

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 MONDAY, 17TH FEBRUARY 2020 - DAY 140

140

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

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4. DETECTIVE INSPECTOR MICHAEL COPPINGER
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10. RETIRED ACTING COMMISSIONER DONAL Ó CUALÁIN
11. RETIRED COMMISSIONER NOIRÍN O'SULLIVAN
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1 THE HEARING RESUMED, AS FOLLOWS ON MONDAY, 17TH  
2 FEBRUARY 2020:

3  
4 CHAIRMAN: Good morning.

5 MR. MARRINAN: Chairman, the first witness this morning 10:36  
6 is Assistant Commissioner Anne Marie McMahon.

7 CHAIRMAN: Thanks very much. Come up, commissioner.  
8 Thank you very much.

9  
10 ASSISTANT COMMISSIONER ANN MARIE McMAHON, HAVING BEEN 10:37  
11 SWORN, WAS DIRECTLY-EXAMINED BY MR. MARRINAN, AS  
12 FOLLOWS:

13  
14 THE WITNESS: Assistant Commissioner Anne Marie  
15 McMahon. 10:37

16 CHAIRMAN: Thanks so much. Sit down please,  
17 commissioner, thank you. Good morning.

18 THE WITNESS: Good morning, Chairman.

19 1 Q. MR. MARRINAN: Commissioner, would you in the first  
20 instance just give a brief summary of your career in An 10:37  
21 Garda Síochána to date?

22 A. Yes. I joined An Garda Síochána in 1986. My first  
23 station was Coolock in Dublin. After a year I  
24 transferred to Henry Street in Limerick and I was there  
25 until 1995. Most of my service as a Guard was in 10:37  
26 Limerick city. In 1995 I was promoted sergeant and I  
27 was transferred to the Garda college in Templemore,  
28 working in the student probationer school. I was there  
29 for two years, after which I returned to Limerick and I

1 was stationed in Mayorstone and Henry Street. I was  
2 there for five years and then I was promoted inspector.  
3 My first station as inspector was Newcastle west, after  
4 which I came in to Henry Street, assisting the  
5 superintendent there. I was then promoted to 10:38  
6 superintendent in 2008. My first station was Bruff in  
7 County Limerick and then Roxboro Road in Limerick. In  
8 2010 I was promoted chief superintendent. I was  
9 assigned to the Garda Community Relations Bureau in  
10 Harcourt Square, in addition to having responsibility 10:38  
11 for training at the Garda college.

12  
13 in 2016 I was promoted assistant commissioner and I was  
14 assigned to the Southern Region. At that time the  
15 Southern Region was Cork, Kerry and Limerick. I was 10:39  
16 also assigned responsibility for the Western Region for  
17 a period of about a year and a half. And the Western  
18 Region is Clare, Galway, Mayo, Longford and Roscommon  
19 at that point. And I remain in the Southern Region to  
20 date. 10:39

21 2 Q. CHAIRMAN: So you had a sojourn, so to speak, in the  
22 Western Region, but your basic assignment is to the  
23 Southern Region?

24 A. I was still assigned to the southern Southern Region  
25 but I had additional responsibility at the western 10:39  
26 Region.

27 3 Q. CHAIRMAN: Okay. So basically it's is Southern Region  
28 since 2016?

29 A. Yes.

1 CHAIRMAN: Thank you very much.

2 4 Q. MR. MARRINAN: Now, you provided a statement to the  
3 Tribunal, it's at page 5994 of the materials. It is  
4 dated 10th April 2019. I think you document, if we  
5 just look at the first page there, on 26th April 2017 10:40  
6 you were appointed by Deputy Commissioner John Twomey  
7 to conduct a discipline investigation in matters  
8 alleged by Garda Keogh against a number of members of  
9 An Garda Síochána and these members included Garda A  
10 amongst three others, isn't that right? 10:40

11 A. That's correct.

12 5 Q. Now, I think if we can look at page 6006 of the  
13 material. Sorry, if we look at 6005 in the first  
14 instance. This is the letter of appointment. If we  
15 could just scroll down, Mr. Kavanagh, please. 10:40

16 MR. MURPHY: Chairman, I wonder would it be possible  
17 for the witness to be given the hard copy of the  
18 folder.

19 CHAIRMAN: Yes.

20 MR. MARRINAN: Certainly. 10:41

21 MR. MURPHY: Thank you.

22 CHAIRMAN: Do you have the hard copy folder of this?

23 THE WITNESS: Yes.

24 MR. MURPHY: I see. Chairman, I beg your pardon.

25 CHAIRMAN: No, that's fine. Thank you, Mr. Murphy. 10:41

26 6 Q. MR. MARRINAN: It's from Deputy Commissioner Twomey,  
27 addressed to you as assistant commissioner, the  
28 Southern Region:  
29



1 "You are hereby appointed pursuant to section 23 of the  
2 Garda Síochána (Discipline) Regulations 2007 to  
3 investigate the allegations as per the attached form  
4 1A31s a in respect of..."

10:41

6 Then it lists a number of people, including Garda A,  
7 isn't that right?

8 A. That's correct.

9 7 Q. "Attached report on behalf of Assistant Commissioner  
10 Nolan, recently retired, is also attached for your  
11 information. Additional documentation on this matter  
12 is held at the office of assistant commissioner, Dublin  
13 Metropolitan Region."

10:41

14  
15 Isn't that right?

10:41

16 A. That's correct.

17 8 Q. Then if we can look over at page 6006. This is the  
18 form 1A31 in respect of Garda Keogh. Then if we scroll  
19 down the page to (a):

20  
21 "Brief details of the acts or conduct alleged."

10:42

22  
23 There we see a number of items going over to the second  
24 page, at 6007. Nine different complaints, is that  
25 right?

10:42

26 A. That's correct, Chairman.

27 9 Q. That's signed by the appointing officer and is dated  
28 26th April 2017. So you were taking over an  
29 investigation that had already been commenced in 2015

1 by Assistant Commissioner Jack Nolan, isn't that right?

2 A. That's correct, Chairman.

3 10 Q. Now, I will return to that in short form shortly. But  
4 in any event, on 2nd February 2017 you were aware that  
5 Superintendent Michael Lacey and Detective Inspector 10:43  
6 Seamus Maher had met by appointment with Garda Keogh to  
7 seek his consent from him to use statements previously  
8 made by him to Detective Superintendent Declan Mulcahy  
9 for the purpose of the internal discipline  
10 investigation, is that right? 10:43

11 A. That's correct.

12 11 Q. You then go on at page 5995 --

13 CHAIRMAN: Sorry just remind me, what page is 2nd  
14 February '17, Mr. Murrinan, the request? If you have  
15 it handy, it doesn't matter if you don't. 10:43

16 MR. MARRINAN: The request is at page 5994.

17 CHAIRMAN: Thank you very much.

18 MR. MARRINAN: Is where she alludes to. I will get the  
19 actual page number.

20 CHAIRMAN: Don't worry in the slightest, I didn't have 10:44  
21 a note of it.

22 12 Q. MR. MARRINAN: You then go on at the bottom of page  
23 5994 of the material:

24

25 "On the 6th March 2018 Detective Inspector Seamus Maher 10:44  
26 spoke to Garda Keogh via telephone call. Further  
27 attempts to engage with Garda Nicholas Keogh on my  
28 behalf have not been successful."  
29

1 You say that you have never interacted with Garda  
2 Keogh. You will be aware of the fact that during the  
3 course of his evidence one of the complaints that Garda  
4 Keogh has, is that first of all he couldn't ascertain  
5 who it was who had taken over the investigation from 10:44  
6 Assistant Commissioner Nolan. What do you say in  
7 relation to that?

8 A. Chairman, I was appointed under the discipline  
9 regulations on the 26th April. So my sole focus was  
10 carrying out that investigation. I did, however, seek 10:45  
11 clarification or confirmation, in fact, that the people  
12 being investigated and the person who had made the  
13 complaint, Garda Keogh, asked if they were notified of  
14 my appointment. But my sole focus was on carrying out  
15 the investigation. There are other processes in place 10:45  
16 in terms of communicating with somebody who makes a  
17 confidential report and I wasn't in -- that person  
18 wasn't me.

19 13 Q. CHAIRMAN: Did you say you asked whether all relevant  
20 parties -- 10:46

21 A. Yes.

22 14 Q. CHAIRMAN: -- including that complainant, i.e., as we  
23 now know, Garda Keogh, had been notified?

24 A. Yes.

25 15 Q. CHAIRMAN: And you were reassured? 10:46

26 A. I got confirmation that the guards who were subject of  
27 investigation were notified. I didn't get any  
28 confirmation that Garda Keogh was notified.

29 CHAIRMAN: Okay.

1 16 Q. MR. MARRINAN: You continue with your statement then  
2 and you point out that on 7th June 2018 you completed  
3 your discipline investigation into matters concerning  
4 three other of the parties but not Garda A, isn't that  
5 right? 10:46

6 A. That's correct, Chairman.

7 17 Q. I think that you forwarded that investigation file to  
8 the office of the deputy commissioner, Governance and  
9 Strategy, in Garda Headquarters for their  
10 recommendations as deciding officer. I think on 9th 10:46  
11 July 2018 you were informed by the Deputy Commissioner  
12 Governance and Strategy that all matters pertaining to  
13 those three parties were finalised and a board of  
14 inquiry was not warranted, isn't that right?

15 A. That's correct. 10:47

16 18 Q. I think on 27th February 2019 you completed your  
17 discipline investigation into matters concerning Garda  
18 A and forwarded your investigation file to the Office  
19 of the Deputy Commissioner, Governance and Strategy at  
20 Garda Headquarters for a final determination to be made 10:47  
21 in respect of your recommendations, isn't that right?

22 A. That's correct.

23 19 Q. I think at the time of writing of your statement to the  
24 Tribunal, you weren't aware of the decision of  
25 Assistant Commissioner Sheehan, isn't that right? 10:47

26 A. That's correct.

27 20 Q. If we could perhaps just look at your report in the  
28 first instance, it's at page 11685 of the material. If  
29 we look at 11687, which is the index to the documents.

1 we see chapter 1 concerns alleges breaches. Then it  
2 goes through the history and to item number 17, dealing  
3 with statements to the investigation team. If we can  
4 just look then at page 11869 of the material, and  
5 there's a chapter headed "alleged breaches". At 1.2 10:48  
6 there we see that you outline the nine alleges breaches  
7 in respect of Garda A. The first one being an:

8  
9 "Allegation Garda A frustrated the investigation of a  
10 public order offence on 14th September 2008. DPP 10:49  
11 directed phone of Ms. B be seized. Alleged Garda A met  
12 with Ms. B and her boyfriend to --"

13 CHAIRMAN: I think it means to tell them.

14 21 Q. MR. MARRINAN: Yes. " -- to tell them to dispose of  
15 the phones. " 10:49

16  
17 You then, if we go forward to 11870, under chapter 2  
18 there "appointment of appointing/investigating  
19 officers", under 2.1:

20 10:49  
21 "On 15th June 2015, Superintendent Frank Walsh, private  
22 secretary to the Commissioner, advised Assistant  
23 Commissioner Kenny, Western Region, that he was  
24 nominated as appointing officer under the regulations  
25 to investigate the allegations as set out in then 10:50  
26 Assistant Commissioner Ó Cualáin's report dated 5th  
27 June 2015. "

28  
29 we have already seen that last week. I think you note

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that:

"On 25th June 2015, AC Kenny notifies AC Jack Nolan, Southern Region, on form 1A31, that he is appointed as investigating officer for the alleged breaches as outlined against Garda A."

10:50

Then at 2.3 you point out, on 26th April 2017, Deputy Commissioner Twomey notified you that you were being appointed as investigating officer, thus replacing retired Assistant Commissioner Jack Nolan, who retired on 20th April 2017, having not had adequate time to complete the investigation.

10:51

If we then turn over to page 11871 of the material, we see the timeline of the discipline investigation. If we just go through this, you'll be aware of the fact that one of Garda Keogh's complaints is the length of time that this process took and I think there were a number of issues that arose during the course of the investigation file, in the first place with Assistant Commissioner Nolan and then subsequently with you, isn't that right?

10:51

10:51

A. Yes, Chairman. From my appointment time of 26th April 2017, I was appointed to investigate 13 allegations in respect of four serving members of An Garda Síochána. There was 28 conferences held in respect of the investigation. I attended 12 of those conferences. There were 110 statements gathered and there was

10:52

1 another 27 individuals approached, and for one reason  
2 or another they didn't want to cooperate or didn't want  
3 to make a statement. There was a considerable amount  
4 of material, a desktop review essentially of material  
5 that was provided to us from the criminal 10:52  
6 investigation, which had to be gone through, in  
7 addition to the material gleaned and gathered by the  
8 discipline investigation.

9  
10 There were a number of clarifications that I sought in 10:53  
11 terms of whether or not I could use the material  
12 gathered by Assistant Commissioner Nolan. And once all  
13 that was clarified, which was September 2017, I sought  
14 to appoint four additional members to the team, because  
15 I wanted to expedite the matter and wanted to get it 10:53  
16 complete as quickly as possible. During the course of  
17 the investigation then on three occasions I sought  
18 legal advice for different matters. In addition to  
19 that, there were two separate issues that arose that I  
20 referred to the appropriate authorities for further 10:53  
21 examination.

22 Q. If we could just go through the chronology here, just  
23 very briefly, because it will become clear what the  
24 issues were as you went along. If we could just deal  
25 with the matters that you have set out in your report 10:53  
26 at page 11871, during the period of time that Assistant  
27 Commissioner Nolan had the reins of the investigation.  
28 You set out there at 4.1 the background; at 4.2, the  
29 first instance where the concerns were raised by

1 Assistant Commissioner Ó Cualáin in respect of the  
2 provision of a complete investigation file and that  
3 legal advice had been sought. You then at 4.3 set out  
4 a detailed timeline of the lifecycle of the  
5 disciplinary inquiry to date. The 5th June 2015 is  
6 when Assistant Commissioner Ó Cualáin wrote to the  
7 Commissioner's office stating that there may be  
8 breaches of Garda discipline regulations arising from  
9 his investigation overseen by him.

10:54

10  
11 Specific details of the alleged breaches are contained  
12 within that correspondence. You note that on 15th June  
13 2015 Superintendent Frank Walsh then corresponded with  
14 Assistant Commissioner Kieran Kenny, appointing him as  
15 appointing officer. Then on the 26th June Assistant  
16 Commissioner Kenny corresponds with Assistant  
17 Commissioner Nolan, informing him that he has been  
18 appointed as investigating officer. And then, the 22nd  
19 July, Assistant Commissioner Nolan forwards form 1A32  
20 to the four parties who are the subject-matter of his  
21 inquiry. Then on the 28th July Assistant Commissioner  
22 Nolan informs executive director Human Resources of the  
23 appointment and the fact that a full copy of the  
24 criminal investigation file is awaited.

10:55

10:55

10:55

25  
26 Then if we go down, on the 5th August then Commissioner  
27 Ó Cualáin corresponded with the Assistant Commissioner  
28 Nolan, outlining concerns that he had over the release  
29 of the full investigation file for the purposes of a

10:56



1 disciplinary inquiry and suggests a meeting is convened  
2 to discuss the matter, which is then held on 10th  
3 August 2015 at Garda Headquarters.

4  
5 On the 14th August the Assistant Commissioner Nolan 10:56  
6 wrote to the private secretary to the Commissioner,  
7 suggesting that the confidential recipient should be  
8 made aware of his appointment and that permission  
9 should be sought to speak with the confidential  
10 reporter. 10:57

11  
12 A number of issues then arose and correspondence that  
13 you set out at page 11873 went back and forth. If we  
14 go then to 11874 of the material, at item number 23:

15 10:57  
16 "9th December 2015, Assistant Commissioner Kenny  
17 corresponded with Assistant Commissioner Nolan, stating  
18 that there is no issue with the discipline  
19 investigation progressing and the recent media reports  
20 were noted. It was also noted that none of the members 10:57  
21 named in the alleged breaches objected to the  
22 appointment of Assistant Commissioner Nolan, nor did  
23 the confidential reporter."

24  
25 You then go on to 11875, there's obviously 10:57  
26 correspondence that goes back and forth. And this  
27 concerns the use of statements that were taken during  
28 the course of Assistant Commissioner Ó Cualáin's  
29 investigation, isn't that right?

1 A. That's correct.

2 23 Q. I think if we go to item number 34 there, on the 18th  
3 April:

4  
5 "Assistant Commissioner Nolan notifies Deputy 10:58  
6 Commissioner Ó Cualáin that all impediments have been  
7 clarified in respect of the criminal investigation file  
8 and that a copy is now requested to fully brief the  
9 discipline inquiry team."

10  
11 I think over the page, at 11876, at item 35 there, we 10:58  
12 see that:

13  
14  
15 "On 18th April 2016 Deputy Commissioner Ó Cualáin 10:58  
16 directs that only witness statements contained within  
17 the criminal investigation file will be made available  
18 to the discipline inquiry and to liaise with Internal  
19 Affairs to obtain same."

20  
21 If you go down to 40, we see on the 4th May, Detective 10:59  
22 Superintendent Mulcahy -- there is an e-mail from  
23 Assistant Commissioner Nolan directing that all witness  
24 statements are to be provided.

25  
26 Then, on 16th May 2016, Assistant Commissioner Nolan 10:59  
27 corresponds with Detective Superintendent Mulcahy,  
28 stating that no further delay can be accepted and all  
29 witness statements should be provided.

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And then we have, at item number 42:

"17th May 2016, Detective Superintendent Mulcahy provides all witness statements to the Assistant Commissioner Nolan via e-mail."

10:59

We can see there has been a delay of almost a year during which problems arose in relation to the use of statements that were taken during the course of Assistant Commissioner Ó Cualáin's investigation, isn't that right?

11:00

A. That's correct, Chairman.

24 Q. They're not matters that have you any responsibility for, but legal advice was sought from the Head of Legal Affairs, Mr. Ken Ruane, isn't that correct?

11:00

A. That's correct.

25 Q. If we then go over to page 11877 of the material. We see item number 49, which is 9th November 2016:

"The first conference was held at Dungarvan Garda Station by the discipline inquiry team, whereby investigation strategy is developed to progress the investigation as expeditiously as possible."

11:00

11:00

Then item number 50, we already observed this:

"On 2nd February 2017, Superintendent Lacey and Inspector Maher met with Garda Keogh at Portlaoise

1 Garda station, having previously sought permission to  
2 speak with Garda Keogh from the confidential recipient.  
3 During this meeting Garda Keogh provided consent for  
4 this disciplinary investigation to use all of his  
5 previous witness statements and supporting documentary 11:01  
6 evidence supplied to Detective Superintendent Declan  
7 Mulcahy in his criminal investigation."

8  
9 We've heard evidence from Assistant Commissioner Ó  
10 Cualáin that it didn't become a criminal investigation 11:02  
11 until June 2015, that in fact what he was involved with  
12 was a fact-finding investigation or criminal or  
13 disciplinary. Was that your understanding at the time  
14 you took it over?

15 A. Chairman, when I took over this investigation I suppose 11:02  
16 it had been through the criminal process and to be  
17 honest, I wasn't involved in any way, I had no  
18 knowledge of the criminal investigation. So I can  
19 only -- you know, the facts are as, you know, the paper  
20 trail suggests. 11:02

21 26 Q. Yes. And then if we then go over to page 11878 of the  
22 material, we see at item 52 there, the 26th April, that  
23 you were appointed as investigating officer by Deputy  
24 Commissioner John Twomey, to replace Assistant  
25 Commissioner Nolan. We just might look at concerns 11:03  
26 that you had at the time and raised, concerns about  
27 this appointment, isn't that right?

28 A. That's correct, Chairman.

29 27 Q. If we could just look at those. If we could look at

1 page 16458 of the material please. Yes, if we can  
2 scroll down there. This is from you as Assistant  
3 Commissioner, Southern Region, to the Deputy  
4 Commissioner, Policing and Security at the time. Who  
5 was the deputy commissioner at that time? 11:04

6 A. Deputy Commissioner Twomey.

7 28 Q. If we look at paragraph 2 there:

8  
9 "It is noted that Assistant Commissioner Nolan was  
10 appointed as investigating officer by Assistant 11:04  
11 Commissioner Kenny on 26th June 2015 in accordance with  
12 regulation 23 of the 2007 regulations.

13  
14 The report of Garda Adrian Cooke of 8th April 2017  
15 details that an investigation team was established and 11:04  
16 extensive investigations have been undertaken to date,  
17 comprising of in excess 120 jobs.

18  
19 In consideration of the extensive work conducted to  
20 date, it may be that an investigating officer 11:05  
21 substitution was envisaged to continue with the work  
22 commenced by then Assistant Commissioner Nolan. A new  
23 investigating officer appointment will require the work  
24 conduct to date to be disregarded.

25 11:05  
26 Clarification is sought on this matter and subject to  
27 your consideration I can proceed with the existing  
28 investigating team to bring this matter to a conclusion  
29 at the earliest possible opportunity."

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Could you just articulate the concern that you had at that time? It's clear and evident from the letter that you had the concern, but did you have a concern at the manner in which you had originally been appointed?

11:05

A. My concern was that it was a fresh appointment, my appointment was a fresh appointment, and on that basis I would be required to establish a new team and start from scratch again essentially, Chairman. I suppose I was asking the question or posing the question if that is in fact what was intended and whether or not a substitution was what in fact was intended, thereby allowing me to continue with the team.

11:06

29 Q. CHAIRMAN: Could you take over?

A. Could I take over.

11:06

30 Q. CHAIRMAN: And carry on to the end or did you have to start again?

A. Exactly, Chairman.

31 Q. CHAIRMAN: Really that's what you were asking?

A. Yes.

11:06

32 Q. MR. MARRINAN: You saw a potential difficulty that might arise and you were looking for the direction of the --

A. Well, I just wanted to get the matter clarified and proceed as quickly as possible.

11:06

33 Q. Then if we look at 16461 of the material, we have a letter to you from Deputy Commissioner Twomey, he says:

"With reference to the above and previous

1 correspondence, in particular e-mail dated the 27th  
2 July, the content of which is noted, I am to advise for  
3 the purpose of clarification that you are to take over  
4 the investigation pursuant to the Garda Síochána  
5 (Discipline) Regulations arising from the above 11:07  
6 referenced report, originally commenced by Assistant  
7 Commissioner Nolan, now retired, to completion."

8  
9 So that was clear enough, isn't that right?

10 A. That's correct. 11:07

11 34 Q. Now, if we could then go back to your statement at  
12 11878. You note at 53 there that you held a conference  
13 on the 4th May in respect of the investigation. On the  
14 14th September 2017 you applied for an additional four  
15 members to be appointed to the disciplinary inquiry 11:08  
16 team to progress the investigation. You had a meeting  
17 on 28th September 2017 to meet with the Garda Síochána  
18 Ombudsman Commission along with the discipline inquiry  
19 team. What was that? What was that about?

20 A. It was merely to advise them in terms of the progress 11:08  
21 of the discipline investigation.

22 35 Q. I think then if we go to 4th December 2018, Garda A was  
23 interviewed in the presence of his solicitor?

24 A. That's correct.

25 36 Q. Sorry, we just might go back. Number 56, at item 56, 11:08  
26 11878, we see:

27  
28 "Having previously failed to engage with the criminal  
29 investigation team, on 15th November 2017 Ms. B engaged

1 with this discipline inquiry and provided a statement  
2 of evidence pertaining to matters relevant to this  
3 investigation. "

4  
5 Again, it's a matter that Garda Keogh has complained 11:09  
6 about. What he says in relation to that is that after  
7 the statement was taken, that there should have been an  
8 arrest arising from that statement, because obviously,  
9 it implicated Garda A. What do you say in relation to  
10 that? 11:09

11 A. Well I was conducting the discipline investigation, I  
12 had no power of arrest in terms of my terms of  
13 reference. I did, however, forward that statement to  
14 the criminal investigation team for their appropriate  
15 action. 11:10

16 37 Q. When did you do that?

