

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

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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 TUESDAY, 18TH FEBRUARY 2020 - DAY 141

141

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

GWEN MALONE STENOGRAPHY  
SERVICES

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1 THE HEARING RESUMED, AS FOLLOWS, ON TUESDAY, 18TH  
2 FEBRUARY 2020:

3  
4 MR. MCGUINNESS: Good morning, Chairman. The witness  
5 today is Chief Superintendent Anthony McLoughlin. 10:30

6 CHAIRMAN: Thank you very much. Good morning, chief  
7 superintendent. Thank you.

8 THE WITNESS: Good morning, Judge.

9  
10 CHIEF SUPERINTENDENT ANTHONY MCLOUGHLIN, HAVING BEEN 10:30  
11 SWORN, WAS DIRECTLY-EXAMINED BY MR. MCGUINNESS, AS  
12 FOLLOWS:

13  
14 THE WITNESS: Chief Superintendent Anthony McLoughlin.  
15 Tony McLoughlin. 10:31

16 CHAIRMAN: Very good. Thanks very much.

17 MR. MCGUINNESS: Chairman, Chief Superintendent  
18 McLoughlin's statement is found in the Tribunal's  
19 papers at volume 11, page 3228, together with his  
20 associated appendices into volume 12. There is an 10:31  
21 additional statement at volume 58, at page 16418.

22 1 Q. Chief Superintendent McLoughlin, can I first ask you to  
23 give a brief outline of your career to date, please, in  
24 An Garda Síochána?

25 A. I joined An Garda Síochána in 1984 and I was assigned 10:31  
26 to Shankill in south Dublin. I was there until my  
27 promotion in approximately 1992, where on promotion to  
28 sergeant I was assigned to Dun Laoghaire. Then, in  
29 around 1996 I was promoted to inspector and I was

1 assigned to the change management unit in Garda  
2 Headquarters. I spent 11 or 12 years as an inspector  
3 and then in around 2010, 2009/2010 I was promoted to  
4 superintendent, where I spent time in the HR department  
5 and the chief administrative office before being 10:32  
6 promoted in 2013 to chief superintendent. And on  
7 promotion I was allocated initially to Internal Affairs  
8 and then to HR.

9 2 Q. Yes. That is obviously Internal Affairs, B branch?  
10 A. Yes. 10:32

11 3 Q. And then HR. You have been a chief superintendent in  
12 HR since then?  
13 A. Well, since 2013. I had both portfolios initially, I  
14 had both Internal Affairs and HR and then the Internal  
15 Affairs portfolio was taken away and I was left with 10:32  
16 just HR.

17 4 Q. Can I just ask you a little bit about the structure, as  
18 it were, since that time. The civilisation, as I call  
19 it, hadn't happened when you went in, in 2013 but there  
20 was a civilian head introduced? 10:33  
21 A. That's right. I served initially under an assistant  
22 commissioner, and then I served under Mr. John Barrett.

23 5 Q. Yes.  
24 A. And currently I serve under the exec director Alan  
25 Mulligan. 10:33

26 6 Q. Is there an assistant commissioner on top of those?  
27 A. No.

28 7 Q. Or are they at the rank of assistant commissioner?  
29 A. No, the highest Garda ranking Garda officer, if you

1           like, in HR at the moment is a chief superintendent.

2       8   Q.   Yes.

3       A.   I report into Mr. Mulligan who reports into the CAO,

4           Mr. Joe Nugent.

5       9   Q.   Can I just ask you then about 2013 to 2014. Obviously 10:33

6           the Protected Disclosures Act came into force in July

7           2014?

8       A.   Yes.

9       10  Q.   What function had you got, if any, at that point in

10           time? 10:34

11       A.   I had no function, other than perhaps if we got a

12           referral to us in relation to welfare, because I had

13           responsibility for the welfare service.

14       11  Q.   Yes.

15       A.   So other than that we had no function in relation to 10:34

16           the Protected Disclosures Act.

17       12  Q.   Obviously we know that the confidential recipient wrote

18           directly to the Commissioner, as was mandated by the

19           regulations at the time?

20       A.   Yes. 10:34

21       13  Q.   And the Commissioner made her appointment to appoint

22           Assistant Commissioner Ó Cualáin. But is it the case

23           that you wouldn't and weren't in any way directly

24           involved in dealing with that protected disclosure?

25       A.   No. 10:34

26       14  Q.   Or in any way connected with the investigation or the

27           reports coming from the investigation?

28       A.   No, I had no part whatsoever to play in the

29           investigation, in the appointment, in any aspect of it.



1 15 Q. Yes.

2 A. I only became familiar with it very late on then in  
3 maybe 2016.

4 16 Q. Yes. Just to clarify then insofar as your role related  
5 to sickness management and pay, where did they slot in 10:35  
6 in terms of issues that did arise and can arise?

7 A. I have no direct responsibility for either the  
8 sickness, and I still don't, for either sickness or  
9 pay. They come under the remit of the director in  
10 Athlumney House in Navan. 10:35

11 17 Q. Yes.

12 A. So my only role would be maybe to seek advice or seek a  
13 status update in any particular case that we might be  
14 dealing with, or if I came across something to maybe  
15 make a recommendation to that section, if I thought it 10:35  
16 was warranted.

17 18 Q. Yes. So the pay section is outside HRM?

18 A. It comes under the control of HRM but it just so  
19 happens, geographically, that it's placed in Navan.

20 19 Q. Yes. 10:35

21 A. And it comes under mostly Garda staff, all of the  
22 section is now managed by Garda staff.

23 20 Q. Yes. And the sickness management aspect of it, where  
24 is that sort of controlled from or responsible to?

25 A. It's under the head of the director in Navan and I 10:36  
26 think in this case it was Ms. Monica Carr, and she  
27 reports, like I do, into the exec director of HR.

28 21 Q. Yes. Just coming into, sort of, the period that we're  
29 concerned with in question, we've seen that Garda Keogh

1 was previously out ill, receiving treatment back in  
2 2012, he was back on duty then and Assistant  
3 Commissioner Fanning at the time had directed that I  
4 think quarterly reports or regular reports would be  
5 made in relation to it from his unit. We have seen 10:36  
6 that I think Mr. Mulligan wrote reminders in relation  
7 to those, which resulted in Sergeant Moylan writing a  
8 unit report up in relation to Garda Keogh. Would that  
9 unit report have come to HRM and to your notice at the  
10 time? 10:37

11 A. They wouldn't have come to my notice, no.

12 22 Q. We know obviously from the sequence of events that  
13 Garda Keogh had a meeting with Superintendent Murray at  
14 the end of March 2015, as a result of which the work  
15 related stress issue was raised or discussed to a 10:37  
16 degree at that meeting. Presumably you had no  
17 knowledge of the basis upon which Garda Keogh was being  
18 recorded on SAMS at that time?

19 A. No. No.

20 23 Q. I think you came to learn, obviously, at a stage we 10:38  
21 will come to very shortly, that it had been recorded as  
22 flu/viral, although he was being certified by his  
23 doctor as work related stress?

24 A. I became aware of that in early '16, sorry, June 2016,  
25 in around that timeframe. 10:38

26 24 Q. Yes. Superintendent Murray dealt with the car tax  
27 issue. He seemed to query the stress that Garda Keogh  
28 said he was under, but he referred him up to the CMO in  
29 the light of his absences and his sickness record and

1 so forth. So we know that went up and he was  
2 ultimately seen by the CMO at a much later stage, but  
3 that referral would have gone -- would it have gone  
4 through HRM first, is that correct?

5 A. It probably went through the hierarchy within the 10:39  
6 division and then on to HR sickness section.

7 25 Q. Yes.

8 A. And then on to the CMO's office.

9 26 Q. Yes.

10 A. It may, on some occasions, I am a complete expert in 10:39  
11 relation to sickness absence, it may go to the CMO on  
12 occasions directly, but that would be by exception.

13 27 Q. Yes. You wouldn't be regularly notified of any such  
14 matter?

15 A. No, no, or I wouldn't expect to be either. 10:39

16 28 Q. In terms of the protected disclosure that Garda Keogh  
17 made in May of 2014, what were your responsibilities at  
18 of that time, May 2014? Had you any in relation to it?

19 A. I would have had none.

20 29 Q. When did you first acquire responsibility for dealing 10:39  
21 with protected disclosures?

22 A. The end of May, early '16, I was appointed as a  
23 protected disclosures manager for the organisation in  
24 accordance with or in compliance with the Act of 2014.

25 30 Q. Yes. So you had no function, as it were -- 10:40

26 A. No.

27 31 Q. -- between the coming into effect of the new Act in  
28 July '14, until you were assigned to be the protected  
29 disclosures manager.

1 A. Yes.

2 32 Q. In 2016.

3 A. Yes.

4 33 Q. Obviously, I take it from that, that you had no  
5 professional reason to involve yourself in Garda 10:40  
6 Keogh's protected disclosures or what was happening in  
7 relation to him, concerning his pay or sickness or  
8 otherwise?

9 A. No. And in effect, even from '16, even as a protected  
10 disclosures manager per se, I wouldn't necessarily have 10:40  
11 had a role from a protected disclosures management  
12 perspective and sometimes it's often confused within  
13 the organisation.

14 34 Q. Yes.

15 A. Because I was appointed with one other member of staff, 10:40  
16 Mr. Mulligan, to be a protected disclosures manager,  
17 but our primary role was a recipient for protected  
18 disclosures within the organisation for anybody who  
19 wanted to make it.

20 35 Q. Yes. 10:41

21 A. Then as a result a follow up and support mechanism for  
22 those people who made a PD to us.

23 36 Q. Yes.

24 A. But during 2016 and onwards, it kind of got conflated,  
25 the protected disclosures manager was having to take on 10:41  
26 maybe people who made protected disclosures otherwise  
27 than to ourselves.

28 37 Q. Yes.

29 A. And that's where I suppose I got more involved in this

1 particular case than maybe the policy would suggest I  
2 should have had.

3 38 Q. It may help just as we go through it, but what is your  
4 role as a protected disclosures manager? Leaving aside  
5 the way you got involved in this particular case. 10:42

6 A. Well, my role is first and foremost to act as the  
7 recipient for anybody who wants to make a disclosure  
8 within the organisation. Once somebody has done that  
9 in accordance with our policy, my first job then is to  
10 assess it and see if it fits within the remit of the 10:42  
11 Act or comes within all of the terms within the Act  
12 itself. Having made that assessment, I then have a  
13 responsibility to appoint an investigator not below the  
14 rank of chief superintendent to investigate that  
15 complaint. And I also have responsibility to inform 10:42  
16 the Commissioner of a PD having been made but without  
17 naming the individual, just indicate to the  
18 Commissioner that I have a PD, a brief outline of what  
19 it is, but do not name the individual concerned.

20 39 Q. Yes. And do you then retain oversight of the 10:42  
21 investigation and of welfare issues in connection with  
22 that disclosure?

23 A. Yes. The other pieces of the responsibility are to  
24 oversee the investigation without having any input into  
25 it, but make sure it is happening in a timely manner, 10:43  
26 to then provide regular updates to the person who has  
27 made the complaint as to how the investigation is  
28 going.

29 40 Q. Yes. Now, obviously in this case you didn't perform

1 any of those functions --

2 A. No.

3 41 Q. -- in relation to Garda Keogh?

4 A. No.

5 42 Q. So, can you just help the Tribunal understand the basis 10:43  
6 upon which you then first got involved in connection  
7 with Garda Keogh and contacting him?

8 A. I was asked, well, I would argue I was almost directed  
9 by the head of legal at the time to get involved in  
10 Garda Keogh's case on behalf of the organisation, 10:43  
11 primarily from a health and welfare perspective, but  
12 also with a view to maybe pulling all the various  
13 strands together so that there was one port of call  
14 that could keep the Commissioner informed of the status  
15 of all the various elements of the investigations that 10:44  
16 were ongoing.

17 43 Q. So you were effectively going to become and did become,  
18 did you, the single point of contact?

19 A. In terms of coordinating all the activities.

20 44 Q. Coordinating, yes. Now obviously we know that Garda 10:44  
21 Keogh had been certified as unfit for work by a report  
22 made by Dr. Oghuvbu, sent to HRM on I think 8th January  
23 2016?

24 A. Yes.

25 45 Q. And didn't and wasn't regarded as sick for work 10:44  
26 thereafter. He was reviewed by the doctor in 2016.  
27 But you contacted him on the 20th May, is that correct,  
28 of 2016?

29 A. Sorry, I contacted?

1 46 Q. Garda Keogh.  
2 A. I did. Once I got was given the role of becoming  
3 involved in Garda Keogh's case, the first thing I did  
4 was to contact him to let him know who I was, to give  
5 him my phone number, to ask about his wellbeing and to 10:45  
6 generally see how he was.

7 47 Q. Yes. Now he had been referred to and seen the doctor  
8 the previous day, the 19th May, had you seen any  
9 documents relating to Garda Keogh at that stage and if  
10 so -- 10:45

11 A. No, I didn't, no.

12 48 Q. Okay. In any event, you made a note of your call. If  
13 we look at page 3250 of the documents. As we are going  
14 through your documents, you have helpfully labelled  
15 them, this TMCL 1? 10:46

16 A. Yes.

17 49 Q. You initiated that phone call?

18 A. Yes.

19 50 Q. As you say, on foot of legal advice, which you were no  
20 doubt happy to follow? 10:46

21 A. Absolutely. It wasn't so much legal advice per se, it  
22 was just a request from the head of legal, where I had  
23 been involved in other cases and where I think he knelt  
24 it would be helpful to the organisation if I would  
25 fulfil a role with Garda Keogh similar to other roles, 10:46  
26 whereby there was an office that was pulling, if you  
27 like, all of the various elements together.

28 51 Q. Yes.

29 A. And there was two objectives; one was to be supporting

1 the people who were in the middle of this; and  
2 secondly, to be able to brief the Commissioner  
3 regularly. Rather than the organisation going all  
4 over, checking and looking for information here, there  
5 and everywhere, that there would be one office with the 10:47  
6 responsibility for doing that. So I took that on.

7 52 Q. Just on a side issue perhaps, had you spoken to the  
8 Commissioner about Garda Keogh or had she spoken to you  
9 about him?

10 A. Not at that time, no. 10:47

11 53 Q. But was it your understanding that she would require to  
12 be briefed with up-to-date position regarding Garda  
13 Keogh?

14 A. Yes. I would have done that on request from the  
15 Commissioner's office and on the very odd occasion I 10:47  
16 would have made the call, I think it was only once or  
17 twice that I actually rang to give him -- well, it  
18 wasn't the Commissioner actually, it was the deputy  
19 commissioner, an update.

20 54 Q. Okay. Well perhaps maybe if we can look at that note, 10:47  
21 page 3250?

22 A. Yes.

23 55 Q. Just to read it there:  
24  
25 "Doctor yesterday." 10:48  
26  
27 Is that "unfit for duty"?

28 A. I presume it should be "unfit" but that was just --  
29 Garda Keogh was reflecting to me that he was unfit for



1 duty, yes.

2 56 Q. Yes. And then "flu/work related stress", is that a  
3 record of -- you're noting the dichotomy there?

4 A. Exactly.

5 57 Q. Yes. What is the next phrase there? 10:48

6 A. "As December on file in error."

7

8 So what that was basically saying to me, that as far as  
9 Garda Keogh was concerned that what was reflected on  
10 file or in the system wasn't exactly what he had wanted 10:48  
11 it to be, or what it actually was diagnosed as at the  
12 time

13 58 Q. Yes. And then "report from Dr. Oghuvbu"?

14 A. Just a reference that there should have been a report  
15 available from Dr. Oghuvbu in relation to -- 10:49

16 59 Q. The last two visits?

17 A. Yeah.

18 60 Q. "His own GP says" something?

19 A. It says "no to do". To be honest with you, I don't  
20 know exactly what that means. 10:49

21 61 Q. Yes.

22 A. I'm assuming it means that as far as his own GP was  
23 concerned as well he was also out sick with work  
24 related stress.

25 62 Q. There is something then, is that "dispute"? 10:49

26 A. Well, it's a dispute between -- what was relayed to me  
27 there, there seemed to be a dispute between what the GP  
28 may have been saying and what the CMO at that time may  
29 have suggested or said. I don't know if that's

1 accurate or not, I didn't check it out.

2 63 Q. Yes. "In contact with Mick Quinn."

3 A. That was a really important piece for me at the time,  
4 because I garnered from that that one of my staff, an  
5 employee assistance officer, was in constant contact 10:50  
6 with Garda Keogh and it gave me a certain amount of  
7 confidence in that, that there was, if you like, a  
8 strong support mechanism in place and a strong  
9 relationship between Garda Quinn and Garda Keogh.

10 64 Q. Yes. And then your note on the last two lines, is it 10:50  
11 "find out"?

12 A. That was a note to myself to try and find out what was  
13 the status and get a copy of the last two Chief Medical  
14 Officer reports.

15 65 Q. Yes. On foot of that then, that was the first time it 10:50  
16 came to your attention that there was this issue of  
17 recording. There's no mention of pay mentioned there  
18 in the conversation?

19 A. No. It was a very brief conversation that I had.

20 66 Q. Yes. 10:50

21 A. It was just to, if you like, break the ice and make  
22 contact. I wouldn't have known Nicky Keogh, Garda  
23 Keogh before that.

24 67 Q. Yes.

25 A. And I don't think Garda Keogh would have known me. So 10:51  
26 it was just an opportunity to get to know each other  
27 and to break the ice.

28 68 Q. Yes. In terms of getting the CMO's reports, is that  
29 within your grasp, as it were? Can you, as chief

1 superintendent in HR, ask the CMO to give you the last  
2 two reports? Or, how does that work?

3 A. I could do it. I wouldn't necessarily do it on a  
4 very -- I wouldn't do it very frequently. I would  
5 probably look for it through our Sick Section in Navan, 10:51  
6 who would have the file in relation to sickness  
7 absence. Therefore, I would get what I'd be entitled  
8 to get. I'd be conscious that there is a  
9 client-patient confidentiality associated with the  
10 Chief Medical Officer and I didn't want to cross over 10:51  
11 or intervene in that in any way, except with the  
12 consent of Garda Keogh. So, to answer your questions,  
13 it would be unusual, if not -- I would never go to the  
14 CMO directly, I would go through the Sickness Absence  
15 Section in Navan to get the information. 10:52

16 69 Q. In Navan?

17 A. Yes.

18 70 Q. I think you provided Garda Keogh with an assurance that  
19 you were always available to help him.

20 A. Yes. 10:52

21 71 Q. Or, if required, to listen and you gave him your mobile  
22 number?

23 A. I did.

24 72 Q. Now, I think he then rang you on the 23rd May, three  
25 days later? 10:52

26 A. Yeah.

27 73 Q. Had you been able to make any progress in terms of  
28 finding out more about the issues that he had raised?

29 A. No, I don't think I did anything at that time in the



1 annoyed that the record showed flu rather than work  
2 related stress.

3 82 Q. He wanted you to then go through Mick Quinn, the  
4 welfare officer?

5 A. Yeah. Judge, he kind of said to me that he would 10:54  
6 prefer if possible to go through Garda Quinn with any  
7 updates or any information that I might have had for  
8 him. I think the reason for that primarily was that  
9 Garda Quinn would have had a greater level of access to  
10 Garda Keogh than possibly I would have had and he would 10:54  
11 be familiar with the phone numbers and things.

12 83 Q. Yes.

13 A. So it might have proved to be quicker in the event that  
14 something needed to go to Garda Keogh.

15 84 Q. Yes. You have a note then that he wanted you to 10:54  
16 contact D/Superintendent Mulcahy?

17 A. Yes.

18 85 Q. Now, this in the period obviously after the Director  
19 has made a decision not to prosecute Garda A and after  
20 Garda Keogh has been informed of that. Can you 10:55  
21 recollect, did he give any reason as to why he wanted  
22 to contact D/Super Mulcahy?

23 A. I don't remember it, to be quite honest. I don't  
24 remember the conversation other than what's in my note.  
25 I'm sorry, I'm not able to help. 10:55

26 86 Q. Not at all. The next note you have then is "going to"  
27 what does that mean?

28 A. What Garda Keogh had stated to me and I took a note of  
29 it:

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29

"He was going to drink more that afternoon."

87 Q. Okay. Then the last one there?

A. "Wanted reports from Dr. Oghuvbu."

10:55

So I am suspecting that maybe Garda Keogh himself wanted to get sight of what Dr. Oghuvbu was actually saying or stating in his reports.

88 Q. Yes. I think on foot of that you probably were concerned for him and you contacted superintendent Della Murphy to try and get Garda Quinn to call you?

10:55

A. Yes.

89 Q. Isn't that right?

A. Yes.

90 Q. You also contacted then, on the same day, Claire Egan in the HR directorate for an update in relation to his position vis-à-vis SAMS, isn't that correct?

10:56

A. Yes, I did.

91 Q. I think you received that, if we look at page 3253?

A. Yeah.

10:56

92 Q. If we perhaps just start at the bottom of 3253 and go onto the next page:

"Garda Nicholas Keogh has been absent continuously on sick leave since 26/12/2015. The member's GP has certified the member as being unfit due to work related stress and the absence is recorded as ordinary illness on SAMS. The member's local management expressed concern regarding his attendance patterns prior to the

10:56

1 commencement of this absence and the member was  
2 reviewed by the Occupational Health Service in early  
3 December 2015 and was found to be unfit for duty. The  
4 OHD is liaising with the member's treating doctor. As  
5 is the procedure in all cases where stress is cited as 10:57  
6 the nature of the illness, the member's local  
7 management met with the member to discuss the source of  
8 his stress. However, the member advised he was  
9 unwilling to discuss this as he was aware that matters  
10 raised by him are under the investigation by AC Western 10:57  
11 Region and he is under the protections of the relevant  
12 legislation in this regard. This branch is not in  
13 receipt nor aware of any application for this sickness  
14 absence to be treated as anything other than ordinary  
15 illness, as recorded. Accordingly, under the 10:57  
16 provisions of the public service management sick leave  
17 regulations 2014, the member's accumulated sick leave  
18 in four year period was in excess of 183 days and the  
19 member was eligible to be paid at the rate of Temporary  
20 Rehabilitation Remuneration from the commencement date 10:57  
21 of his absence and remains in receipt of TRR pay to  
22 date. The member continues to submit medical  
23 certificates in compliance with regulations. The  
24 member was scheduled to attend a review of the OHD on  
25 19th May 2016 and a report of the OHD is awaited." 10:58  
26

27 I see that that is sent on to you by a william J  
28 Gardiner and you sent it on to the Commissioner's  
29 private secretary.

1 A. Mm-hmm.

2 93 Q. Was that a process initiated by you to keep the  
3 Commissioner informed?

4 A. It was, but I would suspect in this case I was asked  
5 for information in relation to it around that time. 10:58

6 94 Q. Yes.

7 A. Because it was very infrequent occasions when I would  
8 have briefed either the Commissioner's office or the  
9 deputy commissioner's office, I would have awaited on  
10 the request, and there was a number of reports that I 10:59  
11 compile for the offices and that's how I would have  
12 basically kept them up-to-date and up to speed on what  
13 was happening.

14 95 Q. Yes. Now, Ms. Egan refers to the procedure there in  
15 her update, about the local management meeting with the 10:59  
16 member?

17 A. Mm-hmm.

18 96 Q. How do you see the investigation of work related stress  
19 should commence and be completed?

20 A. In my previous time in HR as a superintendent I 10:59  
21 happened to be the architect of HQ Directive 139/10, so  
22 I was very familiar with it.

23 97 Q. Yes.

24 A. One of the key things in that directive would be that  
25 if anybody goes sick with injury on duty or work 10:59  
26 related stress, it's meant to precipitate an  
27 investigation almost immediately, to find out the  
28 source of the stress or the injury on duty. And the  
29 idea behind that was to ensure that if at all possible



1 that the organisation could take steps to either  
2 alleviate the stress or find out, I mean, the nature of  
3 it and what caused it.

4 98 Q. The evidence relating to Superintendent Murray's  
5 meeting with Garda Keogh on 26th March 2015 suggests 11:00  
6 that Superintendent Murray queried whether Garda Keogh  
7 was under stress, but he nonetheless, in view of his  
8 absences, referred him up to the CMO. Would you regard  
9 it as necessary to carry out a further investigation on  
10 foot of Garda Keogh being referred to the CMO at that 11:00  
11 point in time?

12 A. From HR's perspective --

13 99 Q. Yes.

14 A. -- and from my perspective, I would have been keen to  
15 ensure that if at all possible that an appropriate 11:01  
16 investigation was conducted to bottom out the work  
17 related stress, as is required under the regulations.

18 100 Q. Yes.

19 A. And while I understand that, in fairness to  
20 Superintendent Murray, he did meet Garda Keogh and he 11:01  
21 did refer him to the Chief Medical Officer. Obviously  
22 the Chief Medical Officer was going to be an important  
23 part in the diagnosis of Garda Keogh and may well have  
24 become a significant part of the investigation or the  
25 report from the investigation into the causes and so on 11:01  
26 and so forth.

27 101 Q. Yes. Obviously and in fairness to Superintendent  
28 Murray, his report to Chief Superintendent Wheatley  
29 expressly refers to Garda Keogh reporting to be

1 suffering from work related stress and he fills in the  
2 CMO application form, the referral form.

3 A. Yeah.

4 102 Q. On the basis of ticking the mental health box.  
5 Ordinarily would you have expected that to result in 11:02  
6 the formal assessment of Garda Keogh's work related  
7 stress, either by HR in some way or by CMO?

