the  
21          earliest possible opportunity without fear of  
22          victimisation or reprisal."

10:49

23  
24          Those two matters, I suppose, would be the principal  
25          barriers to somebody coming forward and disclosing what  
26          they believe is wrongdoing, would that be right?

10:50

27         A.    Yeah. I'd agree with that, Chairman. It takes a lot  
28           of courage from an individual, you know, to stand up  
29           and shout out something that they see as a wrongdoing

1 by one of their colleagues and on that basis, yes, I  
2 agree with what you said.

3 30 Q. If we go on to page 7849 then of the Charter:

4  
5 "Duties of commissioner. 10:50

6  
7 The duties of the Garda Commissioner and any persons  
8 acting on his behalf include: Taking all practicable  
9 steps to ensure that the identity of a confidential  
10 reporter is not disclosed other than in strict 10:50  
11 accordance with the criteria in regulation 9(2)."

12  
13 There is an exception in regulation 9(2), but we  
14 needn't go into that, because it doesn't arise in this  
15 particular instance. But that's a matter that we might 10:51  
16 return to.

17  
18 "Examining each report transmitted by a confidential  
19 recipient; investigating or causing to be investigated  
20 all allegations other than those found upon examination 10:51  
21 to be false, frivolous or vexatious, or to have been  
22 made in bad faith."

23  
24 If we then move on to page 7850 of the material, under  
25 "employee safety" at number 6 there: 10:51

26  
27 "The Commissioner is committed to ensure that any  
28 member or civilian employee in An Garda Síochána who  
29 raises genuine concerns or allegations of corruption or



1 malpractice under the charter will not be at risk of  
2 losing their employment or suffering any form of  
3 retribution as a result.

4  
5 Harassment or victimisation of confidential reporters 10:52  
6 who have raised genuine concerns or allegations of  
7 corruption or malpractice is contrary to the Garda  
8 Síochána (Discipline) Regulations 2007 and the civil  
9 service disciplinary code revised in accordance with  
10 the Civil Service Regulations (Amendment) Act 2006 and 10:52  
11 the criminal law."

12  
13 Isn't that right?

14 A. That's correct, Chairman.

15 31 Q. It then deals with some other matters concerning the 10:52  
16 nature and how reporting is done. The general thrust  
17 of this would appear to be two primary objectives;  
18 first of all, to keep the identity of the confidential  
19 reporter confidential, isn't that right?

20 A. That's correct, Chairman. 10:53

21 32 Q. I suppose that's is to prevent any form of retribution  
22 or perhaps targeting of him that may take place?

23 A. Well, it would assist in that regard, of course.

24 33 Q. Yes, it would. In this particular instance, and we  
25 will come to deal with the disclosure that was made on 10:53  
26 the 8th May, it had become public knowledge as a result  
27 of the confidential reporter giving information to  
28 Deputy Flanagan, isn't that right?

29 A. That's correct, Chairman.

1 34 Q. On the 8th May were you aware of the broadcast or were  
2 you made aware of the broadcast of the information that  
3 was disclosed in Dáil Éireann?

4 A. I can't say when exactly I became aware, but having  
5 been appointed on the 9th May by the then interim 10:53  
6 commissioner, I would have got that file the following  
7 week. I am sure as I went through it that, you know,  
8 what was going on in the media would have resonated at  
9 that stage, but I was definitely aware of it early on  
10 after my appointment, yes. 10:54

11 35 Q. Did you have any view before you embarked on this as to  
12 the appropriateness of Garda Keogh going to a member of  
13 Dáil Éireann, of the Dáil and disclosing this  
14 information?

15 A. Well, Chairman, he was quite entitled to do that under 10:54  
16 the Act.

17 36 Q. Yes.

18 A. I would never second guess anyone's reasons for taking  
19 action. As I said earlier, it takes a whole lot of  
20 courage for an individual member of any organisation to 10:54  
21 stand up and call out what they see as maybe low  
22 standards or corruption or malpractice or whatever it  
23 might be. On that basis, I would never question any  
24 actions that a confidential reporter would take or  
25 protected disclosure, a person going a protected 10:55  
26 disclosure, in order to highlight the issues that they  
27 feel need to be highlighted.

28 37 Q. But he was also invoking the protected disclosures  
29 procedure and yet his identity was known?

1 A. Well, that's correct, Chairman. You know, that does  
2 cause practical difficulties.

3 38 Q. Yes.

4 A. But, I mean, the difficulties were mine. They  
5 shouldn't be visited on the confidential reporter. He 10:55  
6 has done his duty by doing what he did. It's up to me  
7 to manage then what I had been told to do within the  
8 confines of the law and ensure that what I had been  
9 asked to do is done to the letter of the law.

10 39 Q. If we just then move on to the specifics. On the 9th 10:55  
11 May, if we could have page 3969 up on the screen  
12 please. This is the letter of appointment dated 9th  
13 May.

14

15 "The attached correspondence from --" 10:56  
16

17 Have you got it there? Yes.

18

19 "Attached correspondence from Judge Patrick McMahon, An  
20 Garda Síochána confidential recipient, is forwarded for 10:56  
21 your information and attention.

22

23 Please carry out a thorough investigation into all the  
24 issues raised by the confidential recipient and let me  
25 have a comprehensive report on the matter. 10:56  
26

27 Your report should reach this office no later than the  
28 9th June. Where delays are encountered, an interim  
29 report should be submitted setting out progress to date

1 and reasons for delays encountered."

2  
3 I think that deadline that was set in the first  
4 instance just simply wasn't achievable. But in terms  
5 of the request from the Commissioner there in relation 10:57  
6 to the investigation, could you just tell us what you  
7 envisaged at that time? Because there seems to be --  
8 you certainly draw a distinction in your interview with  
9 our investigators in relation to what you describe as a  
10 fact-finding investigation, a criminal investigation 10:57  
11 and then a disciplinary investigation. So could you  
12 just assist the Chairman in relation to the difference  
13 between those three, please?

14 A. Of course, Chairman. First of all, I would say that  
15 when I got this correspondence from the Commissioner, 10:57  
16 it would have been in the week beginning the 12th May,  
17 I would have studied it closely. It was not unusual in  
18 the event that complaints were made, and that can be  
19 without recourse to the PD system at all, but not in  
20 the normal course, where wrongdoing is highlighted, 10:58  
21 that it would be important to establish first what  
22 you're dealing with in the context of: Is this  
23 criminal? Is it a disciplinary matter? Is it either  
24 or is it both? And when the file arrived to me, I  
25 can't -- I don't know what the Commissioner's office 10:58  
26 actually did with it, but I don't think they would have  
27 gone into reading the affidavit in any great detail.  
28 They would have immediately said, this is something  
29 that needs to go and we need to appoint someone to look

1 at this. On that basis, the early date that was given  
2 of course was not a realistic date. But I understood  
3 that, because I knew that within a month I'd be able to  
4 give the Commissioner some indication as to what I was  
5 dealing with. At some point further down the line, 10:58  
6 given how successful our investigation was going, that  
7 I could make a call on whether or not it was A, B or A  
8 plus B, as I just mentioned in relation to criminal or  
9 disciplinary etcetera, or either.

10  
11 So I was aware, having read the affidavit, that there  
12 were some very serious allegations being made, I knew  
13 that I had to immediately set about getting a serious  
14 team put together to look at these matters, because  
15 they were not insignificant in the level of seriousness 10:59  
16 that they indicated. And that's what I set about doing  
17 immediately.

18  
19 Having read carefully the affidavit that Garda Keogh  
20 had provided, through the judge, then having studied 10:59  
21 again and refreshed my memory in relation to the  
22 regulations and charter and legislation surrounding all  
23 of this, and then setting about getting a team together  
24 to look into all of these matters. I viewed it so  
25 seriously that I called in the most experienced 11:00  
26 detectives I had available to me in the Western Region  
27 in order to initiate those enquiries for me. You have  
28 already heard from former detective superintendent  
29 Declan Mulcahy, who I appointed as my senior

1 investigating officer. He was at that stage the senior  
2 detective in my region, responsible for all  
3 investigation of serious crime in the Western Region,  
4 not just in Galway but right across the region. I then  
5 set about getting assistance for him and I knew that I 11:00  
6 had at my disposal in my own, in the -- I suppose in  
7 the station in which I resided, Detective Inspector  
8 Michael Coppinger, who I had worked with previously at  
9 different ranks. I knew that he was someone that would  
10 be, you know, of the right calibre to put into that 11:00  
11 team. I then asked both of them to attend a meeting  
12 with me on the following Thursday

13 40 Q. Yes.

14 A. Which was I think the 12th -- or the 15th, was it?  
15 Yeah. 11:01

16 41 Q. I don't want to interrupt you, but if we could just go  
17 back and we will come back to that?

18 A. Yeah.

19 42 Q. But we were just dealing with the difference between --

20 A. Sure. 11:01

21 43 Q. -- the investigations. A fact-finding investigation, a  
22 criminal investigation and a disciplinary  
23 investigation.

24 A. Yes.

25 44 Q. And just to deal with the disciplinary investigation as 11:01  
26 compared to the fact-finding and the criminal  
27 investigation.

28 A. Okay. Well, the fact-finding is there to establish  
29 what you are dealing with. Is it criminal? Does it

1 have disciplinary aspects to it? If it is a member of  
2 An Garda Síochána that allegations of criminality are  
3 made against, there is an automatic assumption that you  
4 are going to have discipline at some stage in the  
5 process. Or, it could be just discipline alone? When 11:01  
6 you look at what you're trying to establish, that you  
7 know, well, there's no criminal aspect here but there  
8 is lots of discipline and we need to appoint someone to  
9 look at the discipline.

10 45 Q. That's the important thing. If you conducted a 11:02  
11 fact-finding or criminal investigation, you then make a  
12 recommendation in relation to disciplinary matters that  
13 may have arisen from that investigation and that is  
14 then handed over to somebody else, is that right?

15 A. If I could assist the Tribunal. You know, at the 11:02  
16 outset you're looking at a bald statement.

17 46 Q. CHAIRMAN: what have we got here?  
18 A. Yeah, what have we got? So you have to establish what  
19 you're dealing with.

20 47 Q. CHAIRMAN: Now, that's the fact-finding part, is it? 11:02  
21 A. It is, but you have to start on the basis that it's a  
22 criminal matter.

23 48 Q. CHAIRMAN: Yes.  
24 A. So that all the work you do doesn't come to naught when  
25 you do establish it's a criminal matter, that all the 11:02  
26 work you've done will stand up to the rigour of that  
27 particular --

28 49 Q. CHAIRMAN: Yes. So the default --  
29 A. The default, yes.

1 50 Q. CHAIRMAN: The default position is that it's is a  
2 criminal matter?  
3 A. Yes.

4 51 Q. CHAIRMAN: I'm sorry, Mr. Marrinan. But it may turn  
5 out to be, I mean just in general terms, it may turn 11:02  
6 out to be not a criminal matter.  
7 A. Yes.

8 52 Q. CHAIRMAN: It is really a disciplinary matter.  
9 A. That's correct.

10 53 Q. CHAIRMAN: In which case you can go down that road? 11:03  
11 A. That's correct.  
12 CHAIRMAN: Okay.

13 54 Q. MR. MARRINAN: I don't think the mere fact that it's a  
14 fact-finding investigation is going to prevent you from  
15 availing of your legislation in relation to the 11:03  
16 investigation of offences, isn't that right?  
17 A. Oh absolutely not. As I say, we're dealing with it as  
18 a criminal investigation until such time that we  
19 establish that it's not.

20 55 Q. CHAIRMAN: That it's is not. 11:03  
21 A. Yes.

22 56 Q. MR. MARRINAN: Absolutely. well, what I am really  
23 trying to test, there isn't really a stamp on the  
24 investigation saying this is only fact-finding. If  
25 something arose during the course of that, a side 11:03  
26 issue, for example, that may have given rise to some  
27 form of criminality --  
28 A. Yes.

29 57 Q. -- you can then use your powers perhaps of search or



1 otherwise in relation to it if you have a reasonable  
2 suspicion arising out of your investigation up to there  
3 to pursue that matter?

4 A. What I would say, Chairman, is: Once you reach a  
5 certain threshold in the fact-finding phase, as it 11:04  
6 were, you would look for formal appointment. And the  
7 reason this is important is, the person who does the  
8 criminal investigation could never be appointed to do  
9 the discipline. And there's case law on that.

10 58 Q. Yes. 11:04

11 A. Like, your prior knowledge of a case and you're doing a  
12 criminal investigation and there are disciplinary  
13 aspects arising at the end of that criminal  
14 investigation, the discipline would have to be given to  
15 another person who has nothing to do with the criminal 11:04  
16 investigation that just concluded. And that's so that  
17 he would remain objective in the context of both  
18 investigations. So that's an important point to raise  
19 at this juncture. And that's why you would seek to  
20 have appointments made at certain junctures so that you 11:04  
21 can continue. I did that at a certain point when I  
22 felt that that threshold was reached. I did look for  
23 formal appointments to be made. But the work that was  
24 done up until then wasn't lost in the context of a  
25 criminal investigation and even from a disciplinary 11:05  
26 point of view, in that all of the statements that were  
27 taken during that phase would have been taken on the  
28 basis that the witnesses making them would have been  
29 told that this particular statement can be used in

1           either a criminal or disciplinary.

2    59   Q.    Yes.

3           A.    So that that meant when a discipline file began that

4           they didn't have to be -- that those witnesses didn't

5           have to be re-interviewed for what they had just put in 11:05

6           their statements.

7    60   Q.    As part of your letter of appointment you were provided

8           with the affidavit of Garda Keogh.

9    61   Q.    CHAIRMAN:  Could I just ask for a second, Mr. Marrinan,

10           would you mind obviously, we start off with the default 11:05

11           option, it's a criminal investigation unless it's

12           established otherwise.

13           A.    Yes.

14   62   Q.    CHAIRMAN:  And you proceed.  And I understand that you

15           say at a certain point, a threshold of cogency or 11:06

16           whatever, there's a certain amount of material that may

17           be evidence or may not be assembled, and you look for a

18           formal appointment.  Suppose the officer didn't look

19           for a formal appointment, would it continue as a

20           criminal investigation? 11:06

21           A.    Yes.  It wouldn't affect the criminal side as such.

22           Just I sought clarity on what the Commissioner's

23           view -- what should happen.  That was all it was.

24   63   Q.    CHAIRMAN:  I follow.  It's sort of seeking clarity.

25           A.    Yes. 11:06

26   64   Q.    CHAIRMAN:  But it's not a legally decisive point --

27           A.    No, it's not.

28   65   Q.    CHAIRMAN:  -- that would impact on the nature of the

29           investigation.  If it's a criminal investigation, it

1 starts and that's the assumption and it continues right  
2 until to the end?

3 A. Yes.

4 66 Q. CHAIRMAN: But you would look for this formal  
5 appointment to keep everything in order; is that right? 11:07

6 A. That's correct. And also to ensure that the  
7 distinction between criminal and discipline were  
8 separated at that juncture.

9 CHAIRMAN: Okay. Thank you very much. Sorry  
10 Mr. Marrinan. I am glad to have that clarification. 11:07

11 67 Q. MR. MARRINAN: I think that the affidavit accompanied  
12 the letter, and that's at page 3971 of the material. I  
13 don't intend to go through this. But you obviously  
14 studied the affidavit quite carefully, isn't that  
15 right? 11:07

16 A. Yes.

17 68 Q. And there are serious complaints there?

18 A. Yes.

19 69 Q. And substantial complaints in relation to policing in  
20 Athlone? 11:07

21 A. Yes.

22 70 Q. I suppose one of the things that you would have to  
23 establish fairly early on was, was this a bona fide  
24 disclosure, isn't that right?

25 A. Yes, of course. Now, I think, sorry, Chairman, the 11:08  
26 bona fides bit, at that stage we're back to the  
27 Commissioner. I think the charter was clear that, you  
28 know, the Commissioner's functions were to establish  
29 whether this was vexatious -- I forget the exact

1            wording. But once I received this, I took it as read  
2            that this was a bona fide case that needed  
3            investigation.

4    71    Q.    CHAIRMAN: And I think the 2014 Act, the Protected  
5            Disclosure Act makes that a statutory presumption. 11:08

6            A.    Yes.

7    72    Q.    CHAIRMAN: I think. I may be wrong.

8            A.    Yes.

9    73    Q.    MR. MARRINAN: No, that's correct. It hadn't come into  
10           force at that stage. So the position then, can you 11:08  
11           just tell us in relation to Garda Keogh, did you cause  
12           any background checks to be made in relation to him  
13           before you went to see him?

14           A.    No, did I not. As a normal course in major  
15           investigations, that would be a job, an early job that 11:08  
16           the complainant -- that some background would be done  
17           on the complainant.

18    74    Q.    Right.

19           A.    However, I felt it would not be prudent to do that in  
20           this case because he was a confidential reporter and I 11:08  
21           said to the team that we weren't going to do that.

22    75    Q.    Yes. Now I think that, as you have already indicated,  
23           you appointed Detective Superintendent Mulcahy. A  
24           letter of appointment dated 15th May is at 3973.  
25           That's addressed to both Detective Superintendent 11:09  
26           Mulcahy and Detective Inspector Michael Coppinger. And  
27           you have given the reason for appointing them. Then  
28           there's a further appointment that takes place in  
29           relation to the team on 25th June of 2014. we will

1 look at it, it's 3974. We are jumping a little bit  
2 ahead here, but it may well be that in relation to the  
3 point that you wish to make in relation to the quality  
4 of personnel that you had assigned to this?

5 A. Yes. 11:10

6 76 Q. This is from Detective Superintendent Mulcahy to you  
7 and we see there that Detective Sergeant Paudie O'Shea  
8 is appointed and Sergeant Gerry Cleary, Detective  
9 Sergeant Tom waters and Detective Sergeant Kevin  
10 O'Hagan. Can you say anything in relation -- first of 11:10  
11 all, they're all detective branch and they're all  
12 sergeants. Can you say anything in relation to the  
13 quality of the personnel that were being appointed?

14 A. Of course. I had two challenges here, Chairman, at the  
15 outset. All of these were very busy people in relation 11:10  
16 to crime investigation in any case. I wanted to get  
17 the best team. I gave that job to the detective  
18 superintendent, to pick a team that he would have known  
19 of their back records and their experience, but I also  
20 asked him to try and spread the load as best he could 11:11  
21 across the region, rather than just having all of them  
22 coming from one division, which would have left them  
23 challenged to deal with the day-to-day business of  
24 crime investigation. So on that basis, you know, we  
25 picked our team and I would have contacted the chief 11:11  
26 superintendents involved and told them that that was my  
27 intention, to bring them into the team.

28 77 Q. I think that if we could just go back then to the 15th  
29 May, if we could have page 3975 up on the screen, this

1 is a letter to Garda Keogh that you wrote:

2

3 "I wish to inform you that I have been appointed by the  
4 Commissioner to investigate all the issues raised by  
5 you in your sworn affidavit to the confidential  
6 recipient. 11:11

7

8 With a view to progressing my investigation, I would  
9 appreciate it if you could contact me in early course."

10

11 There's a phone call the same day, is that right?

12 A. That's right, yes. I managed to get a phone number for  
13 Garda Keogh, but I still put it in writing, the  
14 request. And the purpose of the call was to introduce  
15 myself to him and to let him know what I was assigned 11:12  
16 to do by the Commissioner and to look for an  
17 opportunity to meet with him in early course to get a  
18 statement, a detailed statement from him in relation to  
19 all the issues that he had.

20 78 Q. If we could just perhaps look at Garda Keogh's entry in 11:12  
21 relation to this first interaction that he had with  
22 you. It's at page 13256, if we put that up on the  
23 screen. It's on the right-hand side. There is an  
24 entry on the left-hand side, I will ask you to deal  
25 with this. Judge McMahon dealt with it. 11:13

26

27 "Informed judge I'm not happy with AC appointed."

28

29 Then there is something about friendship with chief.

1 CHAIRMAN: Just roll that down.

2 MR. MARRINAN: If you just scroll down.

3 CHAIRMAN: Sorry, that's all right.

4 79 Q. MR. MARRINAN: Do you see there: 11:13

5

6 "Informed judge I'm not happy with AC appointed due to

7 friendship with chief."

8

9 Do you see that?

10 A. I do. 11:13

11 80 Q. I think Judge McMahon's evidence was and, indeed, Garda

12 Keogh's evidence was in accordance with it, that he

13 said at AC level that you would know most people in the

14 higher ranks in An Garda Síochána. But just to remove

15 any suggestion that there was a particular friendship 11:14

16 in relation to you and Chief Superintendent Curran?

17 A. Chief Curran?

18 81 Q. Yes.

19 A. Well, as you laid out my bio earlier in relation to --

20 I served in all four provinces, I served in a lot of 11:14

21 different divisions in the districts. I probably would

22 know a lot more people than some of my colleagues here

23 in Dublin, who would have served most of their careers

24 within the pale, as it were.

25 82 Q. Yes. 11:14

26 A. So I would have had a working relationship with many

27 officers right throughout the country.

28 83 Q. Yes?

29 A. I don't think I ever served with Chief Curran. I think

1 he was essentially Dublin based. So I wouldn't have  
2 known chief Curran at all.

3 84 Q. Well it's not a matter that is being pursued by Garda  
4 Keogh in any event, but it was a matter that was  
5 apparently in his mind at the time. 11:15

6 A. Right.

7 85 Q. CHAIRMAN: Were you friendly with him, I mean in the  
8 sense of being friends?

9 A. No.

10 86 Q. CHAIRMAN: In other words, above and beyond colleagues? 11:15

11 A. No. No. I got to know him later on, in the last --  
12 because he works in the Commissioner's office at some  
13 stage.

14 87 Q. MR. MARRINAN: Yes, that's right.

15 A. That's when I -- 11:15

16 CHAIRMAN: Okay.

17 88 Q. MR. MARRINAN: But certainly at that time there was no  
18 friendship there. Then if we look across and scroll up  
19 to the entry on the 15th, you see:  
20 11:15

21 "AC contacts me. He says I understand there is another  
22 matter."  
23

24 I think that arose out of the letter of Judge McMahon,  
25 isn't that right? 11:15

26

27 "I say it's far more serious than what's in the  
28 affidavit and we have a job to do."  
29



1           So that is his note. Do you recall him or that issue  
2           arising?

3           A. Oh yes. There was a few calls I know in the early  
4           stages, first of all in order to establish contact and  
5           then actually Garda Keogh, when I introduced myself, 11:16  
6           you know, he was anxious to get across that there was a  
7           lot of other issues.

8   89   Q. Yeah.

9           A. And that's when I would have told him, look it, that's  
10          why we need to sit down with you and get a proper 11:16  
11          statement of all the issues that you have to tell us  
12          about, and tried to make an appointment at which that  
13          could be done.

14   90   Q. Did you discuss with him at that stage or at all the  
15          fact that he had gone public in relation to his 11:16  
16          allegations?

17          A. There was some meeting, it wasn't at that stage, it was  
18          much later, where we were dealing with some of the  
19          issues that he raised by letter to the detective  
20          superintendent and where I would have told him, you 11:17  
21          know, your name is in the public domain but we're not  
22          responsible for that. We have maintained your  
23          confidentiality within our team, and we hadn't talked  
24          to anybody in relation to it. But obviously, if his  
25          name was in the public domain it had to come through 11:17  
26          some other avenue and I just explained that to him.  
27          And he was very happy to say that he was -- that he  
28          didn't have any issue with our team in relation to  
29          that.