17 A. That was in February -- sorry, Chairman, I just want to  
18 get the date.

19 CHAIRMAN: It's all right. Take your time.

20 38 Q. MR. MARRINAN: We might move on. I haven't seen it in 11:10  
21 your papers that you provided to us, but we will move  
22 on?

23 CHAIRMAN: If you would like a moment.

24 A. I know it's February 2018.

25 MR. MARRINAN: 2018. 11:10

26 CHAIRMAN: Okay. Thank you.

27 A. I just can't recall the exact date.

28 39 Q. CHAIRMAN: That's all right, if necessary we can come  
29 back to that or whatever it is. You say you forwarded



1 Ms. B's statement to the --  
2 A. Criminal investigation team.  
3 40 Q. CHAIRMAN: That's Ó Cualáin, to Assistant Commissioner  
4 Ó Cualáin's team, if you like?  
5 A. Yes, yes. It's just that Assistant Commissioner Ó 11:11  
6 Cualáin had moved on, as had Detective Superintendent  
7 Mulcahy. So it was Inspector Coppinger.  
8 CHAIRMAN: Thank you very much.  
9 41 Q. MR. MARRINAN: The next matter that you note there is  
10 at number 57: 11:11  
11  
12 "Ms. B via her solicitor on 2nd August 2018 states that  
13 she no longer stands over her witness statement of 15th  
14 November 2017 and does not wish to engage with An Garda  
15 Síochána in this matter." 11:11  
16  
17 Then at item number 58 there, the 4th December, Garda A  
18 is interviewed in the presence of his solicitor by  
19 yourself and your investigation team, is that right?  
20 A. That's correct. 11:11  
21 42 Q. Then if we just move on, and that chronology is very  
22 helpful, but if we could just then move on to 11879,  
23 under item number 5:  
24  
25 "Allegations that Garda A frustrated the investigation 11:12  
26 of a public order offence on 14th September 2008."  
27  
28 You then go on to deal with that. If we go to 11881,  
29 at 5.14, you note -- thank you, Mr. Kavanagh.

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"Sergeant Andrew Haran, who was Garda supervisor's sergeant at the time when attached to community policing forwarded a report to the superintendent based on anecdotal information pertaining to alleged issues concerning Garda A." 11:13

You note that the report is dated 9th September 2009; isn't that right

A. That's right. 11:13

43 Q. Then if we could go to page 1883 of the material. You note at the top of the page there, 5.23:

"During the criminal investigation a number of attempts were made to speak and record from Ms. B a witness statement, however she declined to cooperate with the investigation. Ultimately a search was conducted of her home address under warrant for electronic devices by the criminal investigation team. However, on 15th November 2017 Ms. B provided a witness statement to members of this disciplinary investigation." 11:13

Over the page, at 11884, you summarise the information that was available to you at that time. If we scroll down to 5.30 please, you note: 11:14

"Based on the available information to this inquiry, namely notes as recorded by Garda Keogh from a meeting with Garda A, the report compiled --"

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Sorry, that's not for Garda A.

" -- the report completed by sergeant Andrew Haran and his supporting statement, stating that Garda A was informing persons they were to be searched prior to being arrested on a given date, which is now assessed to be 23rd June 2009, the concerns raised by community workers --" 11:14

Then you identify those 11:15

" -- albeit not committed to a formal statement and the witness statement of Ms. B, there appears to be a genuine concern as to the nature of the relationship between Garda A and Ms. B." 11:15

Then if we go over to page 11886, 5.35 there:

"When the portions of the statement of Ms. B were put to Garda A concerning the assertion that Garda A told Ms. B that her then partner [who is named] to get rid of their mobile phones, Garda A completely denies this and stated 'I completely deny that ever happened, I never told them to get rid of phones or anything like that'. Garda A could not provide any reason why Ms. B would state this." 11:15

Then if we go down to 5.37:

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"Garda A states that he attempted to cultivate Ms. B primarily by way of telephone from the official mobile phone attached to the divisional drugs unit, for which Garda A states he retained for '95%' of the time and use it had accordingly."

11:16

Then if we go to page 11877, at the top there, you note:

11:16

"The billing information consists of 15,213 call records. From my analysis of this call data, I can say that Garda A contacted Ms. B phone number 1,672 times from 27th May 2010 until 5th August 2010. I can say that from the 1,672 contacts between phones, 1,379 of these contacts were text messages. The remaining 293 contacts with voice calls."

11:17

That's quoting a report from Garda Walsh.

CHAIRMAN: Mr. Murrinan, am I right in thinking that it wasn't a direct contact between the official phone that Garda A had and the phone of Ms. B, but a phone of Ms. B's young daughter.

11:17

MR. MARRINAN: That's right, yes.

CHAIRMAN: Is that correct?

11:17

MR. MARRINAN: Yes.

CHAIRMAN: That's not what that says.

MR. MARRINAN: No.

CHAIRMAN: It's just that, that's my understanding of

1 the evidence. So that the quote from Garda Walsh, am I  
2 right, it's not exactly correct.

3 MR. MARRINAN: No, no, that's is correct, Chairman.

4 CHAIRMAN: Yes.

5 A. Yes, you are right, Chairman. 11:18

6 CHAIRMAN: Yes.

7 MR. MARRINAN: I think there may have been an  
8 assumption --

9 CHAIRMAN: I mean the implication --

10 MR. MARRINAN: Yes. 11:18

11 CHAIRMAN: The implication was that it was  
12 communication between Garda A and Ms. B but the phone,  
13 the actual technically correct, if I understand, was  
14 that the phone was belonged to Ms. B's daughter, aged  
15 11 or 12, I may be wrong about that. 11:18

16 MR. MARRINAN: That's correct.

17 CHAIRMAN: But certainly very young.

18 44 Q. MR. MARRINAN: You then note:

19

20 "This investigation has not had sight of these billing 11:18  
21 records due to data protection restrictions and has not  
22 been able to place any significance on this date, 5th  
23 August 2010, or establish if Garda A continued to  
24 engage with Ms. B via mobile phone on a separate  
25 unidentified number. As stated previously, this 11:18  
26 inquiry had not sight of the limited billing records as  
27 obtained by Chief Superintendent Aidan Glacken, but  
28 these billing records will be available to a board of  
29 inquiry should the occasion arise."

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Can you just explain that to the Chairman, please?

A. Chairman, there's a lacuna in the discipline regulations and what that essentially means is that the board of inquiry have actually more powers than the investigating officer.

11:19

45 Q. CHAIRMAN: I see.

A. So that's what I was referring to there.

CHAIRMAN: Yes.

46 Q. MR. MARRINAN: Could I summarise it this way: That you took the view that you couldn't make an application under the Data Protection Act, is that right, for billing records? That your inquiry couldn't do that because we know that billing records are only held for a period of two years?

11:19

A. Yes.

47 Q. Well, they're actually held for a period, but the data records would normally -- the metadata would normally be retained for two years, the billing records for a period of six years. And this fell outside the six-year period?

11:19

11:20

A. No, it was more to do with the fact that I couldn't have access to them as the investigator.

48 Q. Yes.

CHAIRMAN: But the board of inquiry would be able to call for them.

11:20

A. Yes.

CHAIRMAN: -- and have them produced.

49 Q. MR. MARRINAN: We saw earlier on that Assistant

1 Commissioner Ó Cualáin took the view that you were  
2 entitled, and I think the legal advice was that you had  
3 been entitled to the statements that had been taken  
4 during the course of the criminal investigation?

5 A. That's correct.

11:20

6 50 Q. But he didn't hand you over any exhibits?

7 A. No, he didn't, but we did get the summary statement  
8 from Garda Walsh.

9 51 Q. So you had the summary of the records but didn't have  
10 the records that in fact had been handed over by  
11 Superintendent Glacken?

11:20

12 A. That's correct.

13 52 Q. Yes. You then go on, the same page:

14

15 "5.39. When asked by Superintendent Lacey as to why  
16 there was an excessive amount of contact between Garda  
17 A and Ms. B by way of telephone, Garda A replied 'I was  
18 trying to cultivate her as a tout, nothing else, I made  
19 the calls, that's what I was doing, that's my  
20 explanation for it, that's what was happening'."

11:21

11:21

21

22 Then if we could just go to page 11891. At 5.44 you  
23 make the point and it's the point that I just dealt  
24 with in relation to exactly what records that you had.  
25 If we just scroll down then, 5.44, yes, we have it  
26 there. You note:

11:22

27

28 "A forensic examination was carried out on the official  
29 mobile phone by Garda Walsh and as noted in the

1 statement of Detective Superintendent Mulcahy, there is  
2 no evidence recovered to suggest Garda A was in contact  
3 with Ms. B on that handset. This investigation has no  
4 other material available to make a similar  
5 determination. "

11:22

6  
7 Then if we could just turn to 11893 of the material,  
8 and scroll down to the end of material there,  
9 Mr. Kavanagh, to the last paragraph:

10  
11 "This allegation is very specific -- -

11:22

12  
13 This is the first allegation that you were looking  
14 into.

15  
16 " -- in that it states that Garda A frustrated the  
17 prosecution of the incidents which occurred in the  
18 particular location. Both Ms. B and another person  
19 pleaded guilty to all the charges preferred against  
20 them, which emanated from this incident. In the  
21 absence of any mobile phones and, indeed, call records  
22 not being sought by the investigating member, it has  
23 not been possible to establish what material effect  
24 they could have had in court proceedings which  
25 followed.

11:23

11:23

11:23

26  
27 There is no doubt that the level of contact between  
28 Garda A and Ms. B in a three-month period between May  
29 and August 2010 was excessive and cause for great



1 concern. However, there is no evidence available to  
2 this investigation which can definitively state Garda A  
3 contacted Ms. B on 23rd June 2009.

4  
5 However, when consideration is given to the accounts as 11:24  
6 provided firstly by Garda Keogh, specifically the  
7 assertions that Garda A confided in him about his  
8 sexual relationship with Ms. B and that he (Garda A)  
9 had to tip her off about a planned Garda search to  
10 conceal the relationship. Secondly, Sergeant Andrew 11:24  
11 Haran reporting on information which was being provided  
12 to him by the local community alleging Garda A was  
13 compromised as a result of a relationship with Ms. B.  
14 Thirdly, the level of excessive mobile contact between  
15 Garda A and Ms. B in 2010, coupled with the 26-month 11:24  
16 period they interacted with each other, does not  
17 support the account that Garda A was attempting to  
18 cultivate Ms. B as a human intelligence source.

19  
20 Even in the absence of the witness statement of Ms. B, 11:24  
21 on the balance of probabilities, based on the evidence  
22 gleaned from this investigation, I am of the opinion  
23 that there is substance to this allegation resulting in  
24 a potential serious breach of the Garda Síochána  
25 (Discipline) Regulations 2007, and that a board of 11:25  
26 inquiry is established subject to section 25 of the  
27 same Act to further examine the matter."

28  
29 So that was your view in relation to item number 1. I

1 think in relation to the other issues that you  
2 examined, which were items 2 to 9, you didn't recommend  
3 the establishment of a board of inquiry, isn't that  
4 correct?

5 A. That's correct. 11:25

6 53 Q. So this is 2019 that you're report has gone forward.  
7 It's a considerable period of time that has elapsed, I  
8 think it's three years and seven months between the  
9 initial appointment. I know you only took over the  
10 investigation and it didn't all concern Garda A, 11:26  
11 because there were two other members at detective level  
12 and a superintendent who were also -- there was an  
13 investigation in relation to them. Was this due to the  
14 complexity of the investigation?

15 A. From the time I was appointed it took 22 months to 11:26  
16 complete all aspects of the investigation. I have  
17 already outlined steps I took to progress the  
18 investigation as quickly as possible. And I would also  
19 like to point out that both I and the team that were  
20 assisting me were working on a part-time basis, they 11:27  
21 had their various other roles as well. So, yes, it was  
22 complex and there were a lot of people to interview and  
23 a lot of statements to take and legal advice to be  
24 sought. However, I believe that I carried it out as  
25 expeditiously as I could given all of the 11:27  
26 circumstances.

27 54 Q. Now I think that since then Assistant Commissioner  
28 Sheehan has provided a statement to the Tribunal, which  
29 was made on the 9th October. On an evidential basis he

1 doesn't agree with your assessment and he is entitled  
2 to a different view in relation to it, but he places  
3 great reliance on the fact that the charges, as  
4 investigated, concerns frustrating a criminal  
5 investigation, in circumstances where in fact the 11:28  
6 investigation wasn't frustrated, that it was -- there  
7 were pleas of guilty in the case. Do you understand;  
8 that's one of the issues that he points out?

9 A. Yes. That is the case. And I take a different view to  
10 that, to Assistant Commissioner Sheehan's view. The 11:28  
11 attempt to frustrate the investigation and the outcome  
12 of the investigation are two separate things in my  
13 view. In fairness to Garda Keogh, he made a statement  
14 outlining the fact that Garda A told him that he tipped  
15 off Ms. B in relation to a search that was forthcoming. 11:28  
16 That is where the frustration or the attempted  
17 frustration of the investigation comes in. The outcome  
18 of the case is a separate matter altogether. And it  
19 was for that reason that I recommended a board of  
20 inquiry. 11:29

21  
22 Equally, my job as investigator is to make a  
23 recommendation. The process that exists is that it  
24 goes -- I submit that to the appointing officer and it  
25 goes to governance and accountability then. 11:29

26 55 Q. Yes.

27 A. Then they consider it. I accept what they are saying  
28 even though I disagree with it.

29 56 Q. Yes, okay. In terms of the actual investigations, you

1 have listed 1 to 9, and you have used the word "attempt  
2 to frustrate", but the actual wording of number 1 is  
3 "frustrated the criminal investigation". I was going  
4 to ask you, I mean is there an alternative there  
5 verdict, as it were, of attempt to frustrate in 11:30  
6 circumstances where you haven't actually established  
7 that the investigation was frustrated?

8 A. I am not really sure about that. But I suppose what I  
9 am relying on is what Garda Keogh stated, which was  
10 that the tip off was given and the phones were 11:30  
11 discarded. Ms. B says the same thing, albeit that she  
12 subsequently withdrew that statement. So the  
13 frustrating piece of it, if I can put it like that, was  
14 the fact that the phones -- the tip off that was given  
15 to get rid of the phones essentially. 11:30

16 57 Q. Yes. He also takes a different view than Deputy  
17 Commissioner Twomey in relation to your appointment,  
18 you're aware of that?

19 A. Yes.

20 58 Q. He takes the view that this wasn't a continuation, that 11:31  
21 it was a fresh investigation. You had sought advice on  
22 this very point, isn't that right?

23 A. That's correct, yeah, and I waited until I got that  
24 advice to proceed.

25 59 Q. Therefore, I think he takes the view that procedurally 11:31  
26 he regards your investigation as being flawed, because  
27 there wasn't an appointment of a new investigating  
28 team, you're aware of that?

29 A. That's correct.

1 60 Q. I suppose your view in relation to this would be very  
2 much dependent on what you had been advised by the  
3 deputy commissioner at the time; namely, to proceed on  
4 the basis that you were taking over an investigation,  
5 is that right? 11:31

6 A. Absolutely. Absolutely, yes.

7 61 Q. Also, an issue arose in relation to the role of the  
8 actual appointing officer and that doesn't concern you.  
9 But another issue arose in relation to the use of  
10 statements that had been taken during the course of the 11:32  
11 criminal investigation. Can you just tell us what your  
12 view is in relation to that?

13 A. Well, I sought advise from our legal section in  
14 relation to the use of the statements. The advice I  
15 got was that I could use them. 11:32

16 62 Q. So you were happy enough to rely on that?

17 A. Yes. Yes. And in addition to that, I got agreement  
18 from the individuals concerned that the statement was  
19 what it was and that we could use it in the discipline  
20 investigation and there are statements on file to that 11:32  
21 effect.

22 63 Q. So if we could then just examine the complaints that  
23 Garda Keogh does have in relation to -- yes, if we  
24 could have Day 104 of the transcript up. If we could  
25 go to page 94 of the transcript. I will just read out 11:34  
26 that paragraph. He says:

27

28 "I have not got a letter from Assistant Commissioner  
29 McMahan and we write -- when I say we write, through my

1 solicitor, at the time, to acting Commissioner  
2 Ó Cualáin to find out who is doing this investigation.  
3 He sends a letter back to say Joe Nugent will be in  
4 touch with you. He's the CAO for An Garda Síochána.  
5 We don't get to find out then. Then, at some point, 11:34  
6 Clare Daly writes to the Minister for Justice in  
7 relation to the same thing, who is conducting this  
8 investigation. I think he can't get involved or  
9 something. Then we later write to Commissioner Drew  
10 Harris who is doing this investigation. He 11:35  
11 acknowledges the letter but in the end I find out it's  
12 Assistant Commissioner McMahon."

13  
14 So that's a complaint that he has, that you didn't  
15 contact him. Was there any particular reason why you 11:35  
16 didn't contact him in the first instance?

- 17 A. The reason simply is that I was carrying out a  
18 discipline investigation and as with any discipline  
19 investigation, you have your statement of complaint. I  
20 had that. My job was to work on that and to 11:35  
21 investigate that as thoroughly as possible. As I have  
22 already stated, there are procedures for dealing with a  
23 confidential reporter, which were outside of my remit.  
24 Notwithstanding that, Superintendent Lacey and  
25 Inspector Maher, as he was at the time, did, on a 11:36  
26 number of occasions, try to make contact with Garda  
27 Keogh for two reasons, one was to clarify a particular  
28 matter and the other one was to inform him that the  
29 investigation was progressing. That's the discipline

1 investigation. By way of update.

2 64 Q. Then if you go to page 96. This is in response to a  
3 question from the Chairman, if you scroll down the page  
4 to line 19:

5 11:37

6 "No, I understand. What complaints have you got, if  
7 any, as to Assistant Commissioner McMahon?

8 A. Well, having read the document, Judge. I see Ms. B  
9 has made a statement of admission there, like I mean, I  
10 would argue that she was obliged to make an arrest at 11:37  
11 that point."

12  
13 So that's a specific matter that he has raised. I  
14 think you have already dealt with that.

15 A. Yes. 11:37

16 65 Q. He is then examined by Mr. McGuinness and it was  
17 pointed out to him that you in fact had recommended the  
18 establishment of a board of inquiry in relation to one  
19 of the complaints. Then if we go to page 103, this is  
20 the complaint in relation to delay, he says: 11:38

21  
22 "But how long did that discipline -- while it was in  
23 assistant commissioner's care, while she was in charge  
24 of it, like it's dragged out again for a lengthy period  
25 of time again, from early 2017 up to 2019 then on this 11:38  
26 one, I think.

27 Q. Well, so it's a delay you're concerned with?

28 A. There is a delay."  
29

1 I think you have already dealt with that and you  
2 explained the extent of your investigation, isn't that  
3 right?

4 A. That's correct.

5 66 Q. Then if we go over to page 107. Obviously, I mean one 11:38  
6 of the issues is, and I think it's a period of three  
7 years and seven months, as I pointed out, did anybody  
8 think of maybe contacting Garda Keogh and, indeed,  
9 Garda A, because he was the subject-matter of the  
10 investigation, and advise him of the difficulties and 11:39  
11 the legal difficulties that had arisen during the  
12 course of the investigation that had caused delay?  
13 Nobody considered doing that?

14 A. Well, as I have already pointed out, there is a process 11:39  
15 for dealing with a confidential reporter, which was  
16 outside of my investigation. But in addition to that,  
17 both Superintendent Lacey and Inspector Maher did  
18 endeavour to contact Garda Keogh, I think it was about  
19 maybe eight times.

20 67 Q. Then if we go to page 107 of the material, Garda Keogh 11:40  
21 says:

22  
23 "A. They do appear to me to be dragging it out.

24 Q. Deliberately?"

25  
26 And Garda Keogh answers: 11:40

27  
28 "I think so."

29



1 was there any sense that you were using this  
2 disciplinary investigation and delaying it so as to  
3 discredit Garda Keogh or to target him?

4 A. Under no circumstances whatsoever was I trying to  
5 deliberately target or discredit Garda Keogh. On the 11:40  
6 contrary, I carried out the investigation in a thorough  
7 and professional manner. I recommended a board of  
8 inquiry in respect of one of the allegations he made  
9 because there was substance to it. I found from my  
10 investigation that there was substance to it. And as I 11:40  
11 have said already, the board of inquiry would have  
12 additional authority to explore that further. So I  
13 would say in fact it's the exact opposite to what is  
14 being asserted here.

15 68 Q. Yes. And I think that you also recommended that there 11:41  
16 would be a peer review of your report, isn't that  
17 right?

18 A. That's correct.

19 69 Q. What did you anticipate that that would involve?

20 A. A review of the investigation that I carried out. Not 11:41  
21 that I had any doubt in terms of its veracity and  
22 thoroughness, but at that particular point, it was  
23 almost at the close of my investigation in late 2018,  
24 there was a criminal investigation going on in respect  
25 of an allegation against Garda Keogh by my husband, 11:42  
26 that he rang the station and made certain trips. And I  
27 felt that it was appropriate in those circumstances  
28 that somebody else, a fresh pair of eyes would look at  
29 my investigation, so that there wouldn't be any, I

1 suppose, ambiguity or anything, any untoward commentary  
2 in terms of my investigation, and for openness and  
3 transparency as well, I felt it was appropriate.

4 70 Q. Yes. Thank you very much. would you answer any  
5 questions please?

11:42

6

7 END OF EXAMINATION

8

9 CHAIRMAN: Now. Ms. Mulligan, yes.

10

11:42

11 ASSISTANT COMMISSIONER ANN MARIE McMAHON WAS  
12 CROSS-EXAMINED BY MS. MS. MULLIGAN, AS FOLLOWS:

13

14 71 Q. MS. MULLIGAN: Good morning, assistant commissioner.  
15 Can I start by asking some very basic questions. What  
16 did you do to prepare for today? Have you read through  
17 your report and all the attending documentation as well  
18 as your statement?

11:42

19 A. Yes.

20 72 Q. Okay. Just in terms of when you assessed the evidence  
21 that was before you as part of the investigation, can  
22 you just confirm to the Chairman what you did in  
23 assessing evidence that was given, did you look at  
24 credibility, for example?

11:43

25 A. I looked at the factual evidence that was before me in  
26 terms of the written statements and reports that I had.

11:43

27 73 Q. What about the credibility, did you consider  
28 credibility of varying witnesses as part of your  
29 assessment process?

1 A. Well the credibility that I assessed was the factual  
2 information that I got. I based my recommendations on  
3 the facts that I was able to glean as part of my  
4 investigation.

5 74 Q. Assistant commissioner, one of the main issues in 11:44  
6 relation to your report is delay. I think you have  
7 given your evidence that you believe you did a fulsome  
8 and thorough report, do you say that that obviates any  
9 delay, is that right?

