

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

HELD IN DUBLIN CASTLE
ON WEDNESDAY, 19TH FEBRUARY 2020 - DAY 142

142

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

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1 THE HEARING RESUMED, AS FOLLOWS, ON WEDNESDAY, 19TH
2 FEBRUARY 2020:

3
4 CHAIRMAN: Now, good morning.

5 MS. McGRATH: Good morning, Chairman. The next witness 10:33
6 is Assistant Commissioner Michael Finn, please.

7 CHAIRMAN: Thanks very much. Yes.

8
9 ASSISTANT COMMISSIONER MICHAEL FINN, HAVING BEEN SWORN,
10 WAS DIRECTLY-EXAMINED BY MS. McGRATH, AS FOLLOWS: 10:33

11
12 THE WITNESS: Michael Finn.

13 CHAIRMAN: Good morning, commissioner. Thank you very
14 much.

15 1 Q. MS. McGRATH: Good morning, commissioner. Chairman, 10:34
16 the commissioner's statement is at page 4105 of the
17 book. I think, commissioner, if you had a hard copy of
18 the statement because we will actually go through it
19 quite a bit this morning, so that might be useful, if
20 you prefer that? 10:34

21 CHAIRMAN: Yes, I think that is probably convenient,
22 just to have it with you in any case, even if are you
23 comfortable looking at the screen.

24 2 Q. MS. McGRATH: So it's 4105.

25 A. Yes, Chairman. I have it in front of me. 10:34

26 3 Q. By way of background for the Chairman, I think you have
27 been in the rank of assistant commissioner since 22nd
28 November 2016, is that right?

29 A. That's correct, Chairman.

1 4 Q. I think prior to that you were in various roles in the
2 south of the country, in the Cork division up until
3 that point, is that right?

4 A. Predominantly, Chair. I started off my career in Cork
5 city as a young garda, driving patrol cars, motorbikes. 10:35
6 I got promoted at a relatively young age, we'll say,
7 became a sergeant after seven years, went to the border
8 for a while and then when I came back, I ended up, the
9 only job available to me was an administrative role, so
10 I ended up working as a superintendent's clerk, as they 10:35
11 called it back in those times, working with the
12 superintendent. I was there for two or three years.
13 Then a more operational roles came up in terms of the
14 sergeant in charge of the station inside in that the
15 city centre station. I'm sure you're familiar with the 10:35
16 term sergeant in charge.

17 5 Q. CHAIRMAN: I understand. We have heard a good deal
18 about sergeant in charge here I think.

19 A. I was in that posting for a number of years. After
20 another seven years then I was promoted to inspector 10:36
21 and at that time there was some restructuring going on
22 in the organisation, Chair, and the regional assistant
23 commissioners were set up. So I ended up as a young
24 inspector going into that post, a new post, working
25 with the assistant commissioner for the Southern 10:36
26 Region. I was there for about six years. Went back
27 out for a short while to some operational posting as an
28 inspector. Got promoted to superintendent. Initially
29 went down to a small district in west Cork, Bantry, a

1 small number of staff. Then, after about a couple of
2 months, I ended up coming into Bandon, which would have
3 been divisional headquarters, big enough, about 150
4 staff I'd say, as a superintendent, we'll say. Then I
5 went back into the city as a superintendent, to 10:36
6 Anglesea Street, which is city centre, 300 plus staff.
7 I was there, got promoted after another seven years to
8 chief superintendent. Went back down to west Cork was
9 the chief superintendent for west Cork, about 350 staff
10 in that division. Was there for a relatively short 10:36
11 period of time, Chair. Went back into the city as the
12 chief superintendent for Cork city, a big enough
13 division, 700 staff, lots of personnel, lots of
14 personnel problems to go with it. And then I got
15 promoted to assistant commissioner. I was based in 10:37
16 headquarters initially, Chair, with also responsibility
17 for the Northern Region at the time, the border region,
18 and I also had responsibility for executive support and
19 corporate services. So some of the issues, we'll say,
20 which we will be dealing with, did actually cross my 10:37
21 bows, we'll say, when I was in executive support Cork
22 services. So in February two years ago I was -- an
23 opportunity to go back to an operational posting in the
24 southeast region, as it was then. That region has
25 subsequently amalgamated with the old Eastern Region, 10:37
26 so now I have, we'll say, what was once AC Fanning's
27 region, is all now my region, we'll say.

28 CHAIRMAN: Thank you.

29 6 Q. MS. McGRATH: At the time you made your statement to

1 the Tribunal, you said you had responsibility for the
2 Southeastern Region, which you have just been
3 describing there. Is that the current position?
4 A. Oh, it was complicated at the time because I was only
5 acting, we'll say, because Assistant Commissioner 10:38
6 Fanning was maybe on leave or whatever it was. But
7 since then we have restructured. So I now have
8 responsibility for the two regions or the one region,
9 it's now called the Eastern Region. It's complicated.
10 7 Q. Can I bring you back to the end of 2017 and into 2018. 10:38
11 I think at the time you were the assistant commissioner
12 of roads, policing and major event emergency
13 management; is that right?
14 A. That's correct, I was based in headquarters then,
15 Chairman. 10:38
16 8 Q. So that's, as you say, operating out of headquarters.
17 I think you were appointed by Assistant Commissioner
18 Fanning on 15th November 2017 to investigate a bullying
19 and harassment claim by Garda Nicholas Keogh, is that
20 right? 10:38
21 A. That's correct, Chair. He was the assistant
22 commissioner in charge of the Eastern Region back then,
23 where, we'll say, Garda Keogh is based.
24 9 Q. Now, I do want to look just briefly at the period prior
25 to your appointment but not in too much detail. The 10:39
26 Chair has heard a lot of evidence in relation to that
27 period already. But maybe if we just look at your
28 letter of appointment first, at 4127 of the book
29 please. Assistant commissioner, these will come up on

1 the screen and you can read from the screen or whatever
2 you're more comfortable with?

3 A. I have it open here.

4 10 Q. Okay. So that's your appointment letter. As you see
5 there, it's dated 15th November 2017 and it's from the 10:39
6 Assistant Commissioner Fintan Fanning. Now, you had
7 previously been nominated by the executive director at
8 HRM, Mr. John Barrett, isn't that right?

9 A. That's correct, Chair. He nominated me but the actual
10 formal appointment came from assistant commissioner 10:39
11 Eastern Region, which was AC Fanning.

12 CHAIRMAN: Okay.

13 11 Q. MS. McGRATH: Now, he tells you -- I mean, first of
14 all, before we go into the wording of the letter, you
15 say in your statement that you were familiar with the 10:39
16 official Garda policy document on dealing with these
17 complaints, isn't that right?

18 A. Yes, Chair.

19 12 Q. We know the title of the document is "working together
20 with create a positive working environment" and we will 10:40
21 look at the document in more detail. So when you
22 received this nomination, it tells you:
23
24 "I wish to inform you that I have admitted a complaint
25 under the policy procedures harassment, sexual 10:40
26 harassment and bullying."
27
28 That's the working document, isn't that right, we're
29 talking about?