8 A. No, the practice at the time in nearly all cases, from  
9 my knowledge, would be that there would have been an  
10 independent -- well, not so much independent, but there 11:02  
11 would have been an report or an investigation outlining  
12 the work related stress issues and detailing them and  
13 offering maybe potential reasons or causes that gave  
14 rise to it. That report would, if you like, satisfy  
15 the regulations but it also would help, I have no 11:02  
16 doubt, the Chief Medical Officer in his various  
17 assessments that he was going to conduct as well.

18 103 Q. Yes. The issue was further clarified on the 23rd, when  
19 you received an e-mail from Claire Egan later that  
20 afternoon. If we could look at page 3255. She was 11:03  
21 only in a position to furnish the CMO advices of the  
22 19th January earlier, but she said in the second  
23 sentence:  
24  
25 "The member's absence records are now being amended 11:03  
26 locally by the SAMS user to reflect 'illness type:  
27 Mental health'. This should update overnight on the  
28 feed into GRIPS."  
29

1 Had you, in your brief conversations, I know they were  
2 with Garda Keogh, discuss how any change might be  
3 recorded or were you aware as to what might be a more  
4 appropriate record of it?

5 A. Well, my understanding from Garda Keogh was very clear: 11:04  
6 That Garda Keogh wished the system to reflect what he  
7 believed was his reason for sickness, which was work  
8 related stress. Now I obviously wasn't sure at that  
9 time how that would manifest itself on the system, I  
10 probably in my naivety would have expected that it 11:04  
11 would go onto the system and be reflected as work  
12 related stress. But I've subsequently become aware  
13 that SAMS doesn't necessarily keep work related stress  
14 except under the umbrella of mental health as one of  
15 the categories. And that's the way it deals with it. 11:04

16 104 Q. Yes. The report that you were furnished with, with  
17 that e-mail is on the next page, at page 3256.  
18 Obviously it dates from January, but the last sentence  
19 of it says:  
20  
21 "Please ensure that all sickness absences are recorded  
22 on SAMS."  
23 A. Yes.

24 105 Q. In the context of Dr. Bartlett, Garda Keogh's GP,  
25 sending in certificates of work related stress, it was 11:05  
26 your view, was it, that you expected that that would be  
27 recorded on SAMS?

28 A. Yes. If that's what the GP was saying initially and  
29 that was the diagnosis that was available initially,

1                   yes.

2   106   Q.   Yes.

3                   A.   Now, I don't -- I have very limited knowledge of SAMS.

4                   I don't think I have ever used it.

5   107   Q.   Yes. 11:05

6                   A.   Yes.

7   108   Q.   In any event, I think within ten minutes of getting

8                   Ms. Egan's e-mail you were phoning Garda Quinn on the

9                   same afternoon to inform him of this update?

10                  A.   Yeah. 11:06

11   109   Q.   I think you have a note of that. Just to look at that

12                   note on 3257:

13

14                   "Spoke with M Quinn EAS re Nick Keogh as requested by

15                   Nick Keogh. Sick absence, the reason is changed to..." 11:06

16

17                  A.   "Reason is changed to work related stress."

18

19                   So the reason for the absence on the system is now, in

20                   my view at the time, reflected as work related stress. 11:06

21   110   Q.   Yes.

22                  A.   As per sick cert.

23   111   Q.   That was your understanding of what it would be?

24                  A.   Absolutely, yes.

25   112   Q.   "Repeat" is that "report"?

26                  A.   "Report from last CMO meeting not yet available. But

27                   previous one is sent to Garda Quinn for his

28                   information. Ms. Claire Egan, Navan, contacted to

29                   resolve these two issues."

1 113 Q. Yes. When you say "two issues" there, that's what I  
2 wanted to ask you about. What did you see as the two  
3 issues there?  
4 A. One of them was definitely the entering on SAMS. I can  
5 only assume that the other one was probably to do with 11:07  
6 pay maybe.  
7 114 Q. Yes.  
8 A. But I can't be certain.  
9 115 Q. Yes. It's possible Garda Quinn raised that with you,  
10 maybe, is it? 11:07  
11 A. Yes, it may have been, yeah. It's the only two I can  
12 think of, yeah.  
13 116 Q. Yes. I think you rang Garda Keogh's number later that  
14 evening to leave a message.  
15 A. Yeah. 11:07  
16 117 Q. Telling him that you had updated Garda Quinn about the  
17 matter, is that right?  
18 A. Yeah. I was anxious -- I felt that Garda Keogh was  
19 anxious about this and that it was causing him some  
20 angst. Therefore, once the job had been done and the 11:07  
21 action had been taken, I was keen that he became aware  
22 of it, because it may help in his own, you know, his  
23 own recovery, if you like, or his own attitudes towards  
24 ourselves in trying to help him.  
25 118 Q. Yes. You kept in touch with Garda Quinn I think, but 11:07  
26 you ended up arranging to meet Garda Keogh with Garda  
27 Quinn on the 3rd June?  
28 A. Yes.  
29 119 Q. In the Tullamore Court Hotel?

1 A. Yes.

2 120 Q. What was the purpose of arranging that meeting?

3 A. Well I wanted to meet him in person.

4 121 Q. In person.

5 A. Rather than be conversing over the phone all the time. 11:08

6 122 Q. Yes.

7 A. I also wanted to meet him to see how he was in person.

8 I wanted him to get a look at what I was about and what

9 I was trying to do. So I arranged to have the meeting

10 with Garda Keogh and he kindly agreed to meet. 11:08

11 123 Q. Yes. You took a note of that, perhaps we will look at

12 that, at 3259?

13 A. Yes.

14 124 Q. If you can just help us?

15 A. Sometimes I do find it hard to read my own writing. 11:08

16 125 Q. It's fine. "Nick had stopped drinking."

17

18 That's the first entry.

19 A. Yes.

20 126 Q. "He was okay with..." 11:09

21

22 what is the next word?

23 A. "He was okay with discussion."

24

25 He was confident to continue with the meeting. 11:09

26 127 Q. Yes.

27 A. Yes.

28 128 Q. "Nick is in hands of Clare Daly and Mick Wallace."

29 A. Yes.

1 129 Q. Had you been aware of that previously?  
2 A. No, not necessarily, no.  
3 130 Q. Okay.  
4 A. It may have been in the media at the time, I can't be  
5 sure. Garda Keogh gave me that information on the day. 11:09  
6 131 Q. Yes. He was quite open about that obviously.  
7 A. Yes.  
8 132 Q. what's next then?  
9 A. "He did indicate to me that he had become dependent on  
10 alcohol because of his work related stress." 11:09  
11 133 Q. Did he attribute any reason for the stress or any  
12 period to it or...  
13 A. well, the whole conversation that morning from Garda  
14 Keogh was about all of the issues that he himself saw  
15 as, you know, annoying him -- annoying would be the 11:10  
16 wrong word, upsetting him, if you like. So we went  
17 through a raft of things, including the Athlone issue,  
18 the investigation into the Athlone issue, his view of  
19 what management's view was of him, and some of the  
20 issues that he felt was contributing to his work 11:10  
21 related stress, yes.  
22 134 Q. Yes. You say there, correct me if I am wrong:  
23  
24 "He outlined a list of issues where he has alleged he  
25 was singled out because of his allegations." 11:10  
26 A. Yes.  
27 135 Q. "He was not going..."  
28  
29 Is it?

1 A. "He will not be returning to work until these matters  
2 are resolved. He believes that Superintendent Murray  
3 and Chief Curran have targeted him for special  
4 treatment."  
5  
6 That's what he said to me. 11:11  
7  
8 "He believes the Commissioner, NOS --"  
9  
10 which I assume is Nóirín O'Sullivan 11:11  
11  
12 " -- had failed to protect him. These matters are now  
13 dealt with in GSOC. He discussed the possibility --"  
14  
15 One of the reasons that I had gone to see Garda Keogh 11:11  
16 at the time, and this is something I would have done in  
17 the past with other staff, would have been -- my  
18 primary role as I would have seen at the time was to  
19 see was there any mechanism whereby we could see a  
20 return to work either in the medium or long-term and to 11:11  
21 discuss that with Garda Keogh  
22 136 Q. Yes.  
23 A. I suggested to him that, okay, regardless of what I  
24 felt, that at the end of the day, before he could  
25 return to work, he would have to be passed fit to 11:11  
26 return by the Chief Medical Officer anyway.  
27 137 Q. Yes?  
28 A. But I was still there explore, in the eventuality of  
29 that happening, how could we orchestrate that? would





1 diagnosis as work related stress that it automatically  
2 means that you then get what we call an award of injury  
3 on duty, and it's not always -- well, very infrequently  
4 is that the case. Because injury on duty, as a  
5 definition, goes back a long time in the Garda 11:13  
6 regulations. An injury on duty usually means or did  
7 mean, in the past in particular, a physical injury  
8 associated with something in the execution of duty or a  
9 mental injury arising from it.

10 145 Q. Yes. 11:13

11 A. And it's quite clear and that's been the way it has  
12 been for quite sometime.

13 146 Q. You have noted there:  
14  
15 "I undertook to look into..." 11:13  
16  
17 That was that issue?

18 A. Yes.

19 147 Q. And then your note concludes:  
20 11:14  
21 "Gave my commitment to him that..."  
22  
23 You were there for him to support?

24 A. Yes.

25 148 Q. "There for him." 11:14  
26 A. Yes.

27 149 Q. He also, as you noted, provide you with this harassment  
28 index?  
29 A. Yes.

1 150 Q. We have heard from Dr. Oghuvbu that he, when he saw him  
2 on the 19th, in fact he recorded in his notes that he  
3 gave him a script and he identified a harassment index  
4 of two pages, he seems to have given you a similar one?  
5 A. Yes. 11:14

6 151 Q. Had he a copy of that ready for you?  
7 A. Yes, I think he had it with him, yeah.

8 152 Q. Did you go through the items with him or did he just  
9 take it?  
10 A. It became -- well, the general conversation obviously 11:14  
11 dealt with those items, so when we finished the  
12 conversation Garda Keogh gave me the list.

13 153 Q. Yes. Now, had you heard at any time that he had  
14 previously complained of being harassed or bullied?  
15 A. No, this would have been the first time, because I 11:15  
16 wouldn't have interacted with him up to this point.

17 154 Q. Yes. We know Deputy Wallace, on the 31st March,  
18 referred to bullying in Athlone of a whistleblower. We  
19 know that Garda Keogh himself wrote back to  
20 Superintendent Murray that he regarded his directions 11:15  
21 in relation to certain crime files to be nothing but  
22 harassment. When something like this comes to an  
23 officer of your rank, how did you regard this as what  
24 ought to be done or what should you do?  
25 A. Yeah. Well, if the member is of a view, which Garda 11:16  
26 Keogh was at the time, and he wanted it to be dealt  
27 with under the existing policy, the one which is there  
28 as bullying and harassment.

29 155 Q. Yes.

1 A. There would have been an onus on me to take that  
2 complaint from him at that time.

3 156 Q. But presumably the policy is on the portal?  
4 A. Yes.

5 157 Q. And all the guards know of it? 11:16  
6 A. Yeah.

7 158 Q. We know Superintendent Murray himself, in writing,  
8 referred Garda Keogh to it --  
9 A. Yeah.

10 159 Q. -- in September of 2015, reminding him of section 39 of 11:16  
11 the Garda Síochána Act and of the policy.  
12 A. Mm-hmm.

13 160 Q. Are members often reluctant to invoke the policy or to  
14 invoke it through their local district or divisional  
15 officer? 11:16  
16 A. Em, I don't know, is the answer to that. But I do know  
17 that if they have issues with doing it that way, they  
18 can go directly into HR with it if they wish.

19 161 Q. But is it the position under the policy, it is meant to  
20 be submitted upwards? 11:17  
21 A. Absolutely.

22 162 Q. You know, through the district division.  
23 A. Absolutely, yes, because the responsibility for  
24 resolving it and investigating it will be in the  
25 division unless there is a conflict of interest in 11:17  
26 relation to it.

27 163 Q. Yes. But do members in fact directly make complaint to  
28 headquarters?  
29 A. Infrequently.

1 164 Q. Infrequently. I think you, the next day --  
2 A. Sorry, if I could, Judge, before I leave that  
3 particular point.  
4 165 Q. Yes.  
5 A. Having been faced with the index and having gone 11:17  
6 through the discussion with Garda Keogh, I was kind of  
7 put on notice, if you like, at that time that Garda  
8 Keogh was bringing this to me as a chief superintendent  
9 and I didn't necessarily want to leave it at that. So  
10 I did ask Garda Keogh at the time if he did want me to 11:18  
11 do anything with it, which in my view was: Did he want  
12 me to take a complaint from him? And rightly or  
13 wrongly, my interpretation was, and Garda Keogh said it  
14 to me, no, I have already made those complaints to  
15 another forum and that's where I want them to be 11:18  
16 investigated at that time. So, when I left the meeting  
17 I left it with a couple of issues to be addressed on  
18 behalf of Garda Keogh. One was his pay and the second  
19 one was in relation to following up with the --  
20 continue following up in relation to his record on 11:18  
21 SAMS.  
22 166 Q. YES. You do say in your statement obviously that he  
23 replied that he didn't want to you do anything because  
24 the matters were with GSOC.  
25 A. Yes. 11:19  
26 167 Q. You did check with GSOC later.  
27 A. Yes.  
28 168 Q. We will come to that in a due course. But I think the  
29 next day you sent an e-mail to Chief Wheatley. If we

1 look at 3261?

2 A. Yes.

3 169 Q. That is a simple enquiry, asking if she can confirm if  
4 an investigation was carried out in accordance with the  
5 regulations into work related stress and the outcome of 11:19  
6 it?

7 A. Yes.

8 170 Q. And the regulations you're referring to presumably are  
9 one you drafted, 139/10?

10 A. Yes. 11:19

11 171 Q. You got a reply were Chief wheatley, which is on the  
12 next page, 3262.

13 A. Yes.

14 172 Q. That sets out the fact that he was deemed unfit for  
15 duty, reviewed a couple of weeks ago and there's a 11:20  
16 suggestion of a conference being held there.

17 A. Yeah.

18 173 Q. Presumably you were happy to take on board that  
19 proposition?

20 A. I was, but I still was keen to keep, if you like, I 11:20  
21 won't say forcing but keep following up until such time  
22 as we got to a point that either the investigation was  
23 concluded or there was a reasonable reason or rationale  
24 as to why it mightn't have been conducted.

25 174 Q. Yes. You do follow that up with a subsequent e-mail to 11:20  
26 Chief wheatley, if we look at 3264?

27 A. Yeah.

28 175 Q. In the interim, you had earlier that day sent an e-mail  
29 to Monica Carr. If we look at page 9695, which will

1 come up on screen. At the very bottom of that page.  
2 This is being cc'd to the CMO Mr. Barrett, Mr. Downey,  
3 Superintendent Ó Cualáin, Margaret Nugent, about work  
4 related stress. You're raising the issue about the  
5 work on definitions, if you see at the top of the page 11:21  
6 there, are near completion.

7 A. Yes.

8 176 Q. In the third last paragraph you say:

9  
10 "My own view is that this situation needs to be 11:21  
11 reviewed as a matter of urgency. It may well be the  
12 case that pay should not be reduced until these matters  
13 are resolved. The members concerned will argue that it  
14 is not their fault that they are out sick. The  
15 organisation carries a risk also while resolutions are 11:22  
16 found.

17  
18 As a minimum the pay status should not change without  
19 personal contact being made with the members concerned.

20 11:22  
21 This requires urgent attention and my recommendation is  
22 that a mechanism is found for pay not to be reduced  
23 while matters are under consideration."

24  
25 You received a reply from Mr. Downey the next day. 11:22

26 A. Yes.

27 177 Q. If we go back to the middle of page 9695. Mr. Downey  
28 is saying essentially that the causality is an issue  
29 and that presents an opportunity to deal with each case

1 on a case-by-case basis, based upon medical assessment.  
2 And he sets out:

3

4 "If supported by the CMO, there is no issue."

5

11:22

6 I think you replied to him later that day, if we look  
7 at the top of the page there.

8 A. Yeah.

9 178 Q. You make the key point there in the second last  
10 paragraph:

11:23

11

12 "The key point here is that they should not be on  
13 reduced pay until it is proven that there wasn't a  
14 causal link between reason for absence and work related  
15 stress. We tend to reduce pay first while we wait on  
16 decisions, thus increasing the stress and exacerbating  
17 the problem.

11:23

18

19 Change of mindset required here.

20

11:23

21 This is urgent, Brian. Mark my words, it will be at  
22 some stage appear in the media or the Dáil. It would  
23 be better if we are ahead of the game."

24

25 So you are raising the issue there, as it were,  
26 in-house. We have seen the debate in e-mails, some of  
27 which you were copied on.

11:23

28 A. Yes.

29 179 Q. And others that you replied to. But I take it that



1 that represents your view at the time, that you didn't  
2 depart from?

3 A. Yeah. I had a fairly strong view at the time, rightly  
4 or wrongly, and particularly from a protected  
5 disclosures perspective, which is where I was coming 11:24  
6 from.

7 180 Q. Yes.

8 A. And also from a human perspective, that if people are  
9 out sick for quite some time, and I know what the  
10 regulations are and I'm not saying for one minute that 11:24  
11 other people didn't act in accordance with the  
12 regulations or in accordance with their own authority,  
13 but I had a view that perhaps there was another way or  
14 a better way of ensuring that people weren't  
15 disaffected by a reduction in pay until such time as we 11:24  
16 became aware as to the cause of that. Whereas, where  
17 the cause was in abeyance, I felt it a little bit  
18 unfair that people would be reduced in pay as a result,  
19 and particularly conscious of the penalisation that is  
20 categorised under the Act, and the definition of 11:25  
21 penalisation, which can include a reduction in wage.

22 181 Q. Yes.

23 A. I felt as a PD manager that I needed to bring that to  
24 bear on the organisation at the time?

25 182 Q. Yes. Your reference to the media and the Dáil, it 11:25  
26 would appear you must have been conscious of actual  
27 public utterances in one form or another?

28 A. I was. It wasn't that that was the fundamental reason  
29 or rationale as to why I would have felt the way I

1 felt, but I was conscious at that time as well, and  
2 from memory, and I can't remember when or the date, I  
3 think there was a reference to Garda Keogh as a  
4 whistleblower on the Houses of the Dáil and it was  
5 referenced that not only is he a whistleblower but the 11:25  
6 organisation has cut his pay at the same time. While  
7 the organisation, and rightly so, was publicly saying  
8 that we were supporting people who wanted to come  
9 forward to make a disclosure and we encouraged them to  
10 do so, I felt myself deep down there was a kind of 11:26  
11 dichotomy here between what we were saying we could do  
12 or would do and what we actually could do under the  
13 regulations. I felt myself that there was a lacuna in  
14 the regulations in relation to people who came forward  
15 as whistleblowers. 11:26

16 183 Q. Yes. Your persistence in raising the issue with Chief  
17 Superintendent Wheatley appears to have led to a  
18 further report being sent by her on the 8th June. If  
19 we look at that, on page 3267. That's a comprehensive  
20 document in the sense that it includes all of -- 11:27

21 A. Yeah.

22 184 Q. -- Superintendent Murray's previous reports of April  
23 and, indeed, May, the 20th as well, that the Chairman  
24 has already seen. I don't need to open those reports.  
25 But I think the key point that you emphasise in your 11:27  
26 statement about this was that efforts had been made  
27 locally to establish it?

28 A. Yeah.

29 185 Q. But the member was reluctant to discuss it?

1 A. Yes.

2 186 Q. And at page 3269, which is the third page of Chief  
3 wheatley's report, in the last paragraph of that, she  
4 says:

5  
6 "In view of the foregoing, it has not been possible to  
7 conduct a full investigation into Garda Keogh's absence  
8 through alleged work related stress, nor do I believe  
9 that any further or specific information be provided by  
10 Garda Keogh which would enable further investigation of 11:28  
11 this claim. However, to be clear and to avoid doubt, I  
12 am to enquire if there is any requirement to further  
13 investigate Garda Keogh's absence through alleged work  
14 related stress. In the event that further  
15 investigation of this matter is warranted, I would 11:28  
16 recommend that permission be granted to appoint an  
17 inspector outside the Westmeath division to conduct  
18 same."

19 A. Yes.

20 187 Q. Now, I'm sure you considered that report carefully. 11:28  
21 Did you take it on its face to be a comprehensive  
22 answer to the question and did it demonstrate to your  
23 mind that as full an investigation as you would have  
24 liked had taken place?

25 A. I wouldn't -- I did consider it carefully. I wouldn't 11:28  
26 have been happy that a full investigation had taken  
27 place.

28 188 Q. Yes.

29 A. But I would have been satisfied that in fairness to

1 Chief wheatley, at this point in time she has gone as  
2 far as she could go and that there is no further she  
3 could go in relation to it. So I was satisfied,  
4 therefore, that there was no point in me continuing to  
5 e-mail or prompt Chief wheatley in relation to the work 11:29  
6 related stress investigation and that now it was time  
7 to hand it over to the policy owners for further  
8 investigation, which was the Sickness Absence Section  
9 in Navan.

10 189 Q. Yes. 11:29

11 A. So I felt that Chief wheatley had gone as much as she  
12 could go in relation to try and, from her perspective,  
13 investigate the work related stress, because if they  
14 had met with Garda Keogh and they weren't able to  
15 allude or elicit from Garda Keogh the reasons from his 11:30  
16 perspective, well then there wasn't much more that she  
17 could do really.

18 190 Q. Could I just ask you to consider two things. She was  
19 obviously relying on what Superintendent Murray had  
20 reported back from March 2015, and in the context of 11:30  
21 where 139/10 seemed to place the onus on the divisional  
22 officer to do the investigation?

23 A. Yes, it does.

24 191 Q. Have you had experience of divisional officers doing it  
25 themselves or trying to elucidate the cause with the 11:30  
26 member directly?

27 A. As I say, I don't deal with these on a day-to-day  
28 basis, so I wouldn't have any knowledge in relation to  
29 whether or not it happens or how it happens or how

1 frequently it happens.

2 192 Q. Yes.

3 A. This is the only case really, apart from in my own  
4 section itself, it would be dealt with.

5 193 Q. The option that she, as it were, was suggesting in her 11:30  
6 last paragraph of appointing someone outside the  
7 division seems a reasonable suggestion?

8 A. Yes.

9 194 Q. Was that taken on board or was there any view that it  
10 would be pointless, because he was out sick? 11:31

11 A. To be honest with you, I don't know.

12 195 Q. Yes.

13 A. I don't know if it was taken further. I don't know if  
14 the view would have been it would have been pointless.  
15 I would have maybe thought that maybe it was worth 11:31  
16 exploring.

17 196 Q. Have you seen that done in other cases?

18 A. In my own case, yes, staff in my own area, yes, we  
19 would have appointed somebody from outside to try and  
20 do an investigation. 11:31

21 197 Q. Yes. In any event, the case conference that was mooted  
22 went ahead on the 12th July, isn't that correct?

23 A. That's correct, yeah.

24 198 Q. I think you have a short note of that at page 3280?

25 A. Mm-hmm. 11:32

26 199 Q. I don't think we need to probably go through it. I  
27 think everyone was agreeable on the course of action,  
28 which was, of course, dependent upon Garda Keogh being  
29 agreeable also, isn't that correct?

1 A. Absolutely.

2 200 Q. There was support for that, including financial  
3 support?

4 A. Yeah.

5 201 Q. I think you spoke with Garda Keogh and Garda Quinn, is 11:32  
6 that right, on the next day?

7 A. I just have to refer to my note.

8 202 Q. Yes. Page 3282.

9 A. Yes. I spoke to both of them. This was actually, and  
10 I remember this fairly well, this was a day or two 11:33  
11 before Garda Keogh was going in for an assessment to be  
12 accepted into residential treatment.

13 203 Q. Yes. And I think he confirmed he had been successful  
14 in that?

15 A. Yes. 11:33

16 204 Q. And would enter into the 22-day programme, is that  
17 right?

18 A. Yes, yeah.

19 205 Q. On the 14th July.

20 A. Yes. 11:33

21 206 Q. In the interim, I think the Commissioner or shortly  
22 afterwards the Commissioner had received a request from  
23 the Minister for a section 41 report?

24 A. Yes.

25 207 Q. And I think that was referred to you by the 11:33  
26 Commissioner's private secretary, Superintendent  
27 Broderick?

28 A. Yes.

29 208 Q. I think on foot of that you -- I suppose just to look

1 at that, that's at page 3283. It enclosed the request  
2 on behalf of the Minister from Mr. Power, who is in the  
3 policing division?

4 A. Yeah.

5 209 Q. Principal officer there? 11:34

6 A. Correct.

7 210 Q. If we just have a look at the first page of that. The  
8 letter refers to a number of different letters from  
9 Garda Keogh. Did you receive all of those?

10 A. What I supplied to the Tribunal is what I received. 11:34

11 211 Q. Yes. So, for example, on the first page there, there's  
12 26th July 2015. That's at page 3288. That's a letter  
13 that had in fact been addressed to the Director of  
14 Public Prosecutions and the Minister?

15 A. Yeah. 11:35

16 212 Q. Had you seen that before?

17 A. No.

18 213 Q. Had you been made aware of its contents by anyone  
19 before?