10 A. That's just one part of it. What I say in relation to 11:44  
11 the delay is, from the time I was appointed to the  
12 completion of the report, of the entire investigation,  
13 was 22 months. During that time there were 13  
14 allegations to be investigated concerning four serving  
15 members of An Garda Síochána. I did everything that I 11:44  
16 could to expedite the investigation. I attended 12  
17 conferences. There was an extensive examination of  
18 documentation that was gathered by the criminal  
19 investigation team, in addition to the material that  
20 was gathered as part of the discipline team. There was 11:45  
21 legal advice sought during my investigation on three  
22 occasions. And I would also like to point out again  
23 that the team, including myself, we were working on  
24 this investigation on a part-time basis. We all had  
25 our other portfolios of work to continue and bring 11:45  
26 alone at the same time. I'm not saying that that's an  
27 excuse but it's the reality of the situation.

28 75 Q. So is it fair to say that you believed that the reason  
29 that the matter took time was because of one, you the

1 amount of material you had go through; two, you were  
2 working on it on a part-time basis; and three, that you  
3 had extensive material to consider in order to complete  
4 the review within 22 months, is that right?

5 A. Yes, it was a complex matter, there were lots of things 11:45  
6 to consider. Chairman, that's the length of time it  
7 took to complete it.

8 76 Q. And do you believe that there were gaps or can you  
9 identify to the Chairman any gaps that were in your  
10 assessment and your report? were there any gaps or 11:46  
11 anything that you missed during the process in order to  
12 expedite matters?

13 A. I don't believe so, Chairman. I believe my  
14 investigation was thorough. I believe I left no stone  
15 unturned. In terms of getting to the bottom of the 11:46  
16 allegations that were made by Garda Keogh, I think I  
17 owed him that at least, in terms of the investigation  
18 that I was carrying out.

19 77 Q. In relation to, I think you gave evidence to the  
20 Chairman that you attempted to contact or at least 11:46  
21 someone on the investigating team attempted to contact  
22 Nick Keogh on eight different occasions, are any of  
23 those occasions via letter?

24 A. Yes, five of them were by telephone and I think three  
25 were through the solicitor. 11:47

26 78 Q. Can you confirm were you the author of those letters in  
27 particular or was it your superintendent?

28 A. No, it was a phone call, sorry Chairman, it was a phone  
29 call to the solicitor, it wasn't a letter.

1 79 Q. Just to be clear, did you say there were three written  
2 correspondence?  
3 A. No, I said there were three attempts to contact the  
4 solicitor.  
5 80 Q. Three attempts to contact the solicitor, five attempts 11:47  
6 to contact Garda Keogh himself?  
7 A. Correct.  
8 81 Q. And none of them via letter?  
9 A. Correct.  
10 82 Q. So the answer to my question did you attempt to contact 11:47  
11 Garda Keogh by letter, the answer is no?  
12 A. No.  
13 83 Q. No, okay, very good. Can we go to page 11865 at Volume  
14 42. This is your report, assistant commissioner. I  
15 have a number of questions in relation to it. 11:47  
16 A. Sorry, Chairman, I wonder if I could have the number of  
17 the page again please?  
18 84 Q. Volume 42, it's 11865. It's the first page of your  
19 full report. If you can just go to point 6, which is  
20 at page 11877 then, point 50. Assistant commissioner, 11:48  
21 do you see it is dated 2nd February 2017, and I just  
22 wanted to clarify, in relation to the consent provided  
23 by Garda Keogh in relation to all his witness  
24 statements and supporting documentation, so you have  
25 identified to the Chairman that you didn't seek to talk 11:49  
26 to him again for clarifying, did you seek to talk to  
27 other members to clarify their statements later in that  
28 investigation? So after consent was given for the  
29 statements to be provided, did you seek to clarify

1 anything that arises between the parties?

2 A. Sorry, Chairman, I don't understand the question.

3 85 Q. So, for example, Garda A comes in in 2018 and gives his  
4 version of events, did you put to Nicholas Keogh, which  
5 I know you didn't, so you didn't put to Nicholas Keogh 11:49  
6 Garda A's version of events. Can I just clarify why  
7 that is?

8 A. So Garda Keogh had made his statement outlining areas  
9 of concern that he had. My job then as investigator  
10 was to, I suppose, corroborate and interview the 11:50  
11 relevant parties when I had all that information  
12 gathered in relation to it. So my job really was to  
13 gather as much information as possible in relation to  
14 those allegations. I did that and I put it -- they  
15 were put to Garda Keogh, after which I drew my 11:50  
16 conclusions.

17 86 Q. Yes, I know that's what you did. Can I just confirm  
18 why you did it that way? So why didn't you feel the  
19 need to clarify, I suppose in any other investigative  
20 approach you would gather the statement, you might get 11:50  
21 the response and you might put the response to the  
22 initial complainant, I just want to know why you didn't  
23 do that in this scenario?

24 A. That isn't how I would normally conduct a discipline  
25 investigation. You have your statement of complaint, 11:51  
26 you establish the facts around that and then you  
27 interview whoever it is that's complained about.

28 87 Q. Just in terms of your evidence, you said that you done  
29 a thorough, fulsome and complete investigation with no

1 delay. But is it possible that Garda Keogh might have  
2 been able to shed more light on the explanation given  
3 by Garda A, for example?

4 A. Judge, or Chairman, the view I took was that I had my  
5 statement of complaint, I went -- I set about 11:51  
6 investigating that, corroborating that and then I put  
7 that to Garda A. That was my investigative strategy.  
8 That's what I did and I believe that that was  
9 appropriate in this discipline investigation. I wasn't  
10 conducting a criminal investigation. 11:52

11 88 Q. I can appreciate that you are not conducting a criminal  
12 investigation, but at the same time would it not be  
13 appropriate to try and clarify the position with the  
14 original complainant in terms of making a final  
15 determination? So, for example, if Garda Keogh had 11:52  
16 accepted Garda A's explanation, would that have gone  
17 some way to identify whether or not -- or informed your  
18 conclusion about the original complaint?

19 A. In terms of the conclusion, that was for me to draw,  
20 based on the statement of complaint vis-à-vis the 11:52  
21 statement of the person complained of.

22 89 Q. And you're satisfied that that was an appropriate  
23 approach, is that right?

24 A. Yes, Chairman.

25 90 Q. Can I just bring you to paragraph 57, I think it's at 11:52  
26 page 11878. This is in relation to the statement of  
27 Ms. B. Between 15th November 2017 and 2nd August 2018,  
28 when Ms. B's statement was withdrawn, do you see those  
29 two dates?

1 A. Yes.

2 91 Q. I think it's fair to say there is about nine months in  
3 the interim. Why is it that Garda A isn't interviewed  
4 until 8th December 2018 -- sorry, 4th December 2018?

5 A. So the reason that Garda A wasn't interviewed until 11:53  
6 that time was that is when I could arrange to meet him  
7 through his solicitor. I also had a number of work  
8 commitments. I was actually ready to interview him  
9 from August, but between one thing and another it just  
10 wasn't possible to arrange it. 11:54

11 92 Q. It's just that it's 13 months between getting a  
12 statement from Ms. B, which confirms that there is a  
13 relationship of some kind, that she accepts the  
14 allegations made by Garda Keogh and yet nothing happens  
15 between, we'll say, the main witness and the actual 11:54  
16 accused, for want of a better word, for 13 months; does  
17 that not seem like an extraordinary delay?

18 A. In terms of the statement that was obtained from Ms. B,  
19 that was forwarded to the criminal investigation team  
20 in February. It was for them then to deal with it as 11:54  
21 they saw fit.

22 93 Q. I am not necessarily talking about the criminal aspect  
23 just right now. I just want to look at again the  
24 timeline. So in terms of you doing what you describe  
25 as a thorough investigation which, we'll say, 11:55  
26 undermines any issue of delay, there's 13 months, did  
27 you prioritise talking to Garda A ahead of other people  
28 between November 2017 and December 2018? Surely he was  
29 the next person on the list once you got that report in



1 November 2017?

2 A. There were a number of facets to this investigation and  
3 it wasn't until I had satisfied myself that I had all  
4 of the statements gathered that -- interviewing Garda A  
5 was the last thing I did. 11:55

6 94 Q. Can you just explain to the Chairman why that is?

7 A. Because I wanted to be in possession of all of the  
8 facts, all of the inquiries I had to complete. So that  
9 I was in the best position possible to interview Garda  
10 A when I did meet him. 11:56

11 95 Q. Okay. And you didn't think it was appropriate given  
12 just in particular the context of where this complaint  
13 emanates from, which is from a confidential reporter,  
14 you didn't think it necessary in December 2017 to say,  
15 we need to interview Garda A and get him in to respond 11:56  
16 to this as soon as possible?

17 A. No, that was not part of my investigative process.

18 96 Q. You maintain the position that you did a thorough and  
19 considerable report, is that right?

20 A. Yes, Chairman. 11:56

21 97 Q. Very good. Can I just ask, in relation to the  
22 correspondence that you sent forward, just because I  
23 haven't seen it, and it could be my error, can you  
24 confirm to the Chairman, you said you sent  
25 correspondence in relation to the statement of Ms. B in 11:56  
26 February of 2018, is that right, to Ó Cualáin, to  
27 Assistant Commissioner Ó Cualáin?

28 A. I sent it to the criminal team. Sorry, Assistant  
29 Commissioner Ó Cualáin was no longer in situ, it was

1 detective Inspector Coppinger actually that got the  
2 correspondence.

3 CHAIRMAN: Yes.

4 A. Yes.

5 98 Q. MS. MULLIGAN: Just to confirm that it's Inspector  
6 Coppinger you sent it to, is that right?

11:57

7 A. Yes.

8 99 Q. And you're satisfied that in fact that was sent, you  
9 have no doubts about that?

10 A. Oh I have no doubts about that, no.

11:57

11 100 Q. Okay. Very well. And just in relation to that, in  
12 terms of any correspondence that flowed from that, did  
13 any correspondence flow from Inspector Coppinger in  
14 that regard? Did you get a reply or a response or was  
15 there any engagement over and back between you in  
16 relation to that correspondence, to the best of your  
17 knowledge?

11:57

18 A. I know I was notified, it came through the western  
19 Regional office, as far as I can recall, saying that  
20 Ms. B had withdrawn her statement and that  
21 communication had come through her solicitor.

11:58

22 101 Q. That's in August. You send a report to Inspector  
23 Coppinger in February of 2018, I'm asking did you  
24 receive any reply or was there any chain of  
25 correspondence between yourself and Inspector Coppinger  
26 emanating from that report?

11:58

27 A. I didn't communicate directly with Inspector Coppinger.  
28 I might have requested a response. I know we had a  
29 meeting with Internal Affairs. Because the issue that

1           arose here was, I was conducting a discipline  
2           investigation, this was bringing the investigation back  
3           into the realm of the criminal investigation, in which  
4           case there may have been a requirement on me to put the  
5           discipline investigation into abeyance while the  
6           criminal matters were being resolved.

11:58

7   102   Q.   We can dig into that in a little bit. Just in terms  
8           of, we have the 15th November, we get engagement from  
9           Ms. B. Can you just confirm to the Chairman, and I  
10          know you have said that you sent correspondence in  
11          February, what happened between November and February?  
12          Did you take any steps in relation to Ms. B and, I  
13          suppose, the disclosure, for want of a better word?

11:59

14          A.   I don't believe I did, Chairman. I just can't recall  
15          at this point in time.

11:59

16   103   Q.   Okay. So you didn't do anything with it until February  
17           of 2018, where, just to be clear to me, you wrote to  
18           Inspector Coppinger and also Internal Affairs. Just to  
19           be clear to me, what happened in around that time, what  
20           steps you took?

11:59

21          A.   It certainly went to the criminal investigation team  
22          and I know we communicated with Internal Affairs, in  
23          terms of advice sought.

24   104   Q.   Just in relation to that, do you know who you spoke to  
25           in Internal Affairs?

12:00

26          A.   As far as I know it was Chief Superintendent Nyland.  
27          And we certainly had a meeting in relation to that.

28   105   Q.   Chief Superintendent Nyland. Was that conversation  
29           or -- sorry, you said it was a meeting, was there

1           correspondence as a first step in relation to yourself  
2           and Chief Superintendent Nyland then?

3           A.    I don't believe -- I don't believe there is.

4 106    Q.    So there is no chain of correspondence?

5           A.    No. 12:00

6 107    Q.    But there was a meeting?

7           A.    Yes.

8 108    Q.    Can you clarify when that meeting was?

9           A.    I can't give you the exact date.

10 109   Q.    Approximately? 12:01

11          A.    It was during that period of time, it was probably June  
12          or July, I would say.

13 110   Q.    June or July. So again, prior to any retraction of the  
14          statement by Ms. B?

15          A.    Yes. 12:01

16 111   Q.    Okay. Perhaps you won't recall, did you take any notes  
17          of that meeting?

18          A.    No, I did not.

19 112   Q.    Did anyone else take notes of that meeting?

20          A.    I'm not aware. 12:01

21 113   Q.    Okay. Was anyone else present at that meeting?

22          A.    Yes, Inspector Coppinger was there and Superintendent  
23          Lacey. I think there may have been other people there.  
24          But certainly Superintendent Lacey and Chief  
25          Superintendent Nyland were there and Inspector 12:01  
26          Coppinger.

27 114   Q.    Just going back to November, why didn't you send the  
28          report of Ms. B to Inspector Coppinger immediately in  
29          November?

1 A. All I can say in response to that, Chairman, is that  
2 this was something that I was doing on a part-time  
3 basis, as it were, and with other workloads and duties.  
4 I didn't.

5 115 Q. Do you think that that affected your ability to, I 12:02  
6 suppose, prioritise this work ahead of other work that  
7 you had also to do?

8 A. I gave this investigation as much time as I possibly  
9 could. In an ideal world I'd like to be assigned to it  
10 full-time. But that wasn't the case. So I had to deal 12:02  
11 with it as time permitted.

12 116 Q. Okay. Just be clear in terms of any steps, are you  
13 aware of any steps that either Inspector Coppinger or  
14 Chief Superintendent Nyland on foot of the information  
15 you provided? Did they keep you in the loop, for 12:03  
16 example, about what they did once you gave them the  
17 report of Ms. B?

18 A. No.

19 117 Q. No. Did you seek to be kept in the loop?

20 A. No, other than when they were finished, that's all I 12:03  
21 needed to know from my investigative point of view. I  
22 wasn't involved or didn't have any dealings with the  
23 criminal investigation.

24 118 Q. Just to be clear, when you say finished, what do you  
25 mean by finished? 12:03

26 A. What I mean by finished, is that when they had  
27 concluded their piece of the investigation and that  
28 concluded or was concluded when Ms. B no longer wished  
29 to stand over her statement.

1 119 Q. Sorry, I don't follow, assistant commissioner. So you  
2 report in February of 2018 up the line that you may  
3 have to put your investigation into abeyance as a  
4 result of material which is, we'll call it, semi  
5 criminal in relation to Ms. B, and there is then a 12:04  
6 further six months where I suppose this issue is over  
7 your head or to the left of you, but you're also saying  
8 to the Chairman that the only reason -- that the end of  
9 that matter related to Ms. B withdrawing her statement,  
10 is that right? My apologies, I am not being 12:04  
11 sufficiently clear. So we have a six-month period  
12 where there is a question mark about whether or not you  
13 can continue on directly, is that what your evidence to  
14 the Chairman is, or whether or not your investigation  
15 has to be put into abeyance? 12:05  
16 A. Yes.  
17 120 Q. Yes. And in relation to being kept in the loop, you  
18 weren't kept in the loop substantially about what steps  
19 were taken by other parties, is that right?  
20 A. No, because that was the criminal investigation team's 12:05  
21 responsibility and I wasn't involved in that.  
22 121 Q. But you say that that issue comes to an end when Ms. B  
23 withdraws her statement. In other words, the criminal  
24 aspect comes to an end when Ms. B withdraws her  
25 statement? 12:05  
26 A. Yes.  
27 122 Q. Can you just clarify that to me, because am I not  
28 correct in saying that Ms. B gives the statement to the  
29 disciplinary investigation and not to the criminal

1 investigation in the first place?

2 A. Yes. So, Ms. B did make a statement to the  
3 disciplinary team. The matter was referred to the  
4 criminal investigation team. They then returned to --  
5 sorry, Ms. B made the statement for the purpose of the 12:05  
6 discipline investigation. The discipline  
7 investigators -- sorry, the criminal investigators then  
8 returned to Ms. B to ensure that she -- or to ask her  
9 was she prepared to give the statement in the context  
10 of the criminal investigation, because she had 12:06  
11 previously refused to do that.

12 123 Q. And just to confirm, how do you know that?

13 A. Sorry, I don't understand what the question is?

14 124 Q. How do you know that the criminal investigators  
15 returned to Ms. B to ask her whether or not she was 12:06  
16 prepared to give a statement in the context of a  
17 criminal investigation?

18 A. I'm aware that, that's the logical progression of  
19 events. I am aware of it from the disclosure  
20 documents. And I'm also aware by virtue of the fact 12:06  
21 that when they did go to her, she refused to stand over  
22 it, effectively withdrew it.

23 125 Q. So did you know -- and this is a tricky question and I  
24 can imagine and I can appreciate it, but did you know  
25 it in June of 2018 or do you know it now? Do you know 12:07  
26 that that happened -- did you know it  
27 contemporaneously, is what I am trying to say, my  
28 apologies?

29 A. I didn't know it contemporaneously but I knew it soon

1 thereafter, because that essentially meant then that  
2 the criminal aspect of it, there was no other door open  
3 in the context of that statement, from a criminal  
4 perspective.

5 126 Q. Okay. So can I just ask, why isn't that in your 12:07  
6 report, that sequence of events, or your statement?

7 A. My report outlines what I did. A lot of what I am  
8 saying now is in relation to the criminal  
9 investigation, which I wasn't involved in. I referred  
10 the statement to the team, a criminal team, for their 12:08  
11 investigation, but I wasn't involved in that  
12 investigation.

13 127 Q. Okay. And can you confirm why it's not in your  
14 statement to the Tribunal?

15 A. My statement to the Tribunal outlines my dealings with 12:08  
16 the various aspects of it, of the investigation that I  
17 carried out.

18 128 Q. Okay. If I can just then go to page 11879, we will  
19 move on from that and just move into the substantive  
20 allegations themselves, and it's the allegation that 12:08  
21 Garda A frustrated the investigation of a public order  
22 offence when the DPP directed a phone of Ms. B to be  
23 seized and it is alleged that Garda A met with Ms. B  
24 and her then boyfriend to then dispose of the phones.  
25 So Ms. B confirms to you that she did meet with Garda A 12:09  
26 for the purpose of disposing of phones, isn't that  
27 right?

28 A. Yes.

29 129 Q. Yes. From your point of view, I think you quite



1 reasonably point out that you were concerned by this  
2 and you did recommend that the matter progress on that  
3 basis?

4 A. Yes.

5 130 Q. There are a number of aspects in relation to it, but 12:09  
6 largely you felt that there were issues about, I  
7 suppose, the conduct of Garda A in that regard?

8 A. Well, what I felt was that there was evidence there  
9 that substantiated the allegation that Garda Keogh had  
10 made. 12:09

11 131 Q. Can I just then, this is all in relation to that, it's  
12 the first allegation, I am going to call to allegation  
13 5, it is on chapter 5 of the report. If we can just go  
14 to 11887. It's just in relation to the number of phone  
15 calls. I calculated it at just less than 300 over 12:10  
16 about a ten-week period. So on the sixth and seventh  
17 line it's identified that 293 contacts were voice  
18 calls, and over that period of time it's approximately  
19 ten to 11 weeks, it's between the end of May 2010 and  
20 August 2010, do you see that? 12:10

21 A. Yes.

22 132 Q. You do say it's excessive. Is it slightly more than  
23 excessive?

24 A. Excessive is the word I used to describe it, but I  
25 could equally say it was an inordinate amount of 12:10  
26 contacts.

27 133 Q. It is an inordinate amount, isn't it?

28 A. Yes, it is.

29 134 Q. Would you describe that as highly suspicious?

1 A. Well, it begged certain questions, to say the very  
2 least.

3 135 Q. Okay. In that regard, do you think that you emphasised  
4 that your determination when you looked at issue 5?  
5 A. Absolutely. You know, that was, I suppose, one of the 12:11  
6 considerations I had in terms of recommending a board  
7 of inquiry, it was that inordinate amount of contact  
8 between Garda A and Ms. B.

9 136 Q. And I think you recall that Garda A's explanation was  
10 that he was trying to obtain Ms. B as a source, isn't 12:11  
11 that right?  
12 A. Yes.

13 137 Q. The reason I asked but the credibility assessment, is  
14 that you don't determine that his position wasn't  
15 credible, do you? His version of events, his 12:11  
16 explanation as to why there is this level of contact,  
17 you don't say that that's not credible in all the  
18 surrounding circumstances, do you?  
19 A. If I can just have a moment, Chair.

20 CHAIRMAN: Ms. Mulligan, I am just a little worried 12:12  
21 that Garda A is not on trial here.  
22 MS. MULLIGAN: And I am not --  
23 CHAIRMAN: You are, you are suggesting that his  
24 explanation was incredible.  
25 MS. MULLIGAN: No, my question is whether or not 12:12  
26 Assistant Commissioner McMahon considered credibility  
27 of part of her assessment.  
28 CHAIRMAN: No, you didn't. I mean understand the  
29 difficulty of where we were.

1 MS. MULLIGAN: If I was ineloquent, Chairman, I can  
2 readdress it.

3 CHAIRMAN: No, it's not a criticism in the slightest.  
4 I quite understand the issue. I am just saying we have  
5 to be careful. 12:12

6 MS. MULLIGAN: I appreciate that, Chairman.

7 CHAIRMAN: He is not on trial. I mean, what the  
8 commissioner has said is, look, I mean she is really  
9 saying it very clearly: This was inordinate,  
10 excessive, it called for explanation. It was such that 12:13  
11 it was part of her rationale for recommending a board  
12 of inquiry. My fear is that we can't trespass. We  
13 have expressly said that the Terms of Reference do not  
14 allow us to investigate the facts and therefore, while  
15 I can understand the logic of your approach and your 12:13  
16 question, and I have no criticism of that kind, I just  
17 think we have to be careful. I do rather think that  
18 the point you are making overall about that matter is  
19 pretty clear, if I may put it that way.

20 MS. MULLIGAN: Very well. 12:13

21 CHAIRMAN: I mean I'm torn, I don't want to inhibit  
22 your cross-examination but I do have to be careful just  
23 to remember what we're not doing. Is that okay?

24 MS. MULLIGAN: I can ask a number of questions that  
25 might -- 12:14

26 CHAIRMAN: By all means, by all means. I want to  
27 explain to you my thinking, that it's not in any way a  
28 criticism of your approach, but I do have to look at  
29 another issue. Okay.

1 MS. MULLIGAN: I appreciate that, Chairman.

2 138 Q. So in relation to coming to your conclusion that this  
3 matter warranted going to the next step, assistant  
4 commissioner, one of the things that appears to me to  
5 be absent is a credibility assessment of the 12:14  
6 explanation given. I wanted to give you an opportunity  
7 to explain why you wouldn't have a credibility  
8 assessment based on the information that you are given?

9 A. Well, if you are asking did I accept that, the  
10 explanation provided by Garda A, I didn't. And that 12:14  
11 was one of the reasons why I was recommending a board  
12 of inquiry.

13 139 Q. Just on that, because it's not entirely clear to me  
14 what the role of a board of inquiry is. So you make  
15 your recommendation based on the information that's 12:15  
16 provided to you, you do your investigation, you come to  
17 a determination. The board of inquiry doesn't reopen  
18 material again, it identifies what discipline should be  
19 taken on foot of your determination, am I right about  
20 that? Or, what happens next? 12:15

21 CHAIRMAN: Do they not hear evidence?

22 MS. MULLIGAN: That's my point.

23 A. Yes, they do.

24 140 Q. CHAIRMAN: The board of inquiry?