1 91 Q. We know from the evidence that Garda Keogh appears to  
2 have been quite open in relation to the fact that he  
3 had made a confidential report. We know from his  
4 sergeant, Sergeant Haran, that he suggested that  
5 perhaps he speak to his unit. 11:18  
6 A. Yes.

7 92 Q. And he spoke to other members of his unit. He didn't  
8 disclose the nature of the allegation or against whom  
9 it was made.  
10 A. Yes. 11:18

11 93 Q. Except for in an intelligence entry that he put on  
12 Pulse. We will come to that in due course. But we  
13 also know from the evidence of other people who have  
14 given evidence to the Tribunal, that it was generally  
15 known that Garda Keogh had made these allegations. 11:18  
16 A. Yes.

17 94 Q. And, indeed, that Garda A was certainly the  
18 subject-matter of those allegations as well?  
19 A. Yes.

20 95 Q. I suppose because of the nature of the investigation, 11:18  
21 that was bound to come out in any event within Athlone  
22 Garda Station. But during this contact that you had  
23 with him on the 15th May, did you make enquiries as to  
24 whether he was still on duty, that he was still  
25 performing his normal duties in Athlone Garda Station? 11:19  
26 A. No, I didn't go into that at all. The purpose of my  
27 call was essentially to introduce myself.

28 96 Q. Yes.  
29 A. I felt that any business we had to do had to happen

1 face-to-face.

2 97 Q. Yes.

3 A. It was essentially just to introduce myself and make an  
4 appointment at which we could meet. That was the  
5 purpose of the call. Or the calls, as it happened to 11:19  
6 be, a few calls had to be made.

7 98 Q. Yes. On that day, on the 15th?

8 A. No, between the 15th and the day that we actually  
9 managed to meet, it was June the 7th, I think.

10 99 Q. There's another entry on the 19th May, at 13257. This 11:19  
11 is the 19th May and this reads:  
12  
13 "Inspector Farrell asks me to change part of an  
14 intelligence entry."  
15 11:20  
16 He says no, but he says then:  
17  
18 "I will speak to AC and ask re informant."  
19  
20 Do you recall in around that time having a conversation 11:21  
21 with Garda Keogh in relation to this issue of the entry  
22 on Pulse?

23 A. No, Chairman, I don't. But I was aware, I did become  
24 aware of it. Whether it was during a conversation with  
25 Garda Keogh, I'm not sure. 11:21

26 100 Q. If we could just then look at another entry, at 13258,  
27 this is the 27th May. If we look there:  
28  
29 "Garda A into public office, humming. I walked out."

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And then he says:

"I spoke with AC to say I wanted movement on the case."

11:21

Do you recall him ringing you on the 27th May?

A. I can't dispute that that call happened. There were a few calls. A lot of them would have been initiated by myself in an effort to get a date to meet with Garda Keogh. So I know that calls happened. If Garda Keogh was endeavouring to go into the meat of his issues over the phone, I would have encouraged him to wait until we sat down so we get a full account in a proper environment.

11:22

101 Q. I think that the reason you emphasise that is in relation to a question that you were asked by our investigators dealing with a suggestion at that stage, which now isn't being pursued by Garda Keogh, that he may have thought that his phone was being bugged and he relies on what you said to him in that regard, namely don't talk over the phone, and I think you dealt with that, isn't that right?

11:22

11:22

A. That's correct, Chair.

102 Q. Would you just give us your evidence in relation to that, to get it out of the way?

11:23

A. Well, I mean, this allegation was put to me by your team.

103 Q. CHAIRMAN: Yes.

A. And I would say, you know, I had no evidence to suggest

1 that any phone was bugged and if it were, my purpose of  
2 ringing Garda Keogh in those early days was to just  
3 establish contact.

4 104 Q. MR. MARRINAN: Yes.

5 A. That was the primary purpose. And if I said to him, 11:23  
6 look it, we're not going to discuss this, it was for  
7 the purpose that, you know -- I knew that he was  
8 anxious to get a story out and that he needed to tell  
9 it and that there was a kind of urgency there, but the  
10 phone wasn't the way to do it. 11:23

11 105 Q. Yes, indeed.

12 A. We needed to sit down and do it in a professional way.

13 106 Q. If we then move on to an entry that he has on the 30th  
14 May, on the opposite page there, he says:  
15 11:24  
16 "Call from AC."  
17  
18 That's yourself  
19  
20 "I state I am not recording him." 11:24  
21  
22 Is that something he volunteered or did you ask him  
23 about that?

24 A. I wouldn't have asked him that, no.

25 107 Q. "And there to ask for help re what I've been saying 11:24  
26 over last four years. Meeting for 7/6/2014 in  
27 Portumna."  
28 A. Yes.

29 108 Q. So, was it on that date that --

1 A. That's the day that the decision was made of the date,  
2 yes. Yes.

3 109 Q. Was that your suggestion or was it his suggestion or  
4 how was it that it was put back for seven days, as it  
5 were, the meeting to take place? 11:25

6 A. Well, I was conscious again of Garda Keogh's situation.  
7 He was a confidential reporter. So I would have said  
8 to him at an early stage, I need to meet with you, I'm  
9 happy to meet wherever you nominate, where you feel  
10 safe, where you can make your statement. Within 11:25  
11 reason, of course, I knew of the urgency of the matter,  
12 that it needed to be attended to, but I wanted to give  
13 him the opportunity as well in relation to when it  
14 would happen. I have looked at my diary for those,  
15 from the day I was appointed until the day I met with 11:25  
16 Garda Keogh, it was a busy diary, but the only days  
17 where I wasn't available actually I think were two days  
18 where I was on annual leave, between my first contact  
19 with Garda Keogh and the day that I met him. And  
20 actually, the day I did meet him was on a Saturday, at 11:25  
21 the weekend. I was totally flexible in relation to  
22 where and when and the when was within reason, I  
23 couldn't let that go too long because I was anxious to  
24 get a detailed statement of complaint from him.

25 110 Q. I think then you had your first meeting with him on the 11:26  
26 7th June at Portumna Garda station. I think it was at  
27 six o'clock in the evening that you met him?

28 A. That's correct.

29 111 Q. With Detective Superintendent Mulcahy. would you just

1 tell us what you recall of that meeting?

2 A. Well again, what I recall is, just, you know, in any of  
3 these scenarios it's good to sit down first and just  
4 talk, have a good chat before you start making notes or  
5 taking anything down formally. So, just to get a view 11:26  
6 of -- and allow Garda Keogh to relax and just to be  
7 able to get into a situation where he could talk freely  
8 about the issues that he had to talk about.

9 112 Q. What were your first impressions of him?

10 A. That he was -- that he was anxious, yeah. He appeared, 11:27  
11 you know, nervous. And I would expect that. He was,  
12 you know, aware of the fact that he was making very  
13 serious allegations against colleagues and, you know,  
14 he was fearful of, you know, what might happen him  
15 because of that. I was there to reassure him in that 11:27  
16 regard. I told him, given that it was under the  
17 confidential reporting mechanism, you know, that I saw  
18 it as my responsibility to ensure that his welfare  
19 needs were met. From the earliest stage of this  
20 process, that is something that I would have discussed 11:27  
21 with Garda Keogh directly or when I didn't attend the  
22 meetings, that I would have ensured that my single  
23 point of contact with Garda Keogh, who was Detective  
24 Superintendent Declan Mulcahy, would keep that on the  
25 agenda at all times. 11:28  
26

27 So the meeting -- it became apparent very quickly to me  
28 and to Declan Mulcahy that this particular statement  
29 was going to take some time. While we went through the

1 actual affidavit, he then started to talk about other  
2 matters that needed to be recorded. So we needed to  
3 put some shape on that and just get his view as to what  
4 related to what in relation to his statement, get  
5 clarity around, you know, how many different issues 11:28  
6 really there were here. That process took -- well, for  
7 that particular session, which started it and then  
8 Detective Superintendent Mulcahy and DI Coppinger  
9 continued with that for I think another three days it  
10 took them before they had a full statement that Garda 11:28  
11 Keogh felt he had told us everything he knew at that  
12 particular point in time

13 113 Q. Just to come back to the question that I asked you  
14 earlier on, at this meeting did you make any enquiries  
15 in relation to his welfare at that stage? 11:29

16 A. Oh, yes. I would have at the very early stage, yes.  
17 Yeah.

18 114 Q. Did you ask him whether there had been any  
19 recriminations at work amongst his colleagues?

20 A. No, he had nothing to say on that. But did he have a 11:29  
21 certain -- he was anxious and was -- he was nervous and  
22 he did feel, and possibly for good reason, he felt  
23 exposed in that his name now had become -- you know, it  
24 had gone around all of the media in the country. It  
25 was known who he was. 11:29

26 115 Q. Yes.

27 A. And for that reason he did feel a bit, you know,  
28 exposed I would say.

29 116 Q. Just to come back to it, you dealt with the Charter



1 earlier on and one of the thrusts of it was to ensure  
2 that somebody wasn't subjected to inappropriate  
3 response --

4 A. Yeah.

5 117 Q. -- to having made a protected disclosure. Did you not 11:29  
6 think that maybe you would enquire as to how he was  
7 getting on with his colleagues, with management,  
8 whether he had any complaints at that stage to make in  
9 relation to how he had perhaps been treated by them?

10 A. No. 11:30

11 118 Q. Did you not perhaps think that that might be something  
12 that you might ask?

13 A. I'm sure it formed part of the conversation, Chairman,  
14 because we were there, it was my first meeting with  
15 him. Of course it would be part of the conversation. 11:30  
16 However, like, at that stage in particular we would  
17 depend on -- he had to come to us and if he had any  
18 particular issues that he felt needed to be aired, let  
19 it be in relation to his colleagues or local management  
20 or whatever, because I would have explained to him 11:30  
21 where I was coming from in the context of a CR report,  
22 I had to maintain his anonymity at all stages. I  
23 couldn't go to his local management with his name, even  
24 though it was known.

25 119 Q. Did you explain that to him? 11:31

26 A. I did, I explained the position. In a funny kind of  
27 way, the fact that his name was in the public domain in  
28 some ways and the details of some of his complaints.  
29 Probably affected the early stages of our

1 investigation. From a welfare point of view, it did  
2 mean that now local management, through another avenue,  
3 knew that they needed to mind one of their staff who  
4 had made this...

5 120 Q. Yes. But is this a problem that perhaps arose fairly 11:31  
6 early on? I mean, did you regard it as the  
7 responsibility of your investigation under the Charter  
8 to look after the welfare of the reporter?

9 A. I did, Chairman.

10 121 Q. So that wasn't a responsibility that was placed on 11:31  
11 local management, because obviously it was confidential  
12 and they weren't to know about it?

13 A. Yes. But the fact that his name became public  
14 knowledge, I didn't get rid of my -- my responsibility  
15 remained. As far as I was concerned, I stayed 11:32  
16 interested in Garda Keogh's welfare right throughout  
17 the investigation. But the fact that it was known  
18 locally now that there was a Garda who had made a  
19 confidential report, local management knew through  
20 another avenue, as I say, they then had a 11:32  
21 responsibility as well, they couldn't -- so his welfare  
22 then became an issue for Detective Superintendent  
23 Mulcahy and with local management, they could then talk  
24 about it because it was...

25 122 Q. Yes. So you were happy in those circumstances that 11:32  
26 there should be some sort of information shared between  
27 Detective Superintendent Mulcahy and Superintendent  
28 Noreen McBrien, for example, in relation to the welfare  
29 of Garda Keogh?

1 A. Yes. In relation to the welfare of a confidential  
2 recipient.

3 123 Q. Yes.

4 A. And that is how it was done. And Declan Mulcahy, I  
5 would make it very clear to the people at my 11:33  
6 conferences, this investigation team are still bound by  
7 the confidential reporting legislation, we cannot  
8 discuss this individual's name. But like, where it was  
9 public knowledge, they could mention Garda Keogh to us,  
10 but we'd talk about a confidential reporter back to 11:33  
11 them.

12 124 Q. So in a normal case where the confidential reporter  
13 hadn't disclosed his identity --

14 A. Yes.

15 125 Q. -- the full obligation in relation to welfare would 11:33  
16 fall on the investigation team?

17 A. Well, that was my interpretation of it, Chairman.

18 126 Q. Yes.

19 A. You know, it's one thing that does cause -- you know,  
20 it's a weakness in the system, that I don't think has 11:34  
21 been remedied.

22 127 Q. Yes.

23 A. In that, you know, the welfare -- the people  
24 responsible for a garda's welfare are their direct  
25 supervisors. If they don't know that this individual 11:34  
26 has a problem, they can't deal with it, you know. So  
27 on that basis I decided early on, I am going to ensure  
28 that Garda Keogh's welfare is being looked after, in  
29 the context of whatever services were available within

1 An Garda Síochána and on a one-to-one basis through my  
2 team members.

3 128 Q. And, indeed, there does seem to be a gap there, because  
4 the investigation team won't be familiar with what is  
5 going on on the ground in the Garda station, where the 11:34  
6 local superintendent perhaps would be au fait with  
7 matters that were arising, isn't that right?

8 A. That's correct. And there's another side to this, in  
9 that persons complained of would also be in need  
10 possibly of some welfare support themselves. I note 11:34  
11 that the new protocols actually make specific mention  
12 of that in the context of the duty of the person  
13 appointed, which would be me at this stage, to let  
14 local management know about who has been complained of,  
15 so they can be supported from a welfare point of view. 11:35

16 129 Q. So is there any more you would like to say in relation  
17 to that?

18 A. No.

19 130 Q. No. The meeting that we are dealing with on the 7th  
20 June, I don't intend to open the notes, Detective 11:35  
21 Superintendent Mulcahy has dealt with the issues that  
22 arose. But in his evidence to the Tribunal, Garda  
23 Keogh said that he mentioned the suspension --

24 A. Yes.

25 131 Q. -- of Garda A at this meeting. Was that a matter that 11:35  
26 was mentioned to you at this meeting?

27 A. It was a matter I was already considering myself. Not  
28 the actual suspension of any member but the possibility  
29 that a member may have to be suspended at some future

1 time.

2 132 Q. We are going to come back to that in some detail later  
3 on, in fact quite shortly, but just in terms of this  
4 meeting, do you have a recollection of Garda Keogh  
5 mentioning the issue? 11:36

6 A. Oh I do, yes.

7 133 Q. You do.

8 A. In fact he raised it in a letter to Detective  
9 Superintendent Mulcahy.

10 134 Q. Yes. 11:36

11 A. In addition to other issues that he had. And I  
12 immediately made arrangements to meet with him, which  
13 happened I think two days later, and went through --  
14 and at that stage I had got some clarity from HRM in  
15 relation to other issues that were -- for example, the 11:36  
16 continuity from the confidential reporting legislation  
17 to the PD legislation and the importance of ensuring  
18 that Garda Keogh was aware that my appointment was  
19 still, you know, legitimate in the context of the  
20 continuance of that and that I was still in place to do 11:37  
21 the investigation. But at that meeting I would have --  
22 he would have raised the issue of the suspension of  
23 Garda A. I would have told him that, you know, this is  
24 a matter that requires a lot of consideration and the  
25 process was there, and it usually happens between local 11:37  
26 management and HRM. And here again is another example  
27 of the CRPD process, where local management aren't  
28 aware of the detail of the complaints being made, they  
29 may not even be aware at that stage of the garda being

1 complained of. Therefore, they had no ground on which  
2 to base application for consideration of a suspension.  
3 And I felt, again, that it was incumbent on me to  
4 ensure that that process was considered from the  
5 earliest stages and that is what I did. 11:38

6 135 Q. Yes. I think that since you have raised the issue, we  
7 can explore it now at this juncture rather than defer  
8 it in the timeframe, because it's a specific allegation  
9 that is made or a complaint that is made by Garda  
10 Keogh. I think that at that time the issue of 11:38  
11 suspension of a member was dealt with under the Garda  
12 Síochána Discipline Regulations of 2007, is that right?

13 A. That's correct.

14 136 Q. I think that is dealt with under section 7, it's in our 11:39  
15 material at page 7795. If we could have that up on the  
16 screen there. We see:

17  
18 "Where in the opinion of the Commissioner the  
19 circumstances renders such a course desirable in the  
20 interests of Garda Síochána he/she may a from duty. A 11:39  
21 member so suspended remains suspended until the  
22 Commissioner decides that the suspension should cease.

23  
24 The Commissioner shall review the suspension of a  
25 member every three months or at such shorter intervals 11:39  
26 as he or she considers necessary, but any noncompliance  
27 with this paragraph does not of itself invalidate a  
28 suspension.  
29

1 A member to whom the function of suspending a member is  
2 delegated by the Commissioner may not suspend a member  
3 for a period exceeding ten days, but the Commissioner  
4 may extend the suspension.

11:39

5  
6 A member who is suspended and is required by the  
7 Commissioner or the Government, as the case may be, to  
8 retire or resign as an alternative to dismissal,  
9 remains suspended during the period of any notice of  
10 retirement or resignation that may be given."

11:40

11  
12 So it appears that under the regulations that the  
13 Commissioner has the role of suspending but that can be  
14 delegated.

15 A. Yes, Chairman.

11:40

16 137 Q. I think it could be delegated to a chief superintendent  
17 at local level?

18 A. That's correct. All discipline matters are delegated  
19 to chief superintendent level, yes.

20 138 Q. But that can only be done for a period of ten days?

11:40

21 A. Yes.

22 139 Q. But the Commissioner can extend that period?

23 A. That's correct.

24 140 Q. So any long-term suspension would be a matter for the  
25 Commissioner, is that right?

11:40

26 A. Yeah. I would say that all suspensions are a matter  
27 for the Commissioner. The Commissioner of the day will  
28 delegate that to chief superintendent level. And any  
29 decision that a Commissioner would be making would be

1 informed by a report coming from local management.

2 141 Q. I think that that, in fact, has been amended. If we go  
3 to page 7828, which is a policy document on the  
4 suspension from duty of members of An Garda Síochána,  
5 but that is in January 2017. So that wasn't in force 11:41  
6 at the time. But if we turn to page 7831 of the  
7 material, paragraph 5:

8  
9 "Long-term suspension."

10  
11 We see there: 11:41

12  
13 "The Commissioner may suspend a member for a period  
14 exceeding ten days. The Commissioner may also extend  
15 the suspension of a member who has been suspended for a 11:42  
16 period not exceeding ten days. These functions may be  
17 delegated by the Commissioner.

18  
19 The views of the divisional officer will be sought on  
20 the following matters... " 11:42

21  
22 Then it sets out the matters and we will come to those  
23 in due course because they actually reflect the view  
24 that was expressed by HR in relation to the  
25 considerations that apply. They are effectively 11:42  
26 identical to the matters and we will come to that  
27 shortly.

28  
29 So if we could just come to deal with this, because



1 Garda Keogh, in his statement to the Tribunal  
2 investigators, it's at page 106, I will just quote from  
3 it, where he says:

4  
5 "I believe that is discrediting to me and targeting me 11:43  
6 as I have made a complaint of a serious nature and of  
7 criminal conduct against a colleague garda, Garda A,  
8 and he was not suspended, not arrested and Garda  
9 colleagues were interviewed about my complaint while  
10 the guard against whom I had made the allegation, Garda 11:43  
11 A, was on duty in the same station at the same time."  
12

13 Now, we are going to break that down and we will look  
14 at different aspects of it. But that is a complaint  
15 that Garda Keogh has made in relation to it. He has a 11:43  
16 diary entry, which is at page 435 of the material. We  
17 don't need to open it. I am just going to quote from  
18 it:

19  
20 "I am not happy with the investigation. No 11:44  
21 suspensions. How can they interview his unit?"  
22

23 And we know that he had raised the issue with you and  
24 that he raised an issue, I think it was in mid July, to  
25 Detective Superintendent Mulcahy, in a letter that he 11:44  
26 sent. You have a diary entry, which is at page 3979,  
27 on 11th August 2014, where you have the entry:

28  
29 "Spoke with Chief Superintendent Tony McLoughlin and

1 got information from him regarding suspension and the  
2 new Protected Disclosures Act. He sent me guidelines  
3 regarding suspension. To call back regarding the new  
4 Act."

11:45

6 was that the first time that you sought advice in  
7 relation to suspension of Garda A and when did you  
8 first consider the issue yourself?

9 A. Chairman, I would like to clarify, I was seeking advice  
10 on the suspension of Garda A. I was seeking advice 11:45  
11 generally, because at that juncture the point that  
12 needed to be considered, that hadn't been done. I was  
13 doing this on the basis that it may have to happen at  
14 some stage and I felt, because of the unique position I  
15 was in, in the context of a CR report, that it fell to 11:45  
16 me because there would not be sufficient knowledge  
17 locally if the question of suspension had to arise.  
18 I would not be in a position at any stage to suspend  
19 any garda in Athlone as part of my investigation. All  
20 I could do was outline to HR the background that I was 11:46  
21 aware of that may support a suspension by local  
22 management. That's the position.

23 142 Q. CHAIRMAN: So you were looking for what are the rules  
24 or guidelines, what's the story about suspension?

25 A. Especially in the context of, I suppose, the unique 11:46  
26 position we were in. I had some experience of  
27 suspensions over the years.

28 143 Q. CHAIRMAN: I understand.

29 A. But it's not something you do every day. So,

1 therefore, every time it would be -- I would advise any  
2 officer to always go back to the experts in this  
3 regard, because it is such a serious move, that you  
4 always consult with the national office in the context  
5 of getting the best possible advice with regard to how 11:46  
6 to proceed in the event of a member needing to be  
7 suspended.

8 144 Q. CHAIRMAN: So he sent you the guidelines and that would  
9 enable you in an appropriate case to fill in the  
10 information as far as you were able to do so? 11:47

11 A. Yes, because that information wasn't available to local  
12 management.

13 CHAIRMAN: I understand.

14 145 Q. MR. MARRINAN: You refer to a letter that had been sent  
15 by Garda Keogh to Detective Superintendent Mulcahy. 11:47  
16 This, in fact, is in August, not July, as stated. If  
17 we look at page 3980 of the materials. The first  
18 paragraphs are the matter that I am not going to raise,  
19 there's no need to go into it, Detective Superintendent  
20 Mulcahy has dealt with it. But he says in the third 11:47  
21 paragraph:

22  
23 "When I met AC Ó Cualáin and yourself the first time in  
24 Portumna I outlined the fact that without a suspension  
25 being issued that people would be reluctant to come 11:48  
26 forward and that goes for members of the public."

27  
28 He mentions a particular person  
29

1 " -- and gardaí. I am concerned in particular that  
2 gardaí who intended to volunteer information have  
3 become reluctant to talk to your investigation team.  
4 The manner that this investigation is being conducted  
5 is actually obstructing the investigation. "

11:48

6  
7 He then goes on to say:

8  
9 "I do have faith in An Garda Síochána and hope I did  
10 the right thing in volunteering such confidential  
11 information to yourselves. Unlike many other Garda  
12 regions in the country, the Western Region has an  
13 excellent reputation. I feel obliged to again inform  
14 you of my concerns. "

11:48

15  
16 Now, I think having received that, that letter, they  
17 seemed to be genuine concerns that he has there, is  
18 that right?

11:48

19 A. They were all genuine concerns.

20 146 Q. Yes.