20 A. No. 11:35

21 214 Q. The letter of the 14th June to the Minister, page 3302.  
22 That refers directly to you in a number of respects.  
23 In the second paragraph, it says:

24

25 "On 3rd June 2016, I met Chief Superintendent 11:36  
26 McLoughlin, who was recently appointed by the  
27 Commissioner to oversee protected disclosures very  
28 recently. I understand that he has corrected my sick  
29 leave record. I was recorded as being out sick with

1 flu by Superintendent Pat Murray, despite my doctor's  
2 certification of my condition as work related stress.  
3 I informed Chief Superintendent McLoughlin of the  
4 consistent and relentless harassment I was put through  
5 for 20 months while trying to do my work after I became 11:36  
6 a whistleblower. As previously stated, I received no  
7 harassment from my colleagues, including ranks of  
8 Gardaí, sergeants and inspectors. My harassment was  
9 from two senior management closer to the Garda  
10 Commissioner, I named the two individuals, Chief 11:36  
11 Superintendent Mark Curran, who was the divisional  
12 officer in Westmeath until March 2015, Superintendent  
13 Pat Murray arrived in Athlone district office in March  
14 2015."

15  
16 He then refers to different events there. At the  
17 bottom, he doesn't complain about Chief Wheatley there,  
18 in fact, but at the last paragraph he says:

19  
20 "Chief Superintendent Tony McLoughlin undertook to 11:37  
21 investigate the harassment I received from elements  
22 within Garda management. One example of which..."

23  
24 And he refers to cancelling leave there. You don't  
25 regard that as an accurate statement of your meeting? 11:37

- 26 A. Not the outcome of the meeting, no, because I was  
27 fairly clear in my understanding at the time that I  
28 asked Garda Keogh if he wished me to pursue the matters  
29 that we had discussed and he did say to me that, no,



1 not at that time, he had made those complaints to  
2 another -- I think it was to GSOC, and that's where he  
3 wanted them to be pursued.

4 215 Q. Yes.

5 A. That is my interpretation. Rightly or wrongly, that is 11:37  
6 the interpretation I had when I left the meeting.

7 216 Q. Yes. In any event, he refers to these issues and he is  
8 linking it, it would appear, for the first time, on  
9 page 3304, with the promotion issue of Superintendent  
10 Murray. In the second last paragraph there, there is 11:38  
11 reference to a quotation from the Garda Commissioner  
12 Nóirín O'Sullivan. Then the last five lines:  
13

14 "Of course, it will come as no surprise that the Garda  
15 Commissioner is rewarding Superintendent Murray by way 11:38  
16 of promotion from superintendent to chief  
17 superintendent whilst the harassment allegations are  
18 being investigated and prior to the Policing Authority  
19 taking over the promotion procedure in relation to An  
20 Garda Síochána." 11:38  
21

22 Then he consents to his identity being disclosed by you  
23 to the Garda Commissioner, also by GSOC. Had you been  
24 aware of any issue surrounding the promotion of  
25 Superintendent Murray's at that time? 11:39  
26 A. I think maybe Garda Keogh might have mentioned it  
27 to me in one or two of the conversations, yes, that he  
28 had an issue with it.

29 217 Q. Yes. The third letter there, which was provided with

1 Mr. Power's letter, is the letter of 16th May 2016 to  
2 the Minister, at page 3292.

3 A. 3292?

4 218 Q. 3292.

5 A. Yeah. 11:39

6 219 Q. It's a five-page letter. It recites many of the  
7 complaints against Superintendent Murray over the first  
8 couple of pages. At the bottom of the second page it  
9 refers to outlining the harassment to Dr. Oghuvbu in  
10 December. It refers to his pay issue at the bottom of 11:40  
11 page 3294. It refers to the DPP's decision and GSOC.  
12 At the bottom of the last page, he is asking three  
13 things:

14

15 "First of all, that the Garda file into the allegations 11:40  
16 handed to GSOC without further delay to enable GSOC  
17 carry out their investigation.

18

19 2. My request for a copy of Deputy Commissioner  
20 Ó Cualáin's report containing his findings into my 11:41  
21 allegations via the Department of Justice.

22

23 3. I would ask you, Minister, to give some  
24 consideration to ensuring that somebody in my position  
25 as a whistleblower, who is forced out on sick leave 11:41  
26 with work related stress, should not be penalised  
27 financially as well as professionally and that such  
28 sick leave should warrant full pay and be classified as  
29 injury on duty as it is most certainly 100% duty

1 related. I am presently facing financial victimisation  
2 on top of everything else, which is also in  
3 contravention of the protections offered under  
4 protected disclosures Act 2014. "

11:41

6 So all those things together, you got Mr. Power's  
7 letter, these three letters and you were, I think,  
8 given the responsibility of providing a response to the  
9 request?

10 A. Yes.

11:41

11 220 Q. Now, that obviously took some time?

12 A. Yes.

13 221 Q. On the first issue you sent a letter to Assistant  
14 Commissioner Ó Cualáin, is that right?

15 A. Yes.

11:42

16 222 Q. You were looking for an update on his views in relation  
17 to the allegations made by Garda Keogh in respect of  
18 his investigation. If we just look at that, page 3311.  
19 On the same day you wrote to the Commissioner's private  
20 secretary, keeping the Commissioner informed as to what  
21 you were seeking?

11:42

22 A. Yes.

23 223 Q. And from whom?

24 A. That was primarily to let them know that I was  
25 progressively actioning the request and to provide a  
26 report, but it was going to take some time to do it.

11:43

27 224 Q. Yes. You wrote back to Chief Wheatley in relation to  
28 her report of the 25th July, directing her to send her  
29 correspondence in that regard to the executive director

1 for the attention of the sick section?

2 A. Yes.

3 225 Q. Is that correct?

4 A. Yes.

5 226 Q. That was a letter which I think was effectively a 11:43  
6 second report that she had -- you saw then a second  
7 report that she did send in, at page 3314, isn't that  
8 correct?

9 A. Yes.

10 227 Q. It's a very short report but she was again asking about 11:44  
11 whether she was required to start an investigation  
12 locally?

13 A. Yes.

14 228 Q. I think in the context of your knowledge about the 11:44  
15 complaints of harassment and the allegations that Garda  
16 Keogh had made, had you learned for the first time that  
17 there was all this detail to his complaints and that he  
18 had previously given the harassment index to  
19 Dr. Oghuvbu?

20 A. I don't think I was aware, from what I can remember, of 11:44  
21 me being aware that he had giving them to Dr. Oghuvbu.  
22 Now I could be mistaken, but I don't remember at any  
23 stage being made aware of that.

24 229 Q. Yes. In any event, on the harassment side, I think you 11:45  
25 took the matter up with the chief superintendent for  
26 Human Resources and People Development about whether  
27 there had been a record --

28 A. Yes.

29 230 Q. -- of any complaint being made by Garda Keogh under the

1 harassment policy?

2 A. Yeah, when I got the report down, or when I got the  
3 request to do a section 41 and when I looked at  
4 documentations attached to it, and particularly where  
5 it referenced the fact that Garda Keogh was of the view 11:45  
6 that he had made the complaint to me on the 3rd June, I  
7 then started to get behind that to try and see well,  
8 okay, if that's what his view was, then I better start  
9 bottoming that out to the point of seeing if I could  
10 get Garda Keogh to confirm that or otherwise. And so, 11:45  
11 I started to converse with the exec director, who had  
12 responsibility for bullying and harassment at that  
13 time.

14 231 Q. Yes. Who was that?

15 A. Alan Mulligan. 11:46

16 232 Q. Yes. And I think Kathleen Hassett replied to your  
17 letter of the 9th?

18 A. Yes.

19 233 Q. On the 15th, if we just look at that, page 3315?

20 A. Yeah. 11:46

21 234 Q. She said:

22

23 "There is no record in this section of any complaint  
24 being made by Garda Keogh."

25 11:46

26 I think you had written out to Garda Keogh himself on  
27 the 9th?

28 A. Yes.

29 235 Q. And he wrote back to you on the 16th, in relation to

1 the three issues?

2 A. Yeah.

3 236 Q. GSOC, pay and harassment. His letter is at 3316. He  
4 says:

5

11:47

6 "I am writing in reply to your letter dated 9th August  
7 2016. I am much obliged that you are actively  
8 addressing certain matters raised by me.

9

10 In relation to making contact with GSOC, I presume this 11:47  
11 relates to the handing over of the Garda investigation  
12 file to GSOC within the specified time as requested. I  
13 consent to this and to the disclosure of my identity  
14 pursuant to the Protected Disclosures Act 2014 for  
15 same. "

11:47

16

17 Just on that point, did you understand that he wanted  
18 GSOC to re-investigate his allegations or just that  
19 they be given the file that they can commence their own  
20 assessment of the file, or was it clear on that?

11:47

21 A. I wasn't clear on it, to be honest. What I felt was  
22 that Garda Keogh had made a complaint or a disclosure  
23 to GSOC and I understood that it included all and every  
24 aspect of the issues that he was dealing with at that  
25 time. I was then subsequently made aware that there 11:48  
26 was an issue from his perspective, as he saw it, that  
27 the GSOC investigation was not proceeding because of a  
28 file not being released to them. Therefore, I started  
29 to take up the baton, if you like, in relation to that

1 aspect as well with GSOC.

2 237 Q. The second line there, the second paragraph says he  
3 gives his permission for you to liaise with the  
4 civilian head of HR, that's Mr. Barrett or  
5 Mr. Mulligan? 11:48

6 A. No, it would be Mr. Mulligan.

7 238 Q. Mr. Mulligan?

8 A. Yes.

9 239 Q. In the third paragraph:

10

11 "However, the issue of most concern to me at the moment  
12 is that of the harassment I endured from elements  
13 within Garda management. I would be interested to know  
14 if any progress has been made on that front. It is of  
15 particular concern at the moment as I am aware that at 11:48  
16 least one of the two persons I named in relation to  
17 this harassment, namely Superintendent Pat Murray, is  
18 number 14 on a promotion list to the rank of chief  
19 superintendent. I presume he has been recommended for  
20 promotion by the Garda Commissioner Nóirín O'Sullivan, 11:49  
21 who is aware of these harassment allegations. Has the  
22 Garda Commissioner notified the Minister for Justice  
23 and the Policing Authority of this as it is relevant  
24 information for them to be aware of."

25

26 So that's a very direct question in any event.

27 A. Yeah.

28 240 Q. which we will come to. In relation to these, I think  
29 you wrote to GSOC on the 19th looking for a report in

1 respect of their investigations into any allegations  
2 made by Garda Keogh. You recite that you were given  
3 permission. You update the Commissioner on what you  
4 are doing on the same date. You also write back to  
5 Garda Keogh on the same date and your letter is at 11:49  
6 3319, perhaps we can just look at that. The second  
7 paragraph:

8  
9 "I wish to advise you that I have pursued the issue of  
10 your pay and have written to the civilian HR in Navan 11:50  
11 in order to progress same."

12  
13 Did that reflect your intention to try and have him put  
14 back on full pay?

15 A. Absolutely. 11:50

16 241 Q. In the second paragraph you say:

17  
18 "In the interest of clarity, I wish to ask if a formal  
19 complaint was made by you under the harassment, sexual  
20 harassment and bullying policy in relation to the other 11:50  
21 complaints made by you.

22  
23 With regard to the relevant promotions, I wish to point  
24 out that the promotions process is overseen by an  
25 independent board made up of two civilians from outside 11:50  
26 of An Garda Síochána, with one acting as Chair and the  
27 Commissioner mass no role in the selection of same.  
28 They are selected by the Department of Justice and  
29 Equality."



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That's is the new Policing Authority?

A. No.

242 Q. No, that was the then existing board?

A. Yes.

11:51

243 Q. Yes, that's correct. Garda Keogh wrote back to you on the 1st September in relation to that. You received that on the 5th, and that's at page 3321?

A. Yeah.

244 Q. And he says:

11:51

"I wish to acknowledge your letter dated 19th August 2016. I have posted documents to you in relation to the harassment on 29/8/16. I hope you have received same."

11:51

Had you received them by the time you got this letter?

A. Sorry, could you repeat that?

245 Q. Had you received these documents?

A. Oh I did, sorry, I did. I beg your pardon, I did, yeah.

11:51

246 Q. "I am writing in relation to the question of a formal complaint being made by me regarding the harassment and the answer is no. I first reported this harassment when it started to Deputy Commissioner Donal Ó Cualáin on 7th June 2014. Deputy Commissioner Ó Cualáin informed me that he was 'only dealing with what was in my affidavit'.

11:51

1 The issue of harassment has been raised over 20 times  
2 in the Dáil and I have written to the Minister for  
3 Justice Ms. Francis Fitzgerald regarding same on a  
4 number of occasions and she is aware of it.

11:52

5  
6 Forwarded for your information please."

7  
8 I think the documents that you received are all  
9 documents that the Tribunal has seen in the course of  
10 its investigation of complaints related to the actual  
11 allegations. I don't think we need to go into them.  
12 They are a considerable portion of one of your exhibits  
13 there, isn't that right?

11:52

14 A. That's correct, yeah.

15 247 Q. I think you then, having received this letter, phoned  
16 Garda Keogh, is that right?

11:52

17 A. Yeah. If it's in my notes, yeah.

18 248 Q. If we look at page 3414. This seems to be in the way  
19 of updating Garda Keogh.

20 A. Yeah.

11:54

21 249 Q. The reference to GSOC there, "GSOC rang yesterday" is  
22 that right?

23 A. That's correct.

24 250 Q. "Act 2005" is that right?

25 A. Yes.

11:54

26 251 Q. And then a reference to --

27 A. "GSOC going to meet Donal Ó Cualáin."

28

29 Yes.

1 252 Q. Yes. That's a meeting scheduled for the 20th  
2 September?  
3 A. Yes.

4 253 Q. There is a reference then "GSOC's protected disclosure.  
5 GSOC meeting HR matter." 11:54  
6  
7 what's the last?  
8 A. "Only and a matter for HR."  
9

10 So what that was really saying to me was, that the 11:54  
11 complaints of bullying and harassment, GSOC had decided  
12 that they are now a matter for An Garda Síochána, not a  
13 matter for them

14 254 Q. Yes. So the summary at the bottom is the take away  
15 point, as it were? 11:54  
16 A. Yes.

17 255 Q. "GSOC phoned yesterday and said bullying and harassment  
18 is a matter for An Garda Síochána."  
19 A. Yes.

20 256 Q. So it wasn't going to be considered by them? 11:55  
21 A. Yes.

22 257 Q. So that's further informing him that that's not the  
23 avenue?  
24 A. Exactly. And it brought clarity to me then about where  
25 this was going or not going, as the case may be, 11:55  
26 because I was of the understanding that those elements  
27 of Garda Keogh's complaints were gone to GSOC, from the  
28 conversation I had with Garda Keogh on the 3rd June.

29 258 Q. Yes. You kept the Commissioner informed then through a

1 three-page report of 8th September 2016. It commences  
2 at page 3415.

3 A. Yes.

4 259 Q. I don't think we need to go through it in detail, but  
5 you reported on the various updates that you had been 11:55  
6 seeking, the welfare interventions in relation to pay.  
7 You obviously reported that he had not made a formal  
8 complaint, that GSOC took the view it wasn't within  
9 their remit and that if Garda Keogh wanted to do so, he  
10 would have to make a formal complaint. 11:56

11 A. Yes.

12 260 Q. And that the issues be investigated?

13 A. What I wasn't saying there necessarily was that Garda  
14 Keogh hadn't complained of various issues.

15 261 Q. Yes. 11:56

16 A. What I was saying there was that we, in accordance with  
17 our policy, hadn't received a formal complaint from  
18 Garda Keogh and my understanding at the time was that  
19 they were gone to GSOC, rightly or wrongly. Like, I  
20 wouldn't like to say or suggest that Garda Keogh hadn't 11:56  
21 mentioned these things in the past.

22 262 Q. Yes.

23 A. He had.

24 263 Q. Yes. You included I think a number of the response  
25 with that report to the private secretary? 11:57

26 A. Yes.

27 264 Q. I think that you received a copy of the correspondence  
28 sent by the commissioner back to the parties.

29 A. Yes.

1 265 Q. That's dated -- that dated, I think, but you received  
2 it anyway on the 9th September and it includes a lot of  
3 the information provided by you to the Commissioner?  
4 A. Yes.

5 266 Q. You received from Assistant Commissioner Ó Cualáin on 11:57  
6 his behalf a report from Detective Superintendent  
7 Mulcahy which he prepared, giving an overview of the  
8 investigation which was dated the 21st September. Have  
9 perhaps I have the date wrong? 2nd September 2016.  
10 That's to be found at 3432. So you had a overview of 11:58  
11 the investigation?  
12 A. Yes.

13 267 Q. The outcome of it at that point in time?  
14 A. Yes.

15 268 Q. Now, you had a meeting in and around that period with 11:58  
16 Mr. Barrett and Mr. Mulligan?  
17 A. Yes.

18 269 Q. Can you describe to us in evidence the purpose of that  
19 at that time and the issues discussed?  
20 A. From memory it was a single item meeting. I am not 11:59  
21 sure how it was called or when it was called, but I do  
22 recollect the meeting very clearly. It was in John  
23 Barrett's office. And it was -- I suppose it was a  
24 follow up to some of the e-mails that I had been making  
25 in relation to the pay and it was a meeting to decide 11:59  
26 on what we were going to do relative to pay, based on  
27 my recommendations. So it was a meeting held in the  
28 office. I made my recommendations. I outlined the  
29 rationale as to why I was making those recommendations

1 and the exec director at the time agreed with those  
2 recommendations and that started in motion then the  
3 process whereby Garda Keogh was restored to pay.

4 270 Q. It would appear to be likely that that discussion took  
5 place sometime before the 26th September, because you 12:00  
6 sent an e-mail to Claire Egan?

7 A. Yes, yes.

8 271 Q. That's at page 3441?

9 A. That's correct.

10 272 Q. That's stated the 26th September? 12:00

11 A. Yes.

12 273 Q. This represents then the combined view of the three of  
13 you?

14 A. Yes.

15 274 Q. Is that right? 12:00

16 A. That's correct. well, I presented the case to both  
17 Mr. Mulligan and to the exec director. I outlined four  
18 or five reasons as to why we should restore the member  
19 to pay and I think everybody was in agreement that it  
20 was the right thing to do at that time. 12:00

21 275 Q. Yes.

22 A. I was basing it on, well, a human element, more  
23 importantly than anything else. I based it on the fact  
24 that there was precedent for it in the organisation, I  
25 think there was one or if not two people at that time 12:01  
26 had been treated the same. I based it on the fact that  
27 there were still no conclusions relative to work  
28 related stress or other elements that Garda Keogh had  
29 complained of. I based it on the fact that the PD

1 legislation at that time in my view was very clear in  
2 terms of what penalisation would look like in terms of  
3 a reduction in wages, despite the fact that the sick  
4 pay regulations would suggest something different, but  
5 we didn't have a lot of opinion at that time. And 12:01  
6 finally then, what was important to me was that the  
7 Garda Commissioner at the time and in our own policies  
8 we were suggesting that we would support in every which  
9 way we could anybody who was going to make a complaint  
10 under the Protected Disclosure Acts. And I felt 12:01  
11 therefore that the right thing to do and the right  
12 recommendation to make at that time was that Garda  
13 Keogh be restored to pay. I stand over that to this  
14 day, that that was the right decision to make at that  
15 time. 12:02

16 276 Q. Yes. I think the Tribunal asked a number of direct  
17 questions, which you reported on in the recent past?  
18 A. That's correct.

19 277 Q. They deal very clearly with that issue and they're in  
20 volume 58, at page 16418. I don't intend to go through 12:02  
21 the questions but you summarised the answers there in  
22 your last piece of evidence to me, isn't that correct?  
23 A. Yes.

24 278 Q. Obviously the Tribunal has heard of a different view of  
25 the effect of the 1994 regulations -- 12:02  
26 A. Yes.

27 279 Q. -- on the operation of Garda Keogh, in relation to his  
28 position?  
29 A. Yes.

1 280 Q. Currently he stands marked out on mental health  
2 grounds, is that correct?  
3 A. Well, the category that's provided to Garda Keogh's  
4 current absence is mental health, but within that it is  
5 work related stress. 12:03

6 281 Q. And is it so recorded?  
7 A. My understanding is, yes, that's how it is recorded.

8 282 Q. In any event, I think you got confirmation from the HR  
9 directorate in Navan on the 6th October, is that  
10 correct? 12:03

11 A. That's correct.

12 283 Q. That that recommendation had been accepted.  
13 A. Yes.

14 284 Q. If we look at page 3442. That says:  
15  
16 "Garda Keogh has been reinstated to full pay status,  
17 backdated to the commencement of his absence from 26th  
18 December 2015. All arrears owed to him will be paid on  
19 Thursday, 13th October, this day week. I have been in  
20 contact with Mick Quinn to advise him of same." 12:04

21  
22 I think, did you yourself phone Garda Keogh the next  
23 day.

24 A. Yes.

25 285 Q. To inform him of that? 12:04

26 A. Yes.

27 286 Q. I think you have a note to that effect on 3443?  
28 A. Yes.

29 287 Q. But I think you have noted there a sort of caveat in



1 relation to him being unhappy that his complaint of  
2 bullying and harassment was to be investigated  
3 internally?

4 A. Yes.

5 288 Q. He, I think, was concerned that -- he had complained to 12:05  
6 the Minister obviously in relation to the Commissioner  
7 and that his view was that as the Commissioner was a  
8 party to his harassment it ought to be conducted  
9 externally. And he said that he had written to the  
10 Minister about that? 12:05

11 A. Yes.

12 289 Q. I think you presumably weren't in a position to respond  
13 to that?

14 A. No, to reflect on whether or not it was appropriate or  
15 otherwise. Our policy is very clear. 12:05

16 290 Q. I think Chief Superintendent Curran, who was working  
17 then in the Commissioner's office, confirmed to you  
18 that a case conference should be called to deal with  
19 the matter, is that right?

20 A. Yes. 12:05

21 291 Q. 3444. And he was asking you were there any outstanding  
22 issues with GSOC?

23 A. Yes.

24 292 Q. Were there any insofar as --

25 A. As far as I recall, obviously I got a call from GSOC, 12:06  
26 so that matter had been dealt with. And in relation to  
27 the file that was holding up -- that Garda Keogh felt  
28 was holding up the investigation, I think that had been  
29 dealt with as well at that time, I am not a hundred

1 percent sure but I think it was. So from that  
2 perspective there was no outstanding matters as far as  
3 we were concerned, as far as I was concerned, with  
4 GSOC.

5 293 Q. Yes. I think you wrote to Garda Keogh on the 12th, 12:06  
6 just formally to inform him of the payroll situation  
7 and also to refer to that issue of bullying and  
8 harassment again?

9 A. Yes.

10 294 Q. If we look at page 3467. 12:06

11 A. Yes.

12 295 Q. The second paragraph:

13

14 "I wish to advise you that I have pursued the issue of  
15 your pay and have written to civilian HR in Navan in 12:07  
16 order to progress same. At this stage you should be  
17 returned to the payroll.

18

19 In the interest of clarity and completeness, I wish to  
20 ask if it is your intention to make a formal complaint 12:07  
21 under harassment, sexual harassment and bullying and  
22 harassment policy in addition to other complaints made  
23 by you. I appreciate that you indicated to me on the  
24 phone that it is not your intention to do so."

25

26 Had he said that on the phone?

27 A. Yes.

28 296 Q. He acknowledged that and wrote back to you the next  
29 day, or sorry, a few days later on the 20th?

12:07

1 A. Yes.

2 297 Q. And that's at page 3468, it seems to have been received  
3 on the 24th?

4 A. Yes.

5 298 Q. It says: 12:08

6

7 "I wish to acknowledge receipt of your correspondence.  
8 I also acknowledge that I have been returned to the  
9 payroll.

10 12:08

11 I accept I made an indication to you regarding  
12 harassment and bullying. However, the fact that I have  
13 reported this and have supplied relevant documents to  
14 support my allegations, I understand there are  
15 obligations for both myself and An Garda Síochána to 12:08  
16 have this investigated under the terms of the  
17 harassment and bullying policy of An Garda Síochána and  
18 I wish to make a formal complaint in relation to same.

19

20 Forwarded for your information please. " 12:08

21

22 I think that was the first occasion when there was a  
23 very definitive response given by Garda Keogh to that  
24 issue?

25 A. Yes. From my perspective, yes. 12:08

26 299 Q. From your perspective.

27 A. Yes, most definitely.

28 300 Q. I think you sent that on to the director of civilian  
29 HR --

1 A. Yes.

2 301 Q. -- on the 26th, at page 3469. You recommend that this  
3 formal complaint be investigated fully?

4 A. Yes.

5 302 Q. Now, obviously we know from the sequence of events that 12:09  
6 there was somebody appointed to investigate it in  
7 November, November 2017. That seems like a long time  
8 between Garda Keogh making his position clear and  
9 Assistant Commissioner Finn, as it turned out, being  
10 appointed. Does that period of time cause you any 12:10  
11 concern, as to whether it was done quickly enough or  
12 dealt with appropriately enough?

13 A. In terms of appropriately enough, I think there was a  
14 lot of issues going on, so I would say, I'd have to say  
15 that it was appropriate. Obviously in terms of delay, 12:10  
16 you would like these things to be investigated as  
17 quickly as possible and our policy outlines various  
18 timeframes associated with it. But, like, yes, the  
19 answer is, the delay, you'd like to see these things  
20 done quicker, yes. 12:10

21 303 Q. Now we will see the different interventions from the  
22 different parties involved - Garda Keogh, his  
23 solicitors, Superintendent Scanlan etcetera - but at  
24 this point in time does it leave your hands in terms of  
25 the responsibility for progressing the investigation? 12:11

26 A. Yes, it does. I was the conduit for the complaint. I  
27 passed that on to the appropriate authority, which was  
28 the bullying and harassment section, who then went  
29 about appointing the various people to do the

1 investigation, yes.