25 A. Yes. 12:15

26 MS. MULLIGAN: So it's an oral inquiry.

27 141 Q. CHAIRMAN: I thought it would be a complete -- there's  
28 an investigation, correct me if I am wrong, there is an  
29 investigation and it goes to a board of inquiry, which

1 is in effect a kind of disciplinary trial.

2 A. Yes.

3 142 Q. CHAIRMAN: Evidence is called, people may be examined  
4 or cross-examined.

5 A. Yes. 12:15

6 143 Q. CHAIRMAN: And am I right in thinking that the board  
7 process defines the charges that are made?

8 A. That's correct.

9 144 Q. CHAIRMAN: So you make your recommendation but  
10 something else, for instance, attempted frustration, 12:15  
11 could be something that the board would decide, they  
12 might decide otherwise, but is that right?

13 A. That is the case.

14 CHAIRMAN: Okay. Sorry. Thank you very much.

15 A. And I as investigating officer would present my case. 12:16

16 CHAIRMAN: You present the case, yes.

17 145 Q. MS. MULLIGAN: Assistant commissioner, in terms of  
18 doing a credibility assessment, that is probably  
19 something that you did but it's not necessarily  
20 something that would go into your determination, would 12:16  
21 that be fair? So you have given evidence that you  
22 didn't accept Garda A's version of events but you don't  
23 necessarily write that down in terms of a credibility  
24 assessment because that aspect is for the next stage,  
25 is that right? 12:16

26 A. Well, when I am outlining what my considerations were,  
27 I very clearly outlined that that particular aspect,  
28 i.e. the inordinate level of contact, was a key  
29 consideration.

1 146 Q. Okay. And just on that note, the explanation given for  
2 by Garda A is in relation to making Ms. B an informant.  
3 Just because I haven't seen it, is it possible, did  
4 anyone seek to identify whether or not Ms. B was  
5 registered with CHIS, for example? 12:17

6 A. She wasn't.

7 147 Q. She wasn't. Was that checked?

8 A. Yes.

9 148 Q. Yes, it was. Very good. Just because I didn't see  
10 that in your determination or in your report, is that 12:17  
11 something that you took into account? So there was an  
12 explanation given that Ms. B was to be an informant,  
13 there is some 300 phone calls and almost 2,000  
14 different variations of contact in a ten-week period,  
15 the explanation for that is that Ms. B is to be an 12:17  
16 informant. You then identify and seek to identify  
17 whether or not she is registered with CHIS, you find  
18 she is not, why isn't that in the report?

19 A. Regardless of whether she was registered with CHIS or  
20 not, the level of contact between Garda A and Ms. B was 12:18  
21 inordinate.

22 149 Q. I accept that?

23 A. That was my consideration.

24 150 Q. No, and I accept that. But can I just ask, for the  
25 benefit of the next stage, knowing that piece of 12:18  
26 information would be quite helpful, because it  
27 undermines the credibility of Garda A's version of  
28 events, does it not?

29 A. Yes, it does.

1 151 Q. Yes. So can I just ask you, why wasn't it in the  
2 report?  
3 A. There was an enquiry carried out in relation to whether  
4 or not Ms. B was a registered informant and that's as  
5 far as it went. 12:18

6 152 Q. Okay. Did it form part of your reasoning for moving  
7 the matter forward?  
8 A. What formed part of my reasoning, as I stated already,  
9 was the inordinate amount of contact between the two  
10 individuals concerned. 12:19

11 153 Q. And just again on page 11885, just in relation to the  
12 nature of their relationship. You identify, it was  
13 Garda Keogh's witness statement, the conversation that  
14 he alleges that he has with Garda A?  
15 A. Yes. 12:19

16 154 Q. Do you see that? I will give you a moment.  
17  
18 "I questioned him about Ms. B. He admitted to me that  
19 he was having a sexual relationship with her and that  
20 that was why he had to tip her off about the search for 12:19  
21 the phones. This conversation took place down in the  
22 Castle Inn."  
23  
24 Do you see that?  
25 A. Yes. 12:19

26 155 Q. Yes. Do you believe that that position is consistent  
27 or inconsistent with the allegations, with the  
28 substantive allegation 5? Do you think it's relevant,  
29 the fact that they might have been in a sexual

1 relationship?

2 MR. MURPHY: Chairman, I wonder if this question is  
3 trespassing on your previous caution. It does appear  
4 to be inviting the witness to make a choice on  
5 credibility on Garda A and other persons. 12:20

6 CHAIRMAN: Yes. I don't think that arises,  
7 Ms. Mulligan. We have the evidence.

8 MS. MULLIGAN: It's just the only issue that arises in  
9 relation to --

10 CHAIRMAN: Sorry, you're actually saying, do you 12:20  
11 believe Garda A or do you believe Garda Keogh. That's  
12 what you are really saying.

13 MS. MULLIGAN: No, Chairman, it's just, Assistant  
14 Commissioner Sheehan identifies that the nature of the  
15 relationship was one of the reasons why he didn't bring 12:20  
16 the matter forward and I just wanted to identify  
17 whether or not the assistant commissioner had the --

18 CHAIRMAN: But does this have anything to do with Garda  
19 Keogh's complaints about this witness?

20 MS. MULLIGAN: Very good, Chairman. 12:20

21 CHAIRMAN: Or indeed about any of his complaints.

22 MS. MULLIGAN: Very good, Chairman.

23 CHAIRMAN: Look, I am eager to explain where I don't  
24 want to go. We're not trying Garda A and we're not  
25 deciding about -- what we are deciding about is whether 12:21  
26 Garda Keogh suffered targeting or discrediting as a  
27 result of making a protected disclosure. We have to  
28 remember that that's what we are about.

29 MS. MULLIGAN: Yes, Chairman, I am endeavouring to



1 confine myself, it can be tricky at times. The issue  
2 is that this witness has given her evidence that she  
3 did a thorough and complete report.

4 CHAIRMAN: Yes.

5 MS. MULLIGAN: And that that took time and if the 12:21  
6 investigation isn't thorough and complete, then the  
7 validity of the --

8 CHAIRMAN: But her judgment as to credibility has  
9 nothing to do with the --

10 MS. MULLIGAN: Very good, Chairman. 12:21

11 CHAIRMAN: well hold on, wait until I finish before you  
12 agree or disagree. Her judgment as to the credibility  
13 of an explanation given or not given has nothing to do,  
14 as I understand it, and subject to what you may say,  
15 with the length of time the report took or the 12:22  
16 thoroughness of the report.

17 MS. MULLIGAN: Very good, Chairman. I take it on  
18 board.

19 CHAIRMAN: Okay.

20 MS. MULLIGAN: I will move on to Allegation 6, which is 12:22  
21 11894, and that's is the allegation that Garda A  
22 protected Ms. B from prosecution because of their  
23 relationship and as a result was never a target. Do  
24 you see that allegation?

25 A. Yes, Chair. 12:22

26 156 Q. Just in relation to that chapter, if we could just go  
27 to page 11897. Just to pick up paragraph 6.14 and  
28 6.15. This is just in relation to the billing records.  
29 Do you see that? Can I just clarify, when you say data

1 protection legislation doesn't allow for you to seek  
2 it, can you clarify even a little bit more what that  
3 means, what you say the data protection issue is?

4 A. These particular billing records were got for a  
5 particular purpose and not for the disciplinary 12:23  
6 investigation. So therefore I couldn't use them for  
7 that.

8 157 Q. So just to be clear, could you have sought them for  
9 that purpose? So the material that you had came from a  
10 different investigation? 12:23

11 A. No, I don't believe I could. However, I believe the  
12 board of inquiry may have been authorised to do so.

13 158 Q. Just again so I am clear, these are the records that  
14 are kept in the station for the purposes of accounts,  
15 is that right? The billing records are in the 12:24  
16 station's original file, am I right about that?

17 A. No, these are records of outgoing and incoming calls.

18 159 Q. Yes.

19 A. Excuse me.

20 160 Q. So Chief Superintendent Glacken has them? 12:24

21 A. But they would have to be got from the service  
22 provider.

23 161 Q. I don't want to dwell on it, I'm not sure how much  
24 turns on them, but just from your point of view, you  
25 couldn't seek them from Chief Superintendent Glacken 12:24  
26 because they were maintained and kept for Chief  
27 Superintendent Glacken for a specific purpose; is that  
28 right?

29 A. That's correct.

1 162 Q. And therefore would you have had to have gone to the  
2 service provider; is that right?  
3 A. I'm not permitted to do that as a part of a discipline  
4 investigation.  
5 163 Q. And can you just confirm to me why that is? 12:25  
6 A. For data protection legislation, it doesn't allow me to  
7 do that.  
8 164 Q. CHAIRMAN: But the board of inquiry could, is that  
9 right?  
10 A. That's my understanding. 12:25  
11 165 Q. MS. MULLIGAN: Just so I am clear on that point, the  
12 board of inquiry can, you're not entitled for data  
13 protection reasons. Did you obtain legal advice in  
14 that regard?  
15 A. Yes. 12:25  
16 166 Q. Yes. So you acted purely on that legal advice, is that  
17 right?  
18 A. Yes.  
19 167 Q. Okay, very good. That was the only question I had in  
20 relation to allegation 6. If I can just go straight to 12:25  
21 allegation 8, which is 11907.  
22  
23 "Allegation that Garda A changed statements pertaining  
24 to the prosecution of suspect 2 and originals were not  
25 disclosed to the defence." 12:26  
26  
27 In fairness to you, assistant commissioner, this is a  
28 very detailed part of the chapter. Can I just ask you  
29 a few questions in relation to this aspect? So,

1 suspect 2 we believe is the correct suspect and suspect  
2 1 was inadvertently named by Garda A, isn't that right?  
3 Is that right? Suspect 1 was the first person who was  
4 arrested and that identification was incorrect and it  
5 was Garda A who made that identification, isn't that 12:26  
6 right?

7 A. Yes, but prior to that the correct person was  
8 identified --

9 168 Q. Yes.

10 A. -- as having been involved in the sale of drugs, sale 12:27  
11 and supply of drugs.

12 169 Q. And it was identified as surname and address issued?

13 A. That's correct, two people of the same name.

14 170 Q. And just at 8.26, Garda A then takes over to submit the  
15 investigation file for recommendation once that issue 12:27  
16 is resolved, isn't that right?

17 A. Yes.

18 171 Q. And at 8.29:  
19  
20 "Based on the documentation available to this inquiry, 12:27  
21 it would appear that Chief Superintendent Aidan Glacken  
22 was unaware of the confusion surrounding suspect 2 and  
23 suspect 1."  
24

25 It's just blanked out there, I'm just not entirely sure 12:27  
26 what that is. But did you seek a statement from Chief  
27 Superintendent Glacken in relation to this?

28 A. No, I didn't.

29 172 Q. So what I just want to ask you is, in terms of looking

1 at this from a disciplinary point of view, should you  
2 have maybe confirmed with Chief Superintendent Glacken  
3 whether or not he was aware of the confusion?  
4 A. well, what I was looking at was a very specific  
5 allegation. 12:28  
6 173 Q. Yes.  
7 A. And I was satisfied that I had sufficient information  
8 available to me to make a determination on that.  
9 174 Q. Okay. So in terms of, from Garda A's point of view,  
10 you took it that he hadn't taken a proper step, is that 12:28  
11 right, in contacting Chief Superintendent Glacken, is  
12 that right?  
13 CHAIRMAN: Sorry, what paragraph are you referring to,  
14 Ms. Mulligan?  
15 MS. MULLIGAN: Sorry, page 11982, 8.29. 12:28  
16 CHAIRMAN: If you just roll down.  
17 MS. MULLIGAN: "On 6th October 2012, Chief  
18 Superintendent Aidan Glacken while district officer for  
19 Athlone directed suspect 2 be prosecuted as  
20 recommended. Based on the documentation available to 12:29  
21 this inquiry, it would appear that Chief Superintendent  
22 Glacken was unaware of the confusion."  
23  
24 CHAIRMAN: Sorry, I see what you mean, yes.  
25 A. Chairman, I'm just not a hundred percent sure about 12:29  
26 that. I may have put that to Aidan Glacken when he was  
27 interviewed.  
28 175 Q. CHAIRMAN: Yes.  
29 A. But in any event, the disclosure in terms of this

1 particular investigation wouldn't be done at district  
2 officer, at superintendent level.

3 176 Q. CHAIRMAN: Yes.

4 A. And it was a Garry Doyle order, for which typed copies  
5 of statements only were provided and in that regard it 12:29  
6 wouldn't necessarily have I suppose emerged as an  
7 issue.

8 CHAIRMAN: Yes.

9 177 Q. MS. MULLIGAN: To chief superintendent Glacken in any  
10 event? 12:29

11 A. Yes.

12 178 Q. So you took no issue with that per se, it wasn't a  
13 required thing for Garda A to do, am I right about  
14 that?

15 A. That's correct, yeah. 12:30

16 179 Q. Okay. So Garda A -- just moving on then to page 48,  
17 you use a section of the interview between Garda A and  
18 Superintendent Lacey, where Garda A essentially  
19 admitted that it was his error where the different  
20 between suspect 1 and 2 arose. That continues on for a 12:30  
21 relatively extensive period of time. I just want to go  
22 to the end of that interview, at page 11917, where he  
23 names the solicitor Owen Carty as being the person who  
24 suspect 2 had instructed. Do you see that? I just  
25 want you to consider whether or not you thought it was 12:30  
26 suspicious that Garda A could remember the name of the  
27 solicitor --

28 CHAIRMAN: Ms. Mulligan, hold on. It's suspicious that  
29 Garda A could remember the name. No. Not allowable.

1 MS. MULLIGAN: Very good. I will move on to paragraph  
2 8.4. No issue, Chairman.

3 CHAIRMAN: Actually the other thing is, isn't the  
4 situation in regard to this particular issue that  
5 whatever else may be said, wasn't it Garda A who 12:31  
6 pointed out the mistake? Wasn't it he who pointed out  
7 the wrong person?

8 MS. MULLIGAN: Yes.

9 CHAIRMAN: Garda Keogh is interviewing the  
10 misidentified accused, isn't that right? 12:31

11 MS. MULLIGAN: Yes.

12 CHAIRMAN: Garda A arrives on the scene, looks in and  
13 says, that's the wrong person.

14 MS. MULLIGAN: Yes.

15 CHAIRMAN: What's wrong with that. 12:32

16 MS. MULLIGAN: That's not the problem, Chairman, it's  
17 the next piece I come coming to that I have the issue.

18 CHAIRMAN: Okay. But his credibility is not to be  
19 judged by this witness and it's not actually an issue  
20 in this inquiry. Now I said that a few times. 12:32

21 MS. MULLIGAN: Yes.

22 CHAIRMAN: And I have tried to be helpful.

23 MS. MULLIGAN: Yes, Chairman.

24 CHAIRMAN: So please bear that in mind.

25 180 Q. MS. MULLIGAN: Very good. If we just go to 8.40 then 12:32  
26 in relation to it. Garda A then accepts that he didn't  
27 disclose the issue between suspect 2 and suspect 1,  
28 isn't that right?

29 A. That's correct.

1 181 Q. Just in relation to your conclusion, you identify at  
2 8.43 that the issue about the Garry Doyle order.  
3 Correct me if I'm wrong, but isn't it the case that a  
4 Garry Doyle order should be a summary of the evidence,  
5 is that right? 12:33

6 A. It's more than a summary of the evidence, it's the  
7 statements.

8 CHAIRMAN: It's the statements have to be furnished.  
9 MS. MULLIGAN: The statements.

10 CHAIRMAN: Not a summary and the statements, I thought 12:33  
11 the statements essentially.

12 182 Q. MS. MULLIGAN: So the statements. Just in relation to  
13 8.44, you said:  
14  
15 "While there is no general duty on a prosecution in a 12:33  
16 summary case to furnish material which it does not  
17 intend to rely upon, statements or material intended to  
18 be tendered as evidence should be furnished to the  
19 defence (where it is necessary in the interest of  
20 justice). The issue to consider now is whether or not 12:33  
21 the original statements and the issues pertaining to  
22 suspect 1's arrest should have been disclosed."  
23  
24 In fairness to you, you do actively identify this as an  
25 issue on your own bat, isn't that right? 12:33

26 A. That's correct.

27 183 Q. In terms of your conclusions then, and perhaps I should  
28 skip to that part, and I apologies to the Chairman in  
29 that regard, you identify that Garda A made what you



1 describe as a genuine mistake. Is it fair to say that  
2 the outcome of that case might have been different if  
3 the defence had known that there was a suspect --  
4 CHAIRMAN: How can she answer that question? You can  
5 make a submission to that. 12:34  
6 MS. MULLIGAN: Very good.  
7 CHAIRMAN: For what it's further, you may make a  
8 submission and it may be disputed and insofar it's  
9 relevant, I will take it into account but it's is not a  
10 matter for this witness to say. 12:34  
11 184 Q. MS. MULLIGAN: Okay. In that regard then, it's the  
12 case that suspect 2 pleads guilty and doesn't have the  
13 benefit of knowing that there was a difference between  
14 suspect 1 and suspect 2, isn't that right? And you do  
15 raise it an issue in terms of the conduct of Garda A in 12:34  
16 that decision making, isn't that right?  
17 A. Yes.  
18 185 Q. Can I just ask you then on that note, you identify that  
19 it's not a sufficiently serious breach in order to  
20 bring the matter forward, I think at page 56, at 8.46, 12:35  
21 do you see that?  
22 A. Yes.  
23 186 Q. Can I just clarify, would you consider that to be  
24 something that would be appropriate for a less serious  
25 breach under a different categorisation of discipline? 12:35  
26 A. I was appointed to carry out an investigation in terms  
27 of a serious breach of discipline. My terms of  
28 reference were just that. In that context, I did not  
29 deem this as something that was worthy of going forward

1 to a board of inquiry.

2 187 Q. Okay. Just in relation to that, we were provided in  
3 the disclosure, and I just want to make sure I'm  
4 correct in this, is that it's -- sorry my apologies.  
5 It's the note of the disciplinary procedures under the 12:36  
6 Garda Síochána (Discipline) Regulations 2007, is that  
7 the material that you were relying on for the purpose  
8 of this investigation? That is the procedural  
9 document?

10 A. Yes. 12:36

11 188 Q. It is open to you to seek to add, amend or adjust  
12 should you consider it appropriate, isn't it, the  
13 allegations that you're investigating?

14 A. It's possible to go from a less serious breach to a  
15 serious breach, but it's not possible to reverse and go 12:36  
16 from a serious breach to a less serious breach.

17 189 Q. So it is your position to the Chairman that you can  
18 only go up, you can't go down, is that right?

19 A. That's correct.

20 190 Q. All right. In those circumstances it doesn't arise 12:36  
21 that a less serious breach -- so in other words, if you  
22 think you censure or advise or reprimand or give a  
23 warning, for example, for a less serious breach, but  
24 you say that you didn't consider that because you can't  
25 look to bring in a lesser allegation if it's a less 12:37  
26 serious breach, am I correct?

27 A. The breaches were set out in my appointment papers and  
28 that's what I am confined to.

29 191 Q. Unless you make an application or seek to add to those

1           allegations, and your evidence to the Chairman is that  
2           you can only do that if you are making -- if you are  
3           bringing one up one from less serious to serious. Is  
4           that my understanding of your evidence?  
5           A.     Yes, and that's my understanding of what I am entitled     12:37  
6           to do.  
7   192   Q.     Okay, very good. So in those circumstances, while you  
8           did accept, for want of a better word, that it was poor  
9           professional practice and perhaps he shouldn't have  
10           done what he did, it didn't reach the standard of     12:37  
11           serious, of a serious breach and you can't bring the  
12           matter forward for a less serious breach, is that  
13           right?  
14           A.     That's correct. There's no doubt it wasn't best  
15           practice, but in the context of where I found myself,     12:38  
16           it wasn't sufficient to bring it to a board of inquiry  
17           in my view.  
18   193   Q.     And you felt that you were on confined by the  
19           regulations, is that right?  
20           A.     Yes, that's my understanding of the regulations.     12:38  
21   194   Q.     Very good. I have very little left for you, assistant  
22           commissioner. If we can go to page 11950. This is  
23           just in relation to allegation 11, which is that Garda  
24           A gave heroin to blank whilst in Garda custody, do you  
25           recall that allegation?     12:39  
26           CHAIRMAN: Is that not an allegation that Garda A [sic]  
27           expressly withdrew in his interview with Chief  
28           Superintendent Mulcahy.  
29           MS. MULLIGAN: I need to clarify.

1 CHAIRMAN: If I had Chief Superintendent Mulcahy's  
2 statement in front of me, I think I am right in saying  
3 that at an interview when -- Mr. McGuinness and  
4 Mr. Marrinan will correct me if I am wrong but I  
5 thought that was the situation. It would be found 12:39  
6 about page 3 or 4 of Detective Superintendent Mulcahy's  
7 original statement and my understanding is that that is  
8 in accordance with his evidence. Now, that may be  
9 quite wrong but I didn't understand that to have been  
10 challenged. 12:40  
11 MS. MULLIGAN: Chairman, my instructions are that Garda  
12 Keogh expressed some doubt about it, but in the  
13 interest of --  
14 CHAIRMAN: No, no, no, it's not a question of being in  
15 doubt, it's a question of being right or being wrong. 12:40  
16 And the question is, if Garda Keogh explicitly withdrew  
17 that, which is my recollection of the statement of  
18 Detective Superintendent Mulcahy, then it's important  
19 that we should clarify it. I don't think I happen to  
20 have it here. If somebody will look at the statement 12:40  
21 of Detective Superintendent Mulcahy as furnished to the  
22 Tribunal. Can we discover the page this is on.  
23 Mr. McGuinness, you seem to have the page.  
24 MR. MCGUINNESS: Chairman, it's the statement, page  
25 3900 commences. 12:41  
26 CHAIRMAN: His statement is 3900. Thank you very much.  
27 Now, can you scroll down, Peter, nicely to about three  
28 pages in? Stop there a second. Off you go again.  
29 Stop there. Go on again. Okay. Next page. Ciara,

1 could you give me a copy of that? Is that the  
2 statement 3900? Thanks very much. It's a meeting that  
3 Detective Superintendent Mulcahy had with Garda Keogh  
4 at Athlone Garda Station, as far as I know, when they  
5 looked at some material. 3900. 3904, about ten lines 12:42  
6 down:

7  
8 "He also stated to me that he 'did not now believe that  
9 blank got it when in custody in Athlone in November  
10 2009'. He was referring to his allegation where he 12:43  
11 alleged that blank had received heroin when in Garda  
12 custody."

13  
14 Am I reading this correctly?  
15 MS. MULLIGAN: My instructions are, Chairman, that my 12:43  
16 client expressed doubt about receiving it in custody.

17 CHAIRMAN: I'm sorry, say that again.  
18 MS. MULLIGAN: That he expressed a doubt as to whether  
19 or not the suspect --

20 CHAIRMAN: what do you think he said there? 12:43

21  
22 "He did not now believe that X..."

23  
24 That that's not expressing doubt?

25 MS. MULLIGAN: I appreciate that, Chairman. 12:44

26 CHAIRMAN: That is in effect withdrawing the  
27 allegation.

28 MS. MULLIGAN: very good, Chairman.

29 CHAIRMAN: well I mean, isn't that right?

1 MS. MULLIGAN: I can't dispute that, Chairman,  
2 certainly not.

3 CHAIRMAN: I mean obviously I don't want to be unfair  
4 to anybody. The detective superintendent was not  
5 challenged on that, as far as I know. Am I right in 12:44  
6 thinking that he gave his evidence in accordance with  
7 that.