11:49

21 A. I understand that Garda Keogh had those concerns, of  
22 course, yeah.

23 147 Q. I think that you then have a diary entry for the 13th  
24 August, where you note the following, it's page 3982 of  
25 the material:

11:49

26  
27 "Travelled to Portumna with Detective Superintendent  
28 Mulcahy, where I met with the confidential reporter.  
29 Went through the letter with him and the matters that

1 were of concern to him. He mentioned the suspension of  
2 Garda A and the manner in which the enquiries were  
3 being carried out in Athlone station. I told him that  
4 the suspension of Garda A was a matter for AC HRM and  
5 that an application was being made. " 11:50

6  
7 Can you just tell us what that refers to? It envisages  
8 that you were going to make an application

9 A. Yeah. You see at this stage I understood the concerns  
10 being expressed by Garda Keogh. I also knew there was 11:50  
11 a process that had to be gone through. I would like to  
12 be in a position to say to Garda Keogh, we have  
13 considered this, this has been considered by the  
14 organisation and it's not considered that -- or the  
15 suspension of Garda A is not warranted at this 11:50  
16 juncture. I needed to have -- so on the basis of his  
17 concerns and what advice I had received from HR, I did  
18 make a decision to send an application to HR in the  
19 context of having the matter considered, yes.

20 148 Q. Garda Keogh has a diary entry for this, it's page 13269 11:51  
21 of the material. If we look at the 13th August.  
22 Scroll down please, Mr. Kavanagh. He says:

23  
24 "4:00pm meet AC and D/Superintendent re letter and I  
25 said it is an absolute disgrace re manner of the 11:51  
26 investigation. "

27  
28 Then the assistant commissioner, yourself, says:  
29

1 "High bar for somebody to get suspended."  
2  
3 Did you have that conversation with him?  
4 A. I mean, I needed to explain to him that due process  
5 applied to this. It wasn't in my power to just willy  
6 nilly suspend people. The discipline had to be 11:52  
7 considered at length. In any event, no matter  
8 information I had in my possession, all I could do was  
9 have it sent to our HR department, where they could  
10 share with local management and then have a decision 11:52  
11 made locally, because that is where that decision has  
12 to reside. It wasn't in my power in that particular  
13 circumstance to suspend anybody.  
14 149 Q. Just in relation to that, I mean it was never going to  
15 be a short-term suspension? 11:52  
16 A. You see --  
17 150 Q. If suspension was being considered, it would be for the  
18 duration of the investigation or until such time as the  
19 investigation perhaps exonerated Garda A?  
20 A. Based on what information was being considered and on 11:52  
21 the evidence available to the investigation team, which  
22 was not available to local management --  
23 151 Q. Yes.  
24 A. -- and which we had to be careful that we didn't give  
25 too much away either in that context. 11:53  
26 152 Q. Yes.  
27 A. They had to know the bare facts of what the allegations  
28 were, maybe not the individuals concerned because that  
29 was something that the confidential reporter had given

1 to us, we were duty bound. So this was the challenge..  
2 from the outset, whether it be long-term, short-term,  
3 that wasn't something that I was considering. All I  
4 wanted to do was -- because this was an issue for Garda  
5 Keogh and for the investigation team, I wasn't doing 11:53  
6 this because Garda Keogh had an issue with it, I was  
7 doing it because it was the right thing to do in the  
8 context of a serious investigation, with serious  
9 allegations, that this thing would be considered on its  
10 merits by the people who are charged to do that within 11:53  
11 the organisation.

12 153 Q. And it would be something that would be fluent, insofar  
13 as if the evidence got to a stage where you were then  
14 moving into a criminal investigation, where the  
15 evidence was pointing to the guilt of Garda A, then at 11:54  
16 that stage suspension would be considered further?

17 A. That's correct.

18 154 Q. Is that right?

19 A. I know that sometime in August I got a response -- no,  
20 it was actually in September. I got a detailed 11:54  
21 response from Human Resources in relation to my letter  
22 to them.

23 155 Q. Yes, I will come to that now.

24 A. Yes.

25 156 Q. We will come to that shortly. 11:54

26 A. Sure.

27 157 Q. If you just have a look at the notes of Detective  
28 Superintendent Mulcahy for this meeting. They are at  
29 page 3946, please, of the material. This is the notes

1 of the meeting on the 13th August. He says:  
2  
3 "Issue raised: Nobody will talk unless he is  
4 suspended. Garda or public - re Garda A hanging around  
5 during an investigation. Concerned about this." 11:55  
6  
7 You stated:  
8  
9 "We will try to do our interviews at another station if  
10 we can. Take focus of investigation away from where he 11:55  
11 works."  
12  
13 You were to write to HRM regarding suspension.  
14  
15 "High bar." 11:55  
16  
17 This is what we just discussed.  
18  
19 "One major concern - do our investigation when he is  
20 not around. Rest days." 11:55  
21  
22 You explain that he is entitled to be there.  
23  
24 "We will try to move locus of investigation."  
25 11:55  
26 Suspension, you invite Keogh whether there was any  
27 other reason, not just hanging around the Garda  
28 station.  
29



1 "Haven't heard that Garda A has asked anyone what they  
2 did or said."

3  
4 That brings us in relation to another issue that has  
5 arisen, and that was the propriety of conducting this 11:56  
6 sort of investigation in Athlone Garda Station and  
7 interviewing members there. Regardless of the number  
8 of people or the extent of the investigation, do you  
9 think that it was correct in principle that when you  
10 were investigating wrongdoing, alleged wrongdoing in 11:56  
11 Athlone Garda Station, that if other members had  
12 information that they should come forward and give that  
13 information to you?

14 A. You mean other than nominated by Garda Keogh?

15 158 Q. Or just other members who may have been reluctant to 11:57  
16 come forward previously, but now seeing the  
17 confidential process in place, that they may come  
18 forward to you as the investigator to either support  
19 the allegations that are made or, in fact, to undermine  
20 them. Did you think that that was something that ought 11:57  
21 to be achieved; an openness in Athlone Garda Station,  
22 encouraging people if they had information to give  
23 information?

24 A. Of course. Like every line of enquiry that we pursued,  
25 and this was something that I was again very strict on 11:57  
26 in relation to the running of the investigation, any  
27 line of enquiry that opened up I was insistent that it  
28 be followed through. That included -- and that's why  
29 the investigation took the time it took, because we had

1 to go down every single one of those -- and some of  
2 them were cul-de-sacs, but we had to go down anyway and  
3 explore what the possibilities could be. That included  
4 lots of members in Athlone station who might have been  
5 mentioned in somebody else's statement and on that 11:58  
6 basis they would have been approached for a statement  
7 on the basis how they would -- this is how the jobs are  
8 created.

9  
10 All of that, essentially the practical implementation 11:58  
11 of the overall thrust of the investigation was for the  
12 SIO to decide. You had him here yesterday, Detective  
13 Superintendent Mulcahy. He would have planned that on  
14 the basis of giving out the jobs to the different teams  
15 that had been -- 11:58

16 159 Q. That was done from Oranmore Garda Station?

17 A. Oranmore was set up as -- yes, it had a few advantages,  
18 in that it was on the periphery of Galway city, it was  
19 a new, modern complex, it had some vacant rooms that  
20 could be used, it would maintain a certain element of 11:58  
21 confidentiality for the team. They were travelling  
22 from various locations around the region and it meant  
23 that they could easily get into that office without  
24 having to go through Galway city, etcetera. And that  
25 is where the detective superintendent's office was, in 11:59  
26 Oranmore, as well, at the time. Because we had issues  
27 with accommodation in Galway at that juncture. So the  
28 detective superintendent's office was there, therefore  
29 he was close to the investigation at all times when he

1 wasn't on other duties.

2

3 So all of the jobs that were given out, and we had a  
4 garda in charge of the incident room, they would have  
5 been given out at conferences and on a regular basis by 11:59  
6 the team and they would have gone off and done their  
7 duties and done their jobs based on what they were  
8 asked to do, if it was taking statement off Garda X or  
9 Y or some witness or some civilian, that would all have  
10 been given out and they would told they wanted it back 11:59  
11 by a certain time. That's is the way in general that  
12 our incident room works

13 160 Q. You changed the location where interviews were going to  
14 place, why did you do that?

15 A. Once I became aware that there was a concern by Garda 12:00  
16 Keogh -- this goes back to the welfare. There were  
17 some elements I had control of, there were some I  
18 didn't have any control of. But where I could, in  
19 order to give some element of comfort to Garda Keogh, I  
20 said, look it, rather than ringing up a garda who works 12:00  
21 in Athlone and saying we're going to meet you, when are  
22 you working again, that was where the people, maybe two  
23 guards would go together, they made those arrangements  
24 themselves, there was no direction from on high, but  
25 there was a direction then from that date. I made it 12:00  
26 clear to the detective superintendent that in as much  
27 as they could that they should interview people away  
28 from Athlone, so that this scenario wasn't going to  
29 repeat itself or the one described by Garda Keogh.

1 161 Q. We have heard different views, the Chairman has heard  
2 evidence from different members and there's different  
3 views in relation to it. You're probably aware of the  
4 criticism that Sergeant Haran, who was there locally,  
5 had in relation to the fact that interviews took place 12:01  
6 in Athlone. And we had contrary evidence from  
7 Inspector Minnock, who said that there was nothing  
8 wrong with it and that it was perfectly all right and  
9 he to go and get documents during the course of making  
10 a statement. 12:01

11 A. Yes.

12 162 Q. And therefore it was convenient.

13 A. If I can just say, in relation to any member, including  
14 Sergeant Haran, who did make a statement, as far as I'm  
15 aware, to my investigation team, it was a matter -- at 12:01  
16 any stage they could have said, I don't think we should  
17 be doing this in Athlone. They could have raised  
18 concerns, like Garda Keogh rightly did when he felt  
19 there was an issue. And immediate action was taken. -

20 163 Q. Well, I suppose, I mean in the first instance we went 12:02  
21 through it and you said, you know, that somebody was  
22 brave to make a protected disclosure?

23 A. Yes.

24 164 Q. And that it wasn't particularly easy. I suppose it  
25 wouldn't have been particularly easy for any member to 12:02  
26 start criticising your investigation?

27 A. No, I am not saying that they would criticise the  
28 investigation, but if a member was approached for a  
29 statement, that they would say, could I please be

1 interviewed at some hotel on the periphery of Athlone,  
2 I don't want to be in the station making my statement.  
3 That was open to them.

4 165 Q. In hindsight, looking back on it, could you understand  
5 how Garda Keogh may have had genuine concerns? 12:02

6 A. Obviously I understand, because I took action.

7 166 Q. Yes.

8 A. When he gave me -- when he made his -- or when his  
9 concerns were aired to me, I immediately took action to  
10 ensure that that wasn't going to be a major concern for 12:02  
11 him in the future. However, I understood the  
12 practicalities of taking statements of complaint and  
13 evidence, that sometimes you have to be in the place  
14 that we've just mentioned.

15 167 Q. So on a human level you can understand -- 12:03

16 A. I can of course, yes.

17 168 Q. -- his concerns but from an official point of view  
18 there was nothing wrong with conducting enquiries  
19 locally and taking statements in Athlone Garda Station?

20 A. I would say, in fact, that some had to be taken there, 12:03  
21 on the basis that, for example, some of the actions  
22 meant that there were searches carried out in the  
23 station of certain PEMS store etcetera that had to  
24 happen there. That if the team were looking for a copy  
25 of an investigation file, it had to be taken from 12:03  
26 there. They had no choice in the matter, only visit  
27 Athlone Garda Station. So certain enquiries would have  
28 to happen in that location. However, as I said, once  
29 it became a concern for Garda Keogh, I sought out to

1 ensure that that was minimised.

2 169 Q. Is there any more you would like to say in relation to  
3 that issue?

4 A. There isn't, Chairman, no.

5 170 Q. Yes. If we could look then, this is a letter from you 12:04  
6 to Assistant Commissioner Fanning, it's at page 10815  
7 of the material. Sorry, if we can scroll up there.  
8 Yes. This is actually Assistant Commissioner Fanning's  
9 response to a query that you raised in a letter dated  
10 29th August of 2014? 12:05

11 A. Yes.

12 171 Q. If we can perhaps go to 3985 of the material to see  
13 that. It's from you to the assistant commissioner,  
14 that's Assistant Commissioner Fanning. If you look at  
15 paragraph 2 and we scroll down towards the end of 12:06  
16 paragraph 2, you see:  
17  
18 "The confidential reporter has expressed concern that  
19 Garda A is still at work and has access to and from the  
20 Garda station and may be in a position to interfere 12:06  
21 with witnesses and disrupt the investigation. Garda A  
22 is currently attached to the crime unit in Athlone."  
23  
24 Then you go on:  
25 12:06  
26 "The allegations being made by the confidential  
27 reporter concern the activities of Garda A while on  
28 duty and his role as a member of An Garda Síochána. A  
29 summary of the allegations (as included in statements

1 of complaint made by the confidential reporter) as  
2 they refer to Garda A. . . "

3  
4 Then you set those out over the following page, we  
5 don't need to go into them. And then if we turn over 12:06  
6 to the following page, 3986, we see:

7  
8 "The issue of suspending Garda A is something which now  
9 requires considering. However, while these allegations  
10 are very serious in nature, they remain allegations and 12:07  
11 the investigation is endeavouring to corroborate or,  
12 indeed, disprove the veracity of these allegations. I  
13 am seeking your views on this matter and the  
14 appropriate course of action to be adopted."

15  
16 Then you say you await their advices. 12:07

17  
18 Then if we turn to page 3987. This is in response to  
19 your letter, your letter was dated the 29th August.  
20 The response is on 16th September 2014. 12:07

21  
22 "It is noted and agreed that the allegations contained  
23 therein concerning Garda A are of a very serious  
24 nature. It would be appreciated if you could forward  
25 the statement containing the allegations and any other 12:07  
26 corroborative evidence obtained in relation to this  
27 matter."

28  
29 How did you view that, that request?

1 A. Well, I think in the normal course, for example, where  
2 a member of An Garda Síochána has -- an allegation has  
3 been made against a member of An Garda Síochána and a  
4 suspension is being considered, it would be normal that  
5 a statement made by the complainant would form part of 12:08  
6 the document that would be considered by HRM. It  
7 wasn't an unusual request. However, the purpose of my  
8 previous correspondence, which gave some, I suppose, a  
9 précis of the evidence without giving the statement,  
10 was that they would get a flavour of the serious -- 12:08  
11 that was acknowledged, that they were serious.  
12 However, a copy of the statement was sought.

13 172 Q. Yes, we will come to that. Then we go on:

14  
15 "Consideration should be given to an appointment being 12:09  
16 made in accordance with the Garda Síochána (Discipline)  
17 Regulations 2007, as amended."

18  
19 what is that a reference to?

20 A. You see, suspensions, they're all part of the 12:09  
21 discipline process.

22 173 Q. Yes.

23 A. So once an appointment is made under discipline, while  
24 the discipline itself, the discipline investigation  
25 cannot proceed until the criminal aspects have been 12:09  
26 concluded/, it would -- I assume, in the context of a  
27 suspension, that they would expect that that matter  
28 would be attended to as well, in the context of making  
29 that appointment, having someone ready to go into



1 looking at the disciplinary matters. But that's for  
2 the HR experts to let you know. This is my  
3 interpretation of it.

4 174 Q. We then move on to the fourth paragraph:

5  
6 "Consideration should also be given to the status of  
7 the member. Accordingly, in order to be exhaustive you  
8 should consider the question of the member's suspension  
9 from duty under the headings below."

10  
11

12 Then we see:

13 "Primary considerations for suspension: Strength of  
14 the evidence; seriousness of allegation; risk to  
15 members of the public; risk to colleagues; potential to  
16 pervert the course of justice/suborn colleagues;  
17 options of alternatives.

18  
19 Secondary considerations: Likely outcome; estimate  
20 time to conclude investigation; relevant complaint  
21 history; current performance; impact on policy/public  
22 relations; impact on service morale; risk to  
23 officer/welfare considerations."

24

25 He goes on: 12:10

26  
27 "You should liaise with the member's divisional officer  
28 and local management to assist you in addressing the  
29 above criteria and aid in your consideration.

1  
2  
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29

Please ensure a prompt reply is forwarded to this office so that a decision in relation to the member's continued deployment or otherwise can be examined. "

12:11

That would appear to be suggesting that perhaps looking for a recommendation from you in relation to those matters, is that right?

A. Yeah, looking for me to consider those matters. That's exactly what I did. I did exactly what I was asked to do. I sought -- in relation to the full correspondence, I asked Detective Superintendent Mulcahy to approach Garda A about his statement and see whether or not he would give it to HR. And then I considered those primary and secondary considerations. I met with the local team. Now, I don't have that in my statement, Chairman, because when I was preparing my statement I had the use of my own notes and I didn't have any reference to it, therefore I couldn't recall it, but I know that a meeting did take place.

12:11

12:11

12:12

175 Q. Yes.

A. And that was the purpose of it.

176 Q. And obviously there were matters that you were aware of --

A. Yes.

12:12

177 Q. -- as set out there, as being considerations for suspension, that local management couldn't have been aware of?

A. Yes.

1 178 Q. And likewise, there were matters that local management  
2 were aware of that you couldn't have been aware of?  
3 A. Yes.

4 179 Q. Is that right?  
5 A. That's correct. 12:12

6 180 Q. So that brings us to the meeting in Garda Headquarters  
7 on the 23rd September?  
8 A. Yes.

9 181 Q. I think that --  
10 A. You see, while this letter was dated the 16th, these 12:12  
11 were matters I was attending to anyway. I knew these  
12 were matters that needed to be done. You know, I may  
13 have been on the phone to somebody in HR and said, you  
14 should meet with the local management. It was  
15 confirmed in this letter of the 16th, but I was already 12:13  
16 putting things in place to ensure that I had the  
17 information I required. Sorry.

18 182 Q. I think then we have a note of this meeting, or we have  
19 the statement. As you say, you had no recall of this?  
20 A. No. 12:13

21 183 Q. And you didn't include it in the information that you  
22 gave to the Tribunal. That is not a criticism in any  
23 way. But the meeting, I think Detective Superintendent  
24 Mulcahy deals with this, if we look at his statement at  
25 page 3901. If we can scroll down. If you go back up. 12:13  
26 Down there. At the bottom. He says:  
27  
28 "On 23rd September 2014 I met with Assistant  
29 Commissioner Ó Cualáin, Detective Superintendent Mark

1 Curran and Superintendent McBrien in Dublin. A  
2 discussion took place around the suspension of Garda A.  
3 There was agreement that there was no local or other  
4 issues to justify the suspension of Garda A at the  
5 time. Neither the chief superintendent nor the 12:14  
6 superintendent received any complaints regarding Garda  
7 A following our investigation or visit to Athlone Garda  
8 Station."

9  
10 Is that your recollection? 12:14

11 A. It is. It would have informed my decision then at that  
12 stage, that a suspension wasn't warranted at that  
13 juncture.

14 184 Q. At that meeting you didn't disclose the contents or the  
15 nature of your investigation or how it had progressed 12:15  
16 or the strength of the evidence or any of the  
17 considerations that could have fed into the chief  
18 superintendent making an application to the  
19 Commissioner to suspend Garda Keogh, did you?

20 A. No. I think I retained all of the information from the 12:15  
21 point of view of the strength of the evidence and the  
22 seriousness of the allegations, that was something that  
23 I had access to. That was something I could report on.  
24 And once -- you see, in the normal course if this  
25 weren't a PD, all of the information would be available 12:15  
26 to the author writing up to HR.

27 185 Q. CHAIRMAN: Yes.

28 A. So it was a bit disjointed. On the basis of my report  
29 to HR, which happened, HR could then have liaised with

1 the local management and found out about the other bits  
2 here. But this, I'd say, was probably the type of  
3 response that anyone would get in relation to a  
4 suspension application.

5 186 Q. CHAIRMAN: Yes. As opposed to a specific PD 12:16  
6 circumstance.

7 A. Yes.

8 187 Q. CHAIRMAN: That's what seemed to me to be absent from  
9 the letter from headquarters.

10 A. Yes. 12:16

11 188 Q. CHAIRMAN: I just wondered about how helpful it was,  
12 because it didn't actually seem to focus or to  
13 acknowledge the protected disclosure confidentiality  
14 end.

15 A. That's correct. That was always paramount in my mind. 12:16  
16 I had to keep the two separate. I knew that there were  
17 certain elements that local management couldn't be  
18 aware of. And then I knew there were certain practical  
19 day-to-day local management issues that only they had  
20 knowledge of. 12:16

21 189 Q. CHAIRMAN: But at least there was no difficulty, as I  
22 understand, about local management saying there's  
23 nothing that we're aware of that impels us towards  
24 suspension. They were able to say that, we're not  
25 aware of anything locally. 12:16

26 A. Yeah.

27 190 Q. CHAIRMAN: And their local management would have  
28 something to say on the question of suspension.

29 A. Yes.

1 191 Q. CHAIRMAN: Okay. So seriousness of the allegations,  
2 that was no problem, they were very serious  
3 allegations?

4 A. Yes, they were serious.

5 192 Q. CHAIRMAN: The real question was the strength of the 12:17  
6 evidence?

7 A. As of that time.

8 193 Q. CHAIRMAN: As of that time?

9 A. Yes.

10 CHAIRMAN: Okay. 12:17

11 194 Q. MR. MARRINAN: If we could just look at Detective  
12 Superintendent Mulcahy's diary entry for that day,  
13 which is at page 11329, Mr. Kavanagh. If we scroll  
14 down, we will see he deals with the meeting, an  
15 introduction to it. He says: 12:17

16  
17 "They were advised that we had moved our investigation  
18 from the station following concerns raised by Nick  
19 Keogh."

20 12:17

21 So that was a matter that you dealt with with him and  
22 you advised them on that at that time.

23

24 "Superintendent McBrien spoke of an occasion where  
25 Garda Nick Keogh stated to her that Garda A was 12:18  
26 carrying a firearm but stated that he, Nick, did not  
27 feel under any threat."

28

29 Do you recall that being mentioned?

1 A. At that particular meeting, I can't, to be honest with  
2 you, but I am aware that Garda Keogh had brought this  
3 up, whether in writing or to Detective Superintendent  
4 Mulcahy. But it happened here, I can't disagree with  
5 that.

12:18

6 195 Q. That is something we might have to return to briefly,  
7 but certainly we have heard Superintendent McBrien that  
8 she caused an enquiry to be made from Detective  
9 Sergeant Curley in relation to Garda A's possession of  
10 a firearm or access to a firearm and he had reported a  
11 few days prior to this meeting on the 23rd September  
12 and assuaged any concerns that she may have had at the  
13 time that there was a problem in that regard.

12:19

14  
15 So, as things stood then at that time in relation to  
16 the suspension of Garda A, did that deal with the issue  
17 in terms of management at divisional level had been  
18 consulted?

12:19

19 A. Yes.

20 196 Q. And at district level?

12:19

21 A. Yes.

22 197 Q. And you, as investigating the matter, you had consulted  
23 and it was a common view that an application to the  
24 Commissioner to suspend Garda A wasn't warranted at  
25 that time?

12:20

26 A. At that time, yes.

27 198 Q. Just bear with me for one moment. If we just move on  
28 then and if we could have page 3989 up on the screen.  
29 Yes. This is a letter dated 8th May, from you to the

1 Commissioner.

2 A. Yes.

3 199 Q. We will just go through it.

4

5 "The confidential reporter in this matter has made 12:21  
6 serious allegations surrounding Garda activities in the  
7 Athlone district and has named individual gardaí and  
8 management as being complicit in areas of malpractice.  
9 The allegations in the main are made against a serving  
10 member, Garda A in the drugs unit at Athlone Garda 12:21  
11 Station.

12

13 To date the investigation team has generated 200 lines  
14 of enquiry and interviewed 92 persons who have provided  
15 statements to the investigation." 12:21

16

17 Now, I haven't opened up as yet your various reports to  
18 the Commissioner as you went along, but we will return  
19 to that at the end in relation to how you had kept the  
20 Commissioner informed, as you were obliged to do, of 12:22  
21 your investigation.