1 A. Yes, Chair.

2 13 Q. "Alleged against members who are or were attached to
3 the Westmeath division by Garda Keogh, Athlone Garda
4 Station. It is alleged that the members undermined his
5 self-confidence, his professional ability and made 10:40
6 inappropriate inferences, etcetera, over a prolonged
7 period."
8

9 So in the letter of appointment this is what you are
10 told is your brief effectively, is that right? 10:40

11 A. So to speak, Chair, but I didn't actually get any
12 further documentation, I didn't get a copy of anything.
13 All I got was the letter.

14 14 Q. You just got the letter, okay.

15 A. I wasn't sure, Chair, you know, did he want to make a 10:40
16 new allegation, you know. I mean, as far as I was
17 concerned I was going to meet him and, you know, take
18 whatever complaint he wanted to make, yeah,

19 15 Q. We will do it step-by-step, commissioner?

20 A. Sorry, Chair, yeah. 10:41

21 16 Q. So on the 15th November, this is what you are told.
22 You are told the complaint is being admitted. Now we
23 will look at the policy document in a moment but again,
24 this wouldn't be unusual when it comes to the point of
25 appointing an investigator, that the complaint is 10:41
26 already admitted, is that right?

27 A. I have often done this myself.

28 17 Q. So it has to be effectively admitted first before you
29 come on board?

1 A. Correct, but it could have been orally. I mean, he
2 mightn't have made a written document -- or complaint.
3 He mightn't have committed it to writing. He might
4 have made a complaint but not committed it to writing,
5 we'll say.

10:41

6 18 Q. Okay. Then:

7

8 "On 9th November 2017 I corresponded with members
9 complained of with the complainant and outlined the
10 process in accordance with policy 8.4 of the policy
11 procedures harassment, sexual harassment and bullying."
12

10:41

13 Again, you are saying this is the only document you got
14 from Assistant Commissioner Fanning, you didn't get
15 these letters, the correspondence of the 9th November,
16 is that right?

10:41

17 A. No, Chair, no, I didn't, no.

18 19 Q. Okay. Assistant Commissioner Fanning goes on to say:

19

20 "I received correspondence from Garda Keogh dated 9th
21 November 2017 as per policy 8.4 of the policy
22 procedures harassment, sexual harassment and bullying
23 in which Garda Keogh has stated that he did not accept
24 mediation and that he required the matter to be fully
25 investigated."

10:42

26

27 He goes on to say:

28

29 "On the 11th November, I advised the five members that

10:42

1 the matter would be fully investigated. I have
2 corresponded with the executive director HRPD on 10th
3 November 2017 in accordance with the policy."
4

5 Just again to confirm for the Chair, did you see at 10:42
6 that stage the correspondence of the 10th or the 11th
7 November?

8 A. No.

9 20 Q. No, you're just being told, is that right, that it
10 happened? 10:42

11 A. Yeah, just being told, yeah.

12 21 Q. Okay.

13 A. But I did get a letter from Mr. Barrett saying that he
14 had nominated me.

15 22 Q. Okay. The next page continues: 10:42

16
17 "On this date, 15th November 2017, I met with Mr. John
18 Barrett, executive director HRPD and he nominated you,
19 in order for me to make the necessary appointment, as
20 per policy. 10:43

21
22 I am therefore appointing you as the investigator in
23 this matter.

24
25 Your attention is drawn to the timelines in the policy. 10:43
26 Garda Nicholas Keogh can be contacted at....

27
28 All my communication with him has been by post to this
29 address.

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I have also communicated notice of your appointment to all concerned parties."

So effectively the letter is giving you a synopsis of the background, referring to correspondence and informing you at what stage it is now at and how it has reached your point of appointment, isn't that right? 10:43

A. Yes, Chairman. He is indicating that he wants a formal investigation, so to speak. So I knew where I was in that regard. 10:43

23 Q. And maybe in that regard then, what we might do is look at the policy itself, if you don't mind, commissioner. Because, as I say, you say in your statement you knew -- you were familiar with this document, and it's at 7868 of the papers. You say that you had previously initiated and investigated complaint under these guidelines, is that right? 10:43

A. I had, Chair.

24 Q. Can I just ask you, what sort of numbers are we talking about? You outlined a very extensive background there to the Chair at the outset and a lot of experience dealing with Garda personnel. So you say you had carried out these investigations before. Can you tell the Chair approximately, was that a large number of these investigations? 10:44

A. I wouldn't say a large number, Chair, but I would be familiar with it.

25 Q. But actual appointments as an investigator, how many

1 times before had that occurred?

2 A. Had I been appointed as the investigator?

3 26 Q. As the investigator.

4 A. Probably not the investigator too often, Chair, but I
5 would have been the person who made the appointment. 10:44
6 we'll say, my chief or super, somebody probably would
7 come to me with a complaint.

8 27 Q. CHAIRMAN: And would in some sense have supervising or
9 receiving the report?

10 A. I would have been in, we'll say, the Assistant 10:44
11 Commissioner Fanning role in the past, as a chief or
12 super, we'll say, yeah. Chief probably more than
13 likely.

14 CHAIRMAN: Okay.

15 28 Q. MS. McGRATH: If you just look at the document there 10:44
16 that we have just asked to come up on the screen. This
17 is the document under which you were appointed, at
18 7868. Even if you just look at the first table of
19 contents there at 7869, it's setting out the legal
20 context of the document. There's a policy statement. 10:45
21 And there's a definition then. You see there at
22 section 3, 4 and 5, the definition of harassment,
23 sexual harassment and bullying and victimisation, isn't
24 that right?

25 A. Yes, Chair. 10:45

26 29 Q. At 7 then we will see -- and we will go into just a
27 couple of these sections in more detail, but 7 sets out
28 general roles and responsibilities and 8 sets out the
29 procedures, isn't that right?

1 A. That's it, Chair. 8 is the main section, yeah.

2 30 Q. Now, you had been told by Assistant Commissioner
3 Fanning that you were appointed under this policy
4 document and it defines the various, as we say, there
5 at 3, it defines what harassment is. If we look at 10:45
6 7877?

7 A. Sorry, Chairman, I'm not with you.

8 31 Q. So 7877, page 7877 of the document there. We are going
9 to stay on the policy document for a moment?

10 A. I have my copy of it open. What page are you referring 10:46
11 to that on the document itself?

12 CHAIRMAN: What chapter?

13 32 Q. MS. McGRATH: 7877. It's chapter 3?

14 CHAIRMAN: Chapter 3 of the document.

15 A. Okay. Yes, I have it there, page 12. 10:46

16 33 Q. "Harassment is defined as any form of unwanted conduct
17 in relation to any of the discriminatory conduct that
18 could reasonably be regarded by an employee as
19 offensive, humiliating or intimidating and includes
20 spoken word, gestures or the production, display or 10:46
21 circulation of written words, pictures or other
22 material."

23

24 Isn't that right?

25 A. Yes, Chair. 10:46

26 34 Q. It sets out then the basis on -- it says:
27
28 "It has to be based on the relative characteristics of
29 the person."

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on the second last paragraph it says:

"It can be a single incident or repeated inappropriate behaviour."