2 304 Q. You were kept informed obviously, I think, at a number  
3 of stages?

4 A. Yes.

5 305 Q. And you participated in case conferences that we will 12:11  
6 come to in due course?

7 A. Yes.

8 306 Q. But Mr. Mulligan replied to you on the 15th November,  
9 attaching a response that had issued to Garda Keogh,  
10 isn't that correct? 12:11

11 A. That's correct.

12 307 Q. That response that issued is set out at page 3472.  
13 That's under Mr. Barrett's hand?

14 A. Yeah.

15 308 Q. Mr. Barrett then, he was the appropriate person to be 12:12  
16 the owner of that, as it were?

17 A. Ultimately, yes. He's the head of HR and he obviously  
18 would have had a team of people dealing with -- a small  
19 team, actually, of dealing with bullying and harassment  
20 on his behalf. 12:12

21 309 Q. The letter obviously doesn't go into any of the  
22 substance of the allegations --

23 A. No.

24 310 Q. -- that Garda Keogh had raised. But can I ask you 12:12  
25 this: Had you forwarded on to the HR directorate any  
26 of the documentation that Garda Keogh had given you?

27 A. Yeah, because I was in receipt, as mentioned by Garda  
28 Keogh in one of his letters, an envelope of documents,  
29 which I think we alluded to earlier in the course of

1 this morning. And I had that, I kept that under lock  
2 and key. Then, I think it was around the end of  
3 October or into November when I passed that list of  
4 documentation on to Ms. Kathleen Hassett for the  
5 purpose of adding it to the file, the bullying and 12:13  
6 harassment file.

7 311 Q. Yes. Mr. Barrett is making it clear here, in the third  
8 line obviously, that you do have no role in this and he  
9 sets out then what the policy is and summarises some of  
10 the crucial parts of the policy as far as a complainant 12:13  
11 is concerned, isn't that right?

12 A. That's correct.

13 312 Q. You phone Garda Keogh some short time after you receive  
14 this. You say in your statement you were seeking an  
15 update, an update from him really, as to what he was 12:14  
16 doing, is it?

17 A. In relation to?

18 313 Q. The bullying complaint.

19 A. Well, I wouldn't be seeking an update from Garda Keogh  
20 necessarily; I would have been informing him of the 12:14  
21 various actions that had been taken. The only thing  
22 would I have been seeking from Garda Keogh necessarily  
23 would have been how he was, how he was getting on, how  
24 he felt and any further supports that would have been  
25 required. But he did make reference to an issue, as he 12:14  
26 saw it, in relation to the bullying and harassment  
27 complaint.

28 314 Q. Perhaps we will just look at the note then, page 3474?

29 A. Yes.

1 315 Q. "Contact to mobile phone offering support and update on  
2 bullying and harassment complaint. Garda..."  
3  
4 Is that acknowledged?  
5 A. "Garda confirmed receipt of the minute from 12:15  
6 Mr. Mulligan and understood process to be followed but  
7 he was now going to seek legal advice and he had issues  
8 making his complaint to Chief Superintendent Galton  
9 because of a conflict of interest. He is [something]  
10 of the support." 12:15  
11 316 Q. "Appreciative of the support"?  
12 A. Yeah. "Particularly his pay and was in good spirits.  
13 He would reply to Mr. Mulligan in course."  
14 317 Q. Did you know of any particular issue? He didn't  
15 outline what conflict with chief superintendent 12:15  
16 Galton, who preceded Chief Superintendent Wheatley  
17 there?  
18 A. I'm not a hundred percent sure as to whether or not  
19 there was any reference to what the conflict was, to be  
20 honest. If there was, I might have taken a note of it, 12:16  
21 but suffice to say he had an issue, a conflictual  
22 issue, as he saw it, with Chief Galton.  
23 318 Q. I think you brought this to Mr. Mulligan's attention,  
24 this view of Garda Keogh, isn't that right?  
25 A. Yes. 12:16  
26 319 Q. You discussed the possibility of going down to meet  
27 Garda Keogh.  
28 A. That's correct.  
29 320 Q. Perhaps with a solicitor, isn't that right?

1 A. That's correct, yeah, I think there was a phone call or  
2 there was a report in from Garda Keogh's solicitor in  
3 relation to these events and I recall, it could have  
4 been a Friday evening, that Mr. Mulligan rang  
5 Mr. Cullen and we offered to go and meet him that 12:16  
6 evening, if needs be.

7 321 Q. Yes. I think that offer was declined and then you  
8 considered an alternative of offering the services of  
9 Ms. Hassett to assist in any completion of the form?

10 A. Exactly. 12:17

11 322 Q. To meet with Garda Keogh if that would help?

12 A. Yes.

13 323 Q. And I don't know, was that offer then actually followed  
14 through? was Garda Keogh or his solicitors informed of  
15 that proposal, do you recall? 12:17

16 A. I think subsequent correspondence would indicate that  
17 Garda Keogh was offered, if he wanted to make the  
18 complaint other than to Chief Galton, he could do so  
19 directly to Mr. Mulligan or myself, even though...

20 324 Q. Yes. I think you were copied in the correspondence 12:17  
21 that Mr. Cullen sent to Mr. Barrett, which was  
22 correspondence that he, Mr. Cullen, had directed to  
23 Mr. Barrett and also the Minister, the Commissioner,  
24 which was correspondence dated 23rd November 2016, to  
25 be found at 3476. 12:18

26 A. Yes.

27 325 Q. There's a number of concerns there. Obviously there  
28 was public knowledge of a review being carried out by  
29 Mr. Justice O'Neill and there were a number of issues



1 raised in that letter on the second page. Raised an  
2 issue, on the next page, 3477, of an immediate  
3 investigation into, it says Garda Patrick Murray there.  
4 It raises the issue of the suspension and is addressing  
5 in a number of different ways Superintendent Murray's 12:19  
6 position vis-à-vis the promotion issue?

7 A. Yes.

8 326 Q. And Garda Keogh's complaints. Did you discuss that  
9 letter with Mr. Barrett or Mr. Mulligan then?

10 A. No. I don't recall that I did in any detail, no, or in 12:19  
11 any shape or form. It was sent to me just for my -- it  
12 was cc'd to me, I think.

13 327 Q. I think you became aware that the Commissioner's office  
14 requested Mr. Barrett to arrange for the taking of a  
15 statement of complaint from Garda Keogh as soon as 12:20  
16 possible?

17 A. Yes.

18 328 Q. I think that was by letter dated the 16th December, is  
19 that correct?

20 A. That's correct. 12:20

21 329 Q. I think you were requested then to provide a response,  
22 or to help provide a response for the Commissioner to  
23 issues raised in that letter?

24 A. Yes.

25 330 Q. I think Mr. Barrett made that request of you in 12:20  
26 December and a report was sent to the Commissioner 's  
27 office by you on the 9th December, isn't that correct?

28 A. That's correct.

29 331 Q. Perhaps we will just look at that, at page 3492.

1 A. My office became the conduit for the completion of many  
2 of the reports that the Commissioner requested or  
3 required at that time.

4 332 Q. Yes. You say in the second paragraph that you can't  
5 provide assistance regarding the inclusion of the 12:21  
6 complaints in Mr. Justice O'Neill's report or the  
7 request for copies of the reports that had been sought  
8 from the Minister by Garda Keogh?

9 A. That's correct.

10 333 Q. And in relation to the issue of protected disclosures 12:22  
11 and the issue of the Ó Cualáin investigation, you  
12 reported on that at the bottom of that page, 3492, into  
13 3493?

14 A. Yes.

15 334 Q. In relation to the bullying and harassment issue, you 12:22  
16 report on the to-ing and fro-ing, if I could put it  
17 that way?

18 A. Yes.

19 335 Q. You do that down to the bottom of page 3493?

20 A. Yes. 12:22

21 336 Q. In relation to issue of pay, you report on that onto  
22 the top of 3494 and then you report on welfare issues.  
23 But the bottom line, take away points, if I can  
24 describe them as that, 3494, the bottom:  
25  
26 "Bullying and harassment: A formal complaint from  
27 Garda Keogh is awaited.  
28  
29 Discipline: The investigation by Assistant

1           Commissioner Nolan is ongoing.  
2  
3           GSOC. Correspondence has been sent to GSOC seeking an  
4           update on the matter."  
5           A. Yes. 12:23  
6 337 Q. Now, I think you were aware that correspondence had  
7           come in from Mr. Cullen's office on the 15th December.  
8           If we look at page 3505. They are asking very clearly  
9           and briefly there when and where he can make a  
10          statement of complaint? 12:24  
11         A. Yes.  
12 338 Q. I think you became aware that Mr. Barrett had nominated  
13          Chief Superintendent Roche, is that correct?  
14         A. I'm not -- if it's in my documentation yes. I'm not  
15          sure whether I specifically became aware it was Chief 12:24  
16          Roche or otherwise who had been appointed to do the  
17          investigation. But if it was in correspondence to me,  
18          most definitely, yes.  
19 339 Q. Yes.  
20         CHAIRMAN: Yes, maybe so. 12:24  
21         MR. McGUI NNESS: Perhaps we will just look to see did  
22          you get that. If we look at 3506.  
23         CHAIRMAN: 3506.  
24         A. Yes. I did receive that.  
25 340 Q. MR. McGUI NNESS: Yes. Then what is behind that is 12:25  
26          Mr. Barrett's letter to the assistant commissioner,  
27          Eastern Region, which would have been Assistant  
28          Commissioner Fanning at the time; is that right?  
29         A. Yes, that's correct.

1 341 Q. If we look at that, at 3507. was that a decision -- I  
2 see in the second paragraph Mr. Barrett says in the  
3 last line:  
4  
5 "I would appreciate if you would formalise that 12:25  
6 appointment."  
7  
8 Is that the position, that the executive director would  
9 nominate or propose a nomination and the assistant  
10 commissioner would make the appointment? 12:25  
11 A. I think ordinarily under the policy that's correct.  
12 342 Q. Assistant Commissioner Fanning copied a letter, which I  
13 think you received, at 3508?  
14 A. Yes.  
15 343 Q. The 22nd December. And he provided that information 12:26  
16 then?  
17 A. Yes. And he addressed it to Chief Scanlan.  
18 344 Q. Yes. Were you involved in any discussion as to who it  
19 should be --  
20 A. No. 12:26  
21 345 Q. -- with either of the persons concerned?  
22 A. No.  
23 346 Q. I think there is an issue there which became the  
24 subject of some considerable discussion, about  
25 determining whether the complaint came within the 12:27  
26 policy for resolution and the appropriate person to be  
27 appointed as investigator in terms of rank or grade?  
28 A. Yes.  
29 347 Q. Had you any view on that at that stage?

1 A. Not at that stage because I was peripheral to what was  
2 going on, but I think there was a conference later on  
3 or it came to a head and I did give my view at that  
4 stage in relation to, I suppose -- I won't say my  
5 concern, but I was anxious that the bullying and 12:27  
6 harassment would get underway and get concluded as  
7 quickly as possible. But that's, for me on the outside  
8 looking in, without necessarily any authority in  
9 relation to how it went at that time.

10 348 Q. Yes. In any event, you were seeking an update from the 12:27  
11 chief superintendent in Internal Affairs about the  
12 discipline inquiries --

13 A. Yes.

14 349 Q. -- in January of 2017?

15 A. Yes. 12:28

16 350 Q. Why were you doing that at that stage?

17 A. I was doing all of that again because my office became  
18 the conduit for any requests from the Commissioner's  
19 office in terms of the update on the status of all  
20 items and ancillary items associated with Garda Keogh's 12:28  
21 case.

22 351 Q. Yes.

23 A. So in order for me to get the information I had to go  
24 to the various sections and units that had the  
25 information and that were dealing with it. 12:28

26 352 Q. Yes. You phoned and spoke to Garda Keogh I think on  
27 the 24th January then?

28 A. Yes.

29 353 Q. Had you received any information about his meeting with

1 Chief Scanlan at that stage or was there anything  
2 that --

3 A. No, I became aware that they met, okay. And I think,  
4 if memory serves me correctly, there was an issue over  
5 a conflict potentially of Chief Superintendent Scanlan 12:29  
6 carrying out the investigation, that they may have  
7 worked together before. I became aware of that, I  
8 don't know how, but I was aware of it, yeah.

9 354 Q. You say in your statement that you had spoke with Garda  
10 Quinn on the 24th and he relayed a concern. Is your 12:29  
11 note -- perhaps I misled the Tribunal there, your note  
12 on 3512, is that a note of your conversation with Garda  
13 Quinn rather than with Garda Keogh?

14 A. Yes. So I returned a call to Garda Quinn.

15 355 Q. Yes. You do note a call in your statement on the 13th 12:29  
16 January and you describe it on page 3241. There  
17 doesn't seem to be any mention of superintendent  
18 Scanlan in that, if we perhaps just confirm that?

19 A. 32...

20 356 Q. At 3241, in the middle of that page. 12:30  
21  
22 "Moreover, on the 13th January..."  
23

24 A. I don't have that in front of me at the moment.

25 357 Q. It should be on the screen there? 12:30  
26 A. Okay.

27 358 Q. CHAIRMAN: Have you got your own statement, chief  
28 superintendent.  
29 A. Sorry, Judge?

1 359 Q. CHAIRMAN: Have you got your own statement?  
2 A. I don't have it in front of me.  
3 360 Q. CHAIRMAN: That's no problem, we will get it for you.  
4 3241 is your statement.  
5 A. Okay. 12:30  
6 361 Q. MR. MCGUINNESS: It doesn't appear that there may have  
7 been a mention of Superintendent Scanlan there, is that  
8 correct, in that phone call of the 13th?  
9 A. Yes, and that would be an oversight because it's  
10 mentioned here in my notes. 12:30  
11 362 Q. Well, what you do mention in your notes seems to be the  
12 call that you later had with Garda Quinn --  
13 A. Yes.  
14 363 Q. -- on the 24th. If we just go back to page 3512.  
15 A. Yes. That's a call I had with Garda Quinn and it 12:31  
16 referenced Chief Scanlan then. And when I spoke  
17 with -- on the 24th January, when I spoke with --  
18 sorry, when I spoke with Garda Keogh on the 13th  
19 January, that's what you are referencing, is it?  
20 364 Q. Yes. 12:31  
21 A. "I made a call. No answer. Left a message. Garda  
22 Keogh returned my call and spoke about member's health.  
23 I provided Garda Keogh with an update, progression in  
24 respect of bullying and harassment. I did not take a  
25 note of this conversation but I did instruct Sergeant 12:31  
26 Donlon of its occurrence to put it in the record."  
27  
28 So from my recollection and my notes at that time, well  
29 I didn't have any notes, I don't remember a

1 conversation with Garda Keogh eliciting any information  
2 relative to Chief Scanlan.

3 365 Q. Your journal of the 24th --

4 A. Yes.

5 366 Q. -- seems to relate to Garda Keogh's concern expressed 12:31  
6 to Garda Quinn --

7 A. Yes.

8 367 Q. -- as to why Chief Roche was gone and Chief Scanlan was  
9 now doing the investigation?

10 A. Yes. 12:32

11 368 Q. You said you were awaiting a report from Chief  
12 Superintendent Scanlan, is that correct?

13 A. That's correct.

14 369 Q. Would he report to you in the normal --

15 A. No. No, he wouldn't. I would follow up with a query 12:32  
16 on behalf of Garda Keogh.

17 370 Q. Yes. You would expect that you would be informed of it  
18 in any event?

19 A. Yes. Yeah.

20 371 Q. On the 27th January you wrote to Mr. Barrett, at page 12:32  
21 3514, seeking an update.

22 A. Yes.

23 372 Q. I think you were copied in on a report from Chief  
24 Scanlan, at page 3516, which was sent to you on the  
25 31st January? 12:32

26 A. Yes.

27 373 Q. Is that correct?

28 A. Yes.

29 374 Q. This outlined in a little detail an issue about



1 possible conflict?

2 A. Yes.

3 375 Q. It records there that Chief Superintendent Scanlan  
4 spoke with you on the 20th?

5 A. That's correct. 12:33

6 376 Q. Have you got a recollection of that?

7 A. I do. I do actually.

8 377 Q. What was your view of that conflict issue?

9 A. Well, obviously it would be a matter for Chief Scanlan,  
10 his assistant commissioner and the bullying and 12:33  
11 harassment section in HQ to deal with that matter, if  
12 there was a conflict. Garda Keogh felt there was. I  
13 am not too sure how Chief Scanlan felt at the time.  
14 But I would have had no input into it whatsoever, other  
15 than to listen to what maybe either party had said in 12:33  
16 relation to it.

17 378 Q. Were you concerned that he was returning the file in  
18 the light of this assertion and that he was seeking  
19 further directions on the matter?

20 A. Well, I would have had a concern only in the context of 12:34  
21 possible delay, but it was the right thing to do and if  
22 the conflict was there, well obviously the best thing  
23 to do would be to remove the conflict, if it was there.

24 379 Q. Yes. Obviously Assistant Commissioner Fanning  
25 subsequently raised an issue as to how Garda Keogh had 12:34  
26 become aware of the intended appointment of Chief  
27 Superintendent Roche?

28 A. Yeah.

29 380 Q. Are you in a position to throw any light on that?

1 A. No, I have no idea how.

2 381 Q. Anyway, Assistant Commissioner Fanning wrote on the  
3 31st March to Mr. Barrett, which I think you must have  
4 got a copy of. If we look at page 3517 there.

5 A. Yes. 12:35

6 382 Q. He expressed a firm view in the last paragraph about  
7 his belief that Chief Superintendent Scanlan wasn't in  
8 any way compromised and that it was really up to Garda  
9 Keogh to advance the matter.

10 A. Yes. 12:35

11 383 Q. Did you agree with that or was it your position to have  
12 any view on that?

13 A. I wouldn't have had a view on it.

14 384 Q. Yes.

15 A. My view from previous experience in other cases would 12:35  
16 be, if there's a conflict of interest in any shape or  
17 form it's safer to remove that conflict in the  
18 interests of all parties concerned. But I wouldn't  
19 have had an input into whether or not there was in this  
20 case or what the correct decision was to be made. I 12:35  
21 left that to the relevant authorities to iron that out.

22 385 Q. Yes. The issue of a case conference in relation to the  
23 matter seems to have raised its head, I don't know  
24 whether it is instigated by the chief administrative  
25 officer, Mr. Barrett I think sent you correspondence 12:36  
26 about an intended case conference?

27 A. Yes.

28 386 Q. I think that didn't occur?

29 A. Not initially anyway.

1 387 Q. Not initially. You say in your statement that it was  
2 considered imprudent to hold a case conference?  
3 A. I think that was the view of the exec director at the  
4 time.  
5 388 Q. Yes. Did you have any view about that or not? 12:36  
6 A. No.  
7 389 Q. Can I ask you, what was actually being done, to your  
8 knowledge, at that stage to get the complaint taken?  
9 A. Well, I think every effort was being made by HR and the  
10 exec director and Mr. Mulligan to try and progress the 12:37  
11 bullying and harassment as soon as possible. But  
12 obviously you have to deal with issues as they arise.  
13 And this issue arose and it had to be dealt with before  
14 it could be progressed further.  
15 390 Q. Yes. But you seem to have been pursuing it, because 12:37  
16 you were writing for an update --  
17 A. Yes.  
18 391 Q. -- as of the 20th April?  
19 A. Yes.  
20 392 Q. At page 4524, you're writing to the executive director? 12:37  
21 A. Yes. And my primary role here was in relation to  
22 keeping all of the matters moving so that, you know, in  
23 the interests of everybody concerned, but also in the  
24 interests of being able to report to the Commissioner  
25 the progress that was being made on all of the various 12:37  
26 strands of this case.  
27 393 Q. Yes. Just in terms of trying to assess how things  
28 progressed and the space that they progressed at, what  
29 did you expect would be the normal course to be taken

1 with the complaint when it was received, taken by Chief  
2 Superintendent Scanlan and transmitted?

3 A. In the normal course of events, all things being equal  
4 and if there was no issues associated with Chief  
5 Scanlan, would have met Garda Keogh, would have taken a 12:38  
6 detailed complaint from him, would have met and  
7 discussed and investigated and met other parties  
8 involved in it, and then would have compiled a report,  
9 an investigative report and sent it forward to the  
10 appointing officer, who in this case was AC Fanning. 12:38

11 Now that's with a clear wind and with no issues, but we  
12 all know that from time to time there are things that  
13 are encountered and have to be dealt with as you go on  
14 that road.

15 394 Q. Well, your letter there of the 20th April, it was 12:38  
16 responded to by Mr. Barrett on the 28th, if we look at  
17 page 3525. That says:

18  
19 "Please be advised that Garda Keogh met with Chief  
20 Superintendent Scanlan on the 2nd and 27th March and 12:39  
21 Garda Keogh provided the chief superintendent with a  
22 prepared statement and appendices.

23  
24 These documents are currently being considered by  
25 assistant commissioner earn region. I will advise you 12:39  
26 of developments on receipt of a further report from  
27 that assistant commissioner."

28  
29 That is Assistant Commissioner Fanning, is it?

1 A. Yes.

2 395 Q. So it was your understanding that the statements were  
3 with him and being considered by him at that point?

4 A. That's what that is saying, yes.

5 396 Q. Yes. Had you received any other update from anyone 12:39  
6 else at that point in time as to where the documents  
7 were or what was happening?

8 A. No, other than what's in my statement to the Tribunal.

9 397 Q. Yes. You do obviously jump from that period in late 12:40  
10 April to the 19th July in your statement. On the 19th  
11 July you received copy correspondence from Mr. Barrett,  
12 which was enclosing correspondence from Mr. Cullen  
13 dated the 12th July. That's at page 3527. This raises  
14 the issue of the classification of Garda Keogh's  
15 absence being recorded as mental health. Is that 12:40  
16 something that you -- are you clear that Garda Keogh  
17 was aware, from your dealings with him in 2016, that it  
18 was recorded as mental health and he was aware of that  
19 at that time?

20 A. Well, I think Garda Keogh would have raised it with me 12:41  
21 in terms of his unease with the fact that it was  
22 recorded as mental health. Other than that ...

23 398 Q. It's suggested at the top of the second page of that  
24 letter and the next page that:  
25  
26 "A further consequence of this latest official error is  
27 that there has been a further prolongation of the  
28 failure by An Garda Síochána to initiate an  
29 investigation into the causation of work related stress

1 together with a denial to Garda Keogh of payment of  
2 wages at the full rate of pay. The latter is  
3 ordinarily payable to gardaí who are absent from work  
4 due to work related stress."

12:41

6 To your knowledge and belief was Garda Keogh still in  
7 receipt of full rate of pay from the period of October  
8 '16 onwards, up to this point in time?

9 A. Yes.

10 399 Q. Have you any reason to doubt that?

12:42

11 A. No, I haven't. And it wasn't brought to my attention  
12 that there was anything to the contrary.

13 400 Q. On this issue, was his rate of pay that he was actually  
14 being paid related to or dependent upon the  
15 classification of his absences?

12:42

16 A. Not at that time.

17 401 Q. Yes.

18 A. Because a decision had been made to put Garda Keogh on  
19 the payroll and I would have expected that that would  
20 continue until such time as something happened to  
21 intervene and change that structure. That while he was  
22 out sick with work related stress associated with the  
23 circumstances that gave rise to putting him on the  
24 payroll in the first instance, that would continue.  
25 And there was no reason and no doubt in my mind that he  
26 was going to change in the short-term.

12:42

12:43

27 402 Q. Yes. The letter from Mr. Cullen enclosed a handwritten  
28 letter from Garda Keogh dated the 9th July. It raises  
29 the interaction with you on the 3rd June. If we look

1 at page 3529?

2 A. Yes.

3 403 Q. In the middle of the page it says:

4

5 "I met with Chief Superintendent McLoughlin on the 12:43  
6 3/6/20, who undertook to address my sick record and did  
7 so.

8

9 However, under the Freedom of Information request I  
10 received my absence report (attached) where I am now 12:43  
11 marked out sick with mental health despite my sick  
12 certs stating work related stress.

13

14 I now understand that your office may not be aware of  
15 same. " 12:44

16

17 So that has the up-to-date SAMS record with it, which  
18 is actually still the current position as we understand  
19 it then, on page 3530?

20 A. Yes. As I understand it also. 12:44

21 404 Q. Did you understand or did you have any function in  
22 relation to looking at that issue again at that point  
23 in time?

24 A. No. I was satisfied in my own mind that I did what I  
25 set out to do and that everything that I could do was 12:44  
26 done at that time and that the record had been  
27 corrected insofar as it could be, albeit not to the  
28 satisfaction, the full satisfaction of Garda Keogh, but  
29 within the caveat of how the system worked itself.

1 405 Q. I think you were copied into correspondence that had  
2 come to the Commissioner's office from the Minister at  
3 that point in time, in August of 2017?  
4 A. Yes.

5 406 Q. This was amongst one of the issues raised in the letter 12:45  
6 from the Minister to the Commissioner, which was copied  
7 on, isn't that correct?  
8 A. Yes.

9 MR. MCGUINNESS: Chairman, I am going onto a slightly  
10 different phase of it now, it might be a convenient 12:45  
11 time to break.  
12 CHAIRMAN: Do you think that would be a convenient time  
13 to break?  
14 MR. MCGUINNESS: I think so, Chairman.