22

23 You then go on to say:

24

25 "On 24th April 2015, Garda A was provided with a 12:22  
26 summary of the allegations made against him to afford  
27 him an opportunity to respond. On 5th May 2015 the  
28 investigation team was provided with an analysis of  
29 phone records by a telephone liaison officer. Based on



1 this analysis and allegations by the confidential  
2 reporter, there now exists a reasonable suspicion that  
3 Garda A may have committed a criminal act."

4  
5 It would appear that you took the view that when the 12:22  
6 billing records became available that these showed a  
7 suspicious, more than suspicious level of communication  
8 between Garda A and a mobile phone which was registered  
9 to Ms. B's daughter, isn't that right?

10 A. That's correct, Chairman. 12:23

11 200 Q. You then say:

12  
13 "I am now seeking your direction as to whether I  
14 proceed with this investigation to a conclusion and the  
15 necessity for formal appointments for both the criminal 12:23  
16 and disciplinary aspects. Advice was previously sought  
17 from assistant commissioner Human Resources Management  
18 regarding the suspension from duty of Garda A and given  
19 the recent developments this matter will now be  
20 revisited." 12:23

21  
22 So it would be fair to say that it would appear that  
23 the investigation team and yourself heading it up  
24 regarded the billing records as a layer of evidence  
25 that was regarded as significant? 12:23

26 A. Yeah, we saw it as a significant development in the  
27 context of part of our inquiry, yeah.

28 201 Q. Now, you will be aware of the fact that that is one of  
29 the complaints of Garda Keogh; that this wasn't

1 identified at an earlier stage, isn't that right?

2 A. That's correct, yes. Again, it was seen as an absolute  
3 priority at the outset of our investigation that  
4 phones, you know, yield some very useful evidence and  
5 can, so that was seen as a priority. It was dealt with 12:24  
6 in that manner. And while the phone that was seized  
7 from Garda A didn't yield anything of an evidential  
8 nature in the context of what we were investigating,  
9 for the same phone and as part of your enquiries into  
10 the broader set of issues that Garda Keogh had made a 12:24  
11 statement about, we discovered that these records  
12 existed for the actual period of time, that records for  
13 that same phone had already been sought and on that  
14 basis we had them analysed in the context of what they  
15 contained. And it was clear that there was, as you 12:25  
16 said, an inordinate amount of contact between that  
17 official phone and the phone belonging to the daughter  
18 of Ms. B, yes.

19 202 Q. Could I just ask you this, because it may be an issue,  
20 how important an issue it is I don't know, but can we 12:25  
21 deal with it. Because it would appear that as soon as  
22 Garda Keogh had identified Garda A and his alleged  
23 relationship with Ms. B, that there was an application  
24 or that there was a request made of Superintendent  
25 McBrien to get Garda A or a phone that Garda A had 12:25  
26 access to and used 90% of the time apparently. That  
27 phone was retrieved. That was sent off for analysis.

28 A. Yes, both locally and at national level, yes.

29 203 Q. Yes. But these concerned activities back in 2010?

1 A. Yes.

2 204 Q. So that any application that could be made in relation  
3 to the service provider providing what limited  
4 information they could make available, those  
5 applications were made I think? 12:26

6 A. They were.

7 205 Q. They were made in circumstances where you knew that the  
8 answer was going to be that we don't have those  
9 records, because it's outside the two year period?

10 A. Exactly. That application was made and it was a two 12:26  
11 year period that was in it.

12 206 Q. Did anybody think that perhaps, look, what we can do  
13 though, however, is getting billing records, because  
14 they retain those for a six year period?

15 A. I can assure you, whatever evidence the phone could 12:26  
16 have produced was sought by the investigation team, in  
17 the context of whatever records were available that  
18 would give us any leads in relation to what we were  
19 investigating. The phone itself held nothing of  
20 evidential value on the basis that there was -- 12:27  
21 obviously it could have texts or text messages or the  
22 text itself, if it was still available, would give  
23 us -- may give us some indication as to what was the  
24 nature of the contact, if there were contact between  
25 certain parties. The fact that we got this dated piece 12:27  
26 of, I suppose, evidence that had been previously  
27 sought, gave us what -- just the fact that there were  
28 these interactions between this phone and this other  
29 phone. That's all it could give.

1 207 Q. I think that line of inquiry ultimately came in early  
2 2015, when Sergeant Haran made a statement to the  
3 investigation team and as a result of that a former  
4 superintendent in the district was requested to make a  
5 statement and that he was the one who indicated that he 12:28  
6 had obtained --

7 A. Yes.

8 208 Q. -- Garda A's billing records in 2010?  
9 A. 2010, yeah.

10 209 Q. Is that right? 12:28  
11 A. That's correct.

12 210 Q. So that is how that information came to the  
13 investigation.

14 211 Q. CHAIRMAN: was it the same phone?  
15 A. It was, Judge, yes. 12:28

16 212 Q. MR. MARRINAN: Yes.  
17 A. Or sorry, Chairman.

18 213 Q. So effectively it was the information that was brought  
19 by Sergeant Haran in the first place?  
20 A. I am not sure of the history of how -- all I know is 12:28  
21 that based on enquiries carried out by the team, they  
22 were able to source this piece of --

23 214 Q. Yes.

24 215 Q. CHAIRMAN: But this information had previously been  
25 elicited -- 12:28  
26 A. It had.

27 216 Q. CHAIRMAN: -- in a previous inquiry?  
28 A. For another purpose.

29 217 Q. CHAIRMAN: So in other words, your team, I suggest no

1 criticism or anything like that, maybe somebody might  
2 criticise it, that's is not for me. But this  
3 information had been sought and obtained?

4 A. Yes.

5 218 Q. CHAIRMAN: Back in, whenever it was?

12:29

6 A. In 2010.

7 CHAIRMAN: '10. Sorry, Mr. Murrinan, thank you.

8 219 Q. MR. MARRINAN: So in any event, if we just then move  
9 on, in response to your letter of the 8th May that we  
10 just opened, you receive a letter from Superintendent  
11 Frank Walsh, who is the private secretary to the  
12 Commissioner, dated 13th May 2015. It's at 3990, if we  
13 could have that up on the screen. If we scroll down.  
14 He says:

12:29

15

12:29

16 "I am directed by the Commissioner to refer to yours of  
17 8th May 2015.

18

19 The Commissioner has directed that you continue with  
20 your investigation into the criminal element of this  
21 matter and that you make the necessary arrangements for  
22 an appointment under the disciplinary regulations  
23 through the member's divisional officer.

12:29

24

25 Please keep this office advised of developments in  
26 relation to the criminal aspects and any decisions as  
27 regards suspension."

12:30

28

29 So this is a defining moment in terms of the

1 fact-finding investigation.

2 A. Yes.

3 220 Q. Has become a criminal investigation. Then the  
4 disciplinary aspect is also to be pursued, is that  
5 right?

12:30

6 A. That's correct, Chairman, yes. My role in that at this  
7 juncture would be to ensure that information available  
8 to the investigation team that would indicate a breach  
9 of discipline, would put into a report and forwarded to  
10 the local chief, as is outlined there, is responsible  
11 for discipline in their divisions. But where a chief  
12 superintendent is involved themselves or an allegation  
13 against a chief superintendent has been made, it has to  
14 raise up one rank. In fact, it was my colleague -- I  
15 sent my report back to the Commissioner and then she  
16 appointed Assistant Commissioner Kieran Kenny, who was  
17 then based in the Northern Region, and who held that  
18 part of the portfolio of the thing, of the section I  
19 was then in administrative charge of, but he held the  
20 legal and compliance part of that portfolio and that's  
21 why he was asked by the Commissioner. And again to  
22 take it out of my office, because I was involved and to  
23 ensure that it was -- you know, that there was  
24 objectivity involved, he was asked to make the  
25 appointment, which he did.

12:30

12:31

12:31

12:31

26 221 Q. CHAIRMAN: So you handed over the disciplinary --

27 A. Yes.

28 222 Q. CHAIRMAN: -- elements that had been established, so to  
29 speak, by the investigation.

1 A. Yes.

2 223 Q. CHAIRMAN: You handed that back to the Commissioner and  
3 the Commissioner appointed --

4 A. And named the people against whom breaches had been  
5 alleged. 12:32

6 224 Q. CHAIRMAN: Of course.

7 A. Yes.

8 225 Q. MR. MARRINAN: Now, if we could just have 3993 up on  
9 the screen, please. After you had received the letter  
10 from the Commissioner, you then write to the executive 12:32  
11 director of Human Resource and People Development. I  
12 think that was on John Barrett, is that right?

13 A. That's correct. And just for the information of the  
14 Tribunal again, from the time I had written to the  
15 assistant commissioner HRM until this time, there had 12:32  
16 been a change in personnel. This position was now  
17 filled by a civilian. It was a long time arrangement,  
18 the Commissioner had agreed that the HR function would  
19 be headed by an executive director. That appointment  
20 happened between -- from the time of my last 12:33  
21 correspondence, which was to an assistant commissioner,  
22 I was now writing to an executive director.

23 226 Q. I think that if we scroll down, this concerns the  
24 operational status of Garda A. You set out the  
25 evidence there and you seek his views in relation to 12:33  
26 the appropriate course of action. If you scroll down.  
27 There you say:  
28  
29 "In light of this evidence, I believe that

1 consideration should now be given to the operational  
2 status of Garda A --"

3  
4 That's what you had pointed out.

5  
6 "-- to the Commissioner."

7  
8 And then you go through the strength of the evidence.  
9 We needn't open this. And the seriousness of the  
10 allegations. You deal with the risk to members of the  
11 public. scroll down. Colleagues. All the issues we  
12 had opened earlier on, you deal with them all. If we  
13 scroll down. You say:

14  
15 "The issue of suspending Garda A is something which now  
16 requires consideration. At present there are serious  
17 allegations and the investigation team is endeavouring  
18 to corroborate or indeed disprove the veracity of the  
19 allegations. I am seeking your views on the  
20 appropriate course of action to be adopted."

21  
22 Can I just ask you this, because the previous year an  
23 issue arose in relation to Garda Keogh, in terms of  
24 seeking his consent to have the statement sent to HR  
25 and him refusing to allow you to send the statement to  
26 HR. There's no question here that a statement is being  
27 sent to HR. So can we take it that the request that  
28 was made of Garda Keogh in 2014, in September, for the  
29 statement to be sent, wasn't fatal, because there was



1           actually no application, is that right?

2           A.    Absolutely, Chairman. I am not of the view that was  
3           fatal in any regard. I had given précis of the  
4           evidence to avail of at that early juncture and it  
5           wasn't included in this latest application because we           12:35  
6           knew Garda Keogh's view on it. But in any event, all  
7           of the issues that were pertinent to the consideration  
8           of that application were there for anyone to look at.  
9           So I don't consider that that was fatal in any regard,  
10          that a statement wasn't made available. Because I was           12:36  
11          making available the context of again, as I say, the  
12          unique circumstances I was in dealing with protected  
13          disclosure, that as much as I could disclose was being  
14          done in the context of ensuring that other processes  
15          could be performed in the context of...                           12:36

16 227 Q.    We have had evidence from Garda Keogh in relation to  
17           this and, indeed, some cross-examination by Mr. Kelly  
18           of Detective Superintendent Mulcahy.

19          A.    Yes.

20 228 Q.    On the fact that Garda Keogh wasn't advised that in           12:36  
21           some way that his refusal could have consequences and  
22           impact on the suspension of Garda A. In other words,  
23           that it was a precondition, almost, to suspension  
24           occurring. What do you say in relation to that?

25          A.    I don't believe that the fact that Garda Keogh didn't           12:37  
26           give permission had any impact on a decision to suspend  
27           or not suspend Garda A.

28 229 Q.    Okay. If we move on then to 3996, this is  
29           Mr. Barrett's response. You see:

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"Your recommendations on this matter would be appreciated."

A. Mm-hmm.

230 Q. Your response to that is at 3998:

12:37

"The Commissioner has directed that an appointment is made in respect of An Garda Síochána discipline regulations and has nominated assistant commissioner, Northern Region, to make the appointment. Local management, on being updated of this appointment by HRPD, will be asked to consider the member's deployment status."

12:38

So in the meantime, if we could look at a letter at -- sorry we have already had this. You dealt with the issue of the discipline, which is set out there. There's no need to open that, Mr. Kavanagh

12:38

A. I think, Chairman, again just to help the Tribunal, in the context of those latest pieces of correspondence we just opened there, in particular the letters from HR looking for my recommendation.

12:39

231 Q. Yes.

A. I had sent my file up for their consideration. I felt, and it was possibly because Mr. Barrett was new to this area and, in fact, the chief superintendent who was now in the space that looked after that aspect of policy was brand new as well and hadn't any previous experience in that area. So I felt this letter

12:39

1 shouldn't -- I shouldn't be asked for my  
2 recommendations.

3 232 Q. CHAIRMAN: It's passing the buck back to you?  
4 A. It wasn't for me to make a recommendation. But I had  
5 given as much as I could. It now was between 12:39  
6 themselves and local management.

7 233 Q. CHAIRMAN: I see the point.  
8 A. To go through this matter.

9 234 Q. CHAIRMAN: You said, if I understand it, your attitude  
10 was, look, I am in a position to fill in the 12:40  
11 information --

12 A. Yes.

13 235 Q. CHAIRMAN: -- that is set out in the primary and  
14 secondary criteria.

15 A. Yes. 12:40

16 236 Q. CHAIRMAN: This is what I am doing, I am sending it up.  
17 A. Yes.

18 237 Q. CHAIRMAN: Now, please make a decision. Don't come  
19 back and say, what do you think we should do?

20 A. Yes. 12:40

21 238 Q. CHAIRMAN: However, there it is. These big  
22 organisations.

23 A. So I did consult after that, because I didn't -- I knew  
24 it was a very serious matter, I didn't want to leave it  
25 hanging. I felt I had to. I did consult with now 12:40  
26 Chief Superintendent Matt Nyland, who was the so-called  
27 expert in our organisation at that time on these  
28 matters. He said, look it, let them know that there is  
29 a discipline appointment being made, and really that

1           once that's done, it's a matter for local management.  
2           So that's what I did.

3 239 Q.     CHAIRMAN: Am I understanding from your letter,  
4           commissioner, that the assistant commissioner in the  
5           northern division wasn't going to do the investigation, 12:41  
6           he was going to nominate somebody to do the  
7           investigation?

8           A.     Yes.

9 240 Q.     CHAIRMAN: Is that correct?

10          A.     That's correct. 12:41

11 241 Q.     CHAIRMAN: In fact, is that how Commissioner Nolan came  
12          into the picture?

13          A.     Yes.

14 242 Q.     CHAIRMAN: I know he retired at a later stage and no  
15          doubt we will hear about that, but is that how he came 12:41  
16          into the picture? Because I hadn't heard that  
17          Commissioner Kenny was involved?

18          A.     And the reason, Commissioner Kenny held, as I said, a  
19          portion of that portfolio.

20 243 Q.     CHAIRMAN: I understand, 12:41

21          A.     which gave him administrative authority.

22 244 Q.     CHAIRMAN: I'm with you.

23          A.     which meant that he could in effect appoint someone of  
24          his own rank.

25 245 Q.     CHAIRMAN: Indeed? 12:41

26          A.     And that's what happened.

27 246 Q.     CHAIRMAN: That is what I am understanding from what  
28          you said.

29          A.     Yes.

1 CHAIRMAN: Okay, thank you.

2 247 Q. MR. MARRINAN: But in any event, the next significant  
3 event that takes place I think is on 5th October 2015,  
4 which is a report that was sent by Superintendent Pat  
5 Murray to Chief Superintendent Wheatley, outlining that 12:42  
6 Garda A had informed him at a meeting that he had been  
7 served with disciplinary forms relating to seven  
8 allegations of serious breach of discipline against  
9 him. That's at page 4001 of the material. I think  
10 arising out of that, we don't need to go through it, we 12:42  
11 have already had it, Superintendent Murray was asked  
12 about it, we have a letter then on 7th October 2015 at  
13 page 4000. If we could have that up on the screen.

14  
15 This raises the issue of the deployment status there of 12:43  
16 Garda A. It appears that there were a number of  
17 correspondence then, which I don't think is necessary  
18 to go into, they're there. There's an e-mail from  
19 Assistant Commissioner Fanning to Deputy Commissioner  
20 John Twomey. But I think for our purposes it's 12:43  
21 sufficient then to go forward to a report on 8th  
22 October 2015, which is at page 4005 of the material,  
23 which is a report from Superintendent Murray again to  
24 his chief superintendent, dealing with additional  
25 information received from a Garda John Ryan, which had 12:43  
26 been passed on to your lead investigator?

27 A. Yes.

28 248 Q. Detective Superintendent Mulcahy. Because he  
29 considered that it was relevant to the investigation?

1 A. Yes.

2 249 Q. Isn't that right?

3 A. That's correct.

4 250 Q. I think that there was then correspondence with Chief  
5 Superintendent Wheatley, and she has dealt with this, 12:44  
6 to Assistant Commissioner Fanning. This all concerned  
7 the issue of whether or not Garda A ought to be  
8 suspended in the first instance. But I think initially  
9 he was put on indoor duties and then he was suspended,  
10 is that right? 12:44

11 A. That is what I believe from reading the files,  
12 Chairman. From the time I sent my response to HR in  
13 June that year, I felt now the suspension of any  
14 member, of that member in particular, is a now a matter  
15 for HR and local management. And it wasn't until this 12:45  
16 correspondence or another piece of correspondence came  
17 in much later, that I raised a query again about the  
18 status, because I felt at that stage it should have  
19 been dealt with in the context of -- I presume it was  
20 dealt with in the context of what I had sent was looked 12:45  
21 at and somebody made a decision, no, we won't be  
22 suspending.

23 251 Q. CHAIRMAN: Yes.

24 A. But that piece of correspondence you opened there in  
25 relation to Pat Murray writing in about this additional 12:45  
26 piece of information.

27 252 Q. MR. MARRINAN: Yes.

28 A. Obviously we were very interested in the meat of that  
29 for your investigation.

1 253 Q. CHAIRMAN: Yes.

2 A. But here we have another local manager had something --

3 254 Q. CHAIRMAN: He has information.

4 A. He has information that he can consider now in the

5 context of suspension of the member being made. 12:45

6 255 Q. MR. MARRINAN: Your diary entries may help in this

7 regard, at 11363. If we look there at the diary entry

8 for the 9th October. If you scroll down. There are a

9 number of phone calls there --

10 A. Yes. 12:46

11 256 Q. -- that might illuminate the situation and assist you

12 in this regard.

13 A. Yes.

14 257 Q. You receive, if we look there, a phone call, 18:57,

15 from Detective Superintendent Mulcahy: 12:46

16

17 "Searches of both house have taken place. Phones, sims

18 and computers taken."

19

20 That's in relation to a search of Garda A's house; 12:46

21 isn't that right?

22 A. What exactly are you looking at now? What date are you

23 talking about.

24 258 Q. Sorry, the 9th October there?

25 A. Yes, the 9th. 12:46

26 259 Q. If you look down, 18:57?

27 A. I see that, yes.

28 260 Q. You see there.

29 A. I see that, yes.

1 261 Q. Then shortly afterwards there is a phone call with Matt  
2 Nyland?  
3 A. Yes.  
4 262 Q. Keeping him up-to-date in relation to that development,  
5 I assume. Then you advised him that suspension was a 12:47  
6 matter for local management?  
7 A. Okay.  
8 263 Q. But he said his section was available if required. And  
9 then at 19:21 you got another phone call from Detective  
10 Superintendent Mulcahy? 12:47  
11 A. Actually I rang him.  
12 264 Q. Pardon?  
13 A. I rang him.  
14 265 Q. You rang him, you updated on "IA advice" what advice?  
15 A. That's Internal Affairs. 12:47  
16 266 Q. Internal Affairs.  
17 A. So, all of that, I mean I am dealing with two issues  
18 there, in those notes.  
19 267 Q. Yes.  
20 A. So this piece of information came to light. 12:47  
21 268 Q. Yes.  
22 A. We immediately actioned it. And at the same time the  
23 whole question of suspension of Garda A also was being  
24 moved then from the Athlone side. And there was a  
25 piece of correspondence from Assistant Commissioner 12:48  
26 Fanning, where he asked a question about the  
27 suspension. I was at that stage, I see the 9th  
28 October, yeah, I rang my Dublin office and asked my  
29 superintendent in my office to make contact with Matt



1 Nyland about those, he was already aware of them in the  
2 context of the suspension. Like, it really wasn't my  
3 business at this stage but I was just anxious to ensure  
4 that things weren't going to fall between stools.

5 269 Q. Yes. 12:48

6 A. I established through that chain of calls, from  
7 Internal Affairs, that the suspension should now be  
8 considered by local management. And I just asked the  
9 detective superintendent to pass that on to local  
10 management, to the local superintendent, who was Pat 12:49  
11 Murray at that time.

12 270 Q. Yes. And you have a diary entry then for the 10th  
13 October, which is the same day, you will see a diary  
14 entry?

15 A. Yeah, I see that. 12:49

16 271 Q. You see at 19:06 you spoke to Detective Superintendent  
17 Mulcahy?

18 A. Yes.

19 272 Q. And he advised you that he had spoken with  
20 Superintendent Pat Murray. 12:49

21 A. Yes.

22 273 Q. And that Garda A had been put back in uniform that  
23 morning.

24 A. Yes.

25 274 Q. And that the examinations of the items seized during 12:49  
26 the course of the search were to be given priority,  
27 isn't that right?

28 A. So a few matters there as well, that are not related  
29 but all form part of the one call. He passed on the

1 message I asked him to pass on and obviously at that  
2 stage action had been taken locally, because in lieu of  
3 suspension at times local management can take someone  
4 from a particular role.

5 275 Q. CHAIRMAN: Of course. 12:49

6 A. And that is what happened there.

7 276 Q. CHAIRMAN: Yes.

8 A. That Garda A was put back into uniform, from plain  
9 clothes. And then I just obviously, part of my view,  
10 that the examination of the items seized should be 12:50  
11 given priority, of the most recent searches, yes.

12 277 Q. MR. MARRINAN: If we look at page 11033, this is a  
13 letter from Chief Superintendent Séan Ward from  
14 Internal Affairs.

15 A. Yes. 12:50

16 278 Q. To Chief Superintendent Wheatley. If we look at the  
17 last paragraph, it says:  
18  
19 "With regard to your consideration in respect of the  
20 status of the member concerned, it is requested that 12:50  
21 you consider the matter."  
22

23 Do you see that?

24 A. Yes.

25 279 Q. CHAIRMAN: That is not bringing things very far 12:50  
26 forward.

27 280 Q. MR. MARRINAN: "...matter in line with HQ directive  
28 73/15. In doing so you may wish to consult with  
29 Detective Superintendent Mulcahy and Superintendent

1 Murray to establish detail required to complete the  
2 review under the standard headings. "

3  
4 So in other words, to support your contention, this is  
5 a matter that was then being dealt with with the 12:51  
6 divisional officer?

7 A. Yeah. Now the focus had changed to Athlone as distinct  
8 from my investigation team. But there was an  
9 appreciation that my investigation team may have to  
10 have some input again if they wanted a completely fresh 12:51  
11 primary and secondary consideration, suspension file  
12 sent in. Which appears that is what they were looking  
13 for in that regard.

14 281 Q. Yes. We have heard evidence from Chief Superintendent  
15 Wheatley and there is no need to open the 12:51  
16 correspondence, but she was recommending the suspension  
17 of Garda A?