10:47

Isn't that right?

A. Yes, Chair.

35 Q. Okay. It goes on to talk about bullying, we will just look at the definition of bullying at chapter 5. If you flick forward a few pages to 7881?

10:47

A. Yes, Chairman.

36 Q. And workplace bullying is: Repeated:

"Repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work."

An isolated incident of the behaviour described in this definition may be an affront to dignity at work but as a once off incident is not considered to be bullying."

It also says there at paragraph 5.2, it says:

"Bullying must be distinguished from a proper use of authority which is necessary to achieve policing

1 obj ecti ves. "

2

3 Is that right?

4 A. Yes, Chair, yeah.

5 37 Q. Then there's forms of bullying on the next page?

10:48

6 A. Yes, Chairman.

7 38 Q. And I think Garda Keogh's complaint, as we know very
8 well at this stage, came under some of these
9 allegations. For example, and I just picking some of
10 the bullet points, even if you look at the first one:

10:48

11

12 "Constantly ridiculing, humiliating or belittling a
13 person in public or private."

14

15 Two-thirds of the way down it talks about:

10:48

16

17 "Consistently and inappropriately finding fault with a
18 person's work and using this as an excuse to humiliate
19 the person rather than trying to improve performance."

20

10:48

21 Also the second last bullet point, for example:

22

23 "Repeated and without cause unfair allocation of duties
24 or by unfairly excluding members from certain duties."

25

10:48

26 I think we just know at this stage with respect to
27 Garda Keogh, we all know the complaint quite well, his
28 allegations came under some of those categories, is
29 that right?

1 A. Correct, Chair, yeah, broadly speaking, we'll say.
2 These are examples, we'll say.

3 CHAIRMAN: Yes.

4 39 Q. MS. McGRATH: Now, chapter 7 there talks about -- this
5 is 7884, it talks about "general roles and
6 responsibilities". And chapter 8, again if you keep
7 flicking forward, please, at 7888. I just want to
8 spend a little time on this chapter because it talks
9 about the "Procedures for making and dealing with
10 complaints of unacceptable behaviour". If you turn to
11 paragraph 8.2 on the next page, because I think here we
12 are getting into the meat really of how you were going
13 to carry out your investigation. It talks about:

10:49

10:49

14
15 "Complaints under this process can be dealt with
16 through an informal or formal approach."

10:49

17
18 Then if you drop down to the third paragraph:

19
20 "A formal approach is where the complainant makes a
21 written complaint to their divisional officer/chief
22 superintendent and the matter is dealt with either
23 through mediation or investigation with a view to
24 achieving a formal resolution."

10:49

25
26 And in the box there, it says:

10:50

27
28 "It is recognised that circumstances may occasionally
29 exist, where, for good reasons, a member may feel that

1 their complaint cannot be pursued through the local
2 line management structure. In such circumstances the
3 complainant may bring their complaint directly to the
4 equality officer at Human Resource Management Garda
5 Headquarters. "

10:50

6
7 Effectively this is how Garda Keogh's complaint came
8 through, isn't that right? It didn't come through what
9 might be described as the normal local line management
10 structures, is that right?

10:50

11 A. I am not a hundred percent sure of that, Chairman, to
12 be honest with you. I mean, I got it from Assistant
13 Commissioner Fanning, so the route of how it came to
14 him, I couldn't -- I'm not exactly sure, to be honest
15 with you, Chair. But I wouldn't -- I'm not --

10:50

16 CHAIRMAN: No, I understand.

17 40 Q. MS. McGRATH: Okay. If you flick forward to paragraph
18 8.4, I think this is a paragraph you subsequently
19 mention in correspondence, at page 7892. It talks
20 about the formal process. This is the formal process
21 of resolving these allegations as opposed to the
22 informal way. It says:

10:51

23
24 "If a complainant opts to take the formal route they
25 should report the matter to their divisional officer
26 chief superintendent. "

10:51

27
28 Flick down a few lines, it says:
29

1 "All complaints regardless of whether made orally or in
2 writing must be must be acted upon."

3

4

Then it says:

5

10:51

6

"Written complaints must contain..."

7

8

This is particularly:

9

10

"The details of a person or people against whom the
11 complaint is being made."

10:51

12

13

And I think this was certainly a provision which you
14 focused on subsequently when you met Garda Keogh, isn't
15 that right?

10:51

16

A. Correct. That's kind of setting out for me, we'll say,
17 where am I going. It gives me the direction.

18

CHAIRMAN: Yes.

19

A. You know.

20

41 Q. MS. McGRATH: It talks about:

10:51

21

22

"Full details of the alleged act or acts constituting
23 the behavior complained of, including dates, times and
24 places.

25

26

A list of witnesses (if any);

27

28

details of whether the complainant let their objections
29 be known and;

1 Whether an informal resolution was invoked in the past;

2

3 An indication of what would satisfactorily resolve the
4 complaint, if the complainant wished to offer such
5 indication."

6

7 Now, we will come back to that again when we look at
8 your own documents and material, but it says that:

9

10 "The divisional officer/chief superintendent..."

10:52

11

12 And in the circumstances, for example, where there is a
13 direct complaint to HRM:

14

15 "...must acknowledge the complaint within five working
16 days and notify the person complained of within the
17 same timeframe."

10:52

18

19 Now, is this really what Assistant Commissioner Fanning
20 was doing? He had notified the members, he tells you
21 in his letter that he had notified the members of the
22 complaint being made by Garda Keogh. So is it
23 effectively in accordance with those provisions?

10:52

24 A. Yeah, that would be the procedure followed, Chair. If
25 I got it, this is what I would have done in the past,
26 you write out to the people.

10:52

27 42 Q. It says:

28

29 "This correspondence will say that there are two

1 options available in attempting to resolve the
2 complaint, either mediation or investigation. "

3
4 And you're also told in that appointment letter that in
5 fact Garda Keogh was objecting to mediation, isn't that 10:52
6 right?

7 A. Hence we will end up going down the formal route, we'll
8 say.

9 43 Q. In the next paragraph it says:

10 10:52
11 "Both parties to the complaint must respond to the
12 divisional officer/chief superintendent's
13 correspondence stating their preferred method of
14 resolution within five working days. "

15 10:53
16 So, can we see there that the timeframe is quite tight.
17 You have five days. Then you have five days. We know
18 that, as I say, Garda Keogh came back that same day
19 effectively and he told Assistant Commissioner Fanning
20 that he was objecting to mediation; is that right? 10:53

21 A. They are the timeframes, Chair.

22 44 Q. Okay.

23 A. That would be, I would say, dealing with a normal one,
24 we'll say, you know, I don't think -- we will get into
25 it later on. Under normal circumstances that's what I 10:53
26 would do, try write out and do it within the timeframe,
27 yeah.

28 45 Q. I think we can move past the next two paragraphs
29 because they deal with mediation.

1 A. Yes.

2 46 Q. And also on the top of the next page, it's just
3 concluding the part about mediation. So now I am on
4 page 7893, and I am really on the paragraph where it
5 says: 10:53
6
7 "Where there is an investigation."
8
9 So now we are getting into the teeth of your role,
10 isn't that right? 10:53
11 A. Yes, Chairman.