15 CHAIRMAN: Very good. Thanks very much. How long more 12:45  
16 do you anticipate, Mr. McGuinness?  
17 MR. MCGUINNESS: I think I will be less than 45  
18 minutes.  
19 CHAIRMAN: Thanks very much, that's very good. Thanks  
20 very much. Just give me a moment to collect my notes. 12:46  
21 Thanks very much.  
22

23 THE HEARING THEN ADJOURNED FOR LUNCH AND RESUMED, AS  
24 FOLLOWS.  
25 14:02

26 407 Q. MR. MCGUINNESS: Chief superintendent, I think on the  
27 18th August 2017 you were copied into correspondence  
28 directed to the chief administrative officer, that  
29 would be Mr. Nugent?



1 A. Yes.  
2 408 Q. which was coming from the acting commissioner's office.  
3 It was copying you into a letter received from  
4 Mr. Cullen's office on behalf of Garda Keogh, do you  
5 remember getting that?

14:02

6 A. Yes.  
7 409 Q. AND that's three pages that are at 3541 and it's  
8 addressed to Minister Flanagan, the Commissioner,  
9 Ms. Josephine Feehily, the Policing Authority and also  
10 Mr. Caoimhghín Ó Caoláin. It's raising a number of  
11 sort of new issues, if we look at page 3542, the first  
12 of which is in the second paragraph in the following  
13 terms:

14  
15 "We now understand that Garda Keogh's express  
16 complaints of harassment, bullying, detrimental  
17 treatment and his formal invocation of the Garda  
18 bullying and grievance procedure have been suspended."

14:03

19  
20 Now as far as you are aware, that wasn't correct, is  
21 that right?

14:03

22 A. Could you just read that again, please?

23 410 Q. It's the second paragraph of that letter on page 3452.

24 A. Yes.

25 411 Q. "We now understand that Garda Keogh's express  
26 complaints of harassment, bullying, detrimental  
27 treatment and his formal invocation of the Garda  
28 bullying and grievance procedures have been suspended."

14:03

29 A. No, from my understanding, I don't think he was ever

1 suspended, that the process was still in train.

2 412 Q. Yes.

3 A. Yeah.

4 413 Q. Are you in a position to say where the process was as  
5 of this point in time, mid August? 14:04

6 A. I'm not unless I refer to my notes, unfortunately.

7 414 Q. Yes. well, we will come on to that.

8 A. Okay.

9 415 Q. It says:

10 14:04

11 "Garda Keogh has been advised in fact that the  
12 whereabouts (in An Garda Síochána) of his formal  
13 complaints are unknown. His complaints have  
14 effectively been clandestinely secreted and covered  
15 up." 14:04

16

17 So this raises the issue as to whether his statement of  
18 complaint made to Chief Superintendent Scanlan, was  
19 that lost or mislaid in the process?

20 A. Well not to my knowledge. 14:04

21 416 Q. Did you ever hear Garda Keogh being told by anyone that  
22 his complaint had been lost?

23 A. No.

24 417 Q. Did anyone within An Garda Síochána ever tell you that?

25 A. No. 14:05

26 418 Q. That it was lost or mislaid?

27 A. No.

28 419 Q. The second paragraph goes on to the misrecording. The  
29 third paragraph relates to the failure there:

1  
2  
3  
4  
5  
6  
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26  
27  
28  
29

"Persistent failure to trigger in ordinary course any investigation into the causation of such work related stress by Superintendent Murray."

14:05

It says:

"Another consequence is a failure to pay Garda Keogh at the appropriate (for police officers absent due to work related injury)."

14:05

The full pay he was getting, that was the amount that he would have got had he been out certified due to work related injury?

A. No.

14:05

420 Q. Injury on duty?

A. No, there would be a difference between the two, from my understanding. That if you are out from work with, we'll call it an injury on duty, you would probably also get compensated for the loss of your allowances that you would get for working unsocially. So he was on what we would call a flat rate of pay.

14:05

421 Q. The flat rate.

A. Yes.

422 Q. So the reference to FP the previous e-mail from Claire Egan I think of the HR directorate, reference to FP, is it full pay?

14:06

A. It's on your full rate of pay at the time but in order to do -- generally speaking, in order to get the

1 allowances you have to work them, the exception to that  
2 would be an injury on duty, if it's is awarded, yeah.

3 423 Q. So that someone who is classified as injured on duty  
4 gets the allowances they would have got had they still  
5 been able to perform duty? 14:06

6 A. Yeah, in some shape or form, yeah.

7 424 Q. And therefore entitled to allowances?

8 A. Yeah.

9 425 Q. So is that correct then, leaving aside the issue of the  
10 consequence? 14:06

11 A. In relation to reference to the appropriate and the  
12 connection between that and an injury on duty, my  
13 understanding would be, yeah, that would be correct.

14 426 Q. Yes. He complains further about the misrecording and  
15 reduced pay. Then it says: 14:07

16

17 "It appears on the one hand that for over 18 months any  
18 investigation into this grave and systematic bullying  
19 has been officially camouflaged, secreted and placed on  
20 hold while on the one hand the promotion of 14:07  
21 Superintendent Murray to chief superintendent has been  
22 covertly preferred, protected from the inside and  
23 furtively advanced."

24

25 Did you ever hear anyone make any remark to the effect 14:07  
26 that something like that was happening?

27 A. No.

28 427 Q. Or was intended?

29 A. No, and in all honesty, I wouldn't agree with that as a

1 sentiment as to how things were progressing. It wasn't  
2 camouflaged or secreted. Every effort was being made,  
3 particularly from a HR perspective, to try and advance  
4 it as fast as we could.

5 428 Q. Yes. Your statement proceeds from the date that this 14:08  
6 was copied to you, on into September then. Do you  
7 recall discussing any of the issues in that letter  
8 after you saw it with anyone in the force?  
9 A. This particular letter?

10 429 Q. Yes. 14:08  
11 A. No.

12 430 Q. You did receive direct correspondence from the chief  
13 administrative officer yourself on the 25th September,  
14 informing you that the Commissioner required an update  
15 from you on the present position regarding the bullying 14:08  
16 and harassment complaint?  
17 A. Yes.

18 431 Q. Were you surprised that they would be writing to you  
19 for that purpose rather than...  
20 A. Not necessarily, because I think all of the 14:08  
21 correspondence seeking a request for an updated report  
22 and any item associated with Garda Keogh's case came to  
23 me and it was my job then to go and find the  
24 information and find out where it was at and reply to  
25 the Commissioner. Rightly or wrongly, the office that 14:09  
26 I held, well from day one started to be the conduit for  
27 most of the reports that were going back up again.

28 432 Q. Yes. That request is on page 3545. You replied, in a  
29 brief reply on the same day, to Mr. Barrett, at page

1 3546?

2 A. Yes.

3 433 Q. You say:

4

5 "Executive director, brief update on above after 14:09  
6 discussi on thi s morni ng.

7

8 PD was investi gated. File went to DPP who advised no  
9 prosecuti on.

10 14:10

11 I understand that statement, not sure if it was signed,  
12 was made by Garda Keogh in May under the bullying and  
13 harassm ent poli cy. But I have not seen it.

14

15 I have writ ten on a number of occasi ons for work 14:10  
16 related stress complai nt to be investi gated. It may  
17 form part of bullyi ng and harassm ent complai nt but I  
18 have no update."

19

20 First of all, do you recollect who you would have 14:10  
21 discuss ed it with that morni ng?

22 A. It would have been with John Barrett.

23 434 Q. Mr. Barrett.

24 A. Indeed.

25 435 Q. Okay. Reference to the statement there, you're saying 14:10  
26 you hadn't seen it, can you recollect whether he had  
27 seen it or whether he was famili ar with it?

28 A. I don't know.

29 436 Q. Okay.

1 A. I don't know.

2 437 Q. All right. In any event, he replied to you by mail or  
3 by letter on the 28th, and that's at page 3547. He  
4 points out in the first paragraph:

5  
6 "The factual position as of today is to progress a 14:11  
7 bullying and harassment investigation, the person  
8 seeking to invoke the policy must nominate the source  
9 of the bullying and harassment complaint. Despite  
10 repeated request to do so, Nicholas Keogh has not done 14:11  
11 so as of today's date."

12  
13 And he says:

14  
15 "I am unsighted on the progress of investigations being 14:11  
16 conducted by Chief Superintendent Scanlan as of today's  
17 date but I understand that some of the papers are on  
18 file with Ms. Kathleen Hassett.

19  
20 I remain concerned that we need to come prepared to 14:11  
21 assess all aspects of this matter at case conference  
22 scheduled for 12:00pm on 3rd October 2017.

23  
24 I look forward to your full report on that occasion." 14:11

25  
26 He seems to be under the impression in the middle  
27 paragraph there that Chief Superintendent Scanlan is in  
28 some way progressing the investigation. Do you know  
29 the basis for that?

1 A. No, other than maybe information he may have had  
2 himself.

3 438 Q. Yes. When he says "I understand some of the papers are  
4 on file with Ms. Kathleen Hassett", what do you  
5 understand that to mean? 14:12

6 A. Ms. Hassett at the time was in charge of the bullying  
7 and harassment office.

8 439 Q. Yes. Under Mr. Barrett's control?

9 A. Yes. Yes.

10 440 Q. In any event, further correspondence had come in from 14:12  
11 Mr. Cullen, isn't that correct?

12 A. Mm-hmm.

13 441 Q. On the 21st September, at page 3558, just to go back in  
14 sequence. This was a letter I think that was copied to  
15 you, isn't that correct? 14:13

16 A. Yes.

17 442 Q. It contained the six-page handwritten letter from Garda  
18 Keogh. It's addressed to Minister Flanagan,  
19 Commissioner Ó Cualáin, Josephine Feehily and it  
20 encloses the manuscript letter. Then it sort of breaks 14:13  
21 down a series of requests, on page 2 of 3559, the three  
22 categories:

23

24 "We should be grateful if the Commissioner might kindly  
25 address the issues raised at paragraphs 1, 2, 3 and 6 14:13  
26 of Garda Keogh's letter."

27

28 Paragraph 1 related to what stage the discipline  
29 inquiry was at, isn't that correct?



1 A. Yes.

2 443 Q. Paragraph 2 related to who was investigating the  
3 bullying and harassment and where that stood?

4 A. Yes.

5 444 Q. Number 3 related to Superintendent Murray's position on 14:14  
6 the promotion list and Commissioner Ó Cualáin's  
7 position in relation to the Policing Authority?

8 A. Yes.

9 445 Q. And what was going to be said to them, isn't that  
10 correct? 14:14

11 A. That's correct.

12 446 Q. Then the second paragraph there:  
13  
14 "We should be grateful if the Policing Authority might  
15 ask the question raised at paragraph 4 of the letter." 14:14  
16  
17 which was about the Policing Authority's policy and the  
18 issue of delay in finalising the investigation into  
19 bullying and harassment as it related to a candidate,  
20 isn't that correct? 14:14

21 A. That's correct.

22 447 Q. The Minister was asked to answer the question raised at  
23 paragraph 5, 6, 7 and 8. Number 5 was the question of  
24 provision of two reports to Garda Keogh that he had  
25 been seeking. Number 6 related to an assertion that 14:14  
26 his pay was to stop in December. That wasn't the case,  
27 isn't that right?

28 A. Yeah. I had no reason at that time to think or even  
29 suggest that his pay was going to be stopped.

1 448 Q. Yes.

2 A. If I was aware of it, I probably would have intervened.

3 449 Q. Yes. Do you know the basis for that assertion at all?

4 A. No, no.

5 450 Q. Paragraph 7 related to an assurance by Minister 14:15

6 Fitzgerald that if the investigations did not progress

7 that she would consider another outside forum for

8 considering them. And paragraph 8 related to an

9 expression of Garda Keogh's frustration at matters not

10 having come a conclusion some three and a half years 14:15

11 after he had raised many of these issues.

12 A. Yes.

13 451 Q. The letter itself there is at page 3560 onwards. I

14 don't intend to open it verbatim. The parties can

15 focus on different portions of it if they wish. But I 14:16

16 think you were asked subsequent to the conference to

17 provide an update in relation to portions of that,

18 isn't that correct?

19 A. Yes.

20 452 Q. Was that a letter that was considered at the 14:16

21 conference?

22 A. There was a couple, there was two conferences.

23 453 Q. Yes.

24 A. There was one on the 3rd and there was one later.

25 454 Q. Yes. 14:16

26 A. The one on the 3rd and the one later focused primarily

27 on the bullying and harassment investigation and how it

28 might be progressed, from memory.

29 455 Q. I think prior to the meeting on the 3rd, you had with

1 Mr. Barrett, I think, attended in his office when he  
2 phoned Garda Keogh?

3 A. That's --

4 456 Q. On the 2nd October?

5 A. I think he phoned Mr. Cullen. 14:17

6 457 Q. Was it Mr. Cullen?

7 A. I think so.

8 458 Q. I beg your pardon, you say "Mr. Keogh's solicitor".  
9 Obviously Mr. Cullen had relayed Garda Keogh's letter,  
10 the six-page letter we've referred to. Was there any 14:17  
11 discussion about his complaint being lost?

12 A. No.

13 459 Q. Was there any suggestion?

14 A. No. I think the focus, from my memory the focus of the  
15 discussion with Mr. Cullen at that time with 14:17  
16 Mr. Barrett, it was quite a short enough conversation  
17 over the phone, about maybe meeting to discuss these  
18 matters further in person. I think, if memory serves  
19 me correctly, I think pay was a substantive part of the  
20 discussion and the loss of allowances and the injury on 14:17  
21 duty piece of it.

22 460 Q. Yes. You say in your statement that:

23

24 "The purpose of this call was to inform ourselves of  
25 matters pertaining to Garda Nicholas Keogh in advance 14:18  
26 of the case conference planned for the next day."

27

28 Now, this isn't a criticism, you don't seem to have any  
29 note of that call.

1 A. No, because I didn't make the call.

2 461 Q. Yes.

3 A. And I would have relied on -- I did take -- most of the  
4 time I would take notes.

5 462 Q. Yes. 14:18

6 A. But for whatever reason I didn't take notes that day,  
7 but I would have been relying on Mr. Barrett to take  
8 his own note at the time.

9 463 Q. Yes, and you were probably relying on him to relay to  
10 you what Mr. Cullen was saying to him? 14:18

11 A. Exactly, yes.

12 464 Q. He was in a position to bring issued raised by  
13 Mr. Cullen to the conference the following day?

14 A. Yes.

15 465 Q. The conference then took place on the 3rd and I think 14:18  
16 Mr. Barrett was at it, Assistant Commissioner Fanning,  
17 HR director Mr. Mulligan, Sergeant Donlon, Sergeant  
18 Broderick?

19 A. Yes.

20 466 Q. Was she still in the Commissioner's office? 14:18

21 A. That's is a different Broderick. Fiona Broderick.

22 467 Q. Yes.

23 A. Who was in John's own office at the time.

24 468 Q. Yes. And Inspector McCarthy.

25 A. Yes. 14:19

26 469 Q. Who worked under Assistant Commissioner Fanning?

27 A. That's correct.

28 470 Q. And then Mr. Ruane. I think Sergeant Broderick took  
29 notes at it and you have seen them, they've been

1 referred to as TMCL 76, and they represent an accurate  
2 account. Can I ask you to look at that.

3 A. Yes.

4 471 Q. To try and get a clear sense of what was happening at  
5 that meeting. They're at page 3549. You will see that 14:19  
6 Mr. Barrett was chairing it?

7 A. Yes.

8 472 Q. It was opened by him?

9 A. Yes.

10 473 Q. Then: 14:19  
11  
12 "Assistant Commissioner Fanning outlines where he is at  
13 in the file with respect to an allegation of bullying  
14 and harassment. Garda Keogh has been in contact with  
15 his office." 14:19  
16

17 So did you understand that to mean that he had the file  
18 at this point in time?

19 A. The minutes are not my minutes.

20 474 Q. I understand that. 14:20

21 A. Yes. So I don't know, is the answer, to be honest.

22 475 Q. Yes. You seem to have endorsed them in your statement  
23 as representing a true and accurate account?

24 A. Yes.

25 476 Q. Was that an issue for you, in terms of the meeting, as 14:20  
26 to who had the file and what was happening?

27 A. Not necessarily, no. No.

28 477 Q. Okay.

29 A. No, I wouldn't have been focused on that at all at that

1 time.

2 478 Q. Okay. So have you any reason to think that that's  
3 inaccurate or not?

4 A. I don't have any reason, no.

5 479 Q. I don't know whether this represents, the next  
6 paragraph, something that Assistant Commissioner  
7 Fanning said but it's recorded:

8

9 "When Assistant Commissioner Fanning received the file  
10 a number of issues arose. He got Chief Superintendent  
11 Scanlan to meet with the member. Assistant  
12 Commissioner Fanning outlines his concern with respect  
13 to issues raised by Garda Keogh and the bullying and  
14 harassment policy does not cover all of the matters  
15 raised.

16

17 Assistant Commissioner Fanning outlines that there  
18 needs to be a bigger investigation carried out as per  
19 previous cases."

20

21 That would seem to imply that he had considered Chief  
22 Scanlan's report, he could see that Garda Keogh had  
23 raised issues which went beyond mere bullying and  
24 embraced other matters?

25 A. Yes, that would suggest that, yes.

26 480 Q. And obviously an investigation only into the bullying  
27 wouldn't encompass other matters unless there was  
28 another investigation?

29 A. That's true.

1 481 Q. He seems to be arguing for a larger investigation,  
2 which would embrace both matters, is that right?  
3 A. I think what he was arguing, not arguing --  
4 482 Q. Yes.  
5 A. -- what he was recommending. 14:21  
6 483 Q. Proposing?  
7 A. Proposing, was that, yeah, that there'd be a wider,  
8 more encompassing investigation. The bullying and  
9 harassment is quite narrow in its focus under the  
10 policy and the terms of reference that would be given 14:22  
11 to an investigative officer would be quite, if you  
12 like, tight in relation to that. So AC Fanning was  
13 suggesting that there were more issues that he saw,  
14 that he felt needed further investigation.  
15 484 Q. Yes. It goes on to record Mr. Barrett there: 14:22  
16  
17 "John outlines that he and Chief Superintendent  
18 McLoughlin spoke to Garda Keogh's solicitors."  
19  
20 That was the previous day obviously. 14:22  
21 A. Yes.  
22 485 Q. "John seeks clarification from Assistant Commissioner  
23 Fanning on the criminal aspect."  
24  
25 Can you recollect what his concern was there? 14:22  
26 A. Mr. Barrett's or Mr. Fanning's?  
27 486 Q. Yes.  
28 A. I think what John was trying to find out was is okay if  
29 you are proposing an alternative and you have reasons

1 for it, what are those reasons and can you allude to  
2 what you're actually talking about.

3 487 Q. Yes. "Assistant Commissioner Fanning outlines that  
4 Garda Keogh says he has been victimised by people since  
5 he made protected disclosure. 14:23  
6

7 Assistant Commissioner Fanning is concerned about  
8 making an appointment under the bullying and harassment  
9 policy. He says that the investigation should be made  
10 under the Byrne/McGinn model, where it encompasses a 14:23  
11 wider investigation.

12

13 It then goes on to say:

14

15 "Harassment could be breaches on a number of points. 14:23  
16 John outlines that two files have been forwarded to the  
17 department of public prosecution."  
18

19 You were all familiar, obviously, with the Byrne/McGinn  
20 model? 14:23

21 A. Well I wasn't familiar with it, to be honest with you.

22 488 Q. All right.

23 A. I have heard obviously of former Assistant Commissioner  
24 Byrne and Chief Superintendent McGinn.

25 489 Q. Yes. 14:23

26 A. But I was not familiar with the process that they had  
27 adopted and what it actually meant or entailed. I had  
28 no idea of it at all.

29 490 Q. Or what necessarily came within it?



1 A. No. No.

2 CHAIRMAN: Maybe you would just give us a hint of what  
3 the Byrne/McGinn model is.

4 MR. McGUI NNESS: well, Assistant Commissioner Byrne was  
5 appointed to investigate the complaints that 14:24  
6 Sergeant McCabe had made in a compendious way, to do a  
7 review of all of them and report upon them and it got  
8 taken over then by Chief Superintendent Terry McGinn  
9 and became the subject of a lengthy report into all of  
10 the investigations that Sergeant McCabe had criticisms 14:24  
11 about.

12 CHAIRMAN: was that one everybody then was critical of,  
13 internally?

14 MR. McGUI NNESS: well it became effectively the  
15 template for the investigations that were the 14:24  
16 subject-matter of the O'Higgins Commission.

17 CHAIRMAN: I understand, when everyone said that  
18 Byrne/McGinn was all wrong.

19 MR. McGUI NNESS: well, there were a number of different  
20 views obviously. 14:24

21 CHAIRMAN: Anyway. It was a general review. A review  
22 of reviews.

23 MR. McGUI NNESS: Yes.

24 CHAIRMAN: Tanks very much and I'm sorry, I know the  
25 name is familiar and I am assuming that everybody in 14:24  
26 the room probably knows it, except myself. It wasn't  
27 present in my mind. A general review of everything.

28 MR. McGUI NNESS: Yes.

29 CHAIRMAN: A sort of compendium, where we are now and

1           how we got there.

2           MR. McGUI NNESS:  Generally speaking, yes.

3           CHAIRMAN:  Thanks very much.  Sorry about that.

4           THE WITNESS:  No problem.

5   491   Q.   MR. McGUI NNESS:  It then records: 14:25

6

7           "John spoke to Garda Keogh's sol ici tors on 2nd October

8           2017 and he has forwarded a handwritten letter from

9           Garda Keogh with issues that he believes have not been

10          resol ved. " 14:25

11

12          That's obviously a reference to the six-page letter I

13          think

14          A.   I think so, yeah.

15   492   Q.   It doesn't appear to have been before the meeting then? 14:25

16          A.   No, it wasn't.

17   493   Q.   "A general di scussi on held on the matters.

18

19          Assi stant Commi ssi oner Fanning outlines that a person

20          needs to be appointed to look at all matters. 14:25

21

22          He outlines a statement needs to be taken from Garda

23          Keogh and a process followed.  Someone neutral needs to

24          carry out an i nvesti gati on.

25 14:25

26          Assi stant Commi ssi oner Fanning suggests that a full

27          statement be taken and sent to the Di rector of Publi c

28          Prosecuti ons and outline what has already been

29          submi tted in the file, then, when Di rector of Publi c

1 Prosecutions comes back, all other matters should be  
2 looked at under the relevant policies. Mr. Barrett is  
3 in agreement with this."

4  
5 There doesn't seem to be mention particularly in that 14:26  
6 context of the fact that the Ó Cualáin investigation  
7 had been completed and furnished to the director. What  
8 did you understand required or might require to be  
9 criminally investigated under Assistant Commissioner  
10 Fanning's proposal? 14:26

11 A. Well, that was my problem at the time and in subsequent  
12 meetings, I didn't know or understand what that might  
13 mean. I don't think it was ever discussed in detail at  
14 that meeting. It was just referred to but never was  
15 the detail associated, what that might look like or 14:26  
16 might be, proffered at either meeting.

17 494 Q. All right. Well we will just continue on with the note  
18 for the moment. This is on the next page:

19  
20 "Assistant Commissioner Fanning is concerned that this 14:27  
21 has been going on for a long time."

22  
23 We are actually on the page. He thinks everything has  
24 to be investigated.

25 14:27  
26 "A general conversation held on this matter. There is  
27 a discipline issue on this. Where is this at? Need an  
28 update on same? Mr. Ruane outlines that GSOC and  
29 Assistant Commissioner McMahon needs to provide an

1 update. Chief Superintendent McLoughlin to seek an  
2 update on both to see where they are at."

3  
4 So that was something that was tasked to do then?

5 A. Yes. 14:27

6 495 Q. "Garda A has not been interviewed to see if he has any  
7 complaint to make.

8  
9 General conversation held on this matter. Mr. Ruane  
10 outlines that he believes what is being proposed is the 14:27  
11 best course of action. Discipline needs to be  
12 identified and Garda Keogh be written to telling him  
13 where it is at.

14  
15 Mr. Mulligan gives his viewpoint and believes that what 14:27  
16 is being suggested be carried out. This has been going  
17 on for a long time. It needs clarity and needs to be  
18 moved along."

19  
20 So there seems to be an acceptance that the pace has to 14:27  
21 be upped, as it were, to move things on a bit here?

22 A. Absolutely.

23 496 Q. "Chief Superintendent McLoughlin agrees nothing to  
24 preclude this organisation from conducting an  
25 investigation. It is agreed that an assistant 14:28  
26 commissioner should be appointed to investigate and get  
27 a full statement from Garda Keogh."

28  
29 Were you in agreement, therefore, with the sort of

1 wider investigation model?

2 A. I wasn't.

3 497 Q. Pardon?

4 A. I wasn't, no. What I was referring to there was the  
5 bullying and harassment elements of it. 14:28

6 498 Q. Yes. That's what I was anxious to get your view on.  
7

8 "Assistant Commissioner Fanning will write to Garda  
9 Keogh, informing him that Human Resources and People  
10 Development will now be his point of contact for any 14:28  
11 issues that he has.  
12

13 Mr. Barrett is in agreement that the route of  
14 investigations will be the best course of action."  
15 14:28

16 Did you understand him to be agreeing with the bullying  
17 and harassment view of it or the wider view?

18 A. I don't know, because it became a point of contention  
19 at the following meeting. So I am not sure what  
20 Mr. Barrett's interpretation was of the course of 14:29  
21 action, whether it go under the Byrne/McGinn type model  
22 or some other alternative.

23 499 Q. Yes.

24 CHAIRMAN: Can you help me?

25 A. Yeah. 14:29

26 500 Q. CHAIRMAN: If it was a bullying and harassment case  
27 simpliciter?