8 MS. MULLIGAN: Very good, Chairman. No issue with  
9 that.

10 CHAIRMAN: If I am not right, I am not right and I 12:44  
11 don't want to be saying it but that's what occurs to  
12 me.

13 MS. MULLIGAN: Yes, Chairman, on the basis of what is  
14 in the statement, I will move on.

15 CHAIRMAN: What do you think, Mr. McGuinness? What's 12:44  
16 is the position?

17 MR. MCGUINNESS: Chairman, it's not clear to me just at  
18 the moment that Detective Superintendent Mulcahy was  
19 asked about that issue.

20 CHAIRMAN: I am pretty certain he wasn't asked about it 12:44  
21 in cross-examination, that's for sure.

22 MR. MCGUINNESS: Yes.

23 CHAIRMAN: And his statement was expressly identified.  
24 I cannot say that he said it in his evidence.

25 MR. MCGUINNESS: Yes. We did go through his notes of 12:45  
26 this meeting, this is a meeting on 6th August 2014.

27 MS. MULLIGAN: Very good, Chairman, very little turns  
28 on it. It was one question in any event.

29 CHAIRMAN: Okay. Thank you. Thanks very much.

1 195 Q. MS. MULLIGAN: Just finally in relation to the  
2 interview conducted with Garda A, you gave your  
3 evidence to the Chairman that you didn't feel it was  
4 appropriate to meet with Garda A prior to completing  
5 the work. I just want to put it to you, that was an 12:45  
6 inappropriate determination and caused undue delay in  
7 all the surrounding circumstances of this case.  
8 A. I don't accept that, Chairman.  
9 196 Q. Very good. I am going to put it to you that that had  
10 the effect of discrediting Garda Keogh, the delay in 12:45  
11 particular had the effect of discrediting Garda Keogh  
12 and in fact that that was borne out in reality because  
13 no formal discipline has ever been placed on Garda A,  
14 isn't that the case?  
15 A. I don't accept that. 12:46  
16 197 Q. Very good. No further questions.  
17  
18 END OF EXAMINATION  
19  
20 CHAIRMAN: Thank you very much. Now. 12:46  
21  
22 ASSISTANT COMMISSIONER ANN MARIE McMAHON WAS EXAMINED  
23 BY MR. MURPHY, AS FOLLOWS:  
24  
25 198 Q. MR. MURPHY: Thank you, Chairman. Assistant 12:46  
26 commissioner, I wonder if you could please be shown the  
27 transcript for Day 104, and particularly at page 103.  
28 The very last line, question 407. Assistant  
29 commissioner this is the evidence given by Garda Keogh

1 to the Tribunal counsel on that date. The question  
2 being put forward:

3  
4 "But are you suggesting that a failure -- I mean, it's  
5 not in the documents as a complaint, in terms of delay, 12:46  
6 but are you suggesting that the failure to keep you  
7 up-to-date was in some way to designed to target you  
8 because of your disclosure?"

9  
10 And Garda Keogh replied 12:47

11  
12 "Yes. "

13  
14 Do you see that?

15 A. Yes. 12:47

16 199 Q. Just to be clear, the allegation being made against you  
17 is that any delay in relation to your investigation  
18 were designed to target Garda Keogh because he had made  
19 disclosures. What do you have to say in relation to  
20 that allegation? 12:47

21 A. Chairman, nothing could be further from the truth in  
22 terms of my perspective on this. As I have already  
23 outlined, I carried out the investigation in the manner  
24 I did, I got additional help, it was a thorough  
25 investigation, and really I was shocked to see this in 12:47  
26 the transcript.

27 200 Q. Can I ask you to move forward, please, registrar, to  
28 107, the same day, line 28. Here the Chairman seeks to  
29 clarify exactly what Garda Keogh is alleging. It is



1 narrowed down first of all to two things; dragging it  
2 out and failing to make arrests.

3

4 "A. Yes.

5 CHAIRMAN: Okay. Sorry, three, failure to keep you  
6 informed?"

7

8 So at the end of this, you will see at line 4 on the  
9 next page, those are the three points he wants to make  
10 against you, do you see that?

12:48

11 A. Yes.

12 201 Q. Insofar as it's alleged, that either the allegations of  
13 dragging out the investigation, failing to make arrest  
14 or failing to keep him informed of the progress of the  
15 investigation, do you accept or reject that that  
16 amounted to targeting or discrediting Garda Keogh?

12:48

17 A. I totally reject these assertions made by Garda Keogh  
18 and I did not in any way discredit or target him during  
19 the course of my investigation or in any other way.

20 202 Q. Assistant commissioner, can I come back now to the  
21 process that you were conducting at the time of the  
22 disciplinary regulations?

12:48

23 A. Yes, the discipline regulations is what I was working  
24 to.

25 203 Q. Just to assist the Tribunal in terms of understanding,  
26 you have made the point that this was a separate  
27 process to the criminal investigation, isn't that  
28 right?

12:48

29 A. Yes, a totally separate process, and I wasn't in any

1 way involved in the criminal. My focus and my  
2 appointment was the discipline investigation.

3 204 Q. Therefore, on the day that you were appointed and you  
4 were given the documents to investigate, complaints to  
5 investigate, was it always your understanding you would 12:49  
6 have to report back at the end of that process to  
7 somebody else, who would make a decision about your  
8 investigation?

9 A. Absolutely. I was appointed as investigating officer.  
10 That was my role. At the end of my investigation I 12:49  
11 always knew that I would be making a recommendation and  
12 it was for somebody else to determine whether or not  
13 that recommendation would proceed.

14 205 Q. Yes. And would this be the case in every disciplinary  
15 investigation of this kind? 12:49

16 A. Yes, that's the standard practice, Chair.

17 206 Q. Could I ask you please to be shown page 11894, please,  
18 and in particular can we please have paragraph 5.47?  
19 Here I think you say, and I quote:  
20 12:50

21 "Even in the absence of the witness statement of Ms. B  
22 on the balance of probabilities, based on the evidence  
23 gleaned from the investigation, I am of the opinion  
24 that there is substance to this allegation resulting in  
25 a potential serious breach of the regulations and that 12:50  
26 a board of inquiry is established to examine the  
27 matter."  
28

29 So is it fair to say that in that paragraph you were



1 official Garda channels and on sight of same it was  
2 clear that Ms. B was confirming involvement of Garda  
3 malpractice in Athlone Garda district."

4  
5 Does that help you confirm the timeframe in which would 12:52  
6 you have transferred that statement?

7 A. Yes, 15th February 2018.

8 211 Q. Again, just in terms of the evidence, I wonder could we  
9 please see Day 136 of this Tribunal's hearing, at page  
10 107. 107. Question 372, please. There again I think 12:52  
11 the position is that Inspector Coppinger said, when  
12 asked:

13  
14 "I think it's February 2018 that Ms. B made a statement  
15 to Commissioner Anne Marie McMahon's investigation 12:53  
16 regarding the discipline investigation that she was  
17 carrying out

18 A. That's correct. That's roughly around that time.  
19 After that, I would have got sight of the actual  
20 statement. I was aware it may be in existence but I 12:53  
21 didn't actually see it after that

22 Q. Yes. What was your hope at this point in terms of  
23 breathing life into the investigation afresh?"

24  
25 And Inspector Coppinger said: 12:53

26  
27 "Well, clearly on reading the statement, it did show  
28 some promise, in that it was very supportive of the  
29 allegation being made by Garda Keogh."

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Do you see that?

A. Yes.

212 Q. So in effect is it the case that you provided to the investigation team information which tended to be supported of Garda Keogh's complaint?

12:53

A. Yes, that's absolutely the position.

213 Q. Insofar as there is any suggestion by your conduct you targeted or discredited Garda Keogh, does that have any foundation whatsoever?

12:54

A. No, the contrary was the case. I was doing everything in my power to professionally and thoroughly investigate and in doing so, through the provision of the statement from Ms. B, brought that to the attention of the criminal team also.

12:54

214 Q. I think that in terms of your investigative methods, you have given very detailed evidence to the Chairman about the steps you took. Just on one point, you have been queried as to why you left interviewing Garda A until towards the end of the investigative process. Can I ask you, from the answers you gave earlier on, is it open to the Chairman to conclude from you said there, that normally in criminal investigations the suspect is one of the last people to be interrogated or interviewed.

12:54

12:54

A. Yes, you gather the facts, you establish the facts and then you go to your suspect.

215 Q. In terms of police methodology, is that something that would apply in both a disciplinary investigation and a

1 criminal investigation?

2 A. Yes, generally speaking yes.

3 216 Q. And is that for the purpose of ensuring that when any  
4 interview does take place that you are in possession of  
5 the maximum amount of information to be put to that 12:55  
6 person?

7 A. Yes.

8 217 Q. And again, it's been asked why you didn't go back to  
9 Garda Keogh to try and clarify things with him. Was  
10 Garda Keogh's statement clear to you on its face? 12:55

11 A. Yes, very clear.

12 218 Q. I think also in terms of most of what Garda Keogh is  
13 saying, would you agree with me that he wasn't  
14 providing direct evidence of things he had seen, he was  
15 leading you in the direction of finding witnesses who 12:55  
16 might give such evidence?

17 A. Absolutely, and that's what I did.

18 219 Q. Just in terms of the general approach towards your  
19 investigation itself, you have indicated that your team  
20 worked with you and met at various conferences. Again, 12:55  
21 did you ever detect any hint that any members of your  
22 team were seeking to target or discredit Garda Keogh?

23 A. No. I had absolute confidence in the team. They were  
24 working to -- they were working to establish the facts  
25 and do a really thorough job given all of the 12:56  
26 circumstances of the case.

27 220 Q. Thank you.

28

29 END OF EXAMINATION

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CHAIRMAN: Has anybody else any questions? Very good.

MR. MARRINAN: There are a number of matters.

CHAIRMAN: Okay.

MR. MARRINAN: There are a number of matters.

12:56

CHAIRMAN: Just let me say before you go any further, Mr. Marrinan. If Garda Keogh wishes to -- I'm not sure that Detective Superintendent Mulcahy was asked in evidence about the contents of the statement that I just referred to, I am not sure, assuming he wasn't, if Garda Keogh wishes to disagree with that or challenge that, that's not a problem. We will recall Detective Superintendent Mulcahy to deal with that very specific point. So that's entirely a matter -- and then we will clear it up. But if there is no question of disputing the material in the statement, then we will simply proceed.

12:56

12:57

MR. KELLY: Thanks, Chairman. I will have a look at that.

CHAIRMAN: Certainly, absolutely. And you can form a judgment about it. As I say, if there is a dispute about it, if Garda Keogh disputes it, then we will proceed to -- insofar as it is of any importance, as people may wish to say or not matter, that's a matter I will be happy to look at. Now, Mr. Marrinan.

12:57

12:57

1 ASSISTANT COMMISSIONER ANN MARIE McMAHON WAS  
2 RE-EXAMINED BY MR. MARRINAN, AS FOLLOWS:

- 3
- 4 221 Q. MR. MARRINAN: Yes, just in relation to advising Garda  
5 Keogh that you had taken up the investigation, if we 12:57  
6 can just have page 16473 on the screen. 16473, please.  
7 Yes. This is a letter from Inspector Noonan on your  
8 behalf to deputy commissioner, Policing and Security.  
9 Do you see that?
- 10 A. Yes. 12:58
- 11 222 Q. If we just look at the second paragraph there, you're  
12 actually raising or he is raising the issue on your  
13 behalf:  
14  
15 "Clarification is sought, enquire as to whether the 12:58  
16 members concerned, including the complainant and those  
17 members complained of, have been formally notified that  
18 Assistant Commissioner McMahon has been nominated to  
19 take over to completion the investigation."  
20 12:58
- 21 So that seems to be a matter that you were concerned  
22 about at that time; that Garda Keogh would be notified?
- 23 A. Yes, absolutely, especially when there was a change of  
24 investigating officers. So that was certainly foremost  
25 in my mind. 12:59
- 26 223 Q. Yes. This is recently disclosed material and no  
27 criticism in relation to that, but we don't seem to  
28 have a reply to that letter. Do you recall whether you  
29 were advised that Garda Keogh had been informed?



1 CHAIRMAN: No, she never got a reply.

2 A. No.

3 224 Q. CHAIRMAN: You got a reply to say the others had been  
4 involved.

5 A. Yes. 12:59

6 225 Q. CHAIRMAN: But you didn't get one about Garda Keogh.

7 A. Correct.

8 226 Q. MR. MARRINAN: Then if we can just go to page 16474 of  
9 the material. Now this seems to be the letter that was  
10 written, again it's by Inspector Crowley on your 12:59  
11 behalf, to deputy commissioner, Policing and Security,  
12 informing him of developments in relation to Ms. B. Do  
13 you see there on the fourth paragraph down:

14

15 "As part of this investigation Ms. B was interviewed on 13:00  
16 15th November 2017. On that date she made a statement  
17 concerning her interaction with Garda A. One of the  
18 breaches of discipline that we are currently  
19 investigating. . . "

20 13:00

21 Then you go on to deal with that. You then, in the  
22 next paragraph, outline what Ms. B has to say. And  
23 then you note in the second penultimate paragraph at  
24 page 16475:

25 13:00

26 "This statement has been forwarded for the attention of  
27 the criminal investigation team for their  
28 considerations. "

29

1 Do you see that?

2 A. Yes.

3 227 Q. Now unfortunately that letter is not dated, if we go  
4 back to the previous page, there's no date on that  
5 letter. But it appears from the statement opened by  
6 Detective Inspector Coppinger that it was sometime  
7 after or shortly after the 15th February that  
8 notification took place.

13:00

9

10 Then if we could have 16476 up on the screen. Again,  
11 this is a report from Inspector Crowley on your behalf  
12 to the chief superintendent in Internal Affairs. It's  
13 a report, if we look at the second paragraph there:

13:01

14

15 "This discipline investigation has been in a position  
16 to conduct interviews with Garda A since August of this  
17 year. However, new developments which arose in the  
18 criminal investigation concerning allegations against  
19 Garda A prohibited the planned discipline interviews  
20 from being conducted until certain matters were put to  
21 Garda A by Detective Inspector Coppinger."

13:01

13:01

22

23 Then the next paragraph:

24

25 "The discipline investigation was informed on 10th  
26 September 2018 that this process was complete.  
27 Arrangements have now been made with Garda A and his  
28 legal team to conduct our interviews on the 14th  
29 November."

13:01

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So it would appear from that letter that your investigation was put in abeyance from February until November, is that right?

A. Yes, because the criminal investigation takes precedence. 13:02

228 Q. Yes.

A. It would just allow that to take its course.

229 Q. And then finally, if I could just deal with one matter, because it was a matter that concerned Garda Keogh when he was giving his evidence and it's set out in your statement. If we could have page 5998 up on the screen. This relates to an allegation that had been made in paragraphs 5 and 6, at page 8 of Garda Keogh's statement of complaint. But if we look there at the second line down: 13:02

"To an individual named Olivia O'Neill and the alleged reporting by her of alleged 'police collusion' and specifically naming Ms. B. I can state that this information was not previously known to me and my discipline investigation team and has only come to my investigation as part of the documentation received from the Chief State Solicitor's Office on 8th March 2019." 13:03

which is the disclosure material. There was some discussion in relation to this. But were you aware of the fact that this information had come from Olivia

1 O'Neill?

2 A. What I was referring to, clearly I was aware of the  
3 allegations between Garda A and Ms. B, I wasn't aware  
4 that Olivia O'Neill had brought these forward.

5 CHAIRMAN: Yes. 13:03

6 230 Q. MR. MARRINAN: And that's because it wasn't part of the  
7 Ó Cualáin investigation?

8 A. Yes.

9 231 Q. And the information in relation to that and the  
10 documentary evidence was retained in Athlone Garda 13:04  
11 Station?

12 A. Yes.

13 232 Q. Thank you very much.

14

15 END OF EXAMINATION 13:04

16

17 CHAIRMAN: Thank you very much, commissioner, you are  
18 free to go.

19 THE WITNESS: Thank you, Chairman.

20 13:04

21 THE WITNESS THEN WITHDREW

22

23 CHAIRMAN: Thank you very much. Two o'clock. Thank  
24 you.

25 13:04

26 THE HEARING THEN ADJOURNED FOR LUNCH AND RESUMED, AS  
27 FOLLOWS:

28

29 MR. MARRINAN: The next witness, Chairman, is Assistant

1 Commissioner David Sheehan, please.

2 CHAIRMAN: Thanks very much.

3

4 ASSISTANT COMMISSIONER DAVID SHEEHAN, HAVING BEEN  
5 SWORN, WAS DIRECTLY-EXAMINED BY MR. MARRINAN, AS  
6 FOLLOWS:

14:04

7

8 THE WITNESS: Assistant Commissioner David Sheehan.

9 CHAIRMAN: Thanks very much, commissioner. Thank you.

10 233 Q. MR. MARRINAN: Assistant commissioner, you provided a 14:04

11 statement to the Tribunal last October, 9th October  
12 2019. If we could have page 14249 up on the screen

13 please. If we scroll down there. 14249. Yes. If we  
14 just simply go through your introduction there. You

15 say you have 35 years service in An Garda Síochána and 14:05  
16 you currently hold the rank of assistant commissioner,

17 having been promoted to that role on 7th February 2018?  
18 A. That's correct.

19 234 Q. Prior to your appointment as assistant commissioner, 14:05  
20 you held the rank of chief superintendent from 2007 to

21 2008, serving as divisional officer in the divisions of  
22 Laois/Offaly, Tipperary and Limerick. I think you were

23 the divisional officer in Limerick from 25th February  
24 2010 to 6th February 2018. I think prior to that role

25 you held the position of superintendent from 2004 to 14:06  
26 2007, serving as district officer in Roxboro Road and

27 Waterford. You point out, in addition to the above you  
28 hold a master's in business administration, which you

29 obtained in 2003, a certificate in HRN development,

1 2006, an advanced management diploma level 9 in  
2 policing leadership 2008, an LLM in human rights and  
3 criminal justice 2018. Where did you do that?  
4 A. University of Limerick.  
5 235 Q. A professional level 9 certificate in governance, 2019. 14:06  
6 And you also completed the strategic command course  
7 2019. I think following your promotion you were  
8 assigned initially responsibility for roads policing  
9 and major event management and on 9th March 2018 you  
10 were assigned the additional responsibility for 14:07  
11 governance and accountability on the direction of the  
12 then Acting Commissioner Ó Cualáin. What did your  
13 responsibilities include in that role?  
14 A. Well, my responsibilities in that, it went down as far  
15 as -- the Commissioner delegated his functions to me in 14:07  
16 the context of setting up of a board of inquiry that  
17 falls under regulation 25 of the discipline  
18 regulations. But it doesn't allow me to dismiss  
19 anybody from the organisation.  
20 236 Q. I think that you then, in your statement at the bottom, 14:08  
21 if we can scroll down, quote section 25 of the  
22 discipline regulations. 25(1) there:  
23  
24 "If it appears from the report of the investigation  
25 that the member concerned may have committed a serious 14:08  
26 breach of discipline, the Commissioner shall establish  
27 a board of inquiry;  
28 (a) to determine whether such a breach has been  
29 committed by the member concerned and;

1 (b) If so, to recommend to the Commissioner the  
2 discipline action to be taken in relation to the  
3 member. "

4  
5 You then in the next paragraph express the view that as 14:08  
6 an assistant commissioner with responsibility for  
7 governance and accountability it was incumbent on you  
8 to ensure that decisions that you made were after a  
9 full and proper consideration of the principles of  
10 natural justice and fair procedures in respect of all 14:09  
11 members.

12  
13 "In order to ensure that I make a fair and balanced  
14 decision regarding the establishment of boards of  
15 inquiry, I have the duty to fully consider any 14:09  
16 evidential and procedural issues that may arise on a  
17 case-by-case basis. "

18 A. That's correct, yes.

19 237 Q. Have you done that frequently or often?

20 A. Yes. I'd say there's not a week goes by that I 14:09  
21 wouldn't have to make a decision of that nature.

22 238 Q. You also point out that you take due cognisance of  
23 relevant case law, best practice and procedure  
24 applicable to the discipline regulations, to ensure  
25 that the disciplinary process and by extension the 14:09  
26 Commissioner is not acting ultra vires of the  
27 discipline regulations?

28 A. Yes, that's correct.

29 239 Q. Is that a procedure that you go through in relation to

1 each case that comes before you where a board of  
2 inquiry has been recommended?

3 A. Yeah. Each case has to be taken on its merits and  
4 really it's what the investigating officer presents to  
5 me at the time. And it's based around that then that I 14:10  
6 make my decision.

7 240 Q. I think in this case, upon receipt of Assistant  
8 Commissioner Anne Marie McMahon's investigation file on  
9 27th February 2019, you read and considered Assistant  
10 Commissioner McMahon's report, including the evidence 14:10  
11 contained therein and the procedural steps taken in the  
12 investigation which gave rise to the report?

13 A. That's correct, yes.

14 241 Q. I think you note in respect of eight of the  
15 allegations: 14:10

16  
17 "(number 2 to 8 in the report) Assistant Commissioner  
18 McMahon submitted that there was no evidence to warrant  
19 the establishment of a board of inquiry. From an  
20 evidential point of view I concur with those 14:10  
21 recommendations."

22  
23 If you hadn't have concurred with the recommendations,  
24 could you still establish a board of inquiry?

25 A. Yeah, most certainly. I mean that happens. Not that 14:11  
26 often, but certainly it has happened. I'm aware of two  
27 cases where an investigating officer would have  
28 recommended no action and I subsequently recommended a  
29 board of inquiry.



1 242 Q. You then go on to say, Having fully and carefully  
2 considered the matter you decided on 7th May 2019 that  
3 a board of inquiry should not be established in respect  
4 of the allegations as recommended by Assistant  
5 Commissioner McMahon under regulation 24(5) of the 14:11  
6 discipline regulations, despite the fact that she was  
7 of the view that the facts disclosed warranted the  
8 establishment of a board of inquiry in respect of one  
9 of the allegations that was under investigation.

10  
11 You then quote from the report. So this was in 14:11  
12 relation totalling number 1 and her recommendation that  
13 a board of inquiry be established. You then go down  
14 and you deal with an issue that arose out of a  
15 suggestion that Assistant Commissioner McMahon had that 14:12  
16 there should be a review of her report in the  
17 circumstances and she explained that this morning. Did  
18 you take steps in that regard?

19 A. Yes. In respect of that, there was one issue that  
20 arose at the end of her report and that was really to 14:12  
21 check the probity of the investigation itself. The  
22 reason for that was because there had been an incident  
23 that occurred between her husband and Garda Nicky Keogh  
24 and what I wanted to try do in respect of -- or what  
25 the assistant commissioner asked me to consider was 14:12  
26 that the matter be peer reviewed for the purpose of  
27 determining the probity of the investigation, that  
28 there was nothing in that that would lend itself to  
29 suggest that there was anything but fairness in the

1 investigation. And on 19th June 2019 then I forwarded  
2 the file to Assistant Commissioner Orla McPartlin for  
3 the purpose of doing that due diligence in the context  
4 of probity of the investigation.

5 243 Q. I think that on 27th June 2019 you advised Assistant 14:13  
6 Commissioner McMahon that the peer review was complete  
7 and that you had reviewed your decision and remained of  
8 the view that a board of inquiry was not warranted?