12 47 Q. So it is up to you to -- it says:
13
14 "The investigator may facilitate referral to mediation
15 if requested by both parties." 10:54
16
17 But that never happened here, isn't that right?
18 A. Actually it did. I did offer.

19 48 Q. I know that you spoke to them about it, but they
20 didn't -- if requested? 10:54
21 A. Sorry, you're correct.

22 49 Q. "Investigation will establish the facts."
23
24 So can we look at this in a little bit of detail, just
25 to see exactly what your role is and what you are 10:54
26 doing. It says:
27
28 "An investigation will establish the facts or
29 credibility of the complaint with due regard for the

1 provisions of fair procedures and natural justice."

2
3 So is that what you see yourself doing, and can we just
4 talk in general terms for a moment, when you're an
5 investigator under this policy. 10:54

6 A. Yes, Chair, I agree with that. That's what I -- I
7 suppose we're all thought, you follow fair procedure
8 and natural justice, would be the guiding principles in
9 terms of how you do that. That's what I learned myself
10 when I was doing personal management in college. Fair 10:54
11 procedure and natural justice would be, I suppose, the
12 basic underlying principle that you follow all the
13 time, you know.

14 50 Q. And can I just ask you, commissioner, maybe you can
15 help us here, the first sentence is a little bit odd in 10:55
16 some ways, it doesn't say facts and credibility of the
17 complaint it says "facts or credibility", what really
18 does that mean in real terms as to what you are doing?
19 Are you assessing credibility or are you simply
20 establishing the facts? How do you see what the 10:55
21 investigation is?

22 A. You're looking at credibility, Chair.

23 51 Q. Sorry.

24 A. You're looking at the facts first, is it credible, you
25 know what I mean, you would have to look at everything 10:55
26 in the around. That would be my assessment.

27 52 Q. Okay. So the suitable investigator will be chosen and
28 as we know you were the investigator that was
29 appointed. If I can go halfway down the next paragraph

1 there, to the end of the sixth line, it says:

2
3 "The investigation to be conducted thoroughly,
4 objectively with sensitivity, utmost confidentiality
5 and with due respect for the rights of both the 10:55
6 complainant and the person complained of. The
7 investigator will report their findings within 28 days
8 of the complaint being received at the divisional
9 office."

10
11 Now, here we're back to the tight timeframes again,
12 isn't that right? 10:56

13 A. Yes.

14 53 Q. Now, this applied to Garda Keogh's complaint, isn't
15 that right? Once you make a complaint or invoke the 10:56
16 policy, the timeframes kick in, is that correct?

17 A. Yes, Chair. That applies to all, whether it is a
18 simple complaint or, we'll say, not a very complicated
19 one. But, however, I would say like this was probably
20 a complicated case. So there was no way we were going 10:56
21 to get it done within 28 days. I think I was flagging
22 that.

23 54 Q. When Assistant Commissioner Fanning says in his
24 letters, I draw your attention to the timelines in the
25 policy, is this effectively what is being highlighted 10:56
26 to you?

27 A. Correct. I would have said the same if I was
28 appointing somebody, the guidelines. Guidelines, you
29 should stay within them, where possible.

1 55 Q. Can I ask you to pop down to the last paragraph on that
2 page, underlined "review within 28 days"? So you're to
3 report your findings within 18 days, that's how you see
4 it, 28 days --

5 A. Ideally, Chair, yes. Under normal circumstances I'd be 10:57
6 asking someone to -- these are the guidelines, you
7 should have them done in 28 days, to be fair, if you
8 can.

9 56 Q. Can I ask you just to clarify the last paragraph, it
10 says: 10:57
11
12 "A review within 28 days."
13
14 So, is this effectively, once you do your report, and
15 this is now in the perfect world where all the time 10:57
16 limits are met.

17 A. Yes.

18 57 Q. You do your report, report your findings within 28
19 days. It says:
20 10:57
21 "There is to be a review."
22
23 And that's to be carried out within 28 days, is that
24 how you read that?

25 A. I would report back to the person that appointed me, 10:57
26 we'll say. So I would report back to Assistant
27 Commissioner Fanning within 28 days to say, here's my
28 report, I've done it, yeah.

29 58 Q. So you would have anticipated, and I know this is not

1 how it worked out, but you would have anticipated going
2 back within 28 days with your report and your
3 investigation, where you have looked at facts and
4 credibility?

5 A. Yeah. 10:57

6 59 Q. And then it would have been for Assistant Commissioner
7 Fanning to carry out a review of that investigation
8 within the 28 days and it says there "inform both
9 parties in writing of the findings of the
10 investigation"?

10:58

11 A. Yeah, I was working for him effectively.

12 60 Q. Now, as I said, we know that Garda Keogh's complaint
13 was a little bit different in the sense that it was a
14 complaint regarding high ranking officers. So
15 therefore, the investigator, for example you, had to be 10:58
16 of a higher rank for this particular complaint?

17 A. That would be normal, we'll say, like you know, if it
18 was a sergeant I'd appoint an inspector or if it was an
19 inspector I'd appoint --

20 61 Q. I think that's is dealt with at the next page, at 7894, 10:58
21 where it says:

22

23 "Some complaints will be forwarded to the assistant
24 commissioner."

25

10:58

26 It says:

27

28 "Where a person complained of is a divisional officer,
29 the formal complaint shall be forwarded to the local

1 assistant commission who will appoint a suitable member
2 not below the rank of assistant commissioner to
3 investigate the complaint."
4

5 So that is what happened in this case, isn't that
6 right? 10:58

7 A. Exactly, Chair, that's what happened, yeah.

8 62 Q. Again, if I am going too fast, it's no problem to slow
9 down, commissioner. But on the next page, paragraph
10 8.5, it talks about extension to the time limits and 10:59
11 here we get into the territory of Garda Keogh's
12 situation, isn't that right?

13 A. Yes, Chair.

14 63 Q. Because there had to be extensive extensions; isn't
15 that correct? 10:59

16 A. Well, I flagged at the outset, Chair, that there's no
17 way we could do this within 28 days. I told everybody.

18 64 Q. It says:

19
20 "Extensions to the time limits outlined are acceptable 10:59
21 once there is a clear justification and both the
22 complainant and the person complained of have indicated
23 that they have no objections to the extension. It is
24 important to maintain a record with reasons for the
25 delay in time limits." 10:59

26
27 Now again, we will come to that in due course, I can
28 just say that, in the context of this case specific
29 situation.

1 A. Yeah.

2 65 Q. Now, if we go forward again two pages, to paragraph
3 8.6, so this is on 7897?

4 A. I have it, Chair.

5 66 Q. So it says:

10:59

6

7 "The investigator should clearly indicate to both
8 parties that the investigation must follow fair
9 procedures and be mindful of the rights of both the
10 complainant and the person against whom the complaint
11 has been made.

12

13 It is important that the investigating officer
14 indicates clearly to the complainant or the person
15 Complainant of that they are not a counsellor. Where a
16 complainant or person complained of seeks counselling
17 they should be directed to an Employee Assistance
18 Services Officer."