28 A. Yeah.

29 501 Q. CHAIRMAN: Presumably somebody would sit down with

1           Garda Keogh and say, tell me about the bullying and  
2           harassment?

3           A.    Yes.

4 502 Q.    CHAIRMAN:  And somebody would write it all down?

5           A.    Yes. 14:29

6 503 Q.    CHAIRMAN:  Maybe Garda Keogh would produce a -- but  
7           somebody would write it all down?

8           A.    Yes.

9 504 Q.    CHAIRMAN:  And say, now we know what we are doing?

10          A.    Yes. 14:29

11 505 Q.    CHAIRMAN:  As opposed to that, Byrne/McGinn, what would  
12          that have involved?

13          A.    Judge, that would have involved everything associated  
14          with Garda Keogh's case, it may have gone over old  
15          ground maybe that AC Ó Cualáin had gone over in his 14:29  
16          investigation, it may have looked into that file and  
17          other files.  So it was likely to take a good bit  
18          longer.

19 506 Q.    CHAIRMAN:  It would start off back at the protected  
20          disclosure on the 8th May? 14:30

21          A.    It could well do.

22 507 Q.    CHAIRMAN:  And try to do everything and say where we  
23          are, where we are now and how we got here?

24          A.    Yes.

25 508 Q.    CHAIRMAN:  By reference to everything that happened in 14:30  
26          the past?

27          A.    Yes.

28 509 Q.    CHAIRMAN:  That would have been some undertaking, I  
29          rather imagine?

1 A. And that was my understanding of what was being said,  
2 rightly or wrongly.

3 CHAIRMAN: Okay, thanks very much. That's what I  
4 wanted to know. I wanted to get a picture of the  
5 difference between the two approaches. Sorry,  
6 Mr. McGuinness?

14:30

7 510 Q. MR. MCGUINNESS: Not at all. It continues on then:

8

9 "Mr. Barrett asks Inspector McCarthy to meet with Garda  
10 Keogh again and to inform him of this meeting."

14:30

11

12 So, that was agreed, was it?

13 A. Yes.

14 511 Q. "Chief Superintendent McLoughlin to follow up with  
15 Internal Affairs on the discipline investigation.

14:30

16

17 Sergeant Donlon to look at the file and see what was  
18 provided to the DPP and pull papers together.

19 Mr. Barrett to send a note to solicitors. Mr. Ruane is  
20 to inform Chief Superintendent Fergus Healy on this  
21 matter."

14:30

22

23 That is about the litigation issue.

24 A. Yes.

25 512 Q. "Mr. Mulligan is checking with Ms. Carr with respect to  
26 sick leave and to look manually checking the sick  
27 certificates. Mr. Mulligan will get a list from  
28 Ms. Carr and then this will be then dealt with at local  
29 level."

14:31

1           Then it's noted:  
2  
3           "The chief superintendent and superintendent in this  
4           division are a problem as they are brothers-in-law.  
5           Corporate risk needs to be moved." 14:31  
6  
7           I think that was something that you were tasked with --  
8           A.    Checking into.  
9   513   Q.    -- checking into. There was then an action sheet  
10           produced on foot of that, is that correct? 14:31  
11           A.    That's correct.  
12   514   Q.    In the days after?  
13           A.    Mm-hmm.  
14   515   Q.    Was that by Sergeant Broderick?  
15           A.    Yes. 14:31  
16   516   Q.    That's at page 3551. So the first action there, that  
17           was to be taken by Mr. Barrett?  
18           A.    Yes.  
19   517   Q.    The scope or type of investigation isn't specified, but  
20           did you understand on getting the minute that this was 14:31  
21           to be an investigation into the bullying and  
22           harassment?  
23           A.    No, I wasn't sure what it was to be.  
24   518   Q.    As a matter of interest, if it was a wider  
25           investigation, suppose it was an investigation into the 14:32  
26           allegation of criminal matters and including  
27           victimisation under the 2014 Act and bullying and  
28           harassment and pay issues, is that something that would  
29           have been within Mr. Barrett's jurisdiction, as it



1 were, to appoint an assistant commissioner to?  
2 A. It would have been up to the point of suggesting there  
3 might have been any criminal or any other matters.  
4 From a HR perspective, most definitely, yes. For  
5 anything outside of HR he may have had to consult with 14:32  
6 assistant commissioner Crime and Security, deputy  
7 commissioner Operations and take advice in relation to  
8 it.  
9 519 Q. Yes.  
10 CHAIRMAN: Anything non-criminal. 14:32  
11 A. Yes, anything to do with HR.  
12 CHAIRMAN: Okay.  
13 520 Q. MR. MCGUINNESS: The second matter was for Mr. Barrett  
14 then:  
15 14:33  
16 "A letter to be drafted to Garda Keogh's solicitors to  
17 address the matter now this proposed AGS will now  
18 proceed."  
19 A. Yes.  
20 521 Q. Third, Mr. Ruane was to deal with the litigation 14:33  
21 matter. Fourth, Inspector McCarthy was to visit Garda  
22 Keogh, to verbally inform him of the case conference  
23 held today and what is being proposed. Then you were  
24 to progress the inquiry with Internal Affairs and with  
25 regard to discipline, GSOC? 14:33  
26 A. Yes.  
27 522 Q. The other tasks are assigned there as set out.  
28 Sergeant Broderick forwarded that to people on the  
29 afternoon of the 3rd?

1 A. Yes.

2 523 Q. According to an e-mail on page 3554. And then she is  
3 following up with Mr. Barrett, in the middle of that  
4 page. She is asking:  
5  
6 "When will you be doing this?"  
7  
8 Page 3553, she is sort of sending reminders really on  
9 the 10th and the 12th of October. And then,  
10 Mr. Barrett is saying at the top of that page, 3553: 14:33  
11  
12 "I want to appoint Barry O'Brien. Could you draw up  
13 the paperwork so that I can walk him through it?"  
14  
15 Was that an issue that was discussed with you? 14:34  
16 A. No.

17 524 Q. You wouldn't normally expect to have a say --  
18 A. No.

19 525 Q. -- in who was being appointed?  
20 A. No. 14:34

21 526 Q. Is that right?  
22 A. Not at that time. I would now, because I now have the  
23 portfolio for bullying and harassment.

24 527 Q. Yes. On the other hand, you were requested by the  
25 chief administrative officer on the 10th October to 14:34  
26 report on the issues raised by reference to the John  
27 Gerard Cullen letter we looked at earlier, isn't that  
28 correct?  
29 A. Yes.

1 528 Q. You wrote to Ms. Carr, am I correct about that, to seek  
2 an update?  
3 A. If I just could have the reference, please?  
4 529 Q. Yes. Perhaps it was to Mr. Donlon, was it? It's at  
5 page 3566, on the 12th, to get an update, 3566. Just 14:35  
6 slightly down the page, we will see it there. You are  
7 trying to track down what changes were?  
8 A. Yeah, and how they happened.  
9 530 Q. I think you got a -- you didn't get a reply at that  
10 point in time? 14:36  
11 A. No, I think I did subsequently.  
12 531 Q. Yes. I think you were told that a Garda Eileen Cregan  
13 had made the change --  
14 A. Yes.  
15 532 Q. -- is that correct, sometime in August 2016? 14:36  
16 A. I am not sure of the name of the person but that was  
17 the gist of what I was told.  
18 533 Q. That turned out not to be correct, I believe, is that  
19 right?  
20 A. From memory, yes. 14:37  
21 534 Q. You wrote subsequently to the chief superintendent  
22 Internal Affairs on the 19th October, if we look at  
23 page 3587. You're pursuing the issues relating to the  
24 information they may have about GSOC and the discipline  
25 inquiries, isn't that correct? 14:37  
26 A. That's correct.  
27 535 Q. You had asked for those matters to be dealt with  
28 urgently and you informed them of the context of the  
29 case conference that had been held?

1 A. Yes.

2 536 Q. Isn't that correct? You also wrote -- sorry, you had  
3 also seen a copy of the letter that Mr. Barrett had  
4 written to Mr. Keogh's solicitors?

5 A. That's correct. 14:38

6 537 Q. Mr. Cullen, and you forwarded that to the chief  
7 administrative officer yourself?

8 A. Yes.

9 538 Q. That letter is at page 3590?

10 A. Yes. 14:38

11 539 Q. That letter responds to queries raised both by  
12 Mr. Cullen and Garda Keogh. And at the bottom of 3590  
13 it deals with being taken off the payroll and it's just  
14 stated that it's not correct. The other matters, item  
15 1, which is the investigation into bullying and 14:39  
16 harassment, on the next page, says:

17

18 "I have undertaken the specific action of assessing how  
19 best to proceed with respect to it. I expect to have  
20 reached a conclusion on this before the end of October 14:39  
21 and it will be communicated to you directly. I will  
22 set out the process to be followed and the personnel  
23 assigned."

24

25 Number 2 then says: 14:39

26

27 "With regard to the bullying and harassment complaint,  
28 I am to advise there has been extensive correspondence  
29 from Garda HRM section seeking clarification from Garda

1 Keogh as to who specifically he was naming as the  
2 subject of his complaint. We are now aware from both  
3 the correspondence and the telephone conversation who  
4 that individual is. We will proceed accordingly."

14:39

5  
6 Did you understand that to be directed just to  
7 Superintendent Murray or in relation to Superintendent  
8 Murray?

9 A. I didn't know who it was in relation to. As a result  
10 of that correspondence I would have had a previous  
11 conversation a long time before this with Garda Keogh  
12 where he would have mentioned that to me.

14:39

13 540 Q. Yes. In any event, number 3 then states:

14  
15 "The matters relating to how the Policing Authority  
16 proceed in the circumstances outlined is for them to  
17 decide. I have today written to the CEO of the  
18 Policing Authority and raised that question with them.  
19 My letter is attached.

14:40

20  
21 4. I have written to the office of the Garda  
22 Commissioner and to the office of head of legal  
23 services to address the matters set out. This office  
24 has had no sight of the correspondence to date but we  
25 have now requested it. Our expectation is that it will  
26 form part of the comprehensive file which will be made  
27 available to the individual or team to be appointed  
28 under 1 to review matters.

14:40

14:40

1 5. In the matter of pay, our telephone call and the  
2 primary point at the top of this correspondence refers.  
3  
4 6. Our intention is that the matters to be established  
5 under 1 above will address the issues comprehensively 14:40  
6 and the need for intervention of the Tánaiste.  
7  
8 7. I wish to assure you and your client that it is to  
9 this office that those charged with the management of  
10 political dynamites report. I have huge confidence in 14:41  
11 the professionalism of the office holder. Chief  
12 Superintendent McLoughlin has met with Garda Keogh in  
13 his capacity as protected disclosure manager and this  
14 relationship continues in effect."  
15 14:41  
16 It goes on to say that Inspector McCarthy will visit.  
17 There's nothing unusual in that.  
18 A. No.  
19 541 Q. It doesn't give a commitment to any particular  
20 timeframe, I suppose? 14:41  
21 A. No, it doesn't. No. I suppose it's a reflection on  
22 the interpretation of where we were at that time by  
23 Mr. Barrett.  
24 542 Q. Yes.  
25 CHAIRMAN: He was going to progress matters "with all 14:41  
26 due élan".  
27 A. Yes.  
28 CHAIRMAN: No less.  
29 543 Q. MR. MCGUINNESS: You say in your statement that on the

1 19th October you were made aware that executive  
2 director HRPD had appointed Assistant Commissioner  
3 McPartlin to undertake a fact-finding inquiry of the  
4 bullying and harassment issues. Is that something that  
5 was reported to you in writing by Mr. Barrett? 14:42

6 A. No, that probably came about as a result of a  
7 conversation or maybe at our management meeting.

8 544 Q. Yes. Certainly her name appears in the conference  
9 notes relating to the 23rd and in a subsequent e-mail?

10 A. Yes. 14:42

11 545 Q. So it would appear that there was some conversation or  
12 perhaps a tentative proposal that she would be  
13 appointed?

14 A. That would appear to be the case, yes.

15 546 Q. The case conference then on the 23rd, you had notes of 14:42  
16 that and there's some other minutes of that. Could I  
17 direct you to your notes at page 3593?

18 A. Yes.

19 547 Q. I am not quite sure what the first name is there on the  
20 top? 14:43

21 A. Peter Early.

22 548 Q. Peter Early. Who is Mr. Early?

23 A. He's a staff -- he was a staff member of the Legal  
24 Affairs at that time. He has since resigned.

25 549 Q. Now there is F Fanning? 14:43

26 A. Yes.

27 550 Q. Jimmy McCarthy?

28 A. Yes.

29 551 Q. That's yourself then, T MCL?

1 A. Yes.

2 552 Q. SO?

3 A. Reardon, Séan O'Reardon, the Commissioner's office.

4 553 Q. And Kathleen Hassett.

5 A. Yes. 14:43

6 554 Q. Alan Mulligan.

7 A. Yes.

8 555 Q. Joe Nugent.

9 A. Yes.

10 556 Q. John Barrett. 14:43

11 A. Yes.

12 557 Q. Could you talk us through the notes then, as to how the  
13 meeting went?

14 A. Okay. It was chaired by Mr. Nugent. It was outlined  
15 obviously that it was a meeting held in confidence and 14:43  
16 that there may be issues discussed that were of a  
17 confidential nature. The Commissioner had requested  
18 Mr. Nugent to chair the meeting, to get a holistic view  
19 of everything that was going on relative to Garda  
20 Keogh's case. An update of the status in the broadest 14:44  
21 sense was what Joe Nugent was looking for. Not to  
22 delve into, even if we knew, into the PD space.

23 558 Q. Is that the identity issue?

24 A. Identity or any element or anything of a confidential  
25 nature that may be associated with the PD, we would not 14:44  
26 -- or he asked the people there not to go into that.

27 559 Q. Yes.

28 A. We had given an overview of where we thought it was at  
29 the time, that was myself and Sergeant Donlon and we



1 had given a number of reports up at the time, which are  
2 included previously in this testimony. There was four  
3 strands to the issues as Mr. Nugent saw it. There was  
4 the welfare piece, which I had primary responsibility  
5 for; there was the protected disclosure piece; there  
6 was the criminal and bullying and harassment and then  
7 there was the civil litigation, which was commented on  
8 at the time as well. Then we had reference to GSOC.

14:45

9 560 Q. Yes.

10 A. I'm assuming that that was reference to the fact that  
11 that's where the protected disclosure may have lay. I  
12 reference the fact that I had sought information from  
13 GSOC into the nature and to see if it included  
14 previously any elements of the bullying and harassment  
15 allegations that Garda Keogh was making. Complaint and  
16 four-page statement to Chief Scanlan was referenced at  
17 the meeting. AC Fanning assessed the case as he saw it  
18 and based on the Byrne/McGinn precedent he felt and  
19 decided that he could not make an appointment on the  
20 bullying and harassment as a result. Out of case  
21 conference recently agreed to proceed with  
22 fact-finding. That was in reference to the meeting of  
23 the 3rd. FF is Fintan Fanning.

14:45

14:45

14:46

24  
25 " -- requires a broad investigation to include all  
26 aspects of the complaint that was made to Chief  
27 Scanlan."

14:46

28 561 Q. Yes.

29 A. "Joe Nugent (JN) emphasis too the bullying and

1 harassment remains outstanding and that Garda Keogh had  
2 continually made reference to the outstanding bullying  
3 and harassment and to the public."

4  
5 I don't know what "and to the public" is a reference 14:46  
6 to.

7  
8 "Tony McLoughlin of the view, as John Barrett, that if  
9 at all possible the bullying and harassment  
10 investigation should proceed in isolation of other 14:46  
11 matters, if necessary.

12  
13 Bullying and harassment also referenced in civil  
14 proceedings by Garda Keogh and therefore needs to be  
15 addressed." 14:47

16  
17 And that was the commentary from Ken Ruane and EC I  
18 think refers to Assistant Commissioner Eugene Corcoran

19 562 Q. Assistant commissioner Corcoran?

20 A. That's right, yeah. 14:47

21 563 Q. So there seems to be a majority there concentrating on  
22 the bullying and harassment at that point, is that  
23 right?

24 A. That's right.

25 564 Q. It goes on then? 14:47

26 A. Will, I continue?

27 565 Q. Pardon?

28 A. Will I continue.

29 566 Q. Yes.

1 A. Yes. FF is Fintan Fanning:

2

3

" -- has a different view of meeting of the 3/10 and  
4 outcome from John Barrett (JB). Letter to Mr. Cullen  
5 solicitor outlines steps forward. "

14:47

6

7

So that was John's letter to Mr. Cullen and John made  
8 reference to that in the meeting.

9

10 "Dealt with multiple issues from AC Fanning's report in 14:48

11

parallel to bullying and harassment and no difficulty  
12 with that." So Mr. Ruane was making reference to the

13

fact that from his perspective he did not believe that  
14 we could not go ahead with two different strands. In

15

other words, continue with bullying and harassment and 14:48

16

then if there were any other issues to be dealt with,  
17 deal with those separately.

18

567 Q. Yes. There were no preclusions from having one to  
19 having a different one?

20

A. Yes. No. Joe Nugent then, JN:

14:48

21

22

"Two ACs to deal with bullying and harassment and other  
23 matters."

24

25

So in other words he was saying, right, appoint 14:48

26

somebody to do the bullying and harassment immediately

27

and then appoint another AC to continue with the other

28

elements of it.

29

1 "We can have as many investigations as we wish  
2 according to AC Eugene Corcoran.

3  
4 John Barrett to get Mr. Cullen and Keogh to identify  
5 bullying and harassment process that requires 14:49  
6 investigation in a meeting.

7  
8 AC to be appointed to bullying and harassment.

9  
10 AC appointment fact-finding." 14:49

11  
12 And Orla McPartlin was mentioned there.

13  
14 "Check O'Higgins." 14:49  
15

16 Now that was an action that I took to myself because I  
17 was unfamiliar with the Byrne McGinn model, that I  
18 would go look at it and see what it entailed.

19 568 Q. Yes.

20 A. 14:49

21 "Can we defend the non action on bullying and  
22 harassment by virtue of the McGinn..."

23  
24 If we were to adopt the Byrne/McGinn way of doing  
25 things, were we in a position to successfully defend 14:49  
26 our position then with not proceeding with the bullying  
27 and harassment. And then I think AC Fanning produced a  
28 chart outlining the welfare interventions that he or  
29 his staff had taken with Garda Keogh within his

1 division at that time.

2 569 Q. Yes. There seems to have been sort of slightly more  
3 official minutes then produced?

4 A. Yes.

5 570 Q. Which are at page 3597. It seems to be -- I am not 14:50  
6 sure I follow the style of it but could you help us  
7 just navigate through? It says "decisions" there.  
8 There's a lot of discussion items obviously --

9 A. Yes.

10 571 Q. -- on the following page. But is 3598 the commencement 14:50  
11 of the minutes then?

12 A. Yes.

13 572 Q. The attendance there is slightly obviously expanded  
14 from your notation, but there's a large number of  
15 people at the meeting? 14:51

16 A. The one person that I had missed in mine is Assistant  
17 Commissioner Corcoran.

18 573 Q. Yes. Were you happy that these minutes were more  
19 accurate?

20 A. I'd be happy with my own minutes. 14:51

21 574 Q. Yes.

22 A. In terms of my recollection of the meeting.

23 575 Q. Yes.

24 A. That's not to say there's anything wrong with those.

25 576 Q. Yes. There are comments on 3597 where people want to 14:51  
26 have other bits included. There seemed to be --

27 577 Q. CHAIRMAN: Have you seen these before?

28 A. I have.

29 578 Q. MR. MCGUINNESS: There seem to be differing views there

1 as to what ought to have been included in the minutes.

2 A. Yes.

3 579 Q. But in terms of the outcome, were you in any doubt that  
4 the meeting had decided that an assistant commissioner  
5 would be appointed to investigate the bullying and 14:52  
6 harassment?

7 A. That was my understanding of that meeting and the  
8 outcome. There were different views in the meeting  
9 obviously.

10 580 Q. Yes. 14:52

11 A. But that was the outcome of the meeting.

12 581 Q. Yes. In any event, Mr. Barrett would have the  
13 responsibility for appointing or nominating the  
14 assistant commissioner involved, isn't that right?

15 A. Yes. 14:52

16 582 Q. I think he wrote to others, including you, is that  
17 right, after the meeting?

18 A. Yes, I think he did.

19 583 Q. If we look at page 3600?

20 A. Yeah. 14:52

21 584 Q. Again, this is a document that seems to be arguing the  
22 issues still, in the third last paragraph:  
23

24 "With respect to the suggestion that the current  
25 panoply of matters is best addressed via Byrne/McGinn 14:53  
26 type investigation. I am neutral at best. I do not  
27 agree that the approach being adopted by the CAO is new  
28 or novel. Both Chief Superintendent McLoughlin and I  
29 have resolved a number of multifaceted cases by an

1 approach such as this. We are, as an organisation,  
2 greatly disadvantaged by the stove piping which sees so  
3 many of the functions which were previously under the  
4 direction of HR now splintered. This is a recurring  
5 problem giving rise to the general concern voiced by  
6 the AC and others too. 14:53

7  
8 I believe that the best course of action is to ensure  
9 that every assistance is given to AC McPartlin and that  
10 independently and immediately the bullying process is 14:53  
11 commenced. I will stay close to this matter and use my  
12 office to do what I can to ensure Garda Keogh is given  
13 every support and comfort about our organisational  
14 intent and approach.

15 14:53  
16 I commend the initiative of the CAO. It is not unique  
17 but with goodwill and coordinated support I believe it  
18 can be effective."

19  
20 He intends to proceed as above there. That wasn't a 14:54  
21 surprise to you, I take it?

22 A. No.

23 585 Q. I think you wrote to the executive director in  
24 connection with the previous request to update him in  
25 relation to the matters, isn't that correct? 14:54

26 A. That's correct.

27 586 Q. You were asked to gather together all materials in  
28 connection with Garda Keogh in the context of the  
29 Freedom of Information Act request as well, isn't that

1 right?

2 A. Yes.

3 587 Q. We're not concerned with that. I think Ms. Carr  
4 updated you on the 24th November with the SAMS change,  
5 if you look at page 3620. At the bottom of the page 14:55  
6 there, that says that it was a Garda Grehan who did  
7 that?

8 A. That's correct.

9 588 Q. On the 4th August?

10 A. Yes. 14:55

11 589 Q. But you yourself had received confirmation on the 25th  
12 May that it had been changed?

13 A. Yes.

14 590 Q. Isn't that right?

15 A. That's correct. 14:55

16 591 Q. Yes. We've received papers recently which confirmed  
17 that Garda Grehan didn't do that on the 4th August,  
18 have you seen those, have you?

19 A. I haven't, no.

20 592 Q. In any event, that information isn't under your 14:55  
21 control?

22 A. No.

23 593 Q. And you weren't responsible for generating it?

24 A. No. My only purpose and concern was that it was  
25 actually done, I didn't particularly mind who did it, 14:56  
26 to be honest.

27 594 Q. Yes. I think you received information concerning the  
28 nomination of Assistant Commissioner Finn from  
29 Inspector McCarthy on behalf of Assistant Commissioner



1 Fanning, is that right?

2 A. That's correct.

3 595 Q. Page 3624. We know that Inspector McCarthy had been  
4 sent down to hand deliver to Garda Keogh information in  
5 relation to the complaint and specifically in relation 14:56  
6 to the question of opting to resolve it by way of  
7 mediation?

8 A. Yes.

9 596 Q. Which Garda Keogh refused or declined to do at that  
10 point in time. That's a normal part of the 14:57  
11 requirement --

12 A. It is, yes.

13 597 Q. -- under the --

14 A. Bullying and harassment.

15 598 Q. Yes. And it is therefore quite a usual step to have 14:57  
16 taken.

17 A. Yes.

18 599 Q. To seek the consent or otherwise of that and then  
19 progress matters.

20 A. Anybody who makes a complaint, that's the first thing 14:57  
21 that would be asked of them, do they want to take an  
22 informal route or a formal route? Yes.

23 600 Q. Yes. Mr. Barrett subsequently I think sent you a copy  
24 of the letter he had written to the deputy commissioner  
25 in Governance and Strategy, which chronologically 14:57  
26 sought to update him and you with a synopsis of  
27 attempts to progress matters?

28 A. Yes.

29 601 Q. That's on page 3526 to 3529.

1 A. Yeah.

2 602 Q. It sets out on the first page of that, at 3626, the  
3 issues in relation to Garda pay. It goes through, on  
4 page 3627, 2016 into 2017. On page 3628, it records in  
5 the middle of page 3628:

14:58

6

7 "On 5th April 2017 Assistant Commissioner Eastern  
8 Region advised me that he had received one part of a  
9 two-part report from Garda Keogh. On perusal of this  
10 material, Assistant Commissioner Fanning was of the  
11 view that the issues raised by Garda Keogh were much  
12 wider than the bullying and harassment matter. He  
13 further advised that he would revert on receipt of the  
14 next phase of the report.

14:58

15

14:59

16 On 21st April 2017, Assistant Commissioner Eastern  
17 Region advised that further documentation had been  
18 received from Garda Keogh and that this material was  
19 being considered by him."

14:59

20

21 There's a reference then:

22

23 "On 22nd May 2017 I met Assistant Commissioner Eastern  
24 Region, who advised that his report was being  
25 prepared."

14:59

26

27 And then there's sort of a big gap of time there  
28 between May and October. Did you see a report from the  
29 assistant commissioner Eastern Region in relation to

1 Garda Keogh's statement.

2 A. No.

3 603 Q. Did you see the statement itself?

4 A. No.

5 604 Q. Were provided with Assistant Commissioner Fanning with 14:59  
6 a copy of the statement?