9 A. Yes, that's correct.

10 244 Q. You then have a discussion in your statement that you 14:13  
11 provided to the Tribunal, where you examine the  
12 evidence in the case, and at 14251 we see the  
13 evidential:

14  
15 "In considering whether or not to establish a board of 14:14  
16 inquiry, I firstly took cognisance of the evidence  
17 presented in the file. In relation to eight of the  
18 nine allegations, I noted Assistant Commissioner  
19 McMahon's recommendations that a board of inquiry was  
20 not warranted." 14:14

21  
22 And you concurred with that view. Then you quote the  
23 actual allegation, which in fact, you describe it as  
24 the ninth, but it's also the first

25 A. It's the first, yes. 14:14

26 245 Q. "Garda A frustrated the investigation of a public order  
27 offence (riot) on 14th September 2008."

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29 You then go on to state:

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"I am of the view that the premise of this allegation is that Garda A frustrated the investigation of a public order offence. The evidence is that the prosecution of the public order offence was not frustrated and the evidence shows that the person involved was convicted of three charges relating to the public order incident and sentenced. Ms. B was also convicted of one charge and convicted. It is my view that the alleged frustration and the alleged meeting are inextricably linked in the allegation as set out."

14:14  
14:15

A. Yes.

246 Q. Insofar as the examination and inquiry conducted by Assistant Commissioner McMahon and on which she recommended a board of inquiry, would it not still be a situation where it could still go forward to a board of inquiry if another issue concerning discipline was disclosed or what's your view in relation to that?

14:15

A. Yes, it could. There was a number of factors that I took into consideration I suppose in coming to that determination. One of the main factors in respect of this, this incident happened on 14th August 2008 and the garda that was involved in this investigation had completed his file by 15/11/2008, which was exceptionally expedient in many ways. He had his file already gone to the DPP looking for direction on that date. On 7/5/2009, the directions arrived back from the DPP and in the directions from the DPP, the DPP had already made up her mind in the context of the charges

14:15

14:16

1 that was to be preferred against the people involved.  
2 But in one line of the top of the directions to the  
3 DPP, there was a line to say that the phones in respect  
4 of the matter should be acquired. When I read that and  
5 from my previous experience of dealing with serious 14:16  
6 investigations, I led that to believe that it was  
7 evidential value in respect of the incident that the  
8 garda had investigated that was under question in  
9 respect of the matter. That said, the guard in  
10 question, in his wisdom or otherwise, chose not to 14:17  
11 execute a warrant to obtain the phones, but on 24th  
12 June 2009 he then arrested the people involved for the  
13 purpose of charge. Notwithstanding everything that  
14 happened up to that then, from there on, one of them  
15 was convicted on the 17/10 and was convicted in the 14:17  
16 District Court, and was convicted to I think it was 120  
17 hours community service. While the other person then  
18 was convicted in the Circuit Court the following year,  
19 on 22/7/2011, and that person received a sentence of  
20 four years imprisonment. 14:17

21  
22 So in my rationale in respect of coming to a  
23 determination in respect of that particular issue, was  
24 that I'm not aware and I couldn't find anything that  
25 was suggesting to me that there was any actions carried 14:18  
26 out by Garda A that frustrated a prosecution by virtue  
27 of the pretty hefty sentence that was handed down in  
28 respect of one person and also the sentence handed down  
29 on the other person.

1 247 Q. Well, I mean, if the information that came from forward  
2 from the investigation was accurate, it might suggest  
3 that there was an attempt to frustrate the  
4 investigation. Did you give any consideration to that?  
5 A. Yes, I did. I did give consideration to that. The 14:18  
6 consideration I gave to that was thorough, insofar as  
7 that by the time that I received the investigation that  
8 was presented by Assistant Commissioner McMahon for  
9 review, there was actually -- the best I can say for  
10 most of it, it was anecdotal information. There was no 14:18  
11 evidence available to me in the context of that, other  
12 than either hearsay evidence or anecdotal information.  
13 At point 51 of the statement of facts, if that can be  
14 seen, it talks about -- I don't have it in front of me.  
15 248 Q. Sorry, I don't have an easy reference to it. 14:19  
16 A. It's point 51 in the statement of facts, it talks about  
17 the phone and it talks about that even if the phones  
18 were recovered, it is unsure what of an evidential  
19 nature could be determined from those phones to show  
20 that there was frustration of the prosecution. And the 14:19  
21 second part of it, it's in the report --  
22 249 Q. CHAIRMAN: I think we will find it around page 11881.  
23 That's the 5.14.  
24 A. This, Mr. Chairman, is on the statement of facts that  
25 was provided. 14:20  
26 250 Q. CHAIRMAN: This is Assistant Commissioner McMahon's  
27 report?  
28 A. No.  
29 251 Q. CHAIRMAN: Oh!

1 A. It's a statement of facts that accompanied Assistant  
2 Commissioner McMahon's report.  
3 CHAIRMAN: Forgive me. Sorry, my mistake, sorry, I  
4 thought that when you said 51, I thought it must be  
5 referring to 5.1. I was completely wrong. Thank you 14:20  
6 very much.

7 252 Q. MR. MARRINAN: Yes, sorry, I thought you might as well.  
8 We don't have it at the moment.

9 A. Okay.

10 253 Q. CHAIRMAN: would you mind just telling me that again, 14:20  
11 because I became convinced I was going to be available  
12 to turn it up by reference to a page and I was wrong.

13 A. It's at 5.1 of the statement of facts. And in the  
14 statement of facts it says that even if the phones were  
15 recovered, the issue really was about their value in 14:20  
16 the context of showing the frustration, frustrate the  
17 prosecution, that's what was at issue.

18 254 Q. MR. MARRINAN: well I suppose the point is that if  
19 there was this communication, okay, between Garda A and  
20 Ms. B, that that would give rise to an attempt to 14:21  
21 frustrate a Garda investigation and that's the point  
22 that I am raising with you. Did you give consideration  
23 to that?

24 A. I did, but I am trying to explain that, in getting  
25 that, in acknowledging that fact, I did look at these 14:21  
26 other aspects of it.

27 255 Q. Okay.

28 A. I didn't take in isolation, I took the thing into  
29 account.

1 256 Q. After careful consideration --  
2 A. Yes.  
3 257 Q. -- of all the facts?  
4 A. Absolutely.  
5 258 Q. I think at page 14252 you deal with Garda Keogh's 14:21  
6 statement there, the next page. You see you deal there  
7 with Garda Keogh's statement. Garda Keogh stated in  
8 his statement that he spoke with the individual.  
9 A. Yes.  
10 259 Q. On the 10th May, that was a matter that you put into 14:22  
11 the equation. In the next paragraph you say:  
12  
13 "I noted that Ms. B in a statement dated 17th November  
14 2017 states that Garda A did meet to tell her to  
15 dispose of the phones. The allegations are denied by 14:22  
16 Garda A. I noted that this statement was later  
17 withdrawn by Ms. B."  
18 A. Yeah.  
19 260 Q. "While the investigation found that the level of 14:22  
20 contact between Garda A and Ms. B in the three-month  
21 period between May and August 2010 appeared excessive,  
22 there was no evidence to indicate the subject-matter of  
23 that contact."  
24  
25 And that was the view that you took, isn't that right? 14:22  
26 A. Yes. And that's supported at 5.46 as well, in the  
27 report of Assistant Commissioner McMahon.  
28 261 Q. You then go on and point out:  
29

1 "I am of the view that if a breach of discipline was to  
2 be preferred, it would have to allege that Garda A  
3 frustrated the investigation, as this was what was  
4 originally alleged in the discipline appointment."

5 A. Yeah.

14:23

6 262 Q. That doesn't appear to be the situation, does it?

7 A. You see, in the discipline regulations, whoever frames  
8 the charges that are laid against a person, that's all  
9 you're entitled to look after, you can't sort of go  
10 away and do something different.

14:23

11 263 Q. It is a specific conduct.

12 A. Yes.

13 264 Q. I mean, I wonder, this is the question I was asking  
14 you, if the specific conduct shows a complete -- the  
15 basis for the inquiry is that something has occurred  
16 which gave rise to something else; is that right?

14:23

17 A. Yes.

18 265 Q. And the conduct of the first part of that could give  
19 rise to disciplinary sanctions.

20 A. Yes.

14:24

21 266 Q. Well then it's not necessarily dependent on the second  
22 part, which is where we are here; where there is a  
23 contact but it doesn't in fact frustrate an  
24 investigation but nevertheless it's the conduct that's  
25 called into question?

14:24

26 A. Yes.

27 267 Q. Yes.

28 A. But my read of that was that the conduct had to be  
29 related to the charge that was being levied against the



1 member, which was the frustration of the prosecution.  
2 That was my read of the situation.

3 268 Q. But surely if the report -- and we are really debating  
4 this, it's not a criticism?

5 A. I know, yes. 14:24

6 269 Q. It's a view that you formed. But surely the conduct as  
7 disclosed from the investigation could give rise to a  
8 disciplinary sanction?

9 CHAIRMAN: To something else, Mr. Marrinan.

10 MR. MARRINAN: Yes. 14:24

11 CHAIRMAN: Let's take a simple example.

12 MR. MARRINAN: Yes.

13 CHAIRMAN: There is a range of possibilities.

14 A. Yes.

15 270 Q. CHAIRMAN: One is, in an indictment we have the 14:24  
16 statement of offence and the particulars of the  
17 offence?

18 A. Yeah.

19 271 Q. CHAIRMAN: So in some circumstances the larceny or  
20 whatever, I am showing my age, but anyway, would say 14:25  
21 that if you fail to prove X you can still convict of Y.  
22 And it was always at common law, as I understood it,  
23 somebody is going to tell me I am wrong, it was always  
24 the case that you could always be convicted of an  
25 attempt to commit the offence. In other words, even if 14:25  
26 the jury were satisfied that you hadn't committed the  
27 offence and they were satisfied -- - that was at common  
28 law, at least on some authorities. You say that's not  
29 the case in disciplinary, is that correct?

1 A. My dealings with discipline is really to do with the  
2 offence that --

3 272 Q. CHAIRMAN: You're charged with a specific offence and  
4 you're either guilty of it or not guilty of it, full  
5 stop. Not that you could be guilty of something  
6 different? 14:25

7 A. Well that's what you are asked to investigate. If  
8 there is something totally different that you want,  
9 then have you to refer back to the appointing officer  
10 to have somebody appointed to deal with something like  
11 this. 14:26

12 CHAIRMAN: Thank you. Now I hope that's what  
13 Mr. Marrinan was asking you, certainly that's what I  
14 was interested in arising out of Mr. Marrinan's  
15 question. 14:26

16 273 Q. MR. MARRINAN: You didn't in fact refer this back to  
17 the appointing officer. But there may be other reasons  
18 for that, because you saw procedural --

19 A. Well, it wouldn't have been my role to -- my role  
20 wasn't of that ilk. That would have been the role of  
21 Assistant Commissioner McMahon, she was the  
22 investigating officer in the case. 14:26

23 274 Q. If we could just scroll down there under "procedural"  
24 and we will go over to page 14253, you say:

25 14:26  
26 "In considering Assistant Commissioner McMahon's  
27 investigation report, I identified a number of  
28 procedural issues which have an adverse impact on the  
29 process. The following three issues were of particular

1 concern and I attached considerable weight to them in  
2 formulating my decision in this matter."

3 A. Yes.

4 275 Q. The first is:

5

14:27

6 "Delay in the commencement of the discipline  
7 investigation."

8

9 You then deal further down with that under 1.

10 A. Yes.

14:27

11 276 Q. You say:

12

13 "Upon examination of the file, I notice the statement  
14 of Garda Keogh upon which the allegations were grounded  
15 and submitted as part of the discipline file was made 14:27  
16 between the 11th June and 18th June 2014 as part of a  
17 criminal investigation. The criminal investigation was  
18 commenced on foot of a report made under the corruption  
19 or malpractice regulations."

20

14:27

21 If I can just have page 3989 up on the screen. This is  
22 a letter dated 8th May 2015 to then Assistant  
23 Commissioner Ó Cualáin. It's a report. The final  
24 paragraph:

25

14:28

26 "I am now seeking your direction as to whether I  
27 proceed with this investigation to conclusion and the  
28 necessity for formal appointments for both the criminal  
29 and disciplinary aspects. Advice was previously sought

1 from assistant commissioner Human Resource Management  
2 regarding the suspension of Garda A and given the  
3 recent developments. . . "

4  
5 If we have 3990 up on the screen, please. It's the 14:28  
6 letter in reply. You see there:

7  
8 "The Commissioner directs that you continue with your  
9 investigation into the criminal element of this matter  
10 and that you make the necessary arrangements for an 14:29  
11 appointment under the disciplinary regulations through  
12 the member's divisional officer. "

13  
14 You see there?

15 A. I do, yeah. 14:29

16 277 Q. Yes. Would you just like to comment on that?

17 A. I can see what's happening in respect of this. My view  
18 of it was that in respect of the fact-finding, for want  
19 of a better word, that that's covered very much by case  
20 law, it's the case law I refer to on page 2, is Mark 14:29  
21 Gibbons, which talks about, that when a person is  
22 appointed to do a fact-finding that it's incumbent on  
23 them to do it expeditiously. And the guideline was  
24 given for eight weeks to have that done. From my  
25 perspective in respect of this, I was of the view, 14:29  
26 rightly or wrongly, that from a procedural perspective  
27 the length of time it took to make the appointment in  
28 respect of this matter was going to cause me  
29 difficulties in any board of inquiry thereafter.

1 278 Q. We know that obtaining the billing records in relation  
2 to a phone that was used by Garda A, an analysis of  
3 that that prompted this letter?  
4 A. Yeah.

5 279 Q. And it seems to have gone through fairly quickly, 14:30  
6 because the following month Assistant Commissioner  
7 Nolan was appointed to conduct the investigation in  
8 relation to the disciplinary side. Were you aware of  
9 that at the time when you made this statement?  
10 A. I was. But I deferred back -- I would defer you back 14:30  
11 to Garda Keogh's statement in respect of the matter, I  
12 think that was done in June --

13 280 Q. CHAIRMAN: 2014.  
14 A. Yes, 2014.

15 281 Q. MR. MARRINAN: Between the 10th and 18th June 2014? 14:31  
16 A. Yes. This is now 2015.

17 282 Q. But do you say that as soon as that statement came in  
18 that consideration at that stage should have been given  
19 in relation to disciplinary proceedings and an  
20 appointment made then? 14:31  
21 A. Not necessarily, but a preliminary investigation of its  
22 nature shouldn't have taken that length of time to  
23 conclude. That's what I am saying.

24 283 Q. So it's a criticism that it took from June of 2014 up  
25 until May of 2015 for the recommendation of a 14:31  
26 disciplinary investigation, is that what you are  
27 saying?  
28 A. I would -- under the Gibbons case, what the Gibbons  
29 case is telling us to do in the context of discipline

1 investigations is that if you are being tasked with  
2 carrying out a fact-finding mission, that really the  
3 idea is that turn over the stone and see is there a  
4 worm underneath it, in that context. So you don't have  
5 to go into the in-depth level of it. If you feel that 14:32  
6 it's worthy of investigation, then you shall appoint  
7 both a discipline and criminal.

8 284 Q. Okay. Anyway, that's a view that you held?  
9 A. Yes.

10 285 Q. Then, at page 14254 of the material, you deal with 14:32  
11 prior involvement. And then you say:  
12  
13 "Contrary to advices from Internal Affairs at the time,  
14 Assistant Commissioner McMahon was appointed by way of  
15 form 1A31. In my view this had the unintended effect 14:32  
16 of starting the investigations afresh."  
17 A. Yeah.

18 286 Q. Now, I think you were here this morning --  
19 A. I was.

20 287 Q. -- when I opened up a number of documents and Assistant 14:32  
21 Commissioner McMahon had sought some sort of clarity in  
22 relation to this herself and was directed to proceed on  
23 the basis that she was in fact continuing the  
24 investigation of Assistant Commissioner Nolan. Do you  
25 have a contrary view in relation to that? 14:33  
26 A. I don't have a contrary view. My experience of dealing  
27 with discipline of those natures, is that the 1A31 that  
28 we are familiar with is actually an appointment, that's  
29 dealt with under regulation 23. That's a specific form

1 to regulation 23 and when that's issued, that form then  
2 becomes the basis of your really going forward.

3  
4 In this particular case, Deputy Twomey at the time  
5 issued an IA31, which had that very unintended effect 14:33  
6 of starting the investigation afresh. In my experience  
7 in dealing with discipline, that normally what happens  
8 in those cases, in the event of somebody either dying,  
9 retiring or for some other reason can't do it, it is  
10 done by a plain paper report to say that you are hereby 14:34  
11 continuing to do that investigation. And the IA31 that  
12 was given in this particular case to Assistant  
13 Commissioner Nolan, that that would be forwarded to you  
14 to continue on with your investigation.

15 CHAIRMAN: It's a question of the wrong piece of paper. 14:34

16 A. That's about the height of it, yeah/

17 288 Q. CHAIRMAN: You say he should have sent the appointment  
18 with Assistant Commissioner Nolan but say, please  
19 continue this investigation, for which Assistant  
20 Commissioner Nolan was appointed? 14:34

21 A. Yes.

22 289 Q. CHAIRMAN: And you're now to continue with it?

23 A. And you're to continue with this investigation.

24 290 Q. CHAIRMAN: So instead of which there were, as you see  
25 it, two appointments and the effect of the appointment 14:34  
26 under regulation 23 in form IA31 --

27 A. Yes.

28 291 Q. CHAIRMAN: -- was to in effect start it again?

29 A. That's correct. And I think, to be honest with you, as

1 we are here this morning, that was queried for a number  
2 of months thereafter, until the deputy clarified it on  
3 the 30th August, I think it was.

4 292 Q. MR. MARRINAN: And the assistant commissioner was  
5 directed to proceed. 14:35

6 A. Correct.

7 293 Q. On the basis that she was continuing the basis of  
8 Assistant Commissioner Nolan?

9 A. Yes.

10 294 Q. CHAIRMAN: It sounds a bit technical, if you don't mind 14:35  
11 me saying so. Maybe you say that's all very well, but  
12 there's many a technicality that --

13 A. Unfortunately, Chairman, I would say that our  
14 discipline regulations are probably the most regulated  
15 in the country. 14:35

16 295 Q. CHAIRMAN: Okay.

17 A. We have learned some hard lessons from judicial  
18 reviews.

19 296 Q. CHAIRMAN: Indeed.

20 A. In respect of -- 14:36

21 297 Q. CHAIRMAN: No, no, no.

22 A. And as a result of that, that's where the -- while the  
23 regulation might seem crystal clear and quite clear,  
24 they have been tested so many times in the courts, that  
25 the import of all the testing has brought it to a 14:36  
26 different space.

27 298 Q. CHAIRMAN: But you say on a strict -- on perhaps a  
28 strict interpretation, perhaps it may be, we might  
29 agree that it was strict rather than --



1 A. Different, yes.

2 299 Q. CHAIRMAN: You say allowing for that, the fact is that  
3 this is the apparent consequence?

4 A. Correct.

5 CHAIRMAN: Okay, thank you. 14:36

6 300 Q. MR. MARRINAN: would it be fair to say that perhaps you  
7 didn't regard this as absolutely fatal but it had to be  
8 seen in the round with the other issues that you were  
9 looking at to see whether fair procedures had been  
10 adopted? 14:36

11 A. And that's so true, because I mean, in my role, in my  
12 role -- I've a slightly different role insofar as I  
13 have to take into consideration all the people involved  
14 in this.

15 301 Q. Yes. 14:37

16 A. In respect of this matter, and that's where I lie in  
17 respect of that.

18 302 Q. Well, I mean, if it was just this one issue?

19 A. No, this on its own would not have been fatal.

20 303 Q. Yes. So you would have sent it forward to a board of  
21 inquiry? 14:37

22 A. Correct, yes.

23 304 Q. Then at page 14255, yes, we have it there:  
24  
25 "The use in the discipline investigation of statements 14:37  
26 made in respect of the criminal investigation."  
27  
28 Then you quote from regulation 24(5) of the regulations  
29 2007, you say:

1  
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"Within 7 days after the investigation has been completed, the investigating officer shall submit to the Commissioner a written report of the investigation containing his or her recommendation as to whether the facts disclosed warrant the establishment of a board of inquiry, together with copies of any written statements made during it and details of any information, document or thing which the investigating officer was made aware of during the investigation."

14:37

14:38

will you just expand on that?

CHAIRMAN: During the investigation, during the disciplinary investigation.

A. It's actually covered later on in the report. In fairness to Assistant Commissioner McMahon, she wouldn't have been aware of the nuances of the broader cases I talk about later on. But at this point in time the investigation team that was in place in respect of the criminal investigation, they handed over a number of statements to the discipline team to continue on with their investigation.

14:38

14:38

305 Q. MR. MARRINAN: After nearly a year.

A. Yes.

306 Q. And after they got legal advice in relation to the matter?

14:39

A. Correct. And again, I can't stress enough the complexities, the nuances around the discipline versus the criminal investigation.

1 307 Q. Yes.

2 A. And obviously the discipline investigation then may  
3 have to be held in abeyance because it may prejudice  
4 the criminal investigation. But in this particular  
5 case, what I found was that a number of statements that 14:39  
6 were taken in the first part were used in the second  
7 part but they were not under the auspices of the person  
8 who was appointed to investigate the matter. In other  
9 words, there were some statements in the first part  
10 that were taken and in the thing it may say that they 14:39  
11 can be used for discipline and criminal investigations  
12 but that person wasn't the appointing officer, or the  
13 investigating officer rather.

14 308 Q. Central to your view in relation to this is that  
15 Assistant Commissioner McMahon's investigation was 14:40  
16 different from Assistant Commissioner Nolan's  
17 investigation, because she was appointed in the manner  
18 in which she was appointed; she wasn't merely  
19 continuing an investigation, it had become her  
20 investigation? 14:40

21 A. Well, in fairness, I'd have to -- in light of the  
22 evidence I heard this morning, that with effect from  
23 30th August, when the deputy commissioner declared that  
24 you would follow on, in fairness that would be the  
25 case, that she was following on. The issue that I have 14:40  
26 in respect of that is, there were some of those  
27 statements that I was using, and I will have to check  
28 that for you, that I was determining that were  
29 statements that the permission wasn't got from the

1 person to use in the discipline investigation by the  
2 investigation team that was doing the discipline  
3 investigation.

4 309 Q. Then you go on at page 14256, this was the role of the  
5 appointing officer and you also took a view that this 14:40  
6 was flawed as well, isn't that right?

7 A. Flawed but not, again not --

8 310 Q. Not fatal?

9 A. Not fatal.

10 311 Q. Yes. Perhaps questionable, perhaps open to challenge? 14:41

11 A. Yes, open to challenge.

12 312 Q. That was the limit of it?

13 A. Yes.

14 313 Q. And then you deal with --

15 A. Now I might say, I might say, Mr. Chairman, that in the 14:41  
16 second paragraph that says:

17

18 "In the case of the investigations under part 3 of  
19 discipline regulations, HQ Directive 159 sections..."

20 14:41

21 That should read section 1.17 states at point 2.

22 CHAIRMAN: Thank you very much.

23 314 Q. MR. MARRINAN: Yes. We can then move on to 14257.  
24 This involved recent case law and the impact on  
25 replacing investigating officers. Again, this is on 14:41  
26 the basis that the original investigating officers  
27 under Assistant Commissioner Nolan were the same  
28 investigating officers by and large that Assistant  
29 Commissioner McMahon used. And again, that's sort of

1 dependent on your view on item 3 there in relation to  
2 the appointment?