19

20 Is that right?

11:00

21 A. Yes.

22 67 Q. "Where a complaint is not made in writing..."

23

24 It continues then in the next paragraph:

25

11:00

26 "You must seek a complaint in writing before initiating
27 the investigation."

28

29 Now, as you said when we were looking at your

1 appointment letter, you at that stage were not notified
2 that a complaint had been made in writing by Garda
3 Keogh?

4 A. No.

5 68 Q. On the date of your appointment? 11:00

6 A. Correct.

7 69 Q. Okay. So when you read it, you would have thought,
8 well, the first thing I have to do is to get a
9 complaint in writing at this stage?

10 A. Yeah. So I wrote to him, Chairman. 11:00

11 70 Q. Now the next one says:

12

13 "Di scussi ng the case.

14

15 The complai nant and the person complai ned of shoul d be 11:00
16 requested not to di scuss the case wi th any other party
17 not connected wi th the i nvesti gati on. "

18

19 The next paragraph:

20 11:00

21 "Both parti es shoul d be i nformed they have a ri ght to
22 be accompani ed or represente d at i ntervi ews hel d duri ng
23 the i nvesti gati on. The accompanyi ng person must be a
24 col league, fri end, fami ly member or staff associ ati on
25 representative. It woul d not be appropri ate for a 11:01
26 person who i s l i kely to be a wi tness to act as an
27 accompanyi ng person. "

28

29 And you say then, and again this is something that you

1 were quite concerned with later on.

2

3 "The person complained of will be advised in sufficient
4 detail of the allegations made against them and be
5 given a copy of the complainant's written statement in 11:01
6 advance of the interview."

7

8 And again this was something that became quite
9 important to you later on when you met Garda Keogh; is
10 that right? 11:01

11 A. Yes, Chairman. Again keeping natural justice and fair
12 procedures in mind.

13 71 Q. If I can then ask you to go to the next page, 7898, you
14 talk about confidentiality. You talk about submitting
15 the report and what you were doing. Again, can we look 11:01
16 at this one, because I was asking you about your role
17 of establishing the facts and credibility. It says
18 here:

19

20 "On completion of the investigation the investigator 11:01
21 shall submit their report to the divisional
22 officer/chief superintendent."

23

24 But here we know you were submitting it to an assistant
25 commissioner. 11:02

26 A. Yes.

27 72 Q. "The report shall include the conclusion with one of
28 the following with clear justification for the selected
29 option."

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And the test you apply is the balance of probabilities?

A. That's correct, Chair, yeah.

73 Q. Either the complaint is upheld on the balance of probabilities or it's not upheld on the balance of probabilities, is that right?

11:02

A. That's correct, Chair yeah.

74 Q. So then again, sorry, we're nearly at the end of the policy there, if we can go to the next page, 7899.

This is the principle that you must observe as an investigator and it talks about impartiality. It says:

11:02

"During the course of the investigation the investigator will be impartial and will not indicate their views with regard to the credibility or otherwise of the complaint itself or the evidence given by the complainant, the person against whom the complaint is made or any witness."

11:02

So it says you will not indicate your own with regard to the credibility or otherwise of the complaint or the evidence given by complainant, is that right?

11:02

A. Correct, Chair, yeah.

75 Q. And it says you will be:

"...refused to be drawn into any speculation of any party as to the likely outcome of the investigation. The investigator will maintain a record of all interviews or meetings held during the course of the

11:03

1 investigation."

2

3 Now, we're going to come to this in a little bit more
4 detail. We have seen now in the policy the reference
5 to interviews a couple of times, are interviews -- I
6 was looking at the policy to see whether interviews
7 with all the various personnel are mandatory or
8 optional. Is the investigator obliged to sit down with
9 everybody involved or not? Just generally with regard
10 to the obligations under the policy.

11:03

11:03

11 A. I would say you would meet the person, tell them what
12 it is, you know. But I think the guiding principle,
13 from the way I look at it, Chair, is that you give them
14 an opportunity to give their account and you give them
15 an opportunity to give it in writing. I think that's
16 the basic principle that I was following here in
17 relation to that Chair, yeah. But I think that's also
18 the principle that's set out in the Code of Practice
19 for bullying and harassment, which I suppose is
20 underpinning this too, yeah.

11:04

11:04

21 76 Q. So when I talk about interviews, I suppose you might
22 think of a Q&A type question in relation to the
23 complaint?

24 A. Yeah.

25 77 Q. Is that something which is at your discretion, if can
26 put it that way?

11:04

27 A. It's at my discretion, Chair, yeah. You can do that in
28 writing too. You mightn't understand or if you weren't
29 clear on something you could do that, yeah. Or you

1 could do that in writing too. I mean that
2 correspondence could take place -- that clarification
3 could take place in writing, it doesn't necessarily
4 have to be a formal interview, you know.

5 78 Q. Okay. 11:04

6 A. It's not like a discipline investigation or a criminal
7 investigation where you have to, you know...

8 79 Q. So, as you say, it's a matter for you to consider who
9 you will sit down with or who it is necessary to sit
10 down with or whether it's necessary to orally deal with 11:04
11 something or it can be dealt with in writing. So these
12 are the kind of decisions you're making; is that right?

13 A. Yeah. The basic principle, Chair, is that people
14 understand, you know, and you give it to them and you
15 give them the opportunity to respond in writing. I 11:05
16 think they are the basic tenets of an investigation
17 under the bullying and harassment investigation, which
18 I suppose essentially is, you know, you are using tools
19 to investigate I suppose employment or industrial
20 relations type disputes as opposed to a criminal matter 11:05
21 or a discipline matter, we'll say.

22 80 Q. Can I ask you to look at paragraph 8.11 on the next
23 page: "Action where complaint is not upheld", and it
24 talks about the notification. And I wonder have you
25 already stepped out of the process as investigator when 11:05
26 this is happening?

27 A. Yeah.

28 81 Q. It talks there at paragraph 3:
29

1 "Where a complaint is not upheld, a divisional
2 officer/chief superintendent will ensure that the
3 reputation and career prospects of both parties will be
4 unaffected by either the making of the complaint or
5 being the subject of a complaint. Every effort should 11:05
6 be made to help restore the confidence of both
7 parties."

8
9 Is that something that applies maybe to the appointing
10 officer? 11:05

11 A. I would say appointing officer, yeah. That would be my
12 role, if I was the chief, it would have been my role,
13 we'll say, if I was the appointing officer, yeah.

14 82 Q. I think the remainder of the policy then goes on to
15 talk about the review and the appeals procedure? 11:06

16 A. Yes.

17 83 Q. If I could ask you to flick forward there, there's a
18 summary of responsibilities at 7904, and again it talks
19 about:

20 11:06
21 "All supervisors, including officers, investigators,
22 staff associations, divisional chief superintendent."

23
24 It reiterates the obligations as investigator and it
25 reiterates the timeframes there. 11:06

26
27 So again, I will just refer to this policy now from
28 time to time when we are going through the situation
29 with Garda Keogh.