7 A. No, I don't believe so. I don't believe I received it  
8 any which way, in any of the documentation surrounding  
9 this issue from then onwards. No.

10 605 Q. Yes. Mr. Cullen wrote to Assistant Commissioner Finn 14:59  
11 then, I am not sure did you get that letter at the  
12 time?

13 A. No, but it was part of -- I'm not sure, to be honest,  
14 but it was part of a list of documentation that we had  
15 on our files. 15:00

16 606 Q. Yes.

17 A. Yeah.

18 607 Q. In any event, you met Garda Keogh subsequent to the  
19 receipt of that letter, isn't that correct?

20 A. Yeah, I think in December of that year. 15:00

21 608 Q. Yes.

22 A. Yes.

23 609 Q. Was that on the 15th December at the Killeshen Hotel  
24 with Mr. Barrett?

25 A. That's correct. 15:00

26 610 Q. And Garda Keogh and Mr. Cullen?

27 A. Yes.

28 611 Q. What was the purpose of a meeting at that point in  
29 time? Mr. Barrett believed he had appointed Assistant

1 Commissioner McPartlin, Assistant Commissioner Fanning  
2 had appointed Assistant Commissioner Finn to  
3 investigate the bullying and harassment. So were they  
4 not -- were the issues not out of your control at that  
5 stage? 15:01

6 A. They were, but again from memory, I think the exec  
7 director, Mr. Barrett, was anxious because Garda Keogh  
8 and Mr. Cullen was writing in continuously in relation  
9 to various matters and he was anxious to meet them, if  
10 we could, to outline to them what had been agreed, what 15:01  
11 had been done and what was going to be done. And there  
12 was also the question that was arising at that time and  
13 even previously, was the matter of what we call an  
14 1137.

15 612 Q. Yes. 15:01

16 A. The payment of allowances associated with being out  
17 sick was an issue as well, that we felt and Mr. Barrett  
18 felt the best way to address that was to meet them in  
19 person.

20 613 Q. Yes. 15:02

21 A. And to explain it.

22 614 Q. Yes. You had in fact discussed previously with  
23 Mr. Barrett keeping in touch with Garda Keogh to  
24 address the possible return to work issues, isn't that  
25 right? 15:02

26 A. Yeah. From the time I first met Garda Keogh on 3rd  
27 June '16, I suppose my intention would have been, and  
28 it would have been with other cases in the past, that  
29 the first thing I will try and discuss with the member

1 is, okay, a return to work and the possibility of a  
2 return to work and when that may happen, obviously  
3 subject to being certified fit to do so. So, yeah.  
4 615 Q. The notes that you took then on page 3635, you sort of  
5 highlight a number of bullet points. That's: 15:02  
6  
7 "Mick Finn, bullying and harassment."  
8 A. Yes.  
9 616 Q. "AC McPartlin, all the elements."  
10 A. Yes. 15:03  
11 617 Q. Now, I don't know, did you see AC McPartlin's  
12 statement, she said she was never written to or  
13 appointed by Mr. Barrett as such at that time?  
14 A. Yeah.  
15 618 Q. She clearly had been discussed. You had recorded 15:03  
16 reference to her in your notes?  
17 A. Yes.  
18 619 Q. At both meetings, isn't that right?  
19 A. That's correct.  
20 620 Q. Was that the intention of Mr. Barrett as far as you 15:03  
21 were concerned and did it seem to have been agreed  
22 upon?  
23 A. Yes, it was the intention of Mr. Barrett, yes.  
24 621 Q. And then what's the next one "welfare" is it?  
25 A. It's just a reference to welfare. 15:03  
26 622 Q. "What can we do for you? Back to work. Set up if I go  
27 back and work as before."  
28  
29 Is that right?

1 A. Yes.

2 623 Q. What does that mean?

3 A. So Garda Keogh was making reference to the fact if he  
4 had gone back to work in his view nothing would have  
5 changed in the station or in the circumstances. So I 15:04  
6 gathered from that he would have been reluctant to do  
7 so at that time.

8 624 Q. Yes. What's is the next entry there?

9 A. "They worked off estimated time."  
10 15:04

11 I'm not sure what that was a reference to.

12 625 Q. Was that trying to project how long the investigation  
13 might take?

14 A. Possibly, yes.

15 626 Q. Okay. 15:04

16 A. "Met with CMO meeting. Minutes of CMO Dr. Oghuvbu.  
17 Correspondence."  
18

19 627 Q. Then there is a reference to "work related stress" and  
20 a arrow to "loss of allowance" 15:04

21 A. Yes.

22 628 Q. Was that something that he was pursuing or was that  
23 something you confirmed would happen?

24 A. No, it was something that Garda Keogh and Mr. Cullen  
25 had been writing about and were trying to pursue and it 15:04  
26 was raised at that meeting again.

27 629 Q. Yes. The reference then to "case conference pointed  
28 out flu, not work related stress, December '15.  
29 Meeting lied to."

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Is that right?

A. Yes, they obviously came up with commentary during the meeting.

630 Q. On the next page there is a reference to --

15:05

A. The Chief's office in Mullingar.

631 Q. "Superintendent McBrien was good".

A. Yes. And I remember Garda Keogh was very complimentary of Superintendent McBrien interactions with him and support for him.

15:05

632 Q. Then next, "but Ó Cualáin investigation took its course".

A. Took its course.

633 Q. "...subject to five investigations, same unit of garda I complained about for one year six months."

15:05

A. Yes.

634 Q. "No issue with Minister."

A. "No issue with Mark Curran."

635 Q. "Chief's office."

A. Offices, yes. "Pat Murray", I took these things as people were speaking them, so I was writing very quickly. So "Pat Murray took from Noreen McBrien" is what that was saying, so in other words --

15:06

CHAIRMAN: Took over.

636 Q. MR. MCGUINNESS: The second entry at the top there, to go back to that, Superintendent McBrien, was that "Superintendent McBrien was good, let Ó Cualáin investigation take its course" is that right?

15:06

A. It was a combination of two commentaries. One, that

1 Superintendent McBrien was good and that the Ó Cualáin  
2 investigation took its course.

3 637 Q. The Ó Cualáin, yes.

4 A. Yes.

5 638 Q. Just going back down then, "Pat Murray took over from 15:06  
6 Noreen McBrien"?

7 A. Yeah.

8 639 Q. "Check allowance payments of injury on duty. Are they  
9 paid while out sick with injury on duty?"

10 A. Yeah. 15:07

11 640 Q. You have got an A there?

12 A. Which is an action to myself.

13 641 Q. An action to yourself?

14 A. To confirm and make sure that is the case or was the  
15 case. 15:07

16 642 Q. Yes. Then there is a reference to Garda A. Is that  
17 "suspended"?

18 A. "Suspension by Donal Ó Cualáin".

19 643 Q. A reference then to Ms. B?

20 A. Yes. 15:07

21 644 Q. A reference to a former chief superintendent?

22 A. Yes.

23 645 Q. There's a lot of references then to Garda A and Ms. B  
24 on the next page, 3637?

25 A. Yes. 15:07

26 646 Q. But we don't need to go into them. At the top of page  
27 3638 it says:

28

29 "All aspects of my complaint are under"



1 A. "Some sort".

2 647 Q. "Some sort of investigation at present. No loose ends  
3 at present. But I am the one"?

4 A. "The only one pushing it".

5 648 Q. "GSOC cannot finish until Garda discipline has 15:08  
6 concluded."

7

8 Something about the other chief superintendent.

9 A. Yes.

10 649 Q. And there is Ms. B there, Garda A, we don't need to 15:08  
11 look at that. Going on to the last page, 3639. What  
12 have you recorded there at the top?

13 A. "Cronyism pure and simple."

14 650 Q. Cronyism pure and simple. Something about farm trips?

15 A. Yeah. "Ryan [blank] and Glacken. 15:08

16 651 Q. what's next there then?

17 A. "Those who told the truth not --" sorry "those who told  
18 the truth not promoted. Those who lied etcetera got  
19 promoted."

20 652 Q. "Defenders of the house promoted." 15:08

21 A. Yeah.

22 653 Q. There's reference to the reports of the Commissioner to  
23 the Minister?

24 A. Yes.

25 654 Q. And he was pressing to get those reports? 15:08

26 A. Yes.

27 655 Q. And you would deliver that query?

28 A. Yes.

29 656 Q. "Main conclusions" there:

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"Possibility of injury"

A. "On duty."

Sorry:

15:09

"Possibility of inquiry into whole Ó Cualáin investigation. Discipline bullying and harassment pursued to end soon."

657 Q. Did your role cease thereafter in the sense that there were an awful lot of strands you were dealing with --

15:09

A. Yes.

658 Q. -- in terms of getting updates for the Commissioner or others, indeed, the chief administrative officer. Did you have any further function, not by supervising but keeping up-to-date with what was happening with the McMahon inquiry, for instance?

15:09

A. No.

659 Q. Or did you have any further contact with the further report sent in on behalf of the criminal investigation to the director?

15:10

A. No.

660 Q. In terms of the bullying and harassment complaint, were you consulted at any stage by Assistant Commissioner Finn in relation to any aspects of that?

15:10

A. No, not that I can -- no, not that I recall.

661 Q. Yes.

A. But I don't believe so.

662 Q. The reporting of that wasn't back to you?

1 A. No.

2 663 Q. It would go back to the same officer?

3 A. Absolutely. Mr. Barrett and Mr. Mulligan. Well, it  
4 would be back to the appointing officer first and  
5 then -- because once it leaves HR, HR has a management 15:10  
6 role over it, the investigation is carried out outside  
7 of HR.

8 664 Q. Yes. You do say in your statement that after this  
9 period you did your best or continued in your efforts  
10 to try and track correspondence, keep abreast of 15:10  
11 matters pertaining to Garda Keogh's health, wellbeing  
12 and safety?

13 A. Yes.

14 665 Q. Did you issue a formal response to him in relation to  
15 these issues that were raised at the time? 15:11

16 A. No.

17 666 Q. Or that had been previously raised in correspondence?

18 A. No. I was satisfied to an extent that all elements of  
19 Garda Keogh's complaints were now at least under  
20 investigation and were being pursued in whatever forum 15:11  
21 they were in.

22 667 Q. Yes. Garda Keogh, after this period, did he contact  
23 you in relation to any further action to be taken or in  
24 relation to a complaint about any other matter?

25 A. No. Not that I'm aware of, no. 15:11

26 668 Q. I think you say in the conclusion of your statement  
27 that you have no knowledge or belief that Garda Keogh  
28 was targeted or discredited with the knowledge or  
29 acquiescence of members of An Garda Síochána. Is that

1 your opinion from the papers that you have seen or what  
2 do you base that on?

3 A. I can only base it on my interactions with the case and  
4 all elements of it. I don't believe, my own view is I  
5 don't believe people went out to target Garda Keogh. I 15:12  
6 don't believe so. I think -- and Garda Keogh may have  
7 a different view obviously.

8 669 Q. Yes.

9 A. From a HR perspective and my own perspective, all I can  
10 say is we did everything we could to try and support 15:12  
11 Garda Keogh, we did everything we could to try and move  
12 forward any of the aspects of the cases that he was, I  
13 suppose, anxious about. And so we did everything we  
14 could in our power to try and support him. As the  
15 section representing the Garda organisation, that's 15:12  
16 what we tried to do and that's what we did.

17 670 Q. Obviously the Chairman, it's his function to report on  
18 the matter?

19 A. Absolutely.

20 671 Q. But looking at the different elements from a HR point 15:13  
21 of view, the discipline inquiry commenced by an  
22 appointment in June 2015 and then reported in February  
23 2019, and you have heard the evidence presumably  
24 yesterday of Assistant Commissioner Sheehan with his  
25 view of all the imperfections in that? 15:13

26 A. Yes.

27 672 Q. That's not an area -- that area is Internal Affairs, is  
28 it?

29 A. It is.

1 673 Q. Exclusively.

2 A. Yes. It was one time within HR but it's is not any  
3 more.

4 674 Q. Yes.

5 A. And has been for quite a number of years. 15:13

6 675 Q. Yes. Is it a HR issue as to whether an appointing  
7 officer under the regulations, whether that function  
8 should be conferred on the successor to that office  
9 or --

10 A. It's not a HR matter. It's purely a matter for 15:14  
11 Internal Affairs and governance.

12 676 Q. Insofar as the pace of any investigations are  
13 concerned, either the length, if you look at the  
14 criminal investigation in its entirety, is it a HR  
15 matter insofar as members aren't, as it were, 15:14  
16 exclusively dedicated to criminal investigations or  
17 have to take it on board in conjunction with their  
18 normal other workloads?

19 A. I would have empathy with any of the people who get  
20 substantial investigations to do, particularly 15:14  
21 superintendent and chief superintendents who have their  
22 own portfolio to deal and manage their districts and  
23 their divisions and at the same time take on board  
24 significant investigations on top of that. I think  
25 it's an onerous task, it's is a difficult one and it's 15:15  
26 a very difficult one to stay within any timelines, for  
27 example, in the bullying and harassment policy, for  
28 them to maintain. It's a real challenge for our  
29 organisation and has been for some time.

1 677 Q. I am sure there is debate going on about internal  
2 investigation units or Internal Affairs sections?

3 A. Yes, yes.

4 678 Q. I don't intrude into any of those discussions. Thank  
5 you, Chief Superintendent McLoughlin.

15:15

6

7

END OF EXAMINATION

8

9

CHAIRMAN: Thanks very much. Now.

10

MR. KELLY: Ms. Mulligan.

15:15

11

CHAIRMAN: Now, Ms. Mulligan.

12

13

CHIEF SUPERINTENDENT ANTHONY McLOUGHLIN WAS

14

CROSS-EXAMINED BY MS. MULLIGAN, AS FOLLOWS:

15

15:15

16

679 Q. MS. MULLIGAN: Chief superintendent, I have very few  
17 questions for you. I am going to start with saying  
18 that Garda Keogh says that you did nothing but try to  
19 help him at every given moment. So my questions are in  
20 that vein. He is extremely complimentary of the help  
21 that you provided to him in around 2016 in particular.

15:15

22

23

Can I just ask in relation to this issue about the rate  
24 of pay. So I think you gave evidence to the Chairman  
25 about an hour ago to say that the rate of pay for  
26 injury on duty is the base rate and then an additional  
27 amount, which relates I think to a portion of overtime,  
28 something about a Sunday rate of pay, and other, we'll  
29 say, bits and pieces, is that right?

15:16

1 A. Yes. The calculation on the potential loss of earnings  
2 that you would incur by virtue not being able to work,  
3 your night duty and working Saturdays and Sundays.

4 680 Q. In terms of a rate, would you know approximately what  
5 that rate might be? 15:16

6 A. I don't, but I think it would come close to what you  
7 have lost.

8 681 Q. Say that to me again?

9 A. I think it would come close to the earnings you would  
10 have lost by virtue of not being able to work them. So 15:16  
11 it's almost as if you're getting what would you have  
12 got had you worked it.

13 682 Q. And is it a couple hundred euros in the month or is it  
14 €100 in a week? Is it a very small amount of money or  
15 is it a large amount of money? 15:17

16 A. I think -- well I don't know, is the straight answer.  
17 But working a Sunday carries a premium in terms of  
18 night duty. So I don't know.

19 683 Q. CHAIRMAN: There would be a variety of allowances,  
20 isn't that right? 15:17

21 A. Yes, exactly.

22 684 Q. CHAIRMAN: I'm sure we'll be able to find out the exact  
23 amount.

24 A. I can find out for you.

25 MS. MULLIGAN: Yes. 15:17

26 685 Q. CHAIRMAN: I am sure it would be a significant figure.

27 A. It is. It is. Yes.

28 686 Q. CHAIRMAN: It's not nothing, because it would be  
29 various allowances to take account of, maybe unsocial

1 hours or this or that or the other, so it would be a  
2 significant sum?

3 A. On a monthly basis Judge, probably I'd say at least  
4 you're talking before tax probably €300 or €400.

5 CHAIRMAN: Yes.

15:17

6 687 Q. MS. MULLIGAN: Very good. Thank you, chief  
7 superintendent. On that note, you did identify at page  
8 3635 that this issue of the restoration of pay was  
9 brought up by Garda Keogh. There is a document, it's  
10 10070, and I presume you haven't had sight of it, I  
11 just want to confirm that that is the case. It's an  
12 e-mail from Frank McDermott to the Commissioner that  
13 relays Garda Keogh's position to the Commissioner,  
14 where it identifies that Garda Keogh and his solicitor  
15 have sought the restoration of full pay for Garda  
16 Keogh. I just wanted to clarify, did anyone come to  
17 you outside of Garda Keogh asking you to look into this  
18 issue for him?

15:18

15:18

19 A. No.

20 688 Q. No.

15:18

21 A. No.

22 689 Q. So Garda Keogh comes to you, I think it's in and around  
23 the same time?

24 A. Yeah.

25 690 Q. Based on the note on 3635, identifying that he is  
26 raising this issue of, I am in fact still losing a  
27 relatively substantial sum?

15:18

28 A. Yes.

29 691 Q. And then this issue goes to the Commissioner in and



1 around -- so again the 20th July. To the best of your  
2 knowledge and belief nobody else came to you to ask you  
3 to look into this issue again, is that right?

4 A. Yes. The source of my information about it being a  
5 problem or an issue for Garda Cullen came from Garda 15:19  
6 Cullen's or Garda Cullen's solicitor [sic] particularly  
7 in advance of and at the time of the meeting in  
8 December.

9 MS. MULLIGAN: No further questions. Thank you very  
10 much, chief superintendent. 15:19

11  
12 END OF EXAMINATION

13  
14 CHAIRMAN: Yes, Mr. McGarry, do you want go first  
15 Mr. McGarry and we will finish up with Mr. Murphy, if 15:19  
16 you are happy with that.

17 MR. MCGARRY: I only have one very minor matter.

18 CHAIRMAN: Very good. You appear for Commissioner  
19 Fanning, is that right?

20 MR. MCGARRY: Yes, Chairman. 15:19

21  
22 CHIEF SUPERINTENDENT ANTHONY McLOUGHLIN WAS  
23 CROSS-EXAMINED BY MR. MCGARRY, AS FOLLOWS:

24  
25 692 Q. MR. MCGARRY: Page 3551, I think we had it earlier on. 15:19  
26 Do you see there just in relation to the actions  
27 assigned, the very first one says assistant  
28 commissioner assigned Mr. Barrett to appoint an  
29 assistant commissioner, I think I'm correct that is not

1 technically correct?

2 A. Yes.

3 693 Q. Mr. Barrett nominates, the chain of command requires  
4 that the appointment is made by somebody else, isn't  
5 that right?

15:20

6 A. That's correct.

7 694 Q. I think that's is what happened, 2831 I think, I don't  
8 need to bring it up. In fact, Assistant Commissioner  
9 Fanning made the appointment although Mr. Barrett may  
10 have had the capacity to nominate a person, is that  
11 right?

15:20

12 A. Yeah. Sometimes you would nominate to the appointing  
13 officer.

14 695 Q. Yes.

15 A. But the authority to do so rests with the officer  
16 concerned.

15:20

17 696 Q. Thank you.

18

19 END OF EXAMINATION

20

15:20

21 CHAIRMAN: Thank you. Yes. Mr. McGuinness.

22

23 CHIEF SUPERINTENDENT ANTHONY McLoughlin was examined by  
24 MR. DONAL McGuinness, as follows:

25

15:20

26 697 Q. MR. DONAL McGuinness: Chief superintendent, can I ask  
27 you just briefly to refer back to document 3259, Volume  
28 11, please. This is your note of your meeting with  
29 Garda Keogh?

1 A. 3259?  
2 CHAIRMAN: 3259, is that right, Mr. McGuinness?  
3 698 Q. MR. DONAL MCGUINNESS: That's correct, in volume 11.  
4 A. Yes.  
5 699 Q. And the fourth sentence down there: 15:21  
6  
7 "He has become dependent on alcohol because of his work  
8 related stress."  
9  
10 You mentioned that in evidence already today? 15:21  
11 A. Yes.  
12 700 Q. At that meeting did Garda Keogh ever tell you that he  
13 had in the course of the Ó Cualáin investigation in a  
14 statement traced back his addiction downfall, if I can  
15 use that phrase, to 2009, when he started drinking 15:21  
16 during the daytime?  
17 A. No.  
18 701 Q. We don't need to refer to this document, but just for  
19 the benefit of the record, the reference in the  
20 Ó Cualáin inquiry to that issue is page 5978. At this 15:21  
21 meeting of the 3rd June, did Garda Keogh stipulate why  
22 he wouldn't return to work at this time?  
23 A. Well, there was two reasons. One, he was still out of  
24 work, as certified by his GP. And secondly, I think he  
25 was anxious that going back to the same environment was 15:22  
26 not going to be conducive to him at the time.  
27 702 Q. Did he indicate why that was the case?  
28 A. Other than that the same structure was still in place,  
29 as he saw it. And I did offer I think then and on

1 other occasions that if it was amenable to him we could  
2 explore other locations on his return, once he was  
3 certified fit to do so by the Chief Medical Officer.

4 703 Q. Then the third issue in relation to this meeting: was  
5 the issue of injury on duty discussed with him at that 15:22  
6 time?

7 A. No. It was just the matter of pay per se, without  
8 exploring what that might be or look like.

9 704 Q. Can I just refer down to the second last -- if  
10 Mr. Kavanagh can scroll down please to the second last 15:23  
11 X on that page or asterisk on that page. Can you just  
12 read out that paragraph?

13 A. "I undertook to look into it."

14 705 Q. No, pay not an issue?

15 A. "Pay not an issue for him but thought there was 15:23  
16 procedure for work related stress being categorised as  
17 an injury on duty."

18 706 Q. So was the injury on duty issue not canvassed to some  
19 degree during the course of that meeting?

20 A. Sorry, you're correct. He did. It was a perception -- 15:23  
21 you're right, sorry, I beg your pardon. It was Garda  
22 Keogh's perception that once work related stress was  
23 categorised or diagnosed by medical or other people,  
24 that that automatically equated to an injury on duty.  
25 And it didn't. 15:23

26 707 Q. I assume you would have discussed that issue with him  
27 and corrected him in that regard?

28 A. Very briefly at that meeting. The concern was to try  
29 and restore him to the payroll and then perhaps look at

1 other matters afterwards.

2 708 Q. Can I ask you to look at document 3302, please? This  
3 is a letter that has been opened to you today already?

4 A. Yeah.

5 709 Q. From Garda Keogh to the Tánaiste? 15:24

6 A. Yeah.

7 710 Q. If you could go to page 3303?

8 A. Yes.

9 711 Q. The last paragraph, the first sentence:  
10 15:24

11 "Chief Superintendent Tony McLoughlin undertook to  
12 investigate the harassment I received from elements  
13 within Garda management."

14

15 That is not correct, is it? 15:25

16 A. No. My understanding of the meeting that I had with  
17 Garda Keogh was that I took away from that meeting two  
18 things to do, one was pay and the other one was the  
19 categorisation on the system in relation to pay, but  
20 that he clearly discussed with me the fact that all of 15:25  
21 those elements, as far as he was concerned, were now  
22 with GSOC and going to be investigated by them.

23 712 Q. You, of course, were very au fait with the regulations  
24 concerning bullying and harassment?

25 A. Yes. 15:25

26 713 Q. It would be very unlikely that would you have misled  
27 him in that regard, even inadvertently?

28 A. If it was, it would be inadvertently, but I wouldn't do  
29 it because I would have been very conscious of it. And

1 I would be conscious also of the protected disclosures  
2 legislation, whereby you could argue that GSOC could  
3 have had a role to play in investigating items such as  
4 those.

5 714 Q. Now, following this meeting -- sorry, following receipt 15:26  
6 of this letter, you double checked then to make sure  
7 that there wasn't a complaint of bullying and  
8 harassment, isn't that right?

9 A. Yeah, I became concerned when I saw that line that  
10 maybe Garda Keogh had a different interpretation than 15:26  
11 the one I had. And so therefore I started about making  
12 sure and trying to find out what was the state of play  
13 from Garda Keogh's perspective relative to bullying and  
14 harassment and checking to see was there any one made  
15 at any stage in relation to it. 15:26

16 715 Q. And then if you look at document 3315, that's a letter  
17 from Kathleen Hasset to you in response to that  
18 enquiry?

19 A. Yes.

20 716 Q. Confirming that there was no record of a bullying and 15:26  
21 harassment complaint being lodged. If you could just  
22 go now to 3414, please, in volume 12.

23 A. Yeah.

24 717 Q. Again, this is a record of a meeting you had with Garda  
25 Keogh? 15:27

26 A. It was a contact, I think, I had made with Garda Keogh,  
27 probably by phone.

28 718 Q. Sorry, I beg your pardon.

29 A. Yeah.

1 719 Q. Phone contact.  
2 A. Yeah.  
3 720 Q. And at the bottom of that document, under the word  
4 "summary" --  
5 A. Yes. 15:27  
6 721 Q. If you just read that out, please?  
7 A. "GSOC phoned yesterday and said bullying and harassment  
8 is a matter for AGS."  
9  
10 An Garda Síochána 15:27  
11 722 Q. So at that stage Garda Keogh is informing you that he  
12 had been to GSOC and that GSOC weren't going to  
13 progress a bullying and harassment issue?  
14 A. That's right.  
15 723 Q. If we could move on now to the issue of pay. I am 15:27  
16 sorry, no, there's a couple more issues on this. Yes,  
17 if we could go to 3468, please?  
18 A. Yes.  
19 724 Q. This document of 20th October 2016 is a letter to you  
20 from Garda Keogh. It has already been opened today. 15:28  
21 But this is the first document -- this is the first  
22 time Garda Keogh actually indicates that he is happy to  
23 go ahead with the bullying and harassment complaint,  
24 isn't that correct?  
25 A. That's correct, yeah. 15:28  
26 725 Q. So in terms of your involvement with Garda Keogh,  
27 you've gone through the months of July, July, August,  
28 September and almost all of October before he decides  
29 to green light the issue of bullying and harassment?