18 A. Yes.

19 282 Q. And Garda A was in fact suspended.

20 A. Mm-hmm. 12:51

21 CHAIRMAN: On the 14th October, as I understand it.

22 283 Q. MR. MARRINAN: On the 14th October, and Garda Keogh has  
23 an entry on that date indicating that he became aware  
24 of it on that date. Just to deal with Garda Keogh's  
25 complaints in relation to some of these matters. In 12:52  
26 relation to the suspension, Garda Keogh complains that  
27 the fact that it wasn't explained to him that his  
28 failure to consent to his statement being made  
29 available to HR, and he spent some time on this, we

1 have it on Day 109, I am not going to open the relevant  
2 sections because it seems that you have already dealt  
3 with this.

4 A. Yes.

5 284 Q. But insofar as he makes the complaint that he wasn't 12:52  
6 informed of the consequences, your answer to that is,  
7 you say there were no consequences arising from it, is  
8 that right?

9 A. That's correct. I didn't inform him. I can't say  
10 exactly what wording the detective superintendent would 12:53  
11 have used when he went to convey the message that HR  
12 had sought this statement. But in any event, I am of  
13 the firm belief that it had no impact whatsoever, that  
14 there was ample information available through my own  
15 team and what we provided. And it was my own view, 12:53  
16 even at that early stage, that there wasn't ample  
17 grounds for suspension in August/September of 2014.  
18 That changed in May of '15, when I submitted a renewed  
19 application, where I could ask them to consider on the  
20 basis that now we had considered all the points 12:53

21 relevant. It was a matter then for HR and local  
22 management. And, as we have seen through what you have  
23 opened up here on the screen, that by October there was  
24 even an additional layer that could be considered by  
25 local management, which was shared with us but we were 12:54  
26 just interested in the issue of the investigation of  
27 that matter and the suspension was then of no concern  
28 to our team on the basis that it was local management  
29 that were dealing with it.

1 285 Q. And insofar as Garda Keogh's complaints in relation to  
2 -- in some way, in the first instance a suggestion that  
3 the failure to suspend Garda A constituted some form of  
4 targeting of him, we will put it in the first instance  
5 as almost inadvertently or negligently, what do you say 12:55  
6 in relation to that?

7 A. I reject that completely, Chairman. I gave this my  
8 utmost attention at a time when the concerns of the  
9 confidential reporter came to me in good faith, with  
10 these concerns. I dealt with them promptly. I was 12:55  
11 dealing with some of them even before they became  
12 concerns for Garda Keogh. On that basis, I can't  
13 accept that.

14 286 Q. Then there is the bigger suggestion, as it were, that  
15 this was done deliberately. What do you say to that? 12:55

16 A. Deliberately? Again, I reject that completely,  
17 Chairman. I am not saying that my investigation was  
18 flawless, of course everything can be improved on, but  
19 I can assure you if there are flaws in my  
20 investigation, they're not deliberate flaws. 12:56

21 287 Q. Have you identified any flaws that you have seen?

22 A. No, I haven't. You know, I think it has been -- my  
23 report has been reviewed, I don't know what the outcome  
24 of that was, but all I can say is, I suppose the one  
25 office that really can be very thorough and searching 12:56  
26 in relation to our submissions is the office of the  
27 DPP. My file was submitted there and there was no  
28 queries arising in relation to the standard of the  
29 investigative process that was undertaken.

1 288 Q. We will be coming to that in due course, but in terms  
2 of Garda Keogh's perspective and perhaps sort of  
3 empathising with his situation?  
4 A. Yes.

5 289 Q. Having come forward and made the protected disclosure. 12:56  
6 Can you understand how he may have felt in some way at  
7 the time that the non-suspension of Garda A had made  
8 life more difficult for him on the ground?  
9 A. I accept that fully, Chairman. As I said earlier, I  
10 met with Garda Keogh and all the meetings and 12:57  
11 correspondence, it was clear that he had very well held  
12 views in relation to some matters, which he was  
13 entitled to have. However, in managing all of that  
14 there is due process for everyone involved and that had  
15 to be applied. Just because one individual felt that a 12:57  
16 thing should happen, fine, we can consider that, we can  
17 give it our due attention and work through the process  
18 so that everyone's rights here are respected. And that  
19 is what I was trying to ensure across the board in the  
20 context of my investigation and all the witnesses we 12:57  
21 dealt with, including the confidential reporter  
22 himself.

23 290 Q. It seems that these aren't sort of manufactured  
24 complaints at this juncture. They seem to have been  
25 complaints that he raised at the time. He raised the 12:58  
26 issue of the interviewing in the Garda station?  
27 A. Yes.

28 291 Q. You have dealt with that. And he doesn't have any  
29 complaints, even though we're aware of the fact that

1 other interviews took place, perhaps out of necessity,  
2 but they weren't certainly impacting on Garda Keogh  
3 during 2015. So you dealt with the issue when he  
4 raised it. He raised the issue of suspension, that it  
5 didn't pan out initially in his favour. But can you 12:58  
6 understand why he may have a feeling at the time that  
7 perhaps more could have been done to give some sort of  
8 credibility to the allegations he was making?

9 A. I think I have said it already, Chairman. I fully  
10 understand where Garda Keogh was coming from. 12:59

11 292 Q. Yes.

12 A. All I could do was what was then -- the statutory  
13 framework available to me, and ensure that he was  
14 informed of all the efforts that both myself and the  
15 team were making on his behalf in the context of the 12:59  
16 complaints that he had made.

17 CHAIRMAN: Okay. You're moving on to something else?

18 MR. MARRINAN: Yes, I am moving on to something else.

19 CHAIRMAN: Very good. Thank you very much. We will  
20 take a break there. Thank you very much. 12:59

21

22 THE HEARING THEN ADJOURNED FOR LUNCH AND RESUMED AS  
23 FOLLOWS:

24

25 CHAIRMAN: Good afternoon. 14:01

26 293 Q. MR. MARRINAN: Now, I think if we move on to another  
27 issue that concerns Garda Keogh. And this is the  
28 involvement or the lack of involvement of your  
29 investigation into the Olivia O'Neill and the Liam

1 McHugh complaints. In the first instance, if we put  
2 page 123 up on the screen. And scroll down. Sorry,  
3 it's 124, please. If you scroll down further. Scroll  
4 down. scroll back up. Can we have page 125, please?  
5 If we scroll back up. I'm sorry, it goes over two 14:03  
6 pages. Yes. Here we have the relevant paragraph.  
7 Garda Keogh says:

8  
9 "On 16th July 2014, I am asked by Superintendent  
10 McBrien about my meeting with Liam McHugh. She also 14:03  
11 looked for information about the informant. At this  
12 stage I had advised Donal Ó Cualáin and Judge McMahon  
13 on 16th July 2014 of what I perceived to be an attempt  
14 to interfere with the internal investigation. On the  
15 16th July Assistant Commissioner Donal Ó Cualáin rings 14:04  
16 me at 17:46 to say that he is not dealing with either  
17 the Olivia O'Neill or Liam McHugh matters, even though  
18 it appeared to me that they were conversely serious  
19 matters of interference here by police management in  
20 the investigation and that the Garda management spin of 14:04  
21 coaching would be exposed as a bizarre contrivance if  
22 these matters were independently investigated."

23  
24 If we could perhaps look at page 100 of the transcript.  
25 Can we go to page 59. If we scroll down to the last 14:04  
26 answer on that page, it's line 24. This is the  
27 evidence that he gave to the Tribunal:

28  
29 "But this does not become rolled into the next thing



1 that we are going to visit and it does become more  
2 sinister then you know, and there's the two of these  
3 then rolled together in the same week. They happened  
4 in the same week. This was the first, it was just an  
5 innocent thing. I hope I clarified that at the start." 14:06

6  
7 Then if we scroll down to line 15. He says:

8  
9 "My point, my problem there is, I mean, it is really  
10 part of their investigation if the allegations are that 14:06  
11 I am rounding up all these people to make complaints  
12 about Garda A, who is the subject of my main complaint,  
13 which Assistant Commissioner Ó Cualáin is  
14 investigating, like if that is the case my argument is,  
15 they should have looked at that." 14:06

16  
17 So that is the matter. He believes that these matters  
18 ought to have been independently investigated. Were  
19 you aware the matter, of the fact that he had raised  
20 this issue with Judge McMahon? 14:07

21 A. I can't be sure that I knew about the contact with  
22 Judge McMahon, but I knew that he had contacted  
23 Superintendent McBrien. And he also had contacted me  
24 in relation to these matters.

25 294 Q. If we just look at Garda Keogh's diary entry, at page 14:07  
26 13264, please. It says there for the 8th July, the  
27 entry:

28  
29 "9:00pm met with superintendent, who informed me she is

1 sending people out again to try get statements from  
2 Olivia O'Neill and Liam McHugh. She is under pressure.  
3 Told her I was meeting judge Monday re this and I know  
4 who was behind it. She didn't reply."

14:08

5  
6 Then if we go to page 13265, there is a note to say:

7  
8 "7:46 AC rings to say they are not dealing with  
9 complaints. Good progress."

14:08

10  
11 And then shortly afterwards, at 18:56, he received a  
12 call from Detective Superintendent Mulcahy. To what  
13 extent were you aware of the Olivia O'Neill and the  
14 Liam McHugh issue?

15 A. I was aware to the extent that Garda Keogh informed me  
16 about it. Also that Superintendent McBrien  
17 communicated in writing with Detective Superintendent  
18 Mulcahy. And I had a meeting then with the detective  
19 superintendent. We studied what was being asked of us  
20 and even more Detective Superintendent Mulcahy showed  
21 me what he had got from the superintendent in Athlone,  
22 I was firmly of the view that this was nothing to do  
23 with my investigation and, in fact, that I couldn't get  
24 involved in it. That was the independently held view  
25 of Detective Superintendent Mulcahy when he arrived, on  
26 the basis that everything I was dealing with were  
27 complaints that were made by the confidential reporter  
28 and what was being suggested or what was being included  
29 in the correspondence to me from Superintendent McBrien

14:09

14:09

14:10

1 indicated that these in nature were complaints against  
2 the confidential reporter. And I felt on that basis  
3 that there's no way I could get involved in making  
4 those part of my investigation. And I made sure that  
5 this was communicated back to the local management, so 14:10  
6 that if it was felt that these matters needed to be --  
7 one thing that the confidential reporter said to me,  
8 when I rang him to tell him that I wasn't taking it on,  
9 he seemed very satisfied with that at the time. That's  
10 a note I made in my diary. And he also said that he 14:11  
11 thought that there was no statement of complaint  
12 actually made yet, in any event. So Detective  
13 Superintendent Mulcahy did communicate with  
14 Superintendent McBrien in Athlone and passed on my  
15 advice in relation to the appointment of some 14:11  
16 independent officer to look at these matters.

17 295 Q. If we could just look first of all when the matter was  
18 raised formally with you by Superintendent McBrien, her  
19 letter to Detective Superintendent Mulcahy, which is  
20 dated the 9th July, it's at page 3977. Do you see 14:11  
21 there:

22  
23 "On 2nd June 2014, Garda Aidan Lyons, Athlone, made a  
24 report regarding information he received from Mr. Liam  
25 McHugh concerning Garda Keogh. An e-mail outlining 14:12  
26 this is attached.

27  
28 I have requested that a statement regarding this  
29 allegation be taken from Mr. McHugh. Detective

1 Sergeant Curley, who knows Mr. McHugh personally since  
2 childhood, has stated that he would not be the most  
3 suitable person to take a statement. Garda Tom  
4 Higgins, Athlone, met with Liam McHugh and invited him  
5 to make statement in relation to this incident. 14:12  
6 Mr. McHugh refused to make a statement but undertook to  
7 think about it and maybe make himself available to  
8 provide such statement in the future.

9  
10 I have considered and agree with Inspector Minnock and 14:12  
11 Detective Sergeant Curley's view that in light of your  
12 investigation, it might be more appropriate and  
13 impartial if someone from outside this district  
14 approached Mr. McHugh to ascertain if he is willing to  
15 make a statement. In the circumstances, would it be 14:13  
16 possible for Detective Inspector Coppinger to arrange  
17 to interview Liam McHugh in this regard? Inspector  
18 Minnock. . . . "

19  
20 And he gives the number: 14:13

21  
22 "...will assist to arrange the meeting.

23  
24 Garda Keogh is aware that I know about the allegation.  
25 He informed me last night that he is meeting his 14:13  
26 confidential recipient on Monday and he will be making  
27 him aware of it."

28  
29 So that's how matters stood at that time. Did you look

1 at the report that came in from Garda Lyons?  
2 A. I looked at the correspondence that came in to  
3 Detective Superintendent Mulcahy from Superintendent  
4 McBrien, about that.  
5 296 Q. Yes. 14:13  
6 A. Before that, I had contacted -- the confidential  
7 reporter had contacted the superintendent around the  
8 9th July on this matter, and then on the 11th I  
9 contacted the confidential reporter by phone and I told  
10 him that I had been talking to the detective 14:14  
11 superintendent earlier that day regarding his call of  
12 the 9th, in which he raised the issues of Olivia  
13 O'Neill and Liam McHugh.  
14 297 Q. Yes.  
15 A. And I informed him that I would be discussing it in 14:14  
16 detail with the detective superintendent at some close  
17 date, the 14th, we had arranged a meeting, and that we  
18 would have a look at it at that conference. That's the  
19 chronology of -- and then at that conference, Detective  
20 Superintendent Mulcahy will have brought the 14:14  
21 correspondence he had received and put it before me.  
22 But at that juncture, given the knowledge I had of the  
23 nature of the complaint or of the two people involved  
24 and the nature and type of allegations that were being  
25 made, I felt that it wasn't for my team. And both I 14:15  
26 and Detective Superintendent Mulcahy were in agreement  
27 on that matter.  
28 298 Q. You have a note of that I think at page 3976 of the  
29 material, in your diary entries?

1 A. Yes.

2 299 Q. The 14th July. It just simply mirrors what you've just  
3 told us.

4 A. Yes.

5 300 Q. Can you explain your reasoning for that and the view 14:15  
6 that you took?

7 A. My reasoning is very simple, Chairman. I mean, I think  
8 I would have been very badly exposed if I had started  
9 to make enquiries about a matter in which a  
10 confidential reporter had -- 14:15

11 301 Q. CHAIRMAN: It would complicate things. It was going  
12 two directions.

13 A. That was my view.

14 302 Q. CHAIRMAN: One was investigating what he complained  
15 about and another was investigating complaints about 14:16  
16 him?

17 A. That's correct.

18 303 Q. CHAIRMAN: It didn't make sense. I mean, there was a  
19 certain advantage from the -- it was understandable  
20 that the local management might have thought, here is a 14:16  
21 heaven sent opportunity because these people are  
22 outside, independent and they're investigating?

23 A. Yeah.

24 304 Q. CHAIRMAN: So that might have commended itself to them.

25 A. Yes. 14:16

26 305 Q. CHAIRMAN: But it wouldn't have made sense.

27 A. No.

28 306 Q. CHAIRMAN: At least that was your thinking.

29 A. It made no sense to me.

1 307 Q. CHAIRMAN: I doubt if anybody is going to suggest  
2 otherwise.  
3 A. And while I can fully understand Garda Keogh's thinking  
4 on it at the time, it still didn't alleviate me of the  
5 issue that I was faced with. 14:16  
6 308 Q. CHAIRMAN: Yes, I understand.  
7 A. Yes.  
8 309 Q. MR. MARRINAN: In any event, Detective Superintendent  
9 Mulcahy writes to Superintendent McBrien on 15th July  
10 2014 and that's at 3978 of the material. 14:17  
11 A. Yes.  
12 310 Q. He agrees, after reading the report:  
13  
14 "I believe that the issues raised by Mr. Liam McHugh  
15 regarding Garda Nicholas Keogh may require further 14:17  
16 investigation.  
17  
18 As you are aware, the current investigation pertaining  
19 to Garda Keogh is investigating allegations outlined by  
20 the member himself. The report of Garda Lyons concerns 14:17  
21 allegations made against Garda Keogh and I feel it may  
22 be prudent for an independent investigation to be  
23 conducted to progress these matters.  
24  
25 Perhaps this file can be forwarded to the chief 14:17  
26 superintendent, Westmeath to determine the most  
27 appropriate and effective manner to investigate these  
28 allegations."  
29

1           You were happy that that dealt with the issue and you  
2           explained it to Garda Keogh, is that right?

3           A.     That's correct.

4   311   Q.     And he at the time appeared happy that that should  
5           remain the situation? 14:18

6           A.     Well, that's reflected in my notes that I took at the  
7           time. I did make the phone call. I promised him I  
8           would, once the meeting had concluded, I did make that  
9           phone call.

10   312   Q.     CHAIRMAN: I mean, suppose you had taken it over and 14:18  
11           suppose you were satisfied that it was a disciplinary  
12           matter, would that have presented another difficulty,  
13           that you're conducting a criminal investigation on one  
14           side and a disciplinary --

15           A.     Regardless, Chairman, of what was the outcome it would 14:18  
16           have presented problems for my investigation.  
17           CHAIRMAN: Okay. Anyway, that's what you said and  
18           that's what you explained. Okay.

19   313   Q.     MR. MARRINAN: So that was the end of the matter as far  
20           as you were concerned? 14:19

21           A.     That's correct, Chairman, yes. We just got on with the  
22           rest of the investigation.

23   314   Q.     Did it colour your view in any way in relation to Garda  
24           Keogh? I mean, the two allegations, Olivia O'Neill and  
25           Liam McHugh, on one reading, constitute, you know, 14:19  
26           Garda Keogh going and coaching witnesses to come  
27           forward and to make false allegations against Garda A,  
28           certainly in relation to Liam McHugh. Did that colour  
29           your view in any sense or did you just decide, this



1 isn't a matter for us and we're not going to examine  
2 it?

3 A. That's it. Absolutely not, did not colour my view in  
4 any way, shape or form. And I know from my interaction  
5 with Garda Keogh at that time that he seemed perfectly 14:19  
6 satisfied with the approach I was taking and I was  
7 happy with that.

8 315 Q. Sorry, I just lost the page here. I will return to it.  
9 So if we move on then to the examination of -- or the  
10 entry of information that was inputted into Pulse. 14:20  
11 When did you become aware of the Pulse entry?

12 A. Again, I'm not certain when I became aware of it  
13 exactly, but it was something that was spoken of at my  
14 conferences early on. But I am not sure on what basis  
15 I did become aware of it. 14:21

16 316 Q. Yes. The first note of it appears to be at page 3911  
17 of the materials. This is on the 16th July. Detective  
18 Superintendent Mulcahy, in his statement to the  
19 Tribunal, says:

20 14:21  
21 "On the 15th July I received a text from the reporter  
22 asking if I could make contact. I rang him at 18:52  
23 and he spoke to me regarding his superintendent asking  
24 him about the intelligence he had put on Pulse and  
25 asking if he had information. I advised him we were 14:21  
26 not investigating the Pulse incident. He advised me  
27 where the intelligence had come from. I explained to  
28 him that his supervisor had an obligation to ensure  
29 that any intelligence placed on the system was

1 correct."

2

3 was that your view also in relation to the matter?

4 A. Yeah. Again, it probably was the detective

5 superintendent who brought it to my attention around 14:22

6 that time, if he had noted it. I suppose the content

7 of that Pulse entry was already before -- and was

8 included in Garda Keogh's statement, as far as I'm

9 aware, or some aspects of it. Where the division came

10 here was, the information that was in the Pulse 14:22

11 incident and the responsibilities of the local chief

12 superintendent in relation to the management of Covert

13 Human Intelligence Sources. So, while I -- the

14 information was from the point of view of -- our

15 investigation, we would pursue whatever information the 14:23

16 confidential reporter wanted to make available to us in

17 the context of those issues, but if something else

18 arose externally, then that was not a matter for me in

19 the context of how that appeared on Pulse, why it

20 appeared on Pulse. That was a matter for local 14:23

21 management.

22 317 Q. I'm not going to open it all because we have already

23 had the correspondence that went back and forth in

24 relation to this to various departments of An Garda

25 Síochána, but this issue, there was a question raised 14:23

26 in relation to this from the assistant commissioner in

27 the Eastern Region. If we could just have page 10824

28 up on the screen, please. This is your letter to him:

29

1 "Regarding the Pulse intelligence dated 18th May 2014,  
2 this was created approximately three weeks prior to the  
3 garda in question commencing his statement to --"  
4

5 Sorry can you see it there? 14:24

6 A. I can see it.

7 318 Q. " -- Detective Superintendent Mulcahy and Detective  
8 Inspector Coppinger.

9  
10 The matters outlined in his intelligence report are of 14:24  
11 a very serious nature. The difficulty that arises for  
12 the investigation team is that the matters are still  
13 under investigation. Furthermore, to discuss with any  
14 third party the contents of that statement would be a  
15 breach of confidentiality, which is the whole basis of 14:25  
16 the confidential reporting legislation.

17  
18 The allegations contained in the intelligence report  
19 have again been alluded to in his statement to the  
20 investigation team, but to date they have been 14:25  
21 unsubstantiated. The creation of the intelligence  
22 report is not a matter, I believe, that the  
23 investigation team can directly investigate. I feel  
24 that this is a matter perhaps for both the divisional  
25 officer and district officer to deal with, in whose 14:25  
26 division the garda in question is currently serving. I  
27 understand that Detective Superintendent Mulcahy has  
28 spoken to both the divisional and district officers in  
29 respect of this matter."

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And certainly that was your view at the time, isn't that right?

A. That's correct.

319 Q. And that remains your view in relation to this, is that right? 14:25

A. That's correct, Chairman.

320 Q. The matter didn't go away. It did as far as you were concerned, but again, I think that you have a communication with Superintendent Walsh, private secretary to the Commissioner, in 2015, the 18th March. It's at 10847. If we just scroll down, just the second paragraph: 14:26

"As outlined, it is agreed that the alleged criminal allegations contained in the intelligence report..." 14:26

And then you give the Pulse number.

"...has certain similarities to a section of a statement made by the confidential reporter and are being investigated as part of the overall investigation under the Garda regulations. 14:26

Detective Superintendent Mulcahy also reports that whilst the investigation is being conducted in respect of certain matters contained within the intelligence..." 14:26

1           And then you give the number.  
2  
3           "...the investigation is not focusing on inputting of  
4           this data on the Pulse system."  
5  
6           Isn't that right? 14:27  
7           A.    That's correct, Chairman.  
8   321   Q.    We know that subsequently there was, as it were, a  
9           debate in relation to this internally in An Garda  
10          Síochána, but as far as you were concerned that was 14:27  
11          your only dealings in relation to it?  
12          A.    That's correct, Chairman.  
13   322   Q.    And what do you say to the allegation that is made by  
14          Garda Keogh in this regard, that this was a matter that  
15          you should have been investigating? 14:27  
16          A.    Chairman, this is a matter I was investigating.  
17   323   Q.    I mean the input of the information.  
18          A.    The inputting of it. Again, if there was an issue with  
19          that, it was an issue that Garda Keogh did something  
20          wrong. I wasn't in any way pursuing any -- and neither 14:28  
21          was it my business to.  
22   324   Q.    CHAIRMAN: Yes, the essence of the material in the  
23          thing you were investigating?  
24          A.    Yes, we already had that.  
25   325   Q.    CHAIRMAN: Yes. 14:28  
26          A.    As part of a statement. This was, I suppose --  
27   326   Q.    CHAIRMAN: But whether it was right or wrong of Garda  
28          Keogh.  
29          A.    Yes.