1 A. Sure.

2 84 Q. So if we come back to Garda Keogh then --

3 A. Chairman, just, that document is underpinned by this

4 Code of Practice issue, bullying and harassment.

5 85 Q. CHAIRMAN: Say again. 11:07

6 A. That document -- our guidelines are underpinned by

7 these guidelines, we'll say, it's a Code of Practice.

8 86 Q. CHAIRMAN: And the relationship. This is the policy?

9 A. Garda policy, yeah.

10 87 Q. CHAIRMAN: Now we have a Code of Practice? 11:07

11 A. Which is broader, not just for the Guards, for

12 everybody, we'll say, across the broad employment

13 sector, the HSA.

14 88 Q. CHAIRMAN: Thank you very much.

15 A. It's referenced at the start of this document, Chair. 11:07

16 CHAIRMAN: Very good.

17 89 Q. MS. McGRATH: we will come back to that in due course.

18 CHAIRMAN: Okay, thank you very much.

19 MS. McGRATH: So again --

20 90 Q. CHAIRMAN: Sorry, do you mind giving me the date of the 11:07

21 Code of Practice, if there is a date please,

22 commissioner.

23 A. It's March 2007, Chair.

24 91 Q. CHAIRMAN: Thank you.

25 A. And there's also a statutory instrument obviously that 11:07

26 underpins this as well too, you know. I think I have

27 it with me, Chair, if it's of some use to it.

28 92 Q. CHAIRMAN: well, give me the reference to the statutory

29 instrument, thank you very much.

1 A. I will, Chair, give you that too.

2 93 Q. CHAIRMAN: If it's convenient, if you have it there.

3 A. I think I have it with me here in my papers. Just bear

4 with me for a moment.

5 94 Q. CHAIRMAN: You don't have to give it now. 11:08

6 A. It's SI 17/2002, Chair.

7 95 Q. CHAIRMAN: Thank you. What's is that called?

8 A. Industrial Relations Act, Code of Practice detailing

9 procedures for addressing bullying in the workplace,

10 declaration order 2002. 11:08

11 CHAIRMAN: Thank you very much.

12 96 Q. MS. McGRATH: Can I say, Chairman, just for the moment

13 it's not jumping out at me as something we have in

14 disclosure but we are going to look into it and we will

15 come back and clarify that. 11:08

16 CHAIRMAN: I appreciate that. But I mean, if it's a

17 statutory instrument, it's a statutory instrument, so

18 we don't need to disclose it. It's presumed to be

19 within the knowledge of everybody. And anyway, we can

20 all look it up. 11:08

21 A. Apologies, Chair, if I jumped out of line here.

22 MS. McGRATH: Not at all.

23 97 Q. CHAIRMAN: You feel free please, commissioner, to refer

24 to it as you think fit and we will certainly be looking

25 into that. 11:08

26 98 Q. MS. McGRATH: If we can just then -- having looked at

27 the framework that you are operating under effectively,

28 Commissioner Finn, now you're appointed and let's start

29 at the very beginning. One of the complaints that

1 Garda Keogh has before the Chair is he complains about
2 the delay in this investigation getting started?

3 A. Oh yes.

4 99 Q. Now, if we talk about the start, namely your
5 appointment? 11:09

6 A. Yeah.

7 100 Q. Okay. Now, can I just say that when he was giving his
8 evidence to the Chair back before Christmas, he
9 accepted that you did not appear to be responsible for
10 this delay, okay? Can I ask you though just to look at 11:09
11 one or two of the documents, the Chair has seen them
12 already. If we look at page 4791?

13 A. I don't have that.

14 101 Q. It's coming up on the screen. Ms. Doolin will give you
15 anything you need in hard copy, commissioner? 11:10

16 A. I have it here, Chair.

17 102 Q. Okay. Now, this is a letter which I'm sure you have
18 seen in the papers, which is, at this date, by the time
19 of your appointment, is almost one year old. It's
20 addressed to the Minister for Justice, the Commissioner 11:10
21 and Mr. Barrett and it says there:

22

23 "On behalf of Garda Nicholas Keogh, please note that
24 Garda Keogh hereby again invokes his rights under such
25 harassment and bullying policy. 11:10

26

27 Garda Keogh advised that he wishes to make a statement
28 of complaint under the said policy as soon as
29 practicable to a non-conflicted possible.

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Please advise when and where he can further make such a statement of complaint as soon as possible."

Again, we are confirming for your evidence that you wouldn't have seen that letter at the time of your appointment? 11:10

A. No, Chair, I didn't see that.

103 Q. Okay. If we can look at another one which is around that time, 5835. It will come up on the screen. It's dated the following day, it says: 11:11

"I am directed by the Commissioner to acknowledge receipt of your correspondence dated 15th December 2016. 11:11

Garda Keogh's wish to make a statement of complaint under the bullying and harassment policy has been noted.

Arrangements are now being made to have a suitable member to take Garda Keogh's statement." 11:11

We do know, and I am sure you know from the papers, that that statement was finalised with Chief Superintendent Scanlan on 27th March 2017. 11:11

A. Yeah. I'm familiar with that, Chair.

104 Q. I think Chief Superintendent Scanlan in his statement confirms sending it on to the Eastern Region and I

1 think, if we can skip forward a number of months,
2 because, as I say, Garda Keogh does not make an
3 allegation against you in respect of this period of
4 delay. But if we skip on a number of months, what I
5 want to bring you to logically then is the 11:12
6 correspondence that Assistant Commissioner Fanning
7 referenced in his letter to you. This starts at 4875
8 of the book, where he writes a number of letters to
9 people on 9th November 2017. I just want to open these
10 to you because it's an argument Garda Keogh makes later 11:12
11 when you sit down with him on the 1st December, when
12 you seek to clarify against whom he is making
13 complaints. And one of his responses, both to the
14 Chair and at the time, was that, well, Assistant
15 Commissioner Fanning was in a position to write to 11:12
16 these people and he did so on the 9th November. And
17 you will see there, if you start at 4875, there is a
18 letter to Superintendent Patrick Murray. Even if you
19 just look at that paragraph, the first substantive
20 paragraph: 11:13

21
22 "I wish to inform you that a complaint of unacceptable
23 behaviour has been alleged against you by Garda Keogh,
24 Athlone Garda Station, on 27th March 2017, including a
25 six page typed statement, unsigned and undated. It is 11:13
26 alleged that you undermined his self-confidence, his
27 professional ability and made inappropriate inferences
28 etcetera."
29

1 Then it goes on to say that it can be dealt with in two
2 ways, mentioning mediation etcetera.
3
4 Now, he writes a similar letter, I'm sure you will be
5 aware of this from the papers, so that's the letter to 11:13
6 Superintendent Patrick Murray, he writes to Chief
7 Superintendent Curran, he writes to Chief
8 Superintendent Wheatley, Superintendent McBrien and
9 Inspector Nicholas Farrell. So would you be aware of
10 that from the papers at this stage, Commissioner Finn, 11:13
11 that he sent those letters?
12 A. I know it now, I do, yeah. I didn't know at the time,
13 Chair, but I do know it now.
14 105 Q. He also wrote to Garda Keogh. He appoints you on the
15 15th November and then he writes to the same people 11:14
16 again on the 15th November. Again, if we just look at
17 an example of those letters. We will take the
18 Superintendent Patrick Murray one again at 4891.
19 A. I have it.
20 106 Q. At 4891, he is again writing to the same people, the 11:14
21 same five people, and he is saying:
22
23 "As you are aware, I have received correspondence from
24 Garda Keogh dated 9th November 2017 under the policy,
25 he does not accept mediation, he is looking for a full 11:14
26 investigation."
27
28 He is saying he has corresponded with Mr. John Barrett.
29 On the 15th November he is confirming that you have

1 been appointed to investigate the matter.