3 A. Yes.

4 315 Q. Isn't that right?

5 A. And in the Broughall Waldron & Doyle case, which was 14:42  
6 taken -- a JR that was adjudicated upon on 7/5/2018,  
7 that had the impact or the import that if you are  
8 starting a new investigation that you can't swap out  
9 one person for another person, you literally have to go  
10 back to the start and you have to -- what it says is 14:42  
11 that where the investigating officer needs to be  
12 replaced and in the absence of any express provision in  
13 the regulation for the appointment of a replacement,  
14 prudence dictates that a new investigating team be  
15 established and a new investigating officer to ensure 14:43  
16 continuity in terms. And we sought advice in respect  
17 of that, because that in itself had serious  
18 implications for us, particular around board of  
19 inquiries and we sought advices in respect of that and  
20 we were told that if it goes down the chain that we 14:43  
21 need to swap out teams. When there is a change of  
22 personnel, that you can't continue to use the team that  
23 was in place, you must replace the whole lot of them.

24 316 Q. Again, that's conditional on your view in relation to 14:43  
25 the appointment of Assistant Commissioner McMahon,  
26 whether she was asked to continue an investigation or  
27 whether it was a fresh appointment?

28 A. Correct. And in fairness to Assistant McMahon in  
29 respect of this particular aspect, her file was either

1 close to completion or almost complete when this  
2 happened. So, I'm not -- this is not casting any  
3 aspersions whatsoever in respect of Assistant  
4 Commissioner McMahon's investigation or what she did,  
5 it's just the way in which the case law was changing 14:44  
6 day by day as we are moving along in respect of this  
7 matter. I know from my office that this had serious  
8 implications for at least 15 or 16 sworn inquiries that  
9 we had up and running, where either a chief  
10 superintendent had been promoted and moved on and we 14:44  
11 had to swap without somebody else and we had to go back  
12 and reconstitute all the boards of inquiry thereafter  
13 as a result of this case law.

14 317 Q. You then, at the bottom of page 14257, talk about the  
15 appointment of the various people. 14:44

16  
17 "On 24th February 2016, Assistant Commissioner Nolan  
18 advised Internal Affairs that he had nominated  
19 superintendent Michael Lacey, Inspector Justin Kelly,  
20 Inspector Sergeant Keevans, Detective Sergeant Maher 14:45  
21 and Garda Adrian Cooke to assist in the investigation.

22  
23 On 23rd December Assistant Commissioner Nolan advised  
24 that Sergeant Gormely and Detective Garda Conor Breslin  
25 were nominated to assist in the investigation. 14:45

26 Assistant Commissioner McMahon sought permission for  
27 Detective Sergeant Goff and Sergeant Toffe and  
28 Detective Garda Brian O'Callaghan to assist with the  
29 investigation in accordance with regulation 24(2) of

1 the Garda Síochána (Discipline) Regulations 2007."

2  
3 Then you say:

4  
5 "I noted that statements taken by Assistant  
6 Commissioner McMahon's investigation team, namely  
7 statements of Ms. B, suspect 2, Garda Andrew Haran..."

14:45

8  
9 That should be sergeant.

10  
11 "...and Garda Michael Ryan were taken by members who  
12 had previously been part of Assistant Commissioner  
13 Nolan's investigation team."

14:45

14  
15 we discussed this earlier on and it would appear that  
16 those aren't valid arguments in the context where  
17 Assistant Commissioner McMahon is merely taking over an  
18 investigation conducted by Assistant Commissioner  
19 Nolan, is that right?

14:46

20 A. Yes.

14:46

21 318 Q. CHAIRMAN: Is that right?

22 A. Sorry?

23 319 Q. CHAIRMAN: I thought they'd be in trouble under the  
24 last case that you cited, the Broughal case seems to  
25 say you have to start again?

14:46

26 A. In the context of what I was saying, in this particular  
27 section, section 5 of this, that's exactly what I was  
28 saying, that they would be trouble in the context of  
29 that case that we're talking about here.

1 320 Q. CHAIRMAN: This latest case that came up in 2018, the  
2 High Court, and we don't know whether it was appealed  
3 or what the story was or whatever it was, but there it  
4 is, that's the decision?  
5 A. It hasn't been appealed to my knowledge. 14:46  
6 321 Q. MR. MARRINAN: And, of course, that decision hasn't  
7 been delivered, the decisions earlier on of 2015?  
8 A. They're all made --  
9 322 Q. In any event, you decided that you wouldn't establish a  
10 board of inquiry. Now that's some four years down the 14:47  
11 road from -- well, if we go back to -- it's actually  
12 five years down the road?  
13 A. Yes.  
14 323 Q. Isn't it, from when Garda Keogh made his statement in  
15 May of 2014. It seems like quite a considerable delay. 14:47  
16 Do you want to comment? Not on your part. You dealt  
17 with this expeditiously, but do you want to comment on  
18 the whole process from beginning to end, as it were,  
19 taking five years?  
20 A. Well, I have to say that I think it gets lost in the 14:47  
21 telling on occasion.  
22 324 Q. Yes.  
23 A. The complexities around some of these investigations.  
24 325 Q. Yes.  
25 A. This wasn't just an ordinary investigation, it had a 14:48  
26 number of tentacles, between the criminal, the  
27 discipline and then there was other people involved as  
28 well. So trying to steer the boat through all the  
29 turmoil that was going on at the time, plus one has to



1 remember that organisationally, I mean our Commissioner  
2 of the day, Nóirín O'Sullivan, didn't have two deputies  
3 and had to get -- put in two deputies temporarily to  
4 try and keep everything going. And I think that the  
5 complexities around what was happening at the time 14:48  
6 certainly needs to be taken into consideration in the  
7 delay that was --

8 326 Q. CHAIRMAN: In other words, when you're considering the  
9 reasons for the delay and any culpability or  
10 blameworthiness, those things are relevant. 14:48  
11 Mr. Marrinan's point in the end though is, five years  
12 does look a bit much?

13 A. No, I --

14 327 Q. CHAIRMAN: Before you get to the board of inquiry. If  
15 you like, leaving aside that anybody might have -- I 14:49  
16 know it's unfortunate, Commissioner Nolan retired and  
17 everything else and there was legal advice, there was  
18 this, that and the other to be got, allowing for all of  
19 those, that's his real point, what do you say about  
20 that? That's part of your consideration, leaving any 14:49  
21 question of blaming anybody out of the way?

22 A. Well, I think at number 1, one of my considerations in  
23 respect of this was the delay in the commencement of  
24 the discipline investigation. And the delay in -- in  
25 fairness to everybody across the board in respect of 14:49  
26 this matter, that was a consideration that I took into  
27 account.

28 328 Q. CHAIRMAN: Okay.

29 A. But I do want to acknowledge, I do want to acknowledge

1 the complexities around everything that was going on.  
2 CHAIRMAN: Oh sure, yes.

3 329 Q. MR. MARRINAN: There's two aspects to it. There's  
4 Garda Keogh --  
5 A. Absolutely. 14:49

6 330 Q. -- who, as you correctly pointed out, in June, between  
7 10th and 18th June, has made his statement, but there's  
8 also Garda A, who is suspended from October of 2015?  
9 A. Yes.

10 331 Q. So, three and a half years for him as well of 14:50  
11 suspension?  
12 A. Absolutely.

13 332 Q. He remained on suspension, didn't he?  
14 A. He's no longer on suspension in respect of this matter  
15 but he is on suspension on another matter. 14:50  
16 CHAIRMAN: Not in respect of this matter.  
17 A. No.

18 333 Q. CHAIRMAN: I don't think we need explore further on  
19 that?  
20 A. No. 14:50

21 334 Q. MR. MARRINAN: But remained under suspension until you  
22 made your decision of June of last year?  
23 A. Yes.

24 CHAIRMAN: Okay.  
25 MR. MARRINAN: Thank you very much, would you answer 14:50  
26 any questions.  
27  
28 END OF EXAMINATION  
29

1 CHAIRMAN: Thank you very much. Yes, Mr. O'Brien.

2  
3 ASSISTANT COMMISSIONER DAVID SHEEHAN WAS CROSS-EXAMINED  
4 BY MR. O'BRIEN, AS FOLLOWS:

5 14:50

6 335 Q. MR. O'BRIEN: Assistant commissioner, good afternoon.  
7 Just going back a step, I wonder if I could just ask in  
8 relation to a question that arose a few minutes ago  
9 with Mr. Marrinan and arose this morning when Assistant  
10 Commissioner McMahon was being cross-examined. It's in 14:51  
11 relation to the specific of an allegation that's under  
12 investigation within the disciplinary process. You may  
13 recall, if you were here this morning, Ms. Mulligan  
14 asked Assistant Commissioner McMahon whether or not  
15 something that was being investigated as a serious 14:51  
16 breach of discipline could, I suppose, be downgraded to  
17 a less serious breach.

18 A. Yes.

19 336 Q. The assistant commissioner was of the view that it  
20 couldn't go down but it could go up. Is that your 14:51  
21 understanding?

22 A. No, that's absolutely -- there's a lacuna in the  
23 regulations and we are currently trying to develop new  
24 regulations, not just to cover that but to take  
25 cognisance of the findings of Mr. Justice Charleton in 14:51  
26 respect of the matter. And one of the issues that we  
27 have in respect of that is that we can't go down, but  
28 we can go up. So if I have a regulation, a serious  
29 breach of discipline, to deal with it by way a less

1 serious breach of discipline, it's not possible to do.  
2 337 Q. Just looking at your own report and just a question  
3 that arose a few moments ago in relation to delay, as  
4 you're aware, Garda Keogh, part of his case is that he  
5 is critical of the delay that the disciplinary process 14:52  
6 took as a whole, would you accept that?  
7 A. I...  
8 338 Q. Well that's his case.  
9 A. I hear what Garda Keogh is saying and I can't argue  
10 with him in one sense, but I have to say that the level 14:52  
11 -- or sorry, the amount of issues that had to be dealt  
12 with, their complexity and how they were intertwined  
13 had a major factor in respect of it. I can't but be  
14 complimentary of the standard of the file that was  
15 actually submitted in the end, to try and tease out and 14:52  
16 get to the truth of all the issues that were raised.  
17 339 Q. But the overall issue of delay obviously is something  
18 that was to the forefront of your mind, which is one of  
19 the reasons why you didn't establish a board of  
20 inquiry, isn't that right? 14:53  
21 A. That would be fair to say, but I think I am taking it  
22 in the whole rather than any one individual item.  
23 340 Q. And I think you said a few moments ago that you had to  
24 take into consideration all of the people that are  
25 involved in the process and in the investigation, isn't 14:53  
26 that correct?  
27 A. That's correct, yes.  
28 341 Q. Would you accept, therefore, that Garda Keogh, having  
29 made these complaints in 2014, was justified in his

1 criticisms of the delay in relation to the disciplinary  
2 process?

3 A. I think that many of what Garda Keogh is saying in the  
4 context of that can be explained in the context of some  
5 of the things that were said this morning and also 14:53  
6 things I am saying here now. But that doesn't take  
7 away -- I mean, at the end of the day it's how Garda  
8 Keogh sees this as opposed to how I see it, and that's  
9 his view of the matter.

10 342 Q. I mean, in circumstances where your findings were that 14:54  
11 delay obviously was an issue that would cause a  
12 difficulty if the matter was to progress to a board of  
13 inquiry, surely you would have to accept that he is  
14 justified in his criticism?

15 A. Well, the think about -- what I am saying in respect of 14:54  
16 this, is that this is one of nine matters that were in  
17 consideration in this particular file. I mean, the  
18 same due diligence was given to the other matters as  
19 was this particular one, which AC McMahon had alluded  
20 to. So when you put it all into context, that kind of 14:54  
21 explains the delay in respect of it.

22 343 Q. I just have to suggest to you that the overall delay in  
23 conducting the disciplinary process has had the effect  
24 of discrediting Garda Keogh?

25 A. Oh, I have to say, I couldn't agree with that, on the 14:55  
26 basis that even from an evidential point of view to  
27 have it -- to get it to the point of being able to  
28 present it before a board of inquiry was going to cause  
29 me serious difficulties, even from an evidential point

1 of view. So I don't see how -- no, I couldn't accept  
2 that, sorry.

3 MR. O'BRIEN: I don't have any further questions,  
4 Chairman.

5 14:55

6 END OF EXAMINATION

7

8 CHAIRMAN: Thanks very much. Thanks, Mr. O'Brien.  
9 Anybody else? Ms. Gleeson, Mr. McGarry, nobody else,  
10 no.

11 MR. DIGNAM: I have a few questions, Chairman.

12 CHAIRMAN: Of course. I was just checking with  
13 everybody else.

14 MR. DIGNAM: I appreciate that, Chairman.

15 14:55

16 ASSISTANT COMMISSIONER DAVID SHEEHAN WAS EXAMINED BY

17 MR. DIGNAM, AS FOLLOWS:

18

19 344 Q. MR. DIGNAM: Assistant Commissioner Sheehan, I just  
20 want to cover a few areas and I don't propose to bring 14:55

21 you into the statement that you have given to the  
22 Tribunal in any great detail. But can we take it from  
23 your evidence and, indeed, from Assistant Commissioner  
24 McMahon's evidence earlier on today, that you have a  
25 different function to that of Assistant Commissioner 14:55  
26 McMahon as investigating officer?

27 A. Yeah, absolutely. And I mean, to give the whole  
28 process impartiality and fairness, there has to be  
29 that, shall we say, firewall between the two of us.

1 You know, that gives the whole things impartiality. I  
2 mean, I wouldn't have known Garda Keogh, I never worked  
3 with Garda Keogh, I never served with Garda Keogh, nor  
4 have I served with Garda A or have I worked with Garda  
5 A. So I mean, I'm not saying that Assistant 14:56  
6 Commissioner McMahon did or didn't, but the reality is,  
7 I mean, what we try to do, in fairness to everybody, is  
8 to have that firewall between both of us so that we can  
9 make independent decisions, you know, that's fair for  
10 everybody. 14:56

11 345 Q. You touched on in this response to Mr. Marrinan and  
12 Mr. O'Brien, but do you consider yourself to have  
13 regard to broader considerations than those that an  
14 investigating officer may have to have regard to, is  
15 that fair? 14:57

16 A. Absolutely. And the nature of my office is that way,  
17 insofar as than investigator may not be au fait with  
18 the level of case law that's out there, jurisprudence  
19 around that area, whereas in my office and the staff  
20 that I work with there, that's their bread and butter 14:57  
21 and they have to be up to speed in the context of all  
22 those nature. So that does make a difference in  
23 respect of the role between investigator and my role  
24 then as decision-maker in respect of these.

25 346 Q. I think specifically on that point, we also have a 14:57  
26 statement from Chief Superintendent Nugent, Margaret  
27 Nugent, I think she is in Internal Affairs, isn't that  
28 right?

29 A. Yes, Chief Superintendent Nugent works with me and the

1 first that I would have known about this case was when  
2 the file would have been forwarded to me with the  
3 report of the Chief Superintendent Noonan. But while  
4 she's in my office, the decision-making in respect of  
5 this rests solely with me and she would merely forward 14:58  
6 her file with her own recommendation in respect of it.  
7 But I would still have to do the due diligence around  
8 that, you know, with impartiality and fairness to  
9 everybody.

10 347 Q. So I think it's fair to say that you had the benefit of 14:58  
11 the assistance from Chief Superintendent Nugent but  
12 that you considered this and made your own decision in  
13 relation to what should happen in respect of a board of  
14 inquiry?

15 A. No, I am the final decision-maker in it and I have to 14:58  
16 stand on my own in my position in respect of that  
17 matter.

18 348 Q. You do say on page 14250, which is the second page of  
19 your statement to the Tribunal, you say:

20  
21 "I am of the view that as assistant commissioner with 14:58  
22 responsibility for governance and accountability, it is  
23 incumbent upon me to ensure that decisions I make are  
24 made with proper and full consideration of the  
25 principles of natural justice and fair procedures in 14:59  
26 respect of all members. In order to ensure that I make  
27 a fair and balanced decision regarding the  
28 establishment of boards of inquiry, I have a duty to  
29 fully consider any evidential and procedural issues



1 that may arise on a case-by-case basis."

2

3 Then you go on to say at the end of the paragraph:

4

5 "I am of the view that if a decision is made in the 14:59  
6 knowledge that the procedures leading to that decision  
7 are legally and/or procedurally flawed, then the  
8 principles of natural justice and fair procedures are  
9 not served."

10

14:59

11 So can we take it from that, that you consider it to be  
12 part of your function and, indeed, responsibility to  
13 assess whether procedures that are being followed are  
14 correct or flawed and if you are of the view that they  
15 are flawed, that a board of inquiry should not be 14:59  
16 established?

17 A. Yeah, and again, there's weighting on some of them,  
18 some of them you would weight heavily than others. As  
19 I said already in respect of it, I have had cases where  
20 the investigating members may have suggested no board 15:00  
21 of inquiry and I have gone against them and likewise,  
22 in this and others then as well, where it came into me  
23 and I would say no. I am the ultimate decision-maker  
24 in respect of it but I do take those matters into  
25 consideration. 15:00

26 349 Q. Yes.

27 A. It's a holistic view as opposed to a very simple view  
28 of the file that you get in front of you.

29 350 Q. Yes, I was going to ask you that. On page 5 of your

1 statement, which is page 14253, you identify five  
2 factors, five issues, and you attach weight to three of  
3 them I think and then less weight to numbers 4 and 5.  
4 I think you've already answered this question in terms,  
5 but is it fair to you say that you took everything in 15:00  
6 the round and that there was no one specific factor  
7 which caused you to make a decision in this particular  
8 case?

9 A. And that's the way I make my decision most times. I  
10 have to be fair not only to myself, but fair to the 15:01  
11 office and fair to the people involved in this. And in  
12 that I would look at all those factors in nearly every  
13 case that I deal with. Some to a lesser extent. But  
14 certainly they would be the core procedural factors  
15 that I would take into consideration on top of the 15:01  
16 evidential factors that I would look at as well.

17 351 Q. Could you assist the Chairman, is the interaction or  
18 juxtaposition between this having originally come to  
19 light by way of confidential reporting disclosure, is  
20 that any sort of complicating factor in relation to how 15:01  
21 long it takes the procedures to be applied and how  
22 matter is finally resolved?

23 A. Yeah, I would say that that was certainly part of the  
24 delay factor in this. I can't say definitively, it's  
25 only speculation, as to whether if had come in a 15:02  
26 different route it would have been done faster. But  
27 the reality was, I mean it certainly in its totality is  
28 a fairly complex investigation, both from a discipline  
29 and also -- sorry, both from a criminal and a

1 discipline investigation.

2 352 Q. Assistant commissioner, I think it's correct to say,  
3 isn't it, that you in fact considered this matter  
4 twice; you considered it the first time before and you  
5 asked Assistant Commissioner McPartlin to carry out her 15:02  
6 review, her peer review, and you then revisited it  
7 after that peer review had been conducted?

8 A. Yeah. I have to say, and I remember it well when I got  
9 it file, there was a five bound -- four bound copies of  
10 the file that arrived in the office. It was very well 15:02  
11 presented. It was very professionally presented. I  
12 had gone through it. From my initial review of it at  
13 that point in time, I was quite satisfied as to the  
14 probity of the investigation and what was done.  
15 Assistant Commissioner McMahon had raised one 15:03  
16 particular issue that I felt in the interest of -- in  
17 the interest of her and her team and what they did  
18 versus the other matter that had risen its head, that  
19 it would be important to have it out, to have it  
20 reviewed. Once the investigation file -- I forward it 15:03  
21 out to Assistant Commissioner McPartlin to review it in  
22 the context of the probity of the investigation and  
23 once I received it back, once I received it back in  
24 from -- the results back from Assistant Commissioner  
25 McPartlin, I reviewed it again. There was nothing in 15:03  
26 Assistant Commissioner McPartlin's report back to me  
27 that warranted a further change in my decision in  
28 respect of the matter.

29 353 Q. Yes. And that decision, after that peer review, is at

1 page 14263 of the Tribunal's papers, where you say  
2 that:

3  
4 "Based on the finding of the peer review, I have again  
5 reviewed my previous decision in this matter and I am 15:04  
6 satisfied that a board of inquiry is not warranted in  
7 this case."

8 A. Correct. That's correct, yes.

9 354 Q. And finally, assistant commissioner, in your  
10 consideration, it's ultimately a matter for the Chair, 15:04  
11 but in your consideration of the papers that you saw,  
12 did you see any evidence of targeting or discrediting  
13 of Garda Keogh?

14 A. I can only speak for the actions that I took in respect  
15 of this, and I have to say that from the time that I 15:04  
16 got the file until I dealt with it, that I was  
17 professional in everything I did and that any decision  
18 I made in respect of this matter, I clearly laid it out  
19 in the statement, and certainly the last thing that was  
20 on my mind was targeting Garda Keogh or anyone in 15:04  
21 respect of the matter. This was about trying to get a  
22 process across the line one way or the other in respect  
23 of that.

24 355 Q. Thank you.

25

26 END OF EXAMINATION

27

28

29

ASSISTANT COMMISSIONER DAVID SHEEHAN WAS THEN  
RE-EXAMINED BY MR. MARRINAN, AS FOLLOWS:

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356 Q. MR. MARRINAN: Chairman, just one matter. In asking Assistant Commissioner McPartlin to conduct a peer review, exactly what was your expectation?

15:05

A. My expectation was -- the question that had been asked of me by Assistant Commissioner McMahon was about the probity of the investigation. She didn't want -- or she wanted to make sure that her investigation was not tainted in any way, shape or form by virtue of an incident that occurred between Garda Keogh and her husband just previous to that. Now at that stage her investigation would have been as good as, if not completed.

15:05

15:05

357 Q. Yes.

A. And all I wanted to do was what the assistant commissioner asked me to do: To have a peer review of that with a view to seeing am I satisfied, or get a peer to look at it to see was that person satisfied that the level of probity in respect of the file was such that there was no tainting of it as a result of that interaction.

15:05

358 Q. So it was to be a paper based review?

A. A paper based review, yes, absolutely.

15:06

359 Q. Which had four volumes of material in it?

A. Correct.

360 Q. The report and appendices?

A. And appendices that go with it, yes.

1 361 Q. Thank you very much.

2 A. Okay.

3

4 END OF EXAMINATION

5

15:06

6 CHAIRMAN: Everybody? Very good. Thanks very much,  
7 commissioner. You're free to go. Thank you.

8 THE WITNESS: Thank you, Chairman.

9

10 THE WITNESS THEN WITHDREW

15:06

11

12 MR. McGUI NNESS: Chairman, the next witness is  
13 Assistant Commissioner McPartlin.

14 CHAIRMAN: Yes. Very good.

15

15:06

16 ASSISTANT COMMISSIONER ORLA MCPARTLIN, HAVING BEEN  
17 SWORN, WAS DIRECTLY-EXAMINED BY MR. McGUI NNESS, AS  
18 FOLLOWS:

19

20 THE WITNESS: Orla McPartlin, assistant commissioner.

15:06

21 CHAIRMAN: Thank you very much, commissioner.

22 362 Q. MR. McGUI NNESS: Assistant Commissioner McPartlin's  
23 statement is to be found at volume 50, page 14183 of  
24 the Tribunal's papers.