1 327 Q. CHAIRMAN: To do it or to do it in this manner --  
2 A. To do it in that manner.

3 328 Q. CHAIRMAN: -- or whatever, those were outside, you  
4 thought, your remit?  
5 A. That's right. And within the division, the chief 14:28  
6 superintendent of any division had responsibility for  
7 the management or covert human intelligence sources and  
8 it would be his business to ensure that any matters  
9 that are put onto the Pulse system in that manner, that  
10 they can be backed up and that they -- on that basis it 14:28  
11 was very much in local Garda management --

12 329 Q. CHAIRMAN: That was in his bailiwick?  
13 A. It was in his bailiwick, indeed. Now, I have to say, I  
14 fully again understand the confidential reporter's need  
15 to feel that he had to do that. If he felt he needed 14:29  
16 to air this, that was his prerogative. And all I  
17 wanted to do was to ensure that whatever the issues  
18 were coming out of it in the context of my  
19 investigation, that they were fully pursued as part of  
20 my investigation. 14:29

21 330 Q. MR. MARRINAN: Now, there is an overlap in relation to  
22 some of the complaints that Garda Keogh has made and I  
23 think we have effectively dealt substantially with a  
24 large number of them. In terms of Garda Keogh and  
25 Garda A being left on the same shift, was that 14:29  
26 something that you were aware of or concerned about?  
27 A. Again, it would have come up as part of the discourse  
28 at our meetings, etcetera, if Garda Keogh had raised  
29 this with the detective superintendent. And again,

1 here were issues --

2 331 Q. CHAIRMAN: Am I being picky if I say I'm not sure they  
3 were on the same shift, but they were on overlapping  
4 shifts? Am I being wrong or picky or incorrect?

5 MR. MARRINAN: The complaint is that they -- 14:30

6 CHAIRMAN: I thought the complaint was that Garda A was  
7 present in the station, not necessarily that it was --  
8 so, I am sorry to be picky, but I am not sure it was  
9 the same shift.

10 MR. MARRINAN: Yes. Initially the complaint was the 14:30  
11 same shift but then it became an overlap.

12 CHAIRMAN: They were overlapping, I thought. And it  
13 was the presence in the station. In comes to the same  
14 thing in the end but it doesn't mean that it's  
15 inevitable that they will be together for all the time. 14:30  
16 But the point essentially remains. Sorry.

17 MR. KELLY: If it helps, Chairman, my understanding of  
18 it was that they were on shifts that very often  
19 overlapped.

20 CHAIRMAN: Precisely. They weren't on the same shift. 14:31  
21 So that they were both together in the -- I mean, the  
22 same essential point is, they were both in the station  
23 at the same time and Garda Keogh said, look, that's a  
24 difficulty for me.

25 MR. KELLY: That's the gravamen. 14:31

26 CHAIRMAN: Okay, thank you very much. I'm sorry?

27 MR. CONLON: I'm sorry, Chairman, forgive me. My  
28 client, our understanding was that they were on  
29 different units, which were in different buildings.

1 They may be on the same -- they had half an overlap, I  
2 think was her evidence.

3 CHAIRMAN: I understand. Your client was:

4 MR. CONLON: I am for Superintendent McBrien.

5 CHAIRMAN: If I may stop you for a second. Maybe I 14:31  
6 shouldn't have started, maybe it's all my mistake.  
7 Mr. Marrinan said they were on the same shifts. A bell  
8 rang in my head, in my tedious, pedantic fashion, that  
9 said I'm not so sure, I know they were there at the  
10 same time, but I thought it was overlapping shifts. So 14:32  
11 I am sorry, Mr. Marrinan, I apologise. And the point,  
12 as Mr. Kelly correctly points out, is that the essence  
13 of the matter, the gravamen of it is that they were, so  
14 to speak, in each other's pockets, bumping into each  
15 other or whatever it was. 14:32

16 MR. MARRINAN: I think that we will see, at page 50 of  
17 the material, this is Garda Keogh's statement to our  
18 investigators, that is the state of the evidence at  
19 that stage. He says:

20 14:32  
21 "I raised my concerns re Garda A being on the  
22 same/proximate shifts with the detective superintendent  
23 of the investigation team. Just for clarification, I  
24 was not on the same shift as Garda A all of the time  
25 but most of the time I was on the same shift as him." 14:32

26  
27 The evidence he gave was that there --  
28 CHAIRMAN: As we say, as Mr. Kelly comes to,  
29 essentially the point is that they were together in and



1 about the station.

2 332 Q. MR. MARRINAN: That leads me on to the last sub-issue,  
3 as it were, that's in relation to the incident where  
4 Garda Keogh said that Garda A took his firearm from a  
5 safe near the public office. That has also changed 14:33  
6 somewhat. It appears that the safe was out of view,  
7 but there was a book that you had to enter in the fact  
8 that you had taken the firearm out and that was  
9 proximate to the public office. Could you just assist  
10 us in relation to that? We know, and you've told us, 14:33  
11 that Superintendent McBrien made reference to this at  
12 the meeting on the 23rd September in Garda  
13 Headquarters.

14 A. Mm-hmm.

15 333 Q. Other than that, were you aware of this incident? 14:34

16 A. You see, I had appointed Detective Superintendent  
17 Mulcahy to liaise both with the confidential reporter  
18 and with local management on issues of welfare and that  
19 type and any concerns that the confidential reporter  
20 was raising with him at his meetings, that that would 14:34  
21 be communicated back. And that any of those issues  
22 that could be remedied, would be remedied. There was  
23 an issue of -- there was some suggestion that there was  
24 a firearm. Garda A at the time was a detective, he was  
25 entitled to hold a firearm. He may have had a storage 14:34  
26 facility in the station where he would leave it when  
27 off duty. Other members who were allocated firearms  
28 from time to time, that wouldn't have a personal issue,  
29 as it's called, would have to go to an armoury and sign

1 one out as they required it. I'm not sure of the exact  
2 circumstances of it, but I would assume based on the  
3 fact that he was a detective, that he would have had a  
4 personal issued firearm. That was raised at that  
5 meeting by Superintendent McBrien, who felt that there 14:35  
6 was no issue in the context of risk, that kind of  
7 thing. Like, of course these are matters that always  
8 have to be kept under review in the context of members,  
9 and I am talking generally now, Chairman, in relation  
10 to the carrying of firearms. So people would be very 14:35  
11 aware of that all the time.

12 334 Q. Concerning the failure to arrest Garda A, can you tell  
13 us what your view is in relation to the complaint in  
14 that regard?

15 A. I don't see it as a failure, Chairman. This was -- the 14:35  
16 investigation was carried out by a highly competent and  
17 efficient and experienced team of detectives. They did  
18 their business, they got to a conclusion on the basis  
19 of what was uncovered over the investigation. To make  
20 an arrest one needs reasonable suspicion. I can't 14:36  
21 direct anyone else to arrest another person, that  
22 person themselves needs to come to that conclusion in  
23 their own minds, that they have reasonable suspicion.  
24 That was a matter for the team I had appointed. And I  
25 think I heard Detective Superintendent Mulcahy's 14:36  
26 testimony yesterday, where he hadn't reached that in  
27 his own mind. And on that basis, I can't second guess.  
28 But it wasn't a failure to arrest. It was the way that  
29 the investigation was managed.

1 335 Q. There's also a complaint that Garda A was given  
2 preferential treatment because he was given a summary  
3 of the case against him. You heard yesterday the  
4 evidence from Detective Superintendent Mulcahy.  
5 A. Yes. 14:37

6 336 Q. As to how he went about the interviewing of Garda A?  
7 A. Yes.

8 337 Q. Would you like to make some observations in relation to  
9 that?  
10 A. Well again, while I was fully conversant with all 14:37  
11 aspects of the investigation, these were the hands on  
12 people, as it were, the people who were at the pulse of  
13 the actual investigation. Whatever decisions they  
14 made, I would have respected it, on the basis that I  
15 would have been told, this is our planned approach to 14:37  
16 this matter. Nothing that I could say would try to  
17 convince them otherwise. I wasn't trying to convince  
18 them otherwise. This is based on their experience and  
19 how they wanted to progress with that aspect of the  
20 investigation. 14:38

21 338 Q. Now, during this timeframe in 2014, up until March of  
22 2015, these issues had arisen and were of concern to  
23 Garda Keogh. He seems to have been concerned about the  
24 Olivia O'Neill incident, he was concerned about the  
25 Liam McHugh incident. Because I suppose in some way 14:38  
26 those reports coming through or what was said either by  
27 Olivia O'Neill or what was interpreted as being said by  
28 her, and what was said by Liam McHugh or what was  
29 interpreted as to what he was actually saying, could

1 have constituted coaching and therefore he was in some  
2 way encouraging people to come forward and make false  
3 statements. Did you hear any more about that in 2014  
4 from him?

5 A. I can't recall if that was discussed again after that, 14:39  
6 Chairman, no.

7 339 Q. Did you hear at all about the upshot of the  
8 investigations in relation to those two matters?

9 A. I may have, Chairman, but it would have been a  
10 conversation, I had no note of it or no recollection 14:39  
11 really.

12 340 Q. But he didn't raise the matter with you?

13 A. I can't recall that he did, Chairman, no.

14 341 Q. With you again?

15 A. No. 14:39

16 342 Q. Were you happy that Detective Superintendent Mulcahy  
17 was in fairly regular contact with Superintendent  
18 McBrien concerning the welfare of Garda Keogh during  
19 that timeframe?

20 A. Yes, I was, indeed, extremely happy. As I said before, 14:39  
21 this was always one very item, right at the very top of  
22 our agenda was Garda Keogh's welfare. And at the very  
23 early stages, when obviously his confidentiality had to  
24 be fully respected, I felt that was our responsibility  
25 and ours alone, until such time as then it became 14:40  
26 public knowledge. That welfare onus then shifted to  
27 some extent onto the local management, who were best  
28 placed to deal with the day-to-day issues. But it  
29 didn't alleviate my team of what I considered our

1 responsibility to ensure that he was regularly  
2 contacted and I think there's been a lot of records  
3 produced for the Tribunal that shows lots of contact  
4 between the detective superintendent and Garda Keogh,  
5 in both directions, where welfare issues were  
6 discussed. 14:40

7 343 Q. So then if we move forward into 1st April 2015. There  
8 was an issue raised in Dáil Éireann, isn't that right,  
9 by Deputy Wallace, concerning Garda Keogh, do you  
10 recall that? 14:41

11 A. I recall -- yes, I have a general recollection of some  
12 statement in the Dáil, yes.

13 344 Q. Superintendent Pat Murray had taken up the reins in  
14 Athlone Garda Station at that time, isn't that right?  
15 Just in relation to your personal dealings with  
16 Superintendent Murray, you know the suggestion is and  
17 has been made by Garda Keogh, that you put him into  
18 Athlone Garda Station and arranged for him to take up  
19 the role of superintendent to replace Superintendent  
20 McBrien. Would you like to comment on that? 14:41

21 A. I reject that completely, Chairman. Superintendent  
22 Murray I had known, the first I met him was when he  
23 came to, it was probably Gort. Gort and Loughrea  
24 districts from amalgamated at some stage during his  
25 tenure in Galway I would say. That was my first time  
26 meeting Pat Murray. And he was a very efficient and  
27 professional officer in my view, while I had him on my  
28 team. I then moved on and I finished up in Dublin. I  
29 was aware, because of my duties in Dublin in supporting 14:42

1 the Commissioner, and these were matters for the  
2 Commissioner to consider, the transfer of officers is  
3 something the Commissioner does. While at times there  
4 would be input sought in relation to -- she may, or he,  
5 whoever was in the office at the time, I used to 14:43  
6 consult with my senior team and say, here are the  
7 allocations that we need to make, you know, we were  
8 looking for horses for courses, as it were, to get the  
9 best fit for all of our district. In the normal  
10 course, if you are promoted off a promotion list, you 14:43  
11 are the most junior at that stage in your rank of  
12 super, therefore you get the last cut of the pie, as it  
13 were. So people already in office in districts who  
14 have applied to a transfer to some other district will  
15 get preference over people on a list. And that is what 14:43  
16 happened Pat Murray when he got promoted; a vacancy  
17 came up in Gort district because somebody else had  
18 transferred back, I think it was to Cork at that time.  
19 I needed to fill that district, and the Commissioner of  
20 the day allocated Pat Murray to that district. As I 14:44  
21 say, I never knew the man before that. And then in the  
22 normal course, if people are in a district that doesn't  
23 suit them, their domestic arrangements, they may and do  
24 apply for a transfer themselves, to get closer to home  
25 or to get to a district that is commutable for them. 14:44  
26

27 So that was what Pat Murray would have done in this  
28 instance, I assume. He would have looked for his  
29 transfer. A vacancy arose in Athlone because

1 Superintendent McBrien had looked for a transfer back  
2 to the DMR, somewhere in the DMR here in Dublin, which  
3 would have suited her domestic arrangements. I think  
4 Pat lived somewhere in the midlands and he probably  
5 listed Athlone as one of the stations or one of the  
6 districts that would suit him.

14:44

7  
8 So as I say, I was in an administrative capacity at  
9 that stage in my role. I know that Commissioner  
10 O'Sullivan would ask me and John Twomey, who was my  
11 colleague at the same level, about our knowledge of  
12 different people she mightn't have known. But as far  
13 as I know, I think Nóirín O'Sullivan was assistant  
14 commissioner in the Western Region when Pat was in  
15 Galway and I would say there was a common period there.  
16 So she would have known Pat from her own service and  
17 having served in the west. Her decision was made. She  
18 just transferred people based on what the HR department  
19 gave her. Here's a list of people who applied to  
20 transfer, here are a list of people who are going to  
21 retire and where the vacancies will open up, and here  
22 are a list of people who are on the new list and who  
23 can be promoted. And that's the way it worked.

14:45

14:45

14:45

24 345 Q. The suggestion is that he was put in there to scupper  
25 the investigation in some way. First of all, to what  
26 extent was the investigation ultimately dependent on  
27 any evidence that Garda Keogh could give himself  
28 personally?

14:46

29 A. He had allegations but he was depending on others to

1           substantiate them. He was pointing us in directions to  
2           gather the evidence.

3 346 Q.    He had already set out his allegations.

4           A.    Yes.

5 347 Q.    And they were well defined. 14:46

6           A.    Yes. And then when we explored that, those matters  
7           with him in his extended statement of complaint, he  
8           would have indicated where we may go to find evidence  
9           to support that and individuals who would be in a  
10          position to -- 14:46

11 348 Q.    At various stages he perhaps gave you additional  
12          information if it became available to him?

13          A.    Oh he did, of course.

14 349 Q.    Yes. And he cooperated fully with the investigation  
15          team in that regard? 14:47

16          A.    He did, indeed, yes.

17 350 Q.    But I am just wondering, because we know in May, we  
18          opened the letter earlier on, that you thought that the  
19          issue of the suspension of Garda A should be  
20          revisited -- 14:47

21          A.    Yes.

22 351 Q.    -- in the light of the new evidence of the billing  
23          records.

24          A.    Yes.

25 352 Q.    That is sort of a month or a month and a half after 14:47  
26          Superintendent Murray is put in charge. What stage was  
27          the investigation at, at that stage?

28          A.    Well, we would have moved along on many lines. As I  
29          said, at the start we had to sit down and just break



1 this investigation into nine separate modules, because  
2 there was nine separate elements that needed to be  
3 looked at separately. And at the same time prioritise  
4 which of those we would start first and in some way  
5 make as much inroads as we could. Some jobs, as we 14:48  
6 call them, would involve looking for phone records, for  
7 example, or writing off to places, that could be done  
8 early on. Based on what came back from those, then you  
9 would create other jobs in the context of what came out  
10 of those. 14:48

11 353 Q. CHAIRMAN: A follow up.  
12 A. Yes, a follow up. Yeah. So this, it just, it  
13 flowered. There was any number of avenues that open  
14 up.

15 354 Q. CHAIRMAN: You throw a stone into a pool. 14:48  
16 A. That's it.

17 355 Q. CHAIRMAN: And it ripples out and you see if something  
18 turns up.  
19 A. Yes. I was adamant with my investigation team that we  
20 would follow every single one of those leads to a 14:48  
21 conclusion. And that's what we did. So by, is it May  
22 or March, you said, of 2015, we had made some progress  
23 in some and better in others, but we still hadn't  
24 reached that bar, as the detective superintendent  
25 described yesterday in his mind, which would bring it 14:49  
26 into the realm of a prima facie criminal case against  
27 any individual. And that's what happened at that  
28 stage, yes.

29 356 Q. If we could just have page 2941 up on the screen. This

1 is the diary entry of Superintendent Pat Murray. And  
2 it says there:

3  
4 "Wednesday, 1st April 2010.

5  
6 Calls from AC Ó Cualáin 9:58am, 1:45pm and 5:06pm  
7 re outburst in Dáil by Mick Wallace re whistleblower  
8 Athlone."

9  
10 And then another member of An Garda Síochána. 14:49

11  
12 "Explained re letter he sent to Clare Daly from  
13 district office and my conversation with Garda Keogh re  
14 his welfare, work supports and his work and car tax and  
15 what I was doing." 14:50

16  
17 The car tax issue, was that a matter you were aware of  
18 at that time?

19 A. No, Chairman, I wasn't. This was something that  
20 Detective Superintendent Mulcahy, who had uncovered it, 14:50  
21 dealt with it in his own way, in the context of  
22 bringing it to the attention of the local super.

23 357 Q. Did he tell but that prior to this?

24 A. He didn't, no. This was why I needed to make these  
25 calls on the day, this was something completely -- this 14:50  
26 was out of the blue. This was a report, I presume, on  
27 radio during the day that we picked up and it was news  
28 to me. That's why I was trying to establish what was  
29 this about.

1 358 Q. what was your concern at that time?

2 A. My concern was for Garda Keogh's welfare. Essentially,  
3 I suppose, what the deputies were doing in the Dáil was  
4 outlining the issues in the context of a confidential  
5 reporter and our duty as an organisation to protect 14:51  
6 those individuals and ensure that their welfare was  
7 fully supported. So when this came up I needed to know  
8 what was going on locally. So that was the purpose of  
9 the call.

10 359 Q. He then goes on: 14:51

11  
12 "AC wanted to know who from Athlone was on to Mick  
13 Wallace. Told him general perception it was Garda  
14 Keogh. AC's last phone call was for me to ask Garda  
15 Keogh re his welfare considering he told Detective 14:51  
16 Superintendent Mulcahy he felt people closing in on  
17 him."

18  
19 And in particular he mentions a chief superintendent,  
20 but it clearly can't be right it has to be Murray 14:51  
21 himself.

22  
23 "-- when car tax and CMO were mentioned to him.

24  
25 AC was complimentary of my handling of Garda Keogh and 14:52  
26 his welfare to date."

27  
28 what did Superintendent Murray outline to you?

29 A. I can't recall. I was aware -- you see, as I mentioned

1 earlier, when his identity became known locally, local  
2 management took a very hands on approach to ensuring  
3 welfare issues were remedied. I just wanted to ensure  
4 that continued. It was more or less saying, keep up  
5 the work, you need to keep -- on the basis of what's 14:52  
6 being reported. And again, you talk about the chief  
7 superintendent, that may be Chief Superintendent  
8 Glacken, he was a former chief in charge --

9 360 Q. CHAIRMAN: He's wrong about that. It's Chief  
10 Superintendent Curran, I think. It has to be Chief 14:53  
11 Superintendent Curran who was there at the time,  
12 doesn't it?

13 A. If he felt things were closing in on him, Chairman, I  
14 would say it could have been Chief Superintendent  
15 Glacken he was referring to, I'm not sure, because he 14:53  
16 had made --

17 361 Q. CHAIRMAN: He had been previously there, yes.

18 A. Yes.

19 362 Q. MR. MARRINAN: It seems arise in the context when the  
20 car tax and CMO were mentioned to him. 14:53  
21 A. Yeah.

22 363 Q. Anyway, regardless, that was the general thrust of your  
23 phone calls?

24 A. It was. I was always motivated in these matters and my  
25 ultimate objective was to ensure that Garda Keogh's 14:53  
26 welfare was being protected. And if Garda Keogh felt  
27 that he needed to go to some public representative  
28 because he wasn't getting sufficient support, that was  
29 something that needed to be addressed in the context of

1 ensuring that the organisation was doing everything  
2 that we could to support him.

3 364 Q. If we just scroll down the page there to the following  
4 day, Thursday, 2nd April. Yes. Again:

5  
6 "Call from AC Ó Cualáin offering advice." 14:54

7  
8 He says:

9  
10 "As Garda Keogh is protected, no one is supposed to 14:54  
11 know his identity and against law to reveal him. He  
12 can't discuss him with anyone. If Garda Keogh refers  
13 me to them, then can only give me info if Keogh gives  
14 written permission, but because he went public I can  
15 only know about that time and two day's ago out burst 14:54  
16 he wasn't named, so I don't know who the whistleblower  
17 was then. Explained to AC my support structure for  
18 him."

19  
20 Is that your recollection? Does that reflect the phone 14:54  
21 call that you had?

22 A. Yes. Again, I was anxious to ensure that, you know, in  
23 all of the work that was happening between my team and  
24 the local management team, the risk of Garda Keogh's  
25 identity being exposed by any of our team, that we 14:55  
26 wanted to ensure that that didn't happen. Even though  
27 it was common knowledge, I still had the statutory  
28 obligation to protect his identity, and I wanted that  
29 driven home. So I would say while on that phone call,

1 and any call I ever made, I would be referring to the  
2 confidential reporter, not to a named garda.  
3 CHAIRMAN: Yes.

4 365 Q. MR. MARRINAN: He records you as saying "can only give  
5 info if Keogh gives written permission"? 14:55

6 A. Yes.

7 366 Q. Do you see that?

8 A. Yes.

9 367 Q. Did anybody ask Keogh whether he would give written  
10 permission for you to breach the confidentiality? 14:55

11 A. Well, the only -- there was a few times it happened.  
12 We asked for it in relation to the DPP.

13 368 Q. Yes.

14 A. And we asked for it in relation to, what else? I think  
15 it was three times. One was HR, which he refused. And 14:55  
16 there may have been another occasion.

17 369 Q. The former chief superintendent that we referred to,  
18 the chief superintendent we referred to there, who  
19 wanted a copy of his statement --

20 A. Yeah. 14:56

21 370 Q. -- before he would be interviewed by the investigation  
22 team.

23 A. Right. Okay.

24 371 Q. I think at that point in time Garda Keogh was  
25 approached and he declined to have his statement -- 14:56

26 A. Yes.

27 372 Q. And then obviously when the matter was going to HR, he  
28 was approached as well?

29 A. Yes.

1 373 Q. And he declined?  
2 A. Yes.  
3 374 Q. So those were the occasions --  
4 A. Those were the occasions, yes.  
5 375 Q. -- on which he declined to have his statement, which 14:56  
6 was namely the content of his protected disclosure,  
7 disclosed to other people. But in terms of his  
8 actually identity, did you ever --  
9 A. No, I never looked for his permission because I didn't  
10 need to, because I didn't feel the need to have to give 14:56  
11 his identity to anybody. That never arose.  
12 376 Q. So in terms of the contact that you had with  
13 Superintendent Murray, was that the extent of your  
14 contact with him from April?  
15 A. Again, I had very little contact with Superintendent 14:57  
16 Murray. I have a few references in my own diary notes,  
17 which again I depended on to write my statement.  
18 377 Q. Yes.  
19 A. I accept that there are ones -- I didn't have notes  
20 that Superintendent Murray noted in his notes and I 14:57  
21 accept that they happened, yes, and I can recall now,  
22 having my memory refreshed by these notes, that those  
23 calls did occur.  
24 378 Q. There doesn't seem to be any contact between May and  
25 June and July, August or September? 14:57  
26 A. You see most of the communication, Chairman, that  
27 happened was through the assigned man, who was  
28 Detective Superintendent Mulcahy. I had asked him to  
29 be the main focus of liaison with both the confidential

1 reporter and local management. And therefore, the  
2 detective superintendent would have had nearly, I'd  
3 say, weekly contact with local management in the  
4 context of the investigation.