2 A. Yes, Chairman.

3 107 Q. So one of Garda Keogh's, and we will come to it in a
4 moment when we look at the 1st December, one of the
5 points he makes is that well, Assistant Commissioner 11:15
6 Fanning was quite clear in respect of whom the
7 complaint was made against. Do you have anything to
8 say in respect of that?

9 A. I don't know, Chair. I don't know what's --

10 CHAIRMAN: You hadn't seen this letter? 11:15

11 A. No, Chair.

12 108 Q. MS. McGRATH: Do you bring it back to the point that
13 you hadn't received the statement he made to Chief
14 Superintendent Scanlan by that stage?

15 A. Yes, that's correct, Chair, I didn't have that 11:15
16 statement he made.

17 109 Q. I think you were appointed on the 15th November but I
18 think you became aware very quickly that this was a
19 little bit more complicated than the normal
20 investigation, because you have exhibited in your 11:15
21 statement a letter from Chief Superintendent Lorraine
22 Wheatley, which is 16th November 2017. If we can just
23 open this, at 4166. This is coming in to you the day
24 after your appointment.

25 A. Correct, Chair. I can recall that. I was kind of 11:16
26 wondering, like it didn't make sense, it was out of
27 sequence to me, because I was wondering why was she
28 writing to me, because I hadn't spoken to her at all.
29 But I understand now why it happened, yeah.

1 CHAIRMAN: Yes.

2 110 Q. MS. McGRATH: In her letter there at 4166, she says in
3 the third paragraph:

4
5 "There are a number of issues surrounding the admission 11:16
6 of this complaint which cause me concern."

7
8 One of them, she says:

9
10 "In this instance it is clear that the complaint 11:16
11 referred to was first received by assistant
12 commissioner Eastern Region March 2017. Given the fact
13 that this appointment is being made some eight months
14 later, appears to be in direct contravention of the
15 spirit and ethos of this policy." 11:16

16
17 So here she is telling you, well, here's a red flag,
18 there is a problem straightaway. Was this the first
19 you were on notice of this?

20 A. Correct, Chair. 11:16

21 111 Q. Did it trigger any enquiries or letters or e-mails or
22 investigations from you as to what's happening here,
23 where's all this coming from?

24 A. I think I acknowledged it, Chair, just to be courteous,
25 we'll say, I acknowledged her correspondence. But I 11:17
26 mean, from my perspective I was only starting out, so,
27 you know, it would be, I suppose, premature for me to
28 be making any judgments or whatever in that case. It
29 was an alert to me that, gosh, there was something else

1 going on here that I wasn't aware of.

2 112 Q. But you were told the day after your appointment, here
3 you have a chief superintendent telling you that a
4 complaint was made by Garda Keogh eight months
5 previously. Did you go looking for it at that point? 11:17

6 A. No, Chair. I was going to meet them. I mean, I didn't
7 know what happened that particular complaint, you know.
8 I didn't know was I going to be investigating the very
9 same complaint. I suppose I had to meet Garda Keogh to
10 find out, well, what did he want me to investigate. I 11:17
11 understand from the letter here, we'll say, that there
12 was an issue, but I wasn't aware was that the same
13 issue that I was going to be dealing with, shall we
14 say. Because this was months later, we'll say. I mean
15 there's a lot of water under the bridge, so to speak, 11:18
16 since then, Chair. So he could be making a totally
17 different complaint to me. I wasn't aware -- sorry, I
18 wasn't aware of all issues, we'll say.

19 113 Q. But it trigger any enquiries by you to figure out,
20 well, what's happening here? what's the background? 11:18
21 what's she talking about?

22 A. I suppose, Chair I wanted to -- I knew I was appointed
23 and I think at this stage I had probably written to
24 Garda Keogh, so I was waiting for him to -- my next
25 move would be, my logical move would be, well, meet 11:18
26 Garda Keogh first and find out well what does he want
27 to say first, you know.

28 114 Q. I think you have written to Garda Keogh and I think you
29 have put the contact details for your assistant, which

1 was Inspector Browne on that letter, isn't that right?

2 A. It probably was, Chair, I can't remember was --

3 115 Q. It's at page 4140. Now there's the wrong date on that
4 letter?

5 A. Yeah. 11:18

6 116 Q. I think you subsequently corrected that it wasn't
7 September but it was November. If you see there, it
8 says the 16th -- can we go down please, Mr. Kavanagh?

9 A. I have it, Chair.

10 117 Q. CHAIRMAN: Yes. That's the 16th September. It should 11:19
11 say the 16th November.

12 A. Correct.

13 118 Q. CHAIRMAN: Okay. So the day after you were appointed.

14 A. Yeah. I wrote to him, yeah.

15 119 Q. MS. McGRATH: You said: 11:19
16
17 "Would you like to meet with me in order to progress my
18 investigation of the complaint."
19

20 So, namely a complaint is being made and you want to 11:19
21 progress your investigation. But there's no query
22 there to him as to whether or not a complaint had
23 already been made or what is Chief Superintendent
24 Wheatley referring to when she talks about complaint
25 eight months before. So this is just a straightforward 11:19
26 letter to Garda Keogh, is that right?

27 A. Correct.

28 120 Q. Okay. Now we do know that he does contact your
29 assistant inspector. There is a letter here that she

1 writes to you, at 5741?

2 A. Yeah, I see that.

3 121 Q. That's on 28th November 2017. Now, she is telling you
4 that she spoke to Garda Keogh this morning, he feels
5 that there is no point in a meeting with you until you 11:20
6 have read the documents first?

7 A. I understand, I am familiar, yes.

8 122 Q. I don't want to cut you short. Do you have it there?

9 A. I understand what you're talking about, yes.

10 123 Q. 11:20

11 "He feels a meeting would be a waste of time. He also
12 felt that because I was the contact person that the
13 meeting was with you and I was just scheduling it. He
14 said he made the statement in March to Chief
15 Superintendent John Scanlan and gave him supporting 11:20
16 documentation. He said John Scanlan gave it to Fintan
17 and Fintan sent it on to John Barrett, so it should be
18 with John Barrett. He said it would make no sense
19 meeting with you until you've had a look at the
20 documentation first. I think you need to write to the 11:20
21 executive director HRPD for the statement and documents
22 and I have sent you on a draft e-mail. Regards."

23

24 I think that's Inspector Browne, is it.

25 A. Correct, Chair, yeah. And that's what I did. 11:20

26 124 Q. So it's Garda Keogh who has made the contact and who is
27 highlighting that you need to know the background of
28 what's is happening here, is that right?