25

15:07

26 Assistant commissioner, could you give us a brief  
27 outline of your career to date in An Garda Síochána?

28 A. I joined An Garda Síochána in 1983. I was first  
29 stationed in Crumlin in Dublin. Upon promotion in 1990

1 I was assigned to Monaghan Garda station. I applied  
2 for a transfer back to Dublin and I went to Tallaght  
3 Garda station and stayed there until 1997. I  
4 transferred to Roscommon, to Castlerea district, and  
5 the following 18 months attached there. I returned to 15:07  
6 Dublin to the organisational development unit in Garda  
7 Headquarters. I was there from 1998 until 2002 and I  
8 was promoted to inspector and I transferred to Crime  
9 and Security section, where I was based in Liaison and  
10 Protection. I stayed there until 2007, when I was 15:08  
11 promoted to superintendent and I was transferred to  
12 Manorhamilton district. I spent one year in  
13 Manorhamilton and then I was transferred back to  
14 Liaison and Protection in Garda Headquarters and I  
15 remained there as a detective superintendent until my 15:08  
16 promotion in 2012 to chief superintendent.

17  
18 On my promotion in 2012 I was transferred to Internal  
19 Affairs and I also had responsibility for the Garda  
20 Professional Services Unit, Standard Unit, sorry, I beg 15:08  
21 your pardon. Then later that year I transferred to the  
22 Commissioner's office as personal assistant to the  
23 Commissioner, where I remained until 2014. Then I  
24 transferred to the DMR south division and I was there  
25 until my promotion to assistant commissioner in 15:08  
26 September 2017. Upon promotion I was transferred to  
27 Galway, to take charge of the western Region and I also  
28 had responsibility for a number of months for the  
29 Executive Support and Corporate Section section in

1           Garda Headquarters. I am currently, since February of  
2           last year, in charge of the Community Relations Bureau  
3           in Harcourt Square.

4   363   Q.   We will come to the peer review that you were asked to  
5           conduct in a moment. But can I just ask you this: Had 15:09  
6           you any prior knowledge of Garda Keogh before you came  
7           to do the peer review?

8           A.   I had no prior knowledge, Chairman, apart from what I  
9           would have read in media reports, but I had no internal  
10          prior knowledge. 15:09

11   364   Q.   You had no involvement in any issue connected with  
12          Garda Keogh prior to this, did you?

13          A.   Prior to that, apart from, I would have noted in  
14          documentation, that as assistant commissioner in the  
15          Western Region I would have signed documentation, 15:09  
16          correspondence, back to Assistant Commissioner McMahon  
17          in relation to the criminal investigation, but I  
18          wouldn't have had any involvement in the actual  
19          investigation.

20   365   Q.   Yes. 15:10

21          A.   I just signed off on correspondence.

22   366   Q.   You had no prior knowledge or sight of the criminal  
23          investigation file?

24          A.   No, absolutely not, Chairman.

25   367   Q.   Now, could we look at document 14187. This is the 15:10  
26          appointment made by Assistant Commissioner Sheehan of  
27          you to do the peer review. It refers to "the above  
28          entitled matter and the attached investigation file"  
29          you hadn't seen that before, presumably?



1 A. That's the disciplinary investigation?

2 368 Q. Yes.

3 A. No, I hadn't seen it before I received it.

4 369 Q.

5 "Following the allegations made by a confidential 15:10  
6 reporter concerning the Athlone district, a criminal  
7 investigation was undertaken by the then Assistant  
8 Commissioner Donal Ó Cualáin. On the conclusion of the  
9 criminal investigation a number of potential breaches  
10 of discipline were identified and these were the 15:11  
11 subject of a discipline investigation."

12

13 Now, Inspector Coppinger had been serving under you in  
14 Galway when you returned as assistant commissioner,  
15 isn't that correct? 15:11

16 A. That's correct, Chairman, yes.

17 370 Q. Did you know of his involvement in the Ó Cualáin  
18 investigation at that time?

19 A. Again, I would have been aware from within the  
20 organisation that Assistant Commissioner Ó Cualáin, as 15:11  
21 he was then, had conducted an investigation. But I had  
22 no involvement or knowledge of the specifics of the  
23 investigation.

24 371 Q. Yes. Assistant Commissioner McMahon had in the course  
25 of her discipline investigation obtained a statement 15:11  
26 from Ms. B relating to Garda A and her contacts with  
27 Garda A. And Assistant Commissioner McMahon referred  
28 that statement of Ms. B back to Inspector Coppinger as  
29 part of the Ó Cualáin investigation. Did you become

1 aware of that?  
2 A. I don't have any memory of being aware of that. It may  
3 have come in the ordinary course of post coming  
4 through, but I don't have any recollection or knowledge  
5 of that. 15:12

6 372 Q. Yes. It caused the disciplinary inquiry to be put into  
7 abeyance effectively from February to November of 2018,  
8 pending Inspector Coppinger making further enquiries  
9 with Ms. B and Ms. B's solicitors and then with Garda  
10 A, who he interviewed again. Did you have any 15:12  
11 knowledge that was to taking place or were you briefed  
12 on that?

13 A. No, Chairman, I suppose I might say that Inspector  
14 Coppinger is attached to the Galway division and I  
15 suppose as the assistant commissioner I was in charge 15:12  
16 of Claire, Galway, Mayo, Roscommon, Longford. So I  
17 wouldn't have had regular interaction with Inspector  
18 Coppinger.

19 373 Q. And you weren't aware that he was doing that?

20 A. No, I wasn't aware that he was carrying out those 15:12  
21 enquiries.

22 374 Q. This goes on paragraph 3:

23  
24 "Assistant Commissioner Jack Nolan (now retired) was  
25 appointed in accordance with regulation 23 of Garda 15:13  
26 Síochána (Discipline) Regulations, as amended, the  
27 regulations, to investigate the disciplinary aspects of  
28 the matter."  
29

1 So you're being told there, there's an appointment  
2 under the 2007 regulations and were you familiar with  
3 them?

4 A. Yes, I am reasonably familiar with them.

5 375 Q. Reasonably familiar.

15:13

6 A. Yes.

7 376 Q. It then says:

8  
9 "Assistant Commissioner Anne Marie McMahon was  
10 subsequently appointed on 26th April 2017 to replace  
11 Assistant Commissioner Jack Nolan as investigating  
12 officer following Assistant Commissioner Nolan's  
13 retirement."

15:13

14  
15 Again, was that the first time you became aware of  
16 that?

15:13

17 A. I was aware that Assistant Commissioner McMahon was  
18 carrying out a disciplinary investigation.

19 377 Q. This doesn't of itself obviously raise any issue in  
20 relation to her succeeding to that or replacing  
21 Assistant Commissioner Nolan, nor does it raise any  
22 issue about the propriety of anything that she had  
23 done?

15:14

24 A. No, Chairman, it didn't to me, no.

25 378 Q. Yes. We know Chief Superintendent Nugent had prepared  
26 a report for Assistant Commissioner Sheehan, raising a  
27 number of issues. Was that briefed to you at any  
28 stage?

15:14

29 A. No, Chairman. I received, as I said in my statement,

1 the four volumes of material and the covering statement  
2 as well as the correspondence from Assistant  
3 Commissioner Sheehan. That was all I was in receipt  
4 of.

5 379 Q. Yes. It says then:

15:14

6  
7 "On 27th February 2019, Assistant Commissioner McMahon  
8 finalised her report in the matter and made  
9 recommendations in accordance with the regulations."

10 15:14

11 So that didn't tell you as such that Assistant  
12 Commissioner McMahon had recommended the establishment  
13 of a board of inquiry?

14 A. No, Chairman, it wasn't until I read the actual volumes  
15 of material that I discovered that.

15:15

16 380 Q. Obviously under the regulations, the regulations are  
17 relatively straightforward, somebody is appointed under  
18 regulation 23, as has been referred to there. The  
19 investigation is then completed and it's forwarded, as  
20 required. And then this refers to the report and it  
21 says:

15:15

22  
23 "In a report accompanying the file, Assistant  
24 Commissioner McMahon suggested that for the purposes of  
25 transparency a peer review be conducted in respect of  
26 her investigation. Assistant Commissioner McMahon has  
27 give a valid reason for suggesting this course of  
28 action. While I do not doubt the integrity of  
29 Assistant Commissioner McMahon and the investigation, I

15:15

1 am in agreement with her request for a peer review of  
2 the investigation."

3  
4 So you saw that that was advanced by Assistant  
5 Commissioner Sheehan as the reason. And then you are  
6 nominated: 15:16

7  
8 "Accordingly you are hereby nominated to conduct a peer  
9 review of this investigation."

10  
11 Had you conducted such a peer review before? 15:16

12 A. No, Chairman, I hadn't conducted a peer review of such  
13 an investigation before, no.

14 381 Q. Were there any procedures laid down as to how you  
15 should do that or what it meant in fact? 15:16

16 A. To me it meant I would do a paper review or a desktop  
17 review of the investigation file that I received from  
18 Assistant Commissioner Sheehan. I had been involved in  
19 reviews of other paper files, not relating to criminal  
20 investigation files. So my methodology was to go 15:16  
21 through the whole investigation file, look at all of  
22 the allegations, look at the investigations that were  
23 carried out, the witnesses that were spoken to,  
24 witnesses that were nominated by the complainant and to  
25 come to a conclusion in relation to my review or peer 15:16  
26 review of the investigation.

27 382 Q. Yes. The assistant commissioner, in his statement to  
28 the Tribunal in October 2009, stated at page 14251, we  
29 don't need to look at it:

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"The purpose of the review was to ensure that the investigation was conducted with due probity."

Was that communicated to you in any way?

15:17

A. Well, my understanding of the request to do the review would be to ensure that the investigation was carried out thoroughly, expeditiously and with due probity.

383 Q. Yes. Did you speak to the assistant commissioner as to the scope of your review or the fact that it was to ensure due probity?

15:17

A. I didn't speak directly to Assistant Commissioner Sheehan, if that's who you are referring to.

384 Q. Yes.

A. No, I didn't, Chairman.

15:17

385 Q. The Tribunal has obviously seen from his statement and from his evidence that he concluded there were a number of infirmities which perhaps all taken together meant that he stood by his decision not to establish a board of inquiry. Did you concern yourself with whether the appointments referred to in the letter had been done properly or whether they carried with them any consequences at all?

15:18

A. No, Chairman. I didn't, Chairman. I looked at the whole process of the actual investigation in relation to the nine allegations. I examined each of them and all of the works that were done, the investigative steps that were taken, who was spoken to, what statements were taken.

15:18

1 386 Q. Yes.

2 A. And that was the review that I did. I didn't review  
3 from the perspective of the initial appointment of  
4 Assistant Commissioner McMahon.

5 387 Q. Yes. One of the features that he picked up, both from 15:18  
6 Superintendent Nugent's report to him and from his own  
7 reading, it would appear, is that statements were taken  
8 by the investigating officers appointed under Assistant  
9 Commissioner Nolan's watch, which were, as it were,  
10 taken over by Assistant Commissioner McMahon, and then 15:19  
11 statements taken by officers appointed by her for that  
12 purpose. Did you see any flaw in that or did you  
13 concern yourself with the propriety of any of that?

14 A. Chairman, I took it as said that Assistant Commissioner  
15 McMahon replaced Assistant Commissioner Nolan on his 15:19  
16 retirement and, therefore, he couldn't continue with  
17 the investigation and that she took over as the  
18 assistant commissioner in charge with, I understood,  
19 some of the same team and maybe additional people to  
20 the team as well. 15:19

21 388 Q. So you assumed for your own purposes obviously that  
22 there was nothing improper in her appointment or in her  
23 succession to Assistant Commissioner Nolan's position  
24 and that of his team?

25 A. Yes, Chairman. 15:19

26 389 Q. You ultimately reported to Assistant Commissioner  
27 Sheehan on 19th June 2019. If we just look at your  
28 report. 14189 of the papers. You reported in the  
29 following terms:

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"I refer to the above and your request that I conduct a peer review of the investigation carried out by Assistant Commissioner Anne Marie McMahon, Southern Region.

15:20

I received four volumes of material pertaining to the investigation, including the covering report of Assistant Commissioner Anne Marie McMahon in relation to her investigation.

15:20

I have read and examined the file in its entirety in relation to each of the nine allegations made in respect of the member subject to the allegations. All of the allegations made by the confidential reporter were investigated in a rigorous and thorough manner. All lines of inquiry were pursued to a conclusion insofar as that was possible by Assistant Commissioner McMahon and the investigation team. All persons nominated by the confidential reporter were interviewed as part of the investigation.

15:20

15:21

I am satisfied, having reviewed the investigation file, that the investigation was thorough and complete."

15:21

Now, obviously from what you have told the Tribunal, you spoke to nobody as such in connection with either the review of the investigation or the thoroughness of it?



1 A. Chairman, I did a paper review, as I said, and I relied  
2 upon all of the volumes of material before me and I  
3 examined the investigation from start to finish.

4 390 Q. Yes.

5 A. As it's set out in the investigation. 15:21

6 391 Q. Yes.

7 A. And came to my conclusions based on that.

8 392 Q. Obviously you must have seen the recommendation for the  
9 establishment of a board of inquiry?

10 A. Yes, Chairman, I did. 15:22

11 393 Q. The report that you furnished to Assistant Commissioner  
12 Sheehan here, which we're looking at, it says nothing  
13 obviously one way or the other about any of the  
14 recommendations. Did you see those as coming within  
15 the scope of your peer review? 15:22

16 A. I didn't, Chairman. I saw it was my role to review the  
17 process that was gone through by the investigation  
18 team, to ensure that everything was completed and  
19 nothing was left behind or left hanging.

20 394 Q. Yes. So you were reviewing process rather than outcome 15:22  
21 of the process?

22 A. The process of the investigation, to ensure that it was  
23 thorough and complete.

24 395 Q. So does that mean that you formed no view on the  
25 adequacy or completeness or otherwise of any of the 15:22  
26 recommendations concerning the allegations made by the  
27 confidential reporter?

28 A. Chairman, I looked at the file in its entirety as  
29 opposed to looking at any specifics, and I didn't take

1 the recommendations as a separate entity and feel I had  
2 to comment on that, it was the entirety of the file.

3 396 Q. Yes. Obviously from the point of view of the assistant  
4 commissioner, he was acting pursuant to a delegated  
5 function which would allow him to decide on behalf of 15:23  
6 the Commissioner whether to establish a board of  
7 inquiry under regulation 25. You presumably knew that  
8 that was the purpose of his function in the matter?

9 A. Yes, Chairman, I'm aware of the function of Assistant  
10 Commissioner Sheehan. 15:23

11 397 Q. Yes. In the context of assisting him to come to a  
12 decision as to whether it appeared from the report that  
13 a board of inquiry should be established, you thought  
14 you weren't going to address the issue of the  
15 recommendations or you didn't feel it within your 15:23  
16 scope?

17 A. Well again, Chairman, I was looking at the whole  
18 investigation in its entirety as opposed to  
19 specifically at Assistant Commissioner McMahon's  
20 recommendations in relation to the different 15:24  
21 allegations.

22 398 Q. Yes. Then just finally in relation to this matter, did  
23 you produce anything other than this report to the  
24 assistant commissioner? Were there any working notes  
25 or any other documents that you generated? 15:24

26 A. No. No, Chairman, no other documents generated. Just  
27 the final report that I returned along with all the  
28 volumes that had been sent to me.

29 399 Q. Thank you.

1 CHAIRMAN: Thanks very much, Commissioner.

2

3 END OF EXAMINATION

4

5 MR. O'BRIEN: Assistant commissioner, good afternoon.

6 CHAIRMAN: Sorry, I'm forgetting you, sorry,

7

Mr. O'Brien.

8

9 ASSISTANT COMMISSIONER ORLA MCPARTLIN WAS THEN

10 CROSS-EXAMINED BY MR. O'BRIEN, AS FOLLOWS:

11

12 400 Q. MR. O'BRIEN: Just in relation to your peer review. If  
13 I could just ask you, you said a few moments ago that  
14 you reviewed it to see if the investigation was carried  
15 out thoroughly, expeditiously and with due probity. As 15:24  
16 you know, Garda Keogh is very critical of the delay  
17 that the disciplinary process took. Is that something  
18 that you concerned yourself with or that you noticed  
19 when you were carrying out your paper review?

20 A. No, Chairman. I didn't specifically look at the 15:24  
21 timelines involved, I looked at the actual specifics of  
22 the investigation itself and how it was carried out as  
23 opposed to how long it took.

24 401 Q. But in circumstances where you were, I suppose,  
25 reviewing all of the issues that were within the file, 15:25  
26 is that not something that -- for example, when the  
27 complaint was made, when the investigation commenced,  
28 were significant issues that warranted your attention  
29 to do a full and proper review?

1 A. As I said, Chairman, it was a paper review I did of the  
2 investigation file. While timelines have been referred  
3 to here, I didn't in my review of the investigation  
4 look at timelines or comment on how long any specific  
5 issue took. 15:25

6 402 Q. Did you review the recommendations that were made by  
7 Assistant Commissioner McMahon in relation to the  
8 establishment of a board of inquiry at all?

9 A. Yes, I would have read those in conjunction with the  
10 rest of the file. 15:26

11 403 Q. And you were satisfied not to recommend any alternative  
12 course of action in relation to that, is that the  
13 position?

14 A. I didn't make any recommendation as to any alternative  
15 course. 15:26

16 404 Q. Have you seen Assistant Commissioner Sheehan's report  
17 in relation to the disciplinary investigation?

18 A. I have.

19 405 Q. You will see from that report that one of the five, I  
20 suppose, concerns that he had was the issue of delay, 15:26  
21 that just didn't strike you at all when you were  
22 conducting your peer review?

23 A. Well, I suppose Assistant Commissioner Sheehan has a  
24 different function to me in relation to that. He is  
25 the assistant commissioner in charge of governance and 15:26  
26 accountability, Chairman. He has a delegated function  
27 on behalf of the Commissioner. I get a specific  
28 request that I was asked or I was appointed to review  
29 the investigation file and so, I would possibly have a

1 different view and did have a different view or  
2 certainly didn't comment on the timelines involved in  
3 my review of the actual investigation itself.

4 406 Q. You were operating outside, I suppose, of a structure,  
5 is that correct? There was no set regulation dealing 15:27  
6 with this peer review?

7 A. No. There's no specific template set out as to how one  
8 should conduct a peer review.

9 407 Q. And nobody gave you any guidance in relation to that?  
10 A. Well, I am aware of peer reviews and how they are done 15:27  
11 in relation to criminal investigations, so I would be  
12 aware that it's a matter of gathering all of the  
13 investigation file and examining it to ensure that all  
14 of the relevant lines of inquiry has been followed up.

15 408 Q. Were you comfortable acting and carrying out and 15:27  
16 conducting this review in circumstances where there was  
17 no, I suppose, set policy to adhere to?

18 A. Yes, I was.

19 409 Q. You didn't see any need for taking advice from anybody  
20 in relation to it? 15:27

21 A. No, I have 36 years -- 37 years experience in An Garda  
22 Síochána and I was satisfied that I could look at an  
23 investigation file, look at all of the lines of inquiry  
24 and come to a conclusion in relation to the  
25 thoroughness and completeness of the investigation. 15:28

26 410 Q. And the person's whose report you were reviewing and  
27 whose work you were reviewing, Assistant Commissioner  
28 McMahon, is she somebody that was known to you prior to  
29 this?

1 A. Obviously, yes, she was.

2 411 Q. Is that in a professional capacity or did you know her  
3 outside of that?

4 A. In a professional capacity, Chairman. She has similar  
5 service to me, so obviously I would know her. 15:28

6 412 Q. I have no further questions, Chairman.

7 CHAIRMAN: Thanks very much.

8

9 END OF EXAMINATION

10

11 MR. DONAL MCGUINNESS: Just two questions, Chairman. 15:28

12 CHAIRMAN: Thanks, Mr. McGuinness, yes.

13

14 ASSISTANT COMMISSIONER ORLA MCPARTLIN WAS QUESTIONED BY

15 MR. DONAL MCGUINNESS, AS FOLLOWS: 15:28

16

17 413 Q. MR. DONAL MCGUINNESS: Assistant commissioner, were you  
18 made aware of the very specific reason for the peer  
19 review that has been canvassed in evidence today at the  
20 time you conducted your review? 15:28

21 A. No, Chairman, I just was in receipt of the requested by  
22 Assistant Commissioner Sheehan, which has already been  
23 entered into evidence.

24 414 Q. And can you indicate when it was that you learned of  
25 the issue? 15:29

26 A. It was some time subsequent, I can't say when, I just  
27 became aware.

28 415 Q. Just in relation to the determination that was made by  
29 Assistant Commissioner Sheehan in relation to the

1 matter, did you know whether or not he had made a  
2 determination before your peer review was conducted or  
3 not?

4 A. No, I was not aware that he made any determination in  
5 relation to the recommendations by Assistant  
6 Commissioner McMahon. 15:29

7 416 Q. Was there any need to refer the matter back to you  
8 after he made his decision consequent upon receiving  
9 your report?

10 A. Chairman, I wouldn't think so, because again, as I said 15:29  
11 earlier, Assistant Commissioner Sheehan has a different  
12 remit to myself. He has a delegated function on behalf  
13 of the Commissioner and I wouldn't need necessarily to  
14 concern myself with his decisions in relation to that.

15 417 Q. Thank you, assistant commissioner. 15:29

16 A. Thank you.

17

18 END OF EXAMINATION

19

20 CHAIRMAN: Everybody else finished? Very good. Thank 15:29  
21 you very much, commissioner. Now are you finished.  
22 Thank you.

23

24 THE WITNESS THEN WITHDREW

25

15:30

26 MR. MCGUINNESS: Chairman, that completes the three  
27 witnesses we have scheduled for today.

28 CHAIRMAN: Sorry, just one second. Thank you. I'm  
29 sorry, Mr. McGuinness.

1 MR. MCGUINNESS: That completes the three witnesses  
2 scheduled for today and we will be commencing tomorrow  
3 with Chief Superintendent Anthony McLoughlin.  
4 CHAIRMAN: Very good. Thank you very much. All right.  
5 MR. MURPHY: Chairman, I wonder, just for logistical 15:30  
6 reasons, I wonder if Mr. McGuinness could indicate how  
7 long he thinks that witness will be.  
8 CHAIRMAN: Give us the full schedule for tomorrow,  
9 Mr. McGuinness, if you can. Would you like me to leave  
10 that and you can have a word with Mr. Murphy? Is that 15:30  
11 convenient? Let me say this, if somebody has a  
12 particular problem or difficulty, mention it to  
13 Mr. McGuinness, within reason.  
14 MR. MURPHY: Yes, Chairman.  
15 CHAIRMAN: Mr. McGuinness will be able to indicate what 15:31  
16 my view will be. So I am broadly sympathetic, if  
17 somebody has a particular difficulty.  
18 MR. MCGUINNESS: Well, Chairman, we anticipate that  
19 Chief Superintendent McLoughlin will take the whole of  
20 the day tomorrow. 15:31  
21 CHAIRMAN: Very good.  
22 MR. MCGUINNESS: And the witnesses who had originally  
23 been scheduled on Friday are going to be taken then  
24 starting on Wednesday morning, Assistant Commissioner  
25 Finn, O'Brien and Deputy Commissioner Twomey. 15:31  
26 CHAIRMAN: Okay. Are you clear on all that,  
27 Mr. Murphy.  
28 MR. MURPHY: Yes, Chairman.  
29 CHAIRMAN: As I say, in the case of any doubt or



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difficulty --

MR. MURPHY: That's very helpful, Chairman.

CHAIRMAN: Very good. Thank you very much. We will adjourn until tomorrow. Thank you very much.

15:31

THE HEARING THEN ADJOURNED UNTIL TUESDAY, 18TH FEBRUARY 2020 AT 10:30AM

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