5 379 Q. That's actually not recorded as being the case. It 14:58  
6 would appear that in June, July and August there was no  
7 contact?

8 A. By whom?

9 380 Q. By Detective Superintendent Mulcahy?

10 A. With whom? 14:58

11 381 Q. With Superintendent Murray?

12 A. I don't know. Probably because it wasn't needed.  
13 There was nothing to address, maybe. I'm not sure.

14 382 Q. Well you know from the issues that have arisen at this  
15 Tribunal that there were matters that gave rise to 14:58  
16 complaints that Garda Keogh had?

17 A. Mm-hmm.

18 383 Q. He doesn't appear to have raised them with the  
19 investigation team, but you're aware of the fact that  
20 he has made complaint about what he says is 14:58  
21 micromanagement?

22 A. I am, yes.

23 384 Q. Unfair criticism of his investigations?

24 A. Yes.

25 385 Q. The failure to get commendations? 14:58  
26 A. Yes.

27 386 Q. There's a variety of issues.

28 A. I'm aware of all of those.

29 387 Q. They don't really concern you, but you weren't aware of



1 any of those matters?

2 A. Not at the time. The detail I'm aware of now.

3 388 Q. Then if we could move on then to your report to the  
4 Director of Public Prosecutions. First of all, if we  
5 could have your letter to the Commissioner with the 14:59  
6 report, it's at page 11159. If we just scroll down  
7 there, please. The next page. Scroll back up. This  
8 is the report to the Commissioner, indicating that you  
9 had sent the report on to the Director of Public  
10 Prosecutions. If we could have then page 1142. well, 15:00  
11 if we look at 11076 first of all, sorry?

12 A. 11076?

13 389 Q. Yes. That's the cover of the investigation file.

14 A. Yes.

15 390 Q. We have that and it's is an extensive report. Your 15:00  
16 conclusions are at page 11142. If we could just scroll  
17 down to look at them:

18

19 "Concl usi ons.

20 15:01

21 A number of the allegations made by the reporter are  
22 plausi bl e and have substance.

23

24 Whi l e the i nvesti gati on uncovered suspi ci ons of  
25 cri mi nal behavi our by Gardaí in Athl one, i n parti cul ar 15:01  
26 the al legati on surroun di ng the destructi on of evi dence,  
27 whi ch was faci li tated by Garda A i n the al leged tippi ng  
28 of Ms. B and [another person], the substanti al evi dence  
29 may fall short of what i s requi red to bring a cri mi nal

1 prosecution. "

2

3 That ultimately was your view in relation to the  
4 matter; is that right?

5 A. That's correct, Chairman. 15:01

6 391 Q. But you didn't make any recommendations for a  
7 prosecution or that there should be no prosecution?

8 A. No.

9 392 Q. You seem to have adopted a middle ground on the basis  
10 that the allegations may be plausible and have some 15:01  
11 substance but then point to perhaps that they don't  
12 contain the standard of proof required in a criminal  
13 trial. So you have taken a somewhat neutral position  
14 in relation to it and asked the Director of Public  
15 Prosecutions to review the file and give directions, is 15:02  
16 that right?

17 A. That's correct, Chairman.

18 393 Q. The DPP directions then came back on the 3rd March,  
19 page 4009. And then in the last paragraph:

20 15:02  
21 "On the basis of the investigation, the Gardaí have not  
22 recommended any criminal charges for consideration. In  
23 the circumstances, the question of a prosecution does  
24 not arise on the evidence. "

25 15:02  
26 You're happy that the Director of Public Prosecutions  
27 considered the file and are merely noting there that  
28 there was no recommendation to prosecute ?

29 A. I am very satisfied. Of course, a file of this

1 magnitude and the importance in the context of what we  
2 were investigating would have to go to the DPP,  
3 regardless of what I felt was or was not evidence that  
4 would substantiate a charge. That's a matter for the  
5 law officers to make a determination on. So we were 15:03  
6 fully in their hands once the file was submitted.

7 394 Q. Then an additional report was sent in on the 16th May,  
8 it's at 4010. This is again to the Director of Public  
9 Prosecutions. It concerns evidence arising out of the  
10 search of the home of Garda A, is that right? 15:03

11 A. That's correct.

12 395 Q. Then there is additional directions in relation to the  
13 matter, at 4012 of the material. If you scroll down,  
14 please.  
15 15:04

16 "I note the examination of the electronic devices  
17 seized from the homes of Garda A and Ms. B yielded no  
18 evidence and so the position remains as set out in my  
19 letter on 3rd March 2016."  
20 15:04

21 So even after there was no direction to prosecute, you  
22 continued to follow leads and to examine the matter,  
23 isn't that right?

24 A. If evidence showed itself, of course we would have to  
25 consider it and if it was pertinent to this set of 15:04  
26 circumstances and the issues raised by Garda Keogh,  
27 then the most appropriate place for that to be done  
28 would be going back to the team that already the file  
29 in their possession, yes.

1 396 Q. I think you were obliged to keep the Garda  
2 Commissioner's office updated in relation to the  
3 progress of your investigation?  
4 A. That's correct.

5 397 Q. We have heard from Superintendent Walsh. If I can go 15:05  
6 through these very briefly. The first update there, it  
7 appears, is on the 16th June, it's at page 10797.  
8 That's just giving a progress report for the  
9 Commissioner. I don't intend to open it, unless  
10 anybody requires me to do so. It's already been opened 15:06  
11 in full. That's the first update that you have. The  
12 second correspondence, and it was a matter that I asked  
13 you about earlier on, and we will just deal with it,  
14 it's at page 10802. This is dated the 24th July, it's  
15 from Superintendent Walsh to the deputy commissioner, 15:06  
16 strategy and change management. You had taken up that  
17 role, so he has given you that title, is that right?  
18 A. What date is this, sorry?

19 398 Q. This is on 24th July 2014. 10802?

20 A. Yeah, that's the office I was working in, in an 15:07  
21 administrative capacity. I still didn't have the title  
22 of deputy commissioner, but that's the office I was  
23 working out of on that basis, if that's what you're  
24 saying.

25 399 Q. I beg your pardon. We just note there: 15:07  
26  
27 "On 8th May 2014 the confidential recipient sent a  
28 confidential report to the Commissioner for  
29 investigation under the Garda Síochána regulations

1 2007. All necessary notifications were addressed and  
2 an assistant commissioner was appointed to carry out an  
3 investigation, which is ongoing.

4  
5 The confidential recipient has since contacted this  
6 office --" 15:07

7  
8 Judge McMahon apparently spoke to the Commissioner.

9  
10 " -- and stated that the confidential reporter has 15:07  
11 complained that his chief superintendent is continuing  
12 an investigation against him while his own complaint is  
13 being dealt with. The confidential recipient has  
14 enquired as to whether we have any protocols in place  
15 to address such situations. Perhaps assistant 15:08  
16 commissioner Human Resource Management should advise. "

17 A. Yes.

18 400 Q. "With the introduction of the Protected Disclosures Act  
19 2014, this particular query may be moot. However, the  
20 issues could well arise again once GSOC become a 15:08  
21 prescribed body under section 7 of the Act.

22  
23 The Commissioner would appreciate your views and  
24 recommendations in early course. "

25  
26 Do you recall dealing with that? 15:08

27 A. This came to me in my role as deputy commissioner  
28 administrative functions.

29 401 Q. Right?

1 A. Not as the --

2 402 Q. CHAIRMAN: Not as the head of the investigation.

3 A. Yes. So this would normally -- this is how the

4 correspondence would normally be channelled. A request

5 of that nature would come through my side of the house, 15:08

6 as it was then, because it had to go to HR, and I was

7 in charge of that side at that time. So I can recall

8 that coming through, yes.

9 403 Q. MR. MARRINAN: Did you ever express any views in

10 relation to it? 15:09

11 A. I'm not sure whether that line of correspondence -- I

12 assume it went to HR and came back through again and it

13 was sent back to the Commissioner. That's the

14 normal --

15 404 Q. All right. So it's a general enquiry? 15:09

16 A. It was. In relation to -- I suppose it's the last

17 paragraph there, you know, the context of the situation

18 arising again, having protocols, just wanting to

19 confirm that. And it might also inform new protocols

20 the that would have to be developed as well, a few 15:09

21 issues that would have to be addressed in any new set

22 of protocols.

23 405 Q. CHAIRMAN: It might be difficult one to address in

24 general terms. I mean, it would all depend on the

25 nature of the investigation. 15:09

26 A. Yes.

27 406 Q. CHAIRMAN: And the nature of the other complaint.

28 Still, there might be protocols. I suppose there was

29 nothing wrong in asking are there protocols.

1 A. And I'd say it was just raising the alarm bells in that  
2 section, that this is something you should be looking  
3 at in the context of the new Act, etcetera, you know.

4 407 Q. MR. MARRINAN: At 10822 there's again another update.  
5 At that stage 75 statements had been taken?

15:10

6 A. Yes.

7 408 Q. From 66 interviewees. 47 exhibits seized. You talk  
8 about a case conference held on the 11th November at  
9 Oranmore Garda Station.

10

15:10

11 "It was attended by all members of the investigation  
12 team.

13

14 Further multiple requests have been forwarded to both  
15 Crime and Security concerning telephone data and also  
16 to communications DMR and tetra data concerning dates  
17 of relevance to the investigation."

15:10

18

19 And then a number of applications concerning CHIS  
20 matters have also been forwarded for assistance in the  
21 investigation. That doesn't concern the entry that  
22 Garda Keogh had made?

15:11

23 A. No, it doesn't, Chairman, no.

24 409 Q. No. You note:

25

15:11

26 "As this is a very complex investigation and it appears  
27 that as each potential witness/line of enquiry is  
28 pursued they have the potential to open up further  
29 avenues of investigation which the investigation team

1 have no choice but to enter and pursue that line of  
2 enquiry. "

3  
4 And I think you dealt with that in answer to the  
5 observations of the Chairman and the ripple effect. 15:11

6 A. Yes, Chairman.

7 410 Q. You then do an analysis of it and that's your update  
8 then. Yes. There's a further update then dated 26th  
9 November 2014, at 10826. It shows the progress of the  
10 investigation. 139 jobs had been created. And that 15:12  
11 states that 75 statements have then been taken. You go  
12 through again how the investigation is progressing.  
13 Then if we go to page 10827, this is dated the 27th  
14 November and concerned about the publication in the  
15 Daily Mirror, an article on the 27th November. It 15:13  
16 notes:

17  
18 "I understand that an interim report on the  
19 investigation has been submitted for the Commissioner's  
20 information. 15:13

21  
22 In the light of the contents of this publication, the  
23 Commissioner directs that immediate contact is made  
24 with Garda Keogh to establish the problems he is  
25 experiencing. He should be reassured that he will not 15:13  
26 be subject to any form of harassment and will be  
27 treated with dignity and respect in the workplace.

28  
29 It is noted from previous update, supplied on the 16th



1 June, that Garda Keogh was advised of the services of  
2 the employment assistance officers.

3  
4 Please address these issues and report further in early  
5 course to facilitate updates to the Garda Síochána 15:14  
6 Ombudsman Commission and the Garda Síochána  
7 Inspectorate."

8  
9 was that matter followed up?

10 A. I'm sure it was. I'm aware that Detective 15:14  
11 Superintendent Mulcahy at some juncture submitted a  
12 very detailed report, maybe it could be a bit later  
13 than this, in relation to all of the welfare  
14 interventions that were made. There should be a chain  
15 of correspondence there. 15:14

16 411 Q. Yes. We will move on to page 10832. It is dated 12th  
17 December 2014, from Detective Superintendent Mulcahy to  
18 you?

19 A. Yes.

20 412 Q. If we just look at the third paragraph? 15:15

21 A. Yes.

22 413 Q. "The confidential reporter stated that he had no issues  
23 with this investigation and was content with how it was  
24 being progressed. The investigating gardaí highlighted  
25 and showed an article to him from the Daily Mirror 15:15  
26 newspaper, in which the reporter indicated that matters  
27 highlighted concerned separate issues. He further  
28 informed Gardaí that he feels that he is being harassed  
29 by senior management at Mullingar due to the following

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reasons."

Then the Pulse check, we have dealt with that. The intelligence that he had placed on the Pulse system and two alleged complaints by Olivia O'Neill and Liam McHugh. 15:15

"The confidential reporter informed Gardaí that he has lodged a complaint with GSOC concerning alleged harassment and is of the understanding that the Ombudsman Commission will investigate same on the termination/conclusion of our investigation. 15:15

Gardaí spoke to him with regard to an article that appeared in an edition of the Irish Times dated 11th December 2014. The reporter outlined that he was surprised by such an article and informed Gardaí that he had not spoken to Mr. Wallace and supplied such information. He informed Gardaí that a second whistleblower may have been responsible for forwarding such information for this article. 15:16

The confidential reporter was reassured by investigating Gardaí as to his determination to effectively investigate his allegations, that he will be treated with dignity and respect and informed if he feels that he has been harassed to report the matter immediately. 15:16

1 He was also once again offered the services of the  
2 employment assistance officer. "  
3  
4 were you concerned at any stage that he hadn't taken up  
5 that offer? 15:17

6 A. I was, Chairman, because -- and I don't know why he  
7 felt he couldn't, but at some stage along the road he  
8 did voluntarily come back and say, yes, I am now ready  
9 for that. Again, it's the only avenue open to the  
10 organisation internally. 15:17

11 414 Q. Yes.

12 A. It is a very professional service. It's one that I  
13 could recommend to anyone in the service and have done  
14 so in the past. On that basis, you know, given, I  
15 suppose, the stand he had taken, the context of the 15:17  
16 environment at that time, I felt he did need support,  
17 not just from my investigation team, who are very good  
18 at what they do, but you need experts in that area of  
19 welfare to really support people and identify any basis  
20 where they might need any assistance in the context of 15:18  
21 getting through that time.

22 415 Q. And then if we turn to page 10834. This is your letter  
23 dated 23rd December 2014 --

24 A. Yes.

25 416 Q. -- to Superintendent Walsh. It merely outlines what we 15:18  
26 have just opened --

27 A. Yes.

28 417 Q. -- in relation to the letter that was sent to you by  
29 Detective Superintendent Mulcahy.

1 A. That's correct.

2 418 Q. There is another update on 30th January 2015, it's at  
3 page 10804, please Mr. Kavanagh. It deals with an  
4 update and another conference. I mean, I'm not going  
5 to go through all the conferences you had, but you had 15:19  
6 conferences on a regular basis?

7 A. I did.

8 419 Q. Is that right?

9 A. I did, Chairman.

10 420 Q. And at conferences jobs are assigned and they are 15:19  
11 followed up?

12 A. Yes, indeed. These are conferences, there were jobs  
13 given out when I wasn't there, and there would be  
14 meetings held on a very regular basis by the team  
15 themselves, but I would on occasion call a conference 15:19  
16 of the full team, where I get a full update across the  
17 board and talk directly to the investigators in  
18 relation to lines of enquiries they were pursuing. It  
19 would have been at those junctures that I would have  
20 put pen to paper in relation to reporting it further up 15:19  
21 the line to the Commissioner.

22 421 Q. I think you point out in paragraph 3 that the state of  
23 play at that stage was 154 jobs/lines of enquiry have  
24 been created, 75 persons have been interviewed and  
25 there were a further 47 exhibits seized and had to be 15:19  
26 examined, is that right?

27 A. That's correct, Chairman.

28 422 Q. You point out in the last paragraph of that page:  
29

1 "A draft of the final report has been commenced and it  
2 has been determined by the investigation team that it  
3 is not possible to submit modular files pertaining to  
4 each allegation as previously stated due to the fact  
5 that the allegations made are common and interlinked to 15:20  
6 a number of persons named by the confidential reporter.  
7

8 The investigation team proposes to have all enquiries  
9 completed with a view to then interviewing the serving  
10 member of An Garda Síochána against whom the majority 15:20  
11 of allegations are made. Following the completion of  
12 this interview, a final all encompassing file will be  
13 completed as expeditiously as possible. It is expected  
14 that the interviewing of this member and a small number  
15 of outstanding witnesses will be completed before the 15:21  
16 end of February.  
17

18 I appreciate that this investigation is taking a  
19 considerable period of time and is involving  
20 considerable resources. However, the time and 15:21  
21 resources are required to definitively complete the  
22 investigation to the highest professional standard and  
23 to ensure the allegations are being properly and  
24 thoroughly investigated. "  
25

26 was it considered at one stage that you would deal with  
27 it on a modular basis?

28 A. That's correct. In effect, Chairman, you could look at  
29 what Garda Keogh gave us as being nine different

1 investigations.

2 423 Q. Yes.

3 A. And at the early stages, when not much groundwork had  
4 been done, it was felt prudent that we might just  
5 prioritise some of the modules and get them moving on. 15:21

6 424 Q. CHAIRMAN: Yes, well you could have taken operation  
7 Loki, for example, as a discrete unit?

8 A. That's correct, yes.

9 425 Q. CHAIRMAN: And you could have reported on that?

10 A. That's correct. 15:22

11 426 Q. CHAIRMAN: But the others tended to intermingle.

12 A. There were common lines and that frustrated that  
13 approach. But what did happen is that, you know, the  
14 report started to assemble itself in that the people  
15 working in the incident room had started to -- perhaps 15:22  
16 the report was starting to reach, you know, a maturity  
17 into some form of wording so that it could all come  
18 together.

19 427 Q. MR. MARRINAN: Then if we just go to page 10851 of the  
20 material. This is a further update, it's primarily 15:22  
21 concerning the welfare issues of the confidential  
22 reporter and the comments made in the Dáil by  
23 Mr. Wallace. It's dated the 1st April. You say, the  
24 second paragraph:

25 15:23

26 "By way of additional information, I wish to inform you  
27 that Detective Superintendent Mulcahy has been in  
28 regular contact with the confidential reporter both in  
29 person and on the phone. During all of these meetings

1 and conversations Detective Superintendent Mulcahy has  
2 enquired about the confidential reporter's welfare and  
3 made him aware of all services available to him if  
4 required. The confidential reporter has consistently  
5 indicated that he does not want to engage with any of  
6 the welfare services offered by An Garda Síochána.

15:23

7  
8 The most recent communication between Detective  
9 Superintendent Mulcahy and the confidential reporter  
10 was on today's date, 1st April 2015. Following this  
11 communication, Detective Superintendent Mulcahy is of  
12 the belief that the comments made by Michael Wallace TD  
13 in the Dáil on 31st March 2015 regarding the bullying  
14 and harassment of whistleblowers may have emanated from  
15 the above mentioned confidential reporter. In his  
16 conversation with Detective Superintendent Mulcahy, the  
17 confidential reporter intimated that he had no choice  
18 given recent interventions by Superintendent Murray in  
19 raising issues over his car tax and also the question  
20 of having him referred to the CMO for stress related  
21 illness."

15:23

15:24

15:24

22  
23 That goes back to the note to Superintendent Murray,  
24 where he referred to another --

25 A. Yes.

15:24

26 428 Q. It's quite clear that that's what it actually relates  
27 to?

28 A. Yes.

29 429 Q. Superintendent Murray.

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"Following this conversation, Detective Superintendent Mulcahy contacted Superintendent Murray and outlined the issues as raised by the confidential reporter.

15:24

At the end of today's communication the confidential reporter thanked Detective Superintendent Mulcahy for contacting him and expressed his satisfaction with the investigation to date.

15:24

With the investigation ongoing and further communications expected between Detective Superintendent Mulcahy and the confidential reporter, I have instructed Detective Superintendent Mulcahy to ensure that any welfare issues highlighted will be communicated to local management for attention as appropriate."

15:25

There's a further update at 10853, of the same day. It concerns --

15:25

A. That's actually referred to in the letter you just read out.

430 Q. Yes.

A. There were two reports. One an update on the actual investigation.

15:25

431 Q. Absolutely.

A. And the other was dealing with the issue of welfare.

432 Q. Yes. At that stage we note in the third paragraph that 191 jobs/lines of enquiries have been created, along



1 with 82 persons having been interviewed. Then you say:  
2  
3 "Members of the investigation team are expected to meet  
4 with two key witnesses central to investigation before  
5 the end of the current week to determine if they will 15:26  
6 cooperate with this investigation. Following these  
7 meetings, the investigation team propose to have all  
8 enquiries completed with a view to then interviewing  
9 the member of An Garda Síochána, Garda A, against whom  
10 the majority of the allegations have been made." 15:26  
11  
12 We then move forward in time in relation to a letter  
13 that you received from Detective Superintendent Mulcahy  
14 on 5th May of 2015. This is at page 10867. And it's a  
15 preliminary report surrounding an investigation into 15:27  
16 the allegations made under the Act. Now,  
17 Mr. McGuinness has already gone through this with  
18 Detective Superintendent Mulcahy. If we could just  
19 move forward to the end, at page 10871. This relates  
20 to the telephone evidence, I think, that had come in. 15:27  
21  
22 "On further discussion it was apparent that there now  
23 was a reasonable suspicion based on all information  
24 concerning the tipping off allegation that there  
25 existed a reasonable suspicion that Garda A may have 15:27  
26 committed a criminal act."  
27 A. Mm-hmm.  
28 433 Q. Now, attached to that is an appendices, I think it's a  
29 summary of the allegations as made by the confidential

1 reporter, at 10872.

2 A. Yeah.

3 434 Q. And then there's also a report, 10875, which is a  
4 report from Sergeant Andrew Haran to his  
5 superintendent, which is dated 9th September 2012;  
6 isn't that right? 15:28

7 A. Yes, I can see that.

8 435 Q. Yes. We have already opened this, at page 10881, it's  
9 a report of the 9th May. It says:

10

11 "Further to your correspondence on 9th May 2014."

12

13 That's the initial correspondence.

14

15 "Based on this analysis, the allegations by the  
16 confidential reporter, there now exists a reasonable  
17 suspicion that Garda A has committed a criminal act." 15:29

18

19 And then the further direction, 10882, we have opened  
20 that, on the 13th May, to continue it as a criminal  
21 investigation. Then further, a report on 21st May  
22 2015, that we have already opened, to Mr. Barrett. 15:29

23

24 Then if we go forward to 4th June 2015, at 10904, it  
25 says: 15:30

26

27 "I am directed by the Commissioner to forward the  
28 attached correspondence from the Secretary General for  
29 your information and necessary attention please.

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The Commissioner requires an updated report on your investigation to date, to include an indicative timeline for completion of the investigation file.

15:30

Previous reports submitted on this issue have already been submitted to the department, including GSOC and the Inspectorate."

It includes a letter from Noel Waters, at page 10905. It says:

15:31

"I refer to a matter raised by Deputy Mick Wallace concerning Garda whistleblowers during parliamentary questions on the 26th May.

15:31

The deputy made a number of allegations about how the Gardaí handled the allegations being made. The matter was returned to in subsequent Parliamentary Question about the appointment of a Chairperson to GSOC. I enclose extracts from the Dáil debates relevant to these Parliamentary Questions.

15:31

The Minister has asked me to seek your observations on the claims made by Deputy Wallace into how the cases of the two whistleblowers are being handled."

15:31

And that's a sent to the Garda Commissioner.