1 A. Yes. 15:29

2 726 Q. If during that time he had indicated that he wished to  
3 go ahead with his complaint in relation to bullying and  
4 harassment, I assume that would you have taken  
5 affirmative action at that time? 15:29

6 A. If I had any indication at all from Garda Keogh I would  
7 have commenced or started to commence the process in  
8 accordance with the policy, yes.

9 727 Q. Moving on now to the issue of pay reinstatement, you  
10 agree with me that the regulations do not cater for the 15:29  
11 reinstatement of pay in the circumstances that arose in  
12 this particular case?

13 A. I'm aware of it now, I wouldn't necessarily have been  
14 aware of it -- oh sorry, I would have been aware of it  
15 then as well, that the sick pay regulations wouldn't 15:29  
16 have covered it yes, sorry, yes.

17 728 Q. And, in fact, the whole issue, as you have already  
18 covered in evidence, was brought about by your  
19 intervention specifically?

20 A. Yes. 15:29

21 729 Q. And that this was a fix that you devised in relation to  
22 the protected disclosures of Garda Keogh?

23 A. Yes.

24 730 Q. And another guard, isn't that correct?

25 A. Yes. Well, there's two previous members. I'm not too 15:29  
26 sure -- I don't think I was involved in those ones, but  
27 I was definitely involved in this one, yes.

28 731 Q. And as a result of that his pay was reinstated in  
29 October 2016?



1 A. Yes.

2 732 Q. If we could just have a look at document 3541, please?

3 CHAIRMAN: And was he paid backpay?

4 A. He was, yes.

5 733 Q. CHAIRMAN: But at the level that Ms. Mulligan 15:30

6 identified, less any allowances that you would get for

7 actually showing up and standing on the beat or

8 whatever it was?

9 A. Exactly. Yes, exactly.

10 CHAIRMAN: Okay. Now, sorry, Mr. McGuinness. 3541. 15:30

11 734 Q. MR. DONAL MCGUINNESS: Thank you Chairman. 3541, which

12 is the letter that Mr. McGuinness has happened already.

13 It's the e-mail from Mr. Cullen's office to the

14 Minister for Justice, the Commissioner, Josephine

15 Feehily, and Caoimhghín Ó Caoláin TD. 15:31

16 CHAIRMAN: Just give me the date of that, I am sure I

17 have it but --

18 MR. DONAL MCGUINNESS: It is 17th August 2017.

19 CHAIRMAN: Thank you.

20 735 Q. MR. DONAL MCGUINNESS: If I could just ask you to look 15:31

21 at the bottom paragraph in that e-mail at page 3542?

22 A. Yes.

23 736 Q. 3542, Mr. Kavanagh, please. Yes.

24

25 "Garda Keogh is consigned to suffering ongoing 15:31

26 detriment as a consequence of this non-processing of

27 his formal bullying complaints of the official

28 misrecording of the medical reasons for his absence

29 through his reduced pay."

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That's incorrect?

A. Yes.

737 Q. And if we go up another two paragraphs, we see:

"We secondly again advise that An Garda Síochána has persistently misrecorded on its internal memoranda that Garda Keogh has been absent from work due to flu and mental health."

15:32

Then he goes on to say:

"It is the case that Garda Keogh has on the contrary been absent from work since December '15 because of work related stress caused by harassment and bullying visited on him by the management of An Garda Síochána and by Superintendent Murray."

15:32

The mental health classification, if you like, was brought about as a result of your intervention, isn't that correct?

15:32

A. Yes.

738 Q. And do you agree with me that that in no way impacted negatively on the pay arrangements of Garda Keogh?

A. No, because we already intervened and we already put him back on the payroll.

15:32

15:32

739 Q. Just on this topic, if we could go to page 3563. This is the letter that Garda Keogh wrote to Mr. Cullen on 17th September 2017, and that Mr. Cullen submitted in

1 turn to the Minister, to the Garda Commissioner and to  
2 Josephine Feehily on 21st September 2017. That was  
3 done at page 3558. But if we can just stay for now at  
4 page 3563, please, and that first paragraph there.

5  
6 "Sick with the flu for over a year. It was then  
7 changed to sick other and now it's mental health. I  
8 should be marked out in accordance with work related  
9 stress and on a pay rate of injury on duty like every  
10 other garda who hasn't made a protected disclosure.  
11 Can this be sorted out?"

12  
13 To the best of your knowledge that statement in  
14 relation to every other guard --

15 A. Is incorrect.

16 740 Q. -- is incorrect?

17 A. They would have been on the same arrangement as we put  
18 Garda Keogh on.

19 741 Q. Thank you. Now, if we could go onto the issue of  
20 delay. We have already heard your evidence about the  
21 initiation of the bullying and harassment in October  
22 2017 and the actual appointment and nomination of  
23 Assistant Commissioner Finn in November 2017. That is  
24 the time period we're talking about here. If I could  
25 ask you briefly to go to document 3476, please.

26 A. Sorry, 34 --

27 742 Q. 3476. That is in Volume 12.

28 A. Yeah.

29 743 Q. Again, this is a letter from Mr. Cullen to the

1 Minister, to the Commissioner, to Mr. Barrett. It is  
2 dated 23rd November 2016. Now, bearing in mind the  
3 time that you dealt with Garda Keogh in relation to the  
4 initiation of the bullying and harassment complaint in  
5 the months that we've discussed, June, July, August, 15:35  
6 September, October, this letter is fairly hot off the  
7 bat in November 2017, isn't that correct?  
8 A. That's correct.  
9 744 Q. Once he has actually come forward with the... And he  
10 complains, at page 3477, "ongoing live health safety 15:36  
11 management issues and/or delegate to GSOC". I should  
12 have read the first line of that?  
13  
14 "We again submit that the Minister and the Commissioner  
15 cannot turn a blind eye to ongoing live health and 15:36  
16 safety management issues and/or delegate to GSOC. In  
17 this latter regard, we enclose copy letter from John  
18 Barrett dated the 11th October."  
19  
20 Am I correct in saying that the enthusiasm for GSOC's 15:36  
21 involvement in this came from Garda Keogh?  
22 A. Yes.  
23 745 Q. Not from --  
24 A. No.  
25 746 Q. -- the Guards? 15:36  
26 A. No. No.  
27 747 Q. And at that stage the bullying and harassment complaint  
28 was initiated --  
29 A. It was.

1 748 Q. -- only in October '16?  
2 A. Yeah.  
3 749 Q. A month before the letter was sent?  
4 A. Yeah.  
5 750 Q. If I can ask you now to look at document 3474 in the 15:36  
6 same volume. So we're now dealing with the passage of  
7 time, if you like, during the course of the initiation  
8 of the bullying and harassment complaint?  
9 A. Yes.  
10 751 Q. And matters that transpired during the course of that 15:37  
11 period immediately after. November 2016, there is this  
12 issue about Chief Superintendent Galton, that's a note  
13 of your meeting with Garda Keogh or contact with Garda  
14 Keogh?  
15 A. Yes. 15:37  
16 752 Q. And Garda Keogh was suggesting that there is a conflict  
17 with Chief Superintendent Galton taking any statement,  
18 isn't that correct?  
19 A. That's correct.  
20 753 Q. And then if we go to 3508? 15:37  
21 A. 350 --  
22 754 Q. -- 08?  
23 A. Yes.  
24 755 Q. Here we have Assistant Commissioner Fanning writing to  
25 Chief Superintendent Scanlan and advising Chief 15:38  
26 Superintendent Scanlan that Garda Keogh wishes to make  
27 a complaint under the bullying and harassment scheme.  
28 So this essentially the kick off in relation to the  
29 investigation of that complaint, isn't that correct?

1 A. Yes.

2 756 Q. But the assistant commissioner asks him to determine if  
3 Garda Keogh's complaint comes within the policy and  
4 that the correct rank and grade be appointed as  
5 investigator. Can you please make the necessary 15:38  
6 arrangements to ensure that a copy of the policy is  
7 provided Garda Keogh and he should be advised under the  
8 procedures and processes involved that he may seek the  
9 advice of the equality officer in Garda Headquarters.  
10  
11 So he is essentially sending Chief Superintendent  
12 Scanlan out to see exactly who should be appointed to  
13 do the investigation at this point in time. He's not  
14 actually having Chief Superintendent Scanlan  
15 investigate the bullying? 15:38

16 A. Yeah, I suspect what the AC is trying to allude here  
17 is, okay, before he makes the appointment he needs to  
18 know what's the appropriate rank, and that would depend  
19 on who the complaint is against. I'm only guessing,  
20 that's what he wants to be satisfied himself with. 15:39

21 757 Q. Yes. And that's an appropriate step to take?

22 A. Yes.

23 758 Q. Then if we go to -- it's March 2017 by the time that  
24 Garda Keogh had actually engaged fully with Chief  
25 Superintendent Scanlan. And there's a suggestion also 15:39  
26 by Garda Keogh that the chief superintendent may be  
27 conflicted --

28 A. Yes.

29 759 Q. -- in his involvement in the investigation at that

1 stage?

2 A. Yes.

3 760 Q. That obviously involves a certain amount of delay also.

4 A. Yes.

5 761 Q. Can I ask you to look at document 10, 10478, please. 15:40

6 That's in volume 36 or 37. You might have seen this

7 document before?

8 A. No.

9 762 Q. This is a chronology that Inspector McCarthy has 15:40

10 prepared, James McCarthy, for the assistant

11 commissioner and it's dated 3rd April 2018. It deals

12 with suggestions that there has been perhaps some delay

13 in the ongoing bullying and harassment investigation.

14 This document sets out the steps that were taken along

15 the way in relation to that process. We have already 15:41

16 gone through some of them in your evidence, in fact

17 most of them in your evidence already. Were you aware

18 that Inspector McCarthy had visited Garda Keogh

19 approximately five times?

20 A. No. I was aware from one of the meetings where he was 15:41

21 tasked with going to meet him as a result of that

22 meeting, which is either the 3rd or sometime in

23 October, I have just given evidence in relation to

24 that.

25 763 Q. The October 17th meeting? 15:41

26 A. Yeah. I wasn't aware that he had actually met him on

27 five occasions, no.

28 764 Q. So in that case you wouldn't be aware of the fruits of

29 those discussions or meetings?

1 A. No, no, no.

2 765 Q. Just for the record, Garda Keogh's evidence as to  
3 confirmation that there were five such meetings is  
4 contained at Day 111, page 158. Perhaps we might have  
5 a look at page 159 of that transcript, please, Day 111. 15:42  
6 Actually, Mr. Kavanagh, if you can go to page 158,  
7 please, and if you scroll down to line 16. There's the  
8 piece of evidence in relation to the five times he  
9 visits. Okay. And then he was asked a question at  
10 line 27: 15:43

11  
12 "Was he delivering any other messages apart from what  
13 was in the letters?"

14  
15 And the response was: 15:43

16  
17 "Oh no, no. No, no. Because, Judge, I was trying to  
18 find out from Inspector McCarthy what they knew about  
19 what was going on in Athlone. I was actually trying to  
20 find out and it appeared that both Inspector McCarthy  
21 and Assistant Commissioner Fanning were kept completely  
22 in the dark in relation to everything that went on in  
23 Athlone. Because I was obviously trying to find out  
24 what was going on. I mentioned a report that -- I may  
25 have been taken up wrong here."

26  
27 If you go on further down.

28  
29 "But they seem to not know a whole lot about what was



1 going on, which was incredible in that Assistant  
2 Commissioner Fanning is the assistant commissioner of  
3 the Eastern Region, where all these problems were, and  
4 he seemed to be kept in the dark about everything."

5  
6 were you ever told about that?

7 A. No.

8 766 Q. By Garda Keogh?

9 A. No. No, absolutely not.

10 767 Q. In any sense was assistant commissioner ever kept in 15:44  
11 the dark in relation to anything about Garda Keogh?

12 A. Well, I wouldn't know that.

13 768 Q. Insofar as you are aware?

14 A. No. Well, he's the commander in charge of that  
15 particular area, so... 15:44

16 769 Q. Yes. And then further down, at line 22, Garda Keogh  
17 says:

18  
19 "How do you know he was kept in the dark?

20 A. It was Inspector McCarthy, I was trying to find 15:44  
21 out."

22  
23 So if we might just go briefly back to that 10478  
24 chronology,

25 A. Yes. 15:44

26 770 Q. We can see that page 10479 sets out the chronology all  
27 the way through 2017. 10480 goes into some further  
28 detail also. Now, the list contains things that  
29 Inspector McCarthy did, it also contains things that

1           you did and matters that were going on at the relevant  
2           time. But I just wish to reference that for you.

3           A.    Okay.

4           CHAIRMAN:    what's vis the question about this,  
5           Mr. McGuinness, is there a question here?

15:45

6           MR. DONAL MCGUINNESS:    I suppose I just wanted to put  
7           in front of --

8           CHAIRMAN:    A lot of things happened and a lot of things  
9           were --

10          MR. DONAL MCGUINNESS:    Yes. The question in a sense  
11          has already been answered, was this witness aware that  
12          there was a parallel set of conversations and meetings  
13          ongoing between Inspector McCarthy and Garda Keogh.

15:45

14          CHAIRMAN:    I mean, I may be wrong but I think this is  
15          the very essence of Garda Keogh's complaint. That  
16          between one thing and the inquiry. He has other  
17          complaints about the Finn investigation but all this  
18          actually happened and it took them all that time.  
19          That's what I understand is his complaint.

15:46

20          MR. DONAL MCGUINNESS:    Yes, Chairman, I accept that  
21          that might be his complaint.

15:46

22          CHAIRMAN:    I mean, the fact that there were a lot of  
23          things going on and that A was writing to B and C was  
24          writing to A and they were all wondering about what the  
25          right thing to do was and would it be a Byrne/McGinn or  
26          some other type, whatever, bullying and harassment.  
27          There it is anyway. As you say, it's recorded there,  
28          we can have an argument about it -- sorry, there can be  
29          an argument about it in due course as to the

15:46

1 significance of that. That's really the case, isn't  
2 it? I mean, Garda Keogh doesn't dispute, as I  
3 understand it, that these things happened.

4 MR. DONAL McGUI NNESS: Yes. Garda Keogh in his  
5 evidence, on Day 116, accepted that he had no complaint 15:47  
6 in relation to all the things that happened with  
7 Inspector McCarthy and Assistant Commissioner Fanning.

8 CHAIRMAN: Yes.

9 MR. DONAL McGUI NNESS: In fact, it's contained at page  
10 160. 15:47

11 CHAIRMAN: Of Day 116, is it? Thanks very much.

12 MR. DONAL McGUI NNESS: Day 116.

13 CHAIRMAN: Thank you very much. There you go.

14 MR. DONAL McGUI NNESS: At line 3.

15 CHAIRMAN: Okay. 15:47

16 MR. DONAL McGUI NNESS:

17

18 "Q. I think you will agree with me that your evidence  
19 so far is that you have no criticism of Assistant  
20 Commissioner Fanning's stewardship of managing the file 15:48  
21 between that date and November 2017, isn't that right?

22 A. Now, can you just repeat that please?

23 Q. In your evidence in the earlier issues dealing with  
24 the Finn investigation in particular, I think you  
25 agreed that you were weren't criticising Assistant 15:48  
26 Commissioner Fanning for his stewardship of his part of  
27 the process between March 2017 and November 2017, is  
28 that right?

29 A. Yeah. "

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CHAIRMAN: Thank you very much.

771 Q. MR. DONAL MCGUINNESS: So in relation to -- I suppose the next question that is linked to this is, if we go to document 3541. And we are back to the letter that I opened previously, the letter from Mr. Cullen on 17th August 2017. And if we go to page 3543 and the first paragraph: 15:48

"It appears on the one hand that for over 18 months any investigation into this grave and systematic bullying has been officially camouflaged, secreted and placed on hold while on the other hand the promotion of Superintendent Murray to chief superintendent has been covertly preferred, protected from the inside and furtively advanced." 15:49

Is completely incorrect?

A. Most definitely from our perspective, from my perspective. 15:49

772 Q. Just before we leave that matter, the letter at 3543 is cc'd to Assistant Commissioner Fintan fanning?

A. Yeah.

773 Q. John Barrett?

A. Yes. 15:50

774 Q. Clare Daly TD and Michael Wallace TD. Do any of the recipients surprise you in relation to the copying of that letter?

A. Other than John Barrett, the others would, to be

1 honest, and it would have been the first time that I  
2 would have seen AC Fanning cc'd on documentation coming  
3 through to me from Mr. Cullen or otherwise.

4 775 Q. Sorry, Chairman one moment.  
5 CHAIRMAN: Okay. Take your time. 15:50

6 776 Q. MR. DONAL McGUI NNESS: If we can go to 10245, please.  
7 This is quite hard to read. You have already referred  
8 in your evidence to the case conference of the 23rd  
9 October, you've already referred to that.

10 A. Yes. 15:52

11 777 Q. This is an a newspaper report of 13th November 2017, in  
12 the Irish Independent by Niall O'Connor. And it refers  
13 to, and the heading "row erupts over whistleblower's  
14 bul l y i n g cl ai ms."  
15 15:52

16 If I could just read out the part that I want to refer  
17 to.

18 CHAIRMAN: Tell us where it is.

19 MR. DONAL McGUI NNESS: It's the first paragraph,  
20 Chairman. 15:52

21 CHAIRMAN: Oh yes.

22 MR. DONAL McGUI NNESS: "Seni or Garda bosses have  
23 clashed over the handling of allegations of bul l y i n g  
24 and harassment by a Garda whi stleblower who took a  
25 leave of absence after presenting cl ai ms of maj or 15:52  
26 cri mi nal wrongdoi ng i nvol vi ng offi cers i n the mi dl ands.  
27

28 The I r i sh I n d e p e n d e n t has l e a r n e d the bul l y i n g  
29 al l e g a t i o n made by Garda Nick Keogh had been the

1 subject of a series of tense meetings in Garda  
2 Headquarters in recent days, with one member of Garda  
3 management strongly criticising the force's treatment  
4 of the decorated officer.

5  
6 Assistant Commissioner Fanning has hit out at the delay  
7 in dealing with the bullying allegations by Garda  
8 Keogh, who claims his life has been destroyed after  
9 coming forward with his claims of criminal wrongdoing. "

10  
11 Now, can I just stop at that, as a matter, was that an  
12 issue that occurred during the course of the meeting on  
13 the 23rd?

14 A. There was obviously healthy discourse and discussion  
15 about what the way forward was. Obviously there was a  
16 difference of opinion between AC Fanning and others at  
17 the meeting of the 23rd.

18 778 Q. Yes. And if I recall your evidence correctly, the  
19 issue or one of the major issues was this idea that  
20 there had to be the wider inquiry?

21 A. Yes, most definitely.

22 779 Q. Of the type of Byrne/McGinn?

23 A. Most definitely.

24 780 Q. Yes. Were you surprised to see the detail of this  
25 appearing in the newspaper at the time?

26 A. I didn't see it, to be honest with you. I am seeing it  
27 now for the first time. And I am surprised that a  
28 meeting -- what I would see as a confidential meeting  
29 in headquarters about what the best way forward was in

1 relation to any member of staff would appear in a  
2 newspaper in that vein. I would be -- I would be very,  
3 very disappointed.

4 781 Q. I see. And then it goes on:

5  
6 "It is understood Mr. Fanning will secure agreement  
7 from Acting Garda Commissioner Donal Ó Cualáin to  
8 appoint an assistant commissioner to investigate how  
9 Garda Keogh was being treated.

15:54

10  
11 Assistant Commissioner Fanning has held a number of  
12 meetings in recent days about the case with John  
13 Barrett, the force's head of Human Resources, and Joe  
14 Nugent, the force's chief administrative officer.

15:54

15  
16 It is understood that Mr. Nugent proposed that Garda  
17 Keogh's complaints be the subject of..."

15:54

18  
19 I am just missing a line there

20  
21 " -- a scoping exercise.

15:54

22  
23 Garda Keogh is understood to have strongly criticised  
24 this proposal as being completely inadequate in a  
25 letter sent to Commissioner Ó Cualáin through solicitor  
26 John Gerard Cullen this week."

15:55

27  
28 MR. KELLY: Chairman, I was just wondering what the  
29 relevance of all this is, an article from the Irish

1 Independent.

2 CHAIRMAN: well, Mr. McGuinness, what is the relevance  
3 of all this?

4 MR. DONAL MCGUINNESS: I suppose this is a document  
5 that was in the public domain at the relevant time. It 15:55  
6 reports what transpired at the meeting.

7 CHAIRMAN: I mean there's a bit of me -- I'm sorry, the  
8 devious part of my brain can work out an implication or  
9 an inference that I am expected to draw from it but I  
10 can reassure anybody that I don't propose to draw any 15:55  
11 such inference unless I am satisfied that it's  
12 relevant. So basically, maybe that's of help. I mean,  
13 I can see, I can see -- sorry, what am I supposed to do  
14 read between -- I don't even have to read between the  
15 lines. I just have to read the lines to see what I am 15:56  
16 supposed to infer, deduce. There we are.

17 MR. DONAL MCGUINNESS: Very good, Chairman.

18 CHAIRMAN: Okay.

19 782 Q. MR. DONAL MCGUINNESS: In relation to the issue that  
20 was discussed at the 23rd October meeting -- 15:56  
21 CHAIRMAN: I think we can forget this, can we forget  
22 the newspaper report.

23 MR. DONAL MCGUINNESS: we can.

24 CHAIRMAN: Thanks very much, that's grand.

25 783 Q. MR. DONAL MCGUINNESS: In relation to the issue that we 15:56  
26 discussed or you discussed earlier about the  
27 appointment of Assistant Commissioner McPartlin to do a  
28 scoping exercise?

29 A. Yes.



1 784 Q. That was never actually --  
2 A. Not to my knowledge, no.  
3 785 Q. I understand she will say in her statement that she was  
4 never even approached about that matter?  
5 A. I think she will. 15:56  
6 786 Q. Now, just one final matter, and that is if we refer  
7 back to document 3635, please?  
8 CHAIRMAN: 3635, is that right?  
9 MR. DONAL MCGUINNESS: 3635.  
10 CHAIRMAN: Thank you. Just to get a note of the right 15:57  
11 number.  
12 787 Q. MR. DONAL MCGUINNESS: This is the last meeting that we  
13 referred to with Garda Keogh. At page 3636, the fourth  
14 answer down, you have already referred to this entry  
15 with Mr. McGuinness: 15:57  
16  
17 "No issue with Mark Curran. It was chief's offices."  
18  
19 That's Chief Superintendent Curran, he had no issue  
20 with him at that point in time, is that correct? 15:57  
21 A. That's what that suggests, yeah.  
22 788 Q. And that was dated 15th December 2017?  
23 A. Yes.  
24 789 Q. Then if we just scroll over, this is an entry that  
25 wasn't referred to earlier, and again, we're at the 15:57  
26 fifth asterisk down. That's the entry, the last entry,  
27 at the bottom of the screen:  
28  
29 "Mulcahy, Coppinger. . ."

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A. " Top investigators".

790 Q. Top investigators. So what was that entry being made in connection with?

A. It was a discussion that was held and Garda Keogh was alluding to the fact that he felt those two members were very competent investigators and he seemed to be happy with what they had done.

15:58

MR. DONAL McGUI NNESS: Thank you, assistant commissioner.

15:58

CHAIRMAN: Very good.

MR. DONAL McGUI NNESS: Or chief superintendent, sorry.

END OF EXAMINATION

15:58

MS. MULLIGAN: Chairman, my apologies, before Mr. McGuinness takes up his re-examination.

CHAIRMAN: I'm sorry, say that again.

MS. MULLIGAN: Before Mr. McGuinness takes up his re-examination, there's just one issue that arises, if I might be in a position to clarify it. It's just at page 3304.

15:58

CHAIRMAN: Yes. well, raise it anyway and then we will see. 3304. Yes.

MS. MULLIGAN: My client provides me with an instruction that Chief Superintendent McLoughlin is correct in his understanding of the bullying and harassment, that my client undertook to think about it and not that the chief superintendent was actually

15:59

1 asked to move on it in the first instance, and that  
2 Mr. McLoughlin's position is correct, not incorrect,  
3 as is later borne out in the correspondence. That's  
4 his position now.

5 CHAIRMAN: Thank you very much for clarifying that. 15:59  
6 Thank you. Are we all clear on what Ms. Mulligan is  
7 saying there?

8 MR. DONAL MCGUINNESS: Yes, Chairman.

9 CHAIRMAN: Thank you very much.

10 MS. MULLIGAN: That is the only issue. 15:59

11 CHAIRMAN: Very good, thanks very much. It has been a  
12 long day, chief, superintendent. So you're free to go.  
13 Thanks very much. Will we need Chief Superintendent  
14 McLoughlin on some other occasion.

15 MR. MCGUINNESS: I don't think so, Chairman. 15:59

16 CHAIRMAN: I don't think, no, I think you are in the  
17 clear.

18

19 THE WITNESS THEN WITHDREW

20

16:00

21 CHAIRMAN: Okay, thanks very much.

22

23 THE HEARING THEN ADJOURNED UNTIL WEDNESDAY, 17TH

24

FEBRUARY 2020 AT 10:30AM

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