1 On 5th June 2015, we see a report that is sent to  
2 you -- sorry, a report that you sent to the private  
3 secretary, Superintendent Frank Walsh.

4 A. Yes.

5 436 Q. Then that's a -- 15:32

6 A. This is a response, Chairman, to the direction by the  
7 Commissioner in correspondence, which was in response  
8 to my looking for a direction in relation to the  
9 appointment criminal and discipline.

10 437 Q. Yes. 15:32

11 A. To which she directed that I would continue with the  
12 criminal investigation and make arrangements for a  
13 discipline -- someone to be appointed.

14 438 Q. CHAIRMAN: That was back over to Assistant Commissioner  
15 Kenny, who in turn -- yes. 15:32

16 A. Assistant Commissioner Kenny and whoever he appointed  
17 would need the basis on which I was seeking a  
18 discipline inquiry to begin and this is what this  
19 report outlines, and the different individuals who we  
20 felt there was a case against in relation to 15:33  
21 discipline.

22 CHAIRMAN: Yes.

23 439 Q. MR. MARRINAN: You outline there the allegations  
24 against Garda A?

25 A. Yes. 15:33

26 440 Q. There are nine allegations set down. We don't need to  
27 open them. These arose out of your enquiries?

28 A. That's right.

29 441 Q. Then you identify three other members of An Garda

1 Síochána.

2 CHAIRMAN: Sorry, Mr. Marrinan, what number is that  
3 letter, the 29th May, from Mr. Waters?

4 MR. MARRINAN: Sorry, I will just get the page.

5 CHAIRMAN: Hold on, we have it here. Thanks very much. 15:33  
6 10905. Thanks very much. Sorry.

7 MR. MARRINAN: Sorry, Chairman.

8 442 Q. I haven't opened all your updates to the Commissioner's  
9 office or all your conference notes. Are there any  
10 matters that you feel that I may have omitted in that 15:34  
11 chronology of your interactions with the Commissioner's  
12 office?

13 A. No, Chairman. Just, I was conscious at all times that  
14 there was huge interest in the work that we were  
15 performing, at political level as well as obviously as 15:34  
16 Garda Headquarters, who were dealing with other issues  
17 in relation to whistleblowers at the time and the  
18 context of welfare for whistleblowers. And I wanted to  
19 the Commissioner well informed in relation to what she  
20 had tasked me to do. Most of those would be coming in 15:34  
21 the normal course after a conference, some were  
22 prompted by a specific request coming through the  
23 department or whatever in relation to a specific  
24 request or Dáil questions etcetera.

25 443 Q. CHAIRMAN: And it was being suggested, the Commissioner 15:34  
26 herself was under pressure.

27 A. Absolutely.

28 444 Q. CHAIRMAN: And there was a suggestion -- sorry, there  
29 wasn't a suggestion, there was a statement that she was

1 being hypocritical, that she was making noises about  
2 being nice to whistleblowers but the reality on the  
3 ground, as exemplified by Garda Keogh's treatment, was  
4 that he was being bullied and harassed -- I'm sorry,  
5 targeted and discredited, you know, generally treated 15:35  
6 badly.

7 A. Yes.

8 445 Q. CHAIRMAN: That was really the context.

9 A. That's it, yes.

10 446 Q. CHAIRMAN: what do you say about the allegation that 15:35  
11 this was a hypocritical exercise in declaring that she  
12 was sympathetic to whistleblowers and actually, so to  
13 speak, overlooking the fact that people were being  
14 badly treated?

15 A. Nothing could be further from the truth, Chairman. I 15:35  
16 worked very closely with former Commissioner  
17 O'Sullivan, from 2014 up until she retired in 2018, and  
18 I don't think a day went by when I had interactions  
19 with her that whistleblowers wasn't raised in some  
20 format, whether it was the updating of policy to 15:36  
21 ensure, you know, that we were learning from mistakes,  
22 or the dealing with current cases, as it were, in  
23 relation to different members, including my own case  
24 and how those members being treated. And our her  
25 public pronouncements, and during all our conferences 15:36  
26 to senior management, which were held in the Garda  
27 college twice yearly, this was always on the agenda,  
28 something that was always raised in the context of  
29 raising awareness around the organisation, as to the

1 importance of ensuring that this legislation was  
2 properly --

3 447 Q. CHAIRMAN: But I mean, that was in the air, that sort  
4 of --

5 A. Yes.

15:36

6 448 Q. CHAIRMAN: I don't think I have actually done it any  
7 injustice, I think I have put it clearly, that was the  
8 essence of the --

9 A. It was, and possibly led to some frustration, knowing  
10 the efforts that were being made on one hand and then  
11 the maybe unfound commentary that was coming otherwise,  
12 that was, you know, pretty frustrating for those that  
13 were involved at the front line.

15:37

14 CHAIRMAN: Okay, thank you very much.

15 449 Q. MR. MARRINAN: If we could have page 7360 up on the  
16 screen, please. This is a complaint or a list of  
17 complaints that were made by Garda Keogh to the  
18 Director of Public Prosecutions and were copied to the  
19 Minister for Justice. He says:

15:37

20  
21 "A criminal investigation was conducted by Assistant  
22 Commissioner Ó Cualáin. However, I feel obliged to  
23 point out a number of serious and deliberate flaws with  
24 regard to this investigation."

15:37

25  
26 I will just give you an opportunity to respond to all  
27 these, because they are the basis of subsequent  
28 complaints and his evidence to the Tribunal.

15:37

29

1 "The fact that it took assistant commissioner one month  
2 to meet with myself, being his informant. There is an  
3 unofficial storeroom in Athlone Garda Station which  
4 believe contained strong tangible evidence which was  
5 deliberately emptied in and around the second week in 15:38  
6 May 2014 and evidence vital to the case disappeared."  
7

8 Do you want to -- you have already really dealt with  
9 it, but if you want to add anything further.

10 A. Yeah, just to say I think we have given the chronology 15:38  
11 of when I was appointed officially, when I got the  
12 file, what I did with it. I would say that I treated  
13 it with the utmost importance and dealt with it very,  
14 very efficiently and ensured that I had a team or the  
15 semblance of a team in place by the 15th, which was 15:38  
16 just after I had a chance to read the affidavit myself  
17 and establish the seriousness of what was being said.  
18

19 In relation to the storeroom, I think Detective  
20 Superintendent Mulcahy dealt with that. The moment we 15:39  
21 had evidence from Garda Keogh in relation to his  
22 statement that this was the case, that place was  
23 searched. But as Detective Superintendent Mulcahy  
24 stated yesterday, you know, if the confidential  
25 reporter's issues had not been highlighted in the 15:39  
26 national press at around the same time, we may have had  
27 a more successful start to our investigation in the  
28 context of what we might have been able to find,  
29 etcetera in relation to items that he mentioned and



1           telephones etcetera.

2   450   Q.   The second complaint is:

3

4           "In or around 10th June 2014, the suspect garda had his  
5           state mobile seized. This mobile phone had been wiped   15:40  
6           of its information, which could have been potentially  
7           vital and unlike any other criminal investigation where  
8           evidence is seized, the suspect garda was given a  
9           replacement state mobile phone. It is worth noting  
10          that most sergeants in An Garda Síochána do not have   15:40  
11          state mobile phones."

12

13          I think we have dealt with this issue, but is there  
14          anything else you want to say in relation to it?

15         A.   I think the first point, I have dealt with that   15:40  
16          already.

17   451   Q.   Yes.

18         A.   It relates to the -- the question of the wiping, it  
19          doesn't -- that's a matter for Declan, and he dealt  
20          with it yesterday, I think, satisfactorily in my view.   15:40

21   452   Q.   Then paragraph 3 relates to the suspension. I think we  
22          have gone through that in great detail. Is there  
23          anything further you want to say about that?

24         A.   No, I think I have made it as clear as I can.

25   453   Q.   And then 4:   15:40  
26

27          "During the investigation statements were taken by  
28          members while they were in Athlone Garda Station."  
29

1 Is there anything more you want to say about that? I  
2 think we have dealt with that.

3 A. I think I have, yes, fully ventilated that as well.

4 454 Q. It says:

5

6 "I am aware that the suspect garda did not leave the  
7 Garda station while the investigation team were  
8 present. He was able to see every person who was  
9 called in to make statements and in a position to  
10 eyeball members of An Garda Síochána. I believe this  
11 was deliberately facilitated in an effort to suppress  
12 honest statements being made by way of informal  
13 intimidation."

15:41

15:41

14

15 Did anybody bring to your attention any issue of people  
16 being eyeballed by Garda A before they made their  
17 statements?

18 A. The person who brought this to my attention was Garda  
19 Commissioner, himself, in relation to his unease at the  
20 statements being taken then Athlone. And I have to say  
21 that there was nothing, I heard no reports through the  
22 investigation team or myself that any individual came  
23 forward with that information in the context of being  
24 eyeballed or anything of that nature.

25 455 Q. CHAIRMAN: He says it was deliberately facilitated for  
26 the purpose of suppressing honest statements.

15:42

27 A. Again, Chair, all I can say is that my team --

28 456 Q. CHAIRMAN: I mean, the only reason I'm asking is that  
29 it's actually stated there.

1 A. Yes. What I would say is, Garda A was entitled to be  
2 there, in the context of that was his workplace.  
3 whether he was on or off duty, gardaí at all times come  
4 and go from Garda stations, even when they're off duty.  
5 what his tensions were, I can't say. 15:42

6 457 Q. CHAIRMAN: No, the suggestion is that you deliberately  
7 facilitated it.

8 A. I completely reject that, Chairman.

9 458 Q. CHAIRMAN: That is what is being stated.

10 A. I didn't. 15:42

11 CHAIRMAN: Okay.

12 459 Q. MR. MARRINAN: Number 5 there:  
13  
14 "A crucial witness had come forward with vital  
15 information. The investigation team met this man." 15:42  
16  
17 He was from Galway.  
18  
19 "If around 3rd July 2014 but did not go back to speak  
20 with him for about six months as he did not trust the 15:43  
21 investigation team and was in fear of the suspect Garda  
22 who was still armed and on duty."  
23  
24 You were here yesterday.

25 A. I was. 15:43

26 460 Q. I think Detective Superintendent Mulcahy dealt with  
27 that.

28 A. He did, Chairman.

29 461 Q. In considerable detail?

1 A. That was a matter for the investigation team, Chairman.

2 462 Q. Yes.

3 A. I think the superintendent dealt with it, yes.

4 463 Q. Number 6:

5

15:43

6 "One of the allegations involves the suspect garda  
7 getting an unregistered informant to plant drugs in a  
8 car. On 7th December 2014 the said unregistered garda  
9 informant was arrested by his handler, the suspect  
10 garda, for possession of approximately €4,000 worth of 15:43  
11 heroin. This now put the garda under investigation in  
12 a position of influence over another suspect witness in  
13 the case."

14

15 Were you aware of that during the course of --

15:43

16 A. I wasn't aware of that, Chairman. No, I wasn't. I  
17 have to say, when I saw it written here, it was the  
18 first time I saw any reference to it.

19 464 Q. You heard Detective Superintendent Mulcahy, this issue  
20 arose --

15:44

21 A. Yes.

22 465 Q. -- in a letter that had been sent by Garda Keogh to  
23 Detective Superintendent Mulcahy but Detective  
24 Superintendent Mulcahy had no recollection of receiving  
25 the letter?

15:44

26 A. All letters, every correspondence that Detective  
27 Superintendent Mulcahy received from any source in  
28 relation to the investigation was brought to my  
29 attention and any telephone conversations, any text

1           messaging that happened, was brought to my attention.  
2           This doesn't look familiar to me at all in the context  
3           of what was shown to me at that time.

4   466   Q.   Number 7 there is:

5  
6           "Around 24th April 2015, the allegations were put to  
7           the garda under investigation, where he was given over  
8           a month to seek legal advice. Cautioned statements  
9           were taken from him between 16th June 2015 to 24th June  
10          2015. This is unusual, as in any other criminal  
11          investigation the suspect would be arrested and  
12          interviewed without delay."

15:44

15:45

13  
14          well, you've already given evidence in relation to  
15          that.

15:45

16          A.   I have, Chairman, yes.

17   467   Q.   Are you happy to leave it at that?

18          A.   I have nothing to add to that, Chairman, no, apart from  
19          what I have said already.

20   468   Q.

21          "8. It is my understanding that the investigation team  
22          could not retrieve text messages over two years from  
23          the seized state mobile phone. Text messages for the  
24          period around 2014 are vital and I do not know if every  
25          effort was made to retrieve them."

15:45

15:45

26  
27          I think we've dealt with that and we've looked into  
28          that.

29          A.   I think Detective Superintendent Mulcahy dealt with

1 that yesterday.

2 469 Q. Yes.

3 A. As well as Detective Inspector Coppinger, if I can  
4 recall, the efforts that were made in relation to all  
5 the enquiries that they carried out.

15:45

6 470 Q. Then:

7

8 "9. In June 2015 the suspect garda stopped a witness  
9 in the case without having committed an offence and  
10 checked her tax and insurance and asked for her drivers  
11 licence. I believe this was an attempt to intimidate  
12 the witness."

13

14 There doesn't seem to be any complaint in relation to  
15 that against you. Then he goes on:

15:46

16

17 "I also wish to point out that while the investigation  
18 was ongoing for over a year, I had to work in the same  
19 station and half the time on the same shift."

20

15:46

21 CHAIRMAN: You were quite right, Mr. Marrinan. You  
22 were quite right about on the same shift.

23 471 Q. MR. MARRINAN: "As the garda under investigation who  
24 was subject to my complaint. Since I joined the force  
25 in 1999 I had...."

15:46

26

27 CHAIRMAN: Sorry, well that doesn't really concern  
28 complaints in respect of the investigation.

29 MR. MARRINAN: He goes on to say:

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"I have been subject to five internal investigations to date."

I suppose just to wrap things up in relation to this, 15:46  
can you say how you view Garda Keogh's criticisms of  
your investigation in the first instance and secondly,  
of you and the suggestion that in some way you tried to  
sabotage the investigation?

A. Well, I have to reject that allegation out of hand. I 15:47  
put every effort and every ounce of energy I had over a  
very busy period of time into ensuring that everything  
in relation to Garda Keogh's issues that he reported to  
us were fully investigated. And during that time to  
ensure that Garda Keogh's own welfare issues were fully 15:47  
supported. I can identify with some of the  
frustrations that Garda Keogh would have felt, having  
been an experienced investigator himself.

472 Q. Yes.

A. And possibly being on the outside of that, and looking 15:47  
over the wall, as it were, and feeling frustrated that  
things weren't moving at a pace that he would like or  
maybe in a direction that he would like. But all I can  
do as an investigator is to follow the evidence that is  
there. And that is what our team did. With due 15:48  
respect to all the rules of law and fair procedure,  
that is what I was in charge of and that is how I did  
my business. So, while I can empathise with the  
confidential reporter and maybe some frustrations that

1 he felt along the way, you know, I have to do my job  
2 within the parameters of the law that is set out. And  
3 that is what I did, and my team.

4 473 Q. Does that empathy stretch to perhaps the unfolding of  
5 events? Because it appears whatever happened in 15:48  
6 relation to the Olivia O'Neill and her interaction with  
7 Garda Stephanie Treacy, it does appear that that event  
8 and the Liam McHugh incident were effectively  
9 allegations that were being made against Garda Keogh,  
10 isn't that right? 15:49

11 A. That's correct, Chairman.

12 474 Q. So very shortly after having made a protected  
13 disclosure, he is then the subject-matter of enquiry by  
14 his superiors, isn't that right?

15 A. That's correct, yes. 15:49

16 475 Q. Assuming for the moment that he is not the author of  
17 his own downfall in that regard and not knowing whether  
18 there was some skulduggery on the ground in relation  
19 to Liam McHugh, but it does appear that he is then the  
20 focus of enquiry locally in Athlone Garda Station? 15:49

21 A. I can't say, Chairman, whether or not he ever became  
22 the focus of enquiry in relation to the last two  
23 matters you mentioned or whether statements were ever  
24 made in that regard. I can't say that.

25 476 Q. CHAIRMAN: Do you know anything about those? 15:50

26 A. No. Apart from my own involvement with them, which was  
27 to deal with something that was put before me by the CR  
28 and on his behalf.

29 477 Q. CHAIRMAN: I mean obviously if he had other things on



1 his mind, which might have been justified or might not  
2 have been justified, clearly it's not difficult to  
3 imagine that it would have been a cause of pressure.

4 A. Yes.

5 478 Q. CHAIRMAN: Extra pressure, unnecessary pressure, if 15:50  
6 they weren't justified.

7 A. Yes.

8 479 Q. CHAIRMAN: So I suppose that's really the essence of  
9 it.

10 480 Q. MR. MARRINAN: what I am really asking you about, you 15:50  
11 know, I mean these weren't just matters that he held  
12 himself and his concerns, he expressed them to Judge  
13 McMahon. We know that Judge McMahon contacted the  
14 Commissioner and was concerned about more than one  
15 enquiry taking place. 15:51

16 A. Yes.

17 481 Q. And, you know, you have given very clear evidence in  
18 relation to your position; namely, that you weren't  
19 going to investigate complaints Garda Keogh, that you  
20 were there to investigate complaints that he had made. 15:51

21 A. Yes.

22 482 Q. But is there a gap there in relation to this that could  
23 be filled? Have you any constructive --

24 A. No, I don't think -- anything Garda Keogh brought to  
25 our attention, he was coming with a genuine sense of, 15:51  
26 you know that this is something that's out there, that  
27 was affecting him. And he deserved to be listened to.  
28 And I think that was -- from where I sat, I listened to  
29 everything he had to say in relation to the specific

1 item that I was charged with, but outside and above  
2 that, I listened to everything else as well, or my team  
3 did on my behalf. And we did as much as we could in  
4 the context of ensuring that we could reassure him in  
5 some sense that, you know, we were there for his good. 15:52  
6 We were there to ensure that we got to a successful  
7 conclusion in relation to our enquiries.

8 483 Q. And each decision you made along the way, you explained  
9 it to him and he seemed at the time to understand the  
10 rationale for it? 15:52

11 A. That was the consistent message coming back, you know,  
12 that he was happy with the investigation, that he was  
13 happy with the progress, and then all of a sudden he'd  
14 have issues, but once they were addressed or he was  
15 talked to again by, for the most part, Detective 15:52  
16 Superintendent Mulcahy, they tended to -- you know, he  
17 tended to be happy again that things were being done.  
18 So it required that level of interaction and  
19 reassurance.

20 484 Q. Yes. 15:52

21 A. To ensure that he felt that we weren't just dealing  
22 with this in a flippant manner or that we weren't  
23 taking him seriously.

24 485 Q. Yes. Thank you very much.

25 A. Thank you. 15:53

26 486 Q. Sorry, there was a reference that I made, which was  
27 brought to my attention, an entry that was made by  
28 Garda Keogh in relation to his chief superintendent?

29 A. Yes.

1 487 Q. I referred to the fact that it was Chief Superintendent  
2 Curran who was the person identified?  
3 A. Yes.  
4 488 Q. But in fact that's not correct. It was a former --  
5 CHAIRMAN: It was the named officer who was the 15:53  
6 previous, is that correct?  
7 MR. MARRINAN: well, he wasn't named, but it was the  
8 previous officer who was a superintendent but had been  
9 promoted at that stage to chief superintendent rank.  
10 CHAIRMAN: Hold on. Is that right, Mr. Kelly. 15:54  
11 MR. KELLY: I am very grateful to Mr. Marrinan for  
12 doing that. Just for the purposes of your note,  
13 Chairman, the diary entry to which Mr. Marrinan was  
14 referring this witness was Nick Keogh's entry of the  
15 15th May '14. It's page 13256. 15:54  
16 CHAIRMAN: 13256.  
17 MR. KELLY: It was suggested --  
18 CHAIRMAN: Hold on a second. Give me the date again,  
19 Mr. Kelly.  
20 MR. KELLY: According to my scribbled handwriting, it's 15:54  
21 15th May '14.  
22 CHAIRMAN: I know the reference, I know the one you're  
23 talking about, 15th May '14, yes.  
24 MR. KELLY: Yes.  
25 CHAIRMAN: And what you want to say is that -- 15:54  
26 MR. KELLY: It's not a big deal.  
27 CHAIRMAN: No, no, but just for accuracy.  
28 MR. KELLY: Mr. Marrinan suggested that it was Chief  
29 Superintendent Curran.

1 CHAIRMAN: Yes.

2 MR. KELLY: In fact it was his predecessor.

3 CHAIRMAN: It wasn't, it was the previous --

4 MR. KELLY: I think Glacken was the blank.

5 CHAIRMAN: I don't think there is any big deal about 15:55  
6 that because there's no allegation.

7 MR. KELLY: No.

8 CHAIRMAN: It's just a matter of historical accuracy.  
9 Thank you very much, Mr. Kelly, for that.

10 15:55

11 END OF EXAMINATION

12

13 CHAIRMAN: I assume you don't want to spend six  
14 machines cross-examining, Mr. Kelly, and I'm perfectly  
15 sure that Commissioner Ó Cualáin is probably quite 15:55  
16 happy to leave it until tomorrow.

17 MR. KELLY: That's fine by me.

18 CHAIRMAN: If that's fine by everybody, then that's  
19 fine by everybody.

20 MR. MARRINAN: Chairman, it would be helpful perhaps if 15:55  
21 we could have a rough indication how long all the  
22 parties are going to be.

23 CHAIRMAN: I am sure the commissioner would like to  
24 know that. Any idea, Mr. Kelly? Nobody wants to  
25 constrain you in any way, but it would be helpful. 15:55

26 MR. KELLY: Yeah.

27 CHAIRMAN: If it's possible to do so.

28 MR. KELLY: what I am going to do is have a think  
29 overnight, it has been my general experience if given

1 time overnight, it probably speeds things up.

2 CHAIRMAN: Yes.

3 MR. KELLY: I can't honestly say, but I don't think I'm  
4 going to be --

5 CHAIRMAN: Let me put it this way, will you more than a 15:56  
6 day.

7 MR. KELLY: No.

8 CHAIRMAN: Thank you. Sorry, I don't mean to be rude  
9 in that or brusque, but I would be hoping, Mr. Kelly,  
10 that we would complete the Commissioner's evidence 15:56  
11 tomorrow.

12 MR. KELLY: well I think that should be possible.

13 CHAIRMAN: It should be a reasonable expectation, so  
14 that we can finish with him and finish this week's  
15 work. 15:56

16 MR. KELLY: If it's of help to you and the witness, I'm  
17 fought going to traipse over areas that have already  
18 been traipsed over.

19 CHAIRMAN: Thanks.

20 MR. KELLY: I may have to touch some clearly because 15:56  
21 the examination has been very thorough.

22 CHAIRMAN: I appreciate that. I don't want to  
23 constrain you in any way. Yes.

24 MR. MURPHY: Chairman, subject to Mr. Kelly's  
25 cross-examination, I propose to be very brief. 15:56

26 CHAIRMAN: Thank you very much. I suppose, unless it  
27 was hugely convenient, I propose to sit on a bit if  
28 necessary, and you might want me to do that at  
29 lunchtime, I am quite happy to do either or both. But

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I would be kind of keen, if it was possible within reason and if it only took an extra few minutes, then I would prefer to do that. All right. And I am sure the commissioner would prefer to do that as well. Which is more to the point.

15:57

THE WITNESS: I would, Chairman.

CHAIRMAN: Okay, thank you very much.

THE HEARING THEN ADJOURNED UNTIL FRIDAY, 14TH FEBRUARY  
2020 AT 10:30AM

15:57

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