29 A. Yeah, that's fair, Chair.

1 125 Q. You do write that e-mail and we have the e-mail at page
2 4142, on the 28th November, at around lunchtime. So
3 it's 4142. This is from you to John Barrett HRPD and
4 you copy Mr. McLoughlin. A couple of lines down in the
5 e-mail, you say:

11:21

6
7 "Garda Keogh informed me that he gave me statement and
8 supporting document to Chief Superintendent Scanlan in
9 March 2015 and this was forwarded to the usual channels
10 in your office. He feels it would not be prudent to
11 meet me until I have had an opportunity to read his
12 statement and documentation."

11:21

13 A. That's correct, Chair.

14 126 Q. You requested that:

15
16 "Garda Keogh statement of complaint and supporting
17 documentation be forwarded directly to me so that I can
18 progress this investigation."

11:21

19
20 Can I ask you to stop there in the sense of, what is
21 not there is a query from you as to how has this
22 happened, how is there a complaint eight months ago and
23 it's only getting to me now?

11:21

24 A. I suppose I wanted to read it first, Chair, and see.

25 127 Q. But if I just ask you, commissioner, just about the
26 practicalities of how come I'm just seeing this now in
27 November 2017? Can somebody give me a guide as to what
28 happened, where it was?

11:21

29 A. I know he made that complaint, Chair. I suppose the

1 logic was, I had reached out to him and he said, okay,
2 before you meet me you need to read this statement, you
3 know. Now I didn't know was this statement going to be
4 what I was going to be subsequently investigating but I
5 went off and I got that statement, you know. 11:22

6 128 Q. CHAIRMAN: Yes.

7 A. Now I didn't know if that statement was to do with
8 bullying and harassment specifically or was that part
9 of his other issues, we'll say, that he was pursuing at
10 the time. So I suppose until I got it, Chair, I 11:22
11 couldn't really put it in context or even until I met
12 him I suppose couldn't put it in context as to, let him
13 explain to me what it was, you know.

14 129 Q. I think if you just pop up the -- if Mr. Barnes can
15 just go back up there, there's an e-mail, which is 11:22
16 later on that day. We just know from the papers. At
17 the top of the page. You go back and you say:
18
19 "May I have the appendices also - which he authorised
20 in his conversation today." 11:23
21
22 So you know there is a statement, you know there is
23 appendices and are you asking for the appendices; is
24 that right?

25 A. Correct. I think I actually physically got the 11:23
26 statement first and I read it, I'm sure, but there
27 wasn't appendices attached. But obviously in the
28 statement he was alluding to appendices.

29 130 Q. CHAIRMAN: Yes.

1 A. So I wrote back and said, can I have the appendices.
2 131 Q. CHAIRMAN: Please can I have the appendices.
3 A. Correct, yeah.
4 132 Q. MS. McGRATH: And did you get them?
5 A. I did, Chair, yeah. 11:23
6 133 Q. Did you get all of them or some of them?
7 A. Yeah.
8 134 Q. Because again, this is something that Garda Keogh
9 focuses on?
10 A. I got the appendices but I wasn't sure, we'll say, 11:23
11 because I didn't get an appendix to the appendices, so
12 it was difficult to follow.
13 135 Q. CHAIRMAN: I understand you. You got appendices, as
14 far as you were concerned they were all the appendices
15 but who knows whether they were or were not? 11:23
16 A. Correct, Chairman, yes.
17 136 Q. MS. McGRATH: Now can I just ask you, would you have
18 taken the view at this stage, well, this is all really
19 something I should have been provided with, I shouldn't
20 have had to go looking for this? Did you think about 11:24
21 that at any stage? Did you ask that question to
22 yourself or any superior?
23 A. I can't say I did, Chair. I might have thought about
24 it but I can't say I did. I mean, my state of mind
25 was: He asked me to read this, he said before I meet 11:24
26 him read this statement. So I felt I was complying
27 with his request and that got it and read it and we
28 were going to meet, you know. I think it was the
29 Monday he communicated with me and by Friday we had the

1 meeting arranged. So I didn't -- I wasn't too
2 surprised. But I mean -- maybe that's the wrong
3 phraseology, Chair, but I was waiting, the next step
4 logically for me would be to meet him.

5 137 Q. CHAIRMAN: Was a meeting.

11:24

6 A. Yeah.

7 138 Q. MS. McGRATH: You do say in your -- actually, just to
8 finish off there, you have a diary entry of the 29th
9 November, which is the following day, 5685. It's down
10 the bottom of the page. I wonder if you can read it
11 out, it's difficult to read there, Commissioner
12 Fanning. It says:

11:25

13

14 "Nicholas Keogh file. Spoke to..."

15

11:25

16 A. It says "spoke to him", Chair, but I don't think I
17 spoke to him. I recall actually speaking, no, I think
18 it was Inspector Browne spoke to him, but anyway "read
19 file. Arrangement to meet him on Friday."

20

11:25

21 139 Q. Okay. So did it mean that you were intending to speak
22 to him having read the file?

23 A. Maybe so. I think it was Inspector Browne spoke to
24 him, I don't think I spoke to him. I've read that
25 since, Chair, and I was trying to make sense to it
26 myself, you know. But anyway, I suppose it references
27 the fact that I got a statement that evening.

11:25

28 140 Q. CHAIRMAN: Yes.

29 A. Because that was kind of like late evening work that I

1 would be doing outside my normal day's work, you know.
2 So Nicholas Keogh file I was working on that evening.
3 This is probably my own note in my diary, yeah. Met
4 him -- or read the statement and I'm going to meet him
5 Friday.

11:25

6 141 Q. MS. McGRATH: You say in your statement, if we stop
7 here, the 29th November, you say in your statement:

8
9 "I was not aware of the nature or content of his
10 complaint."

11:26

11
12 This is when you were appointed. You say:

13
14 "I was unaware of the extent of prior involvement with
15 Chief Superintendent Scanlan. I was unaware of any
16 interactions or correspondence he had with parties
17 pertaining to his complaint."

11:26

18
19 Can I just ask you for your views on that to the Chair.
20 Was that satisfactory?

11:26

21 A. Sorry, Chair, could you repeat that now, because I was
22 distracted looking for it.

23 142 Q. Sorry, your statement there at page 4106?

24 A. Yeah.

25 143 Q. You outline in your statement to the Tribunal that when
26 you were appointed, and this is in the third paragraph
27 down, if we stop there, Mr. Barnes. You said:

11:26

28
29 "I was not made aware of the nature or content of his

1 complaint. "

2 A. Yeah.

3 144 Q. You said:

4

5 "I made contact with Garda Keogh to inform him that I 11:26
6 was appointed and that I would meet him and take his
7 complaint. I was unaware of the extent of his prior
8 involvement with Chief Superintendent Scanlan. I was
9 unaware of any other correspondence or interactions
10 that he with other parties pertaining to his 11:26
11 complaint. "

12

13 And what I am asking you, your view, was that a
14 satisfactory position for you to be in at that
15 particular time, at the time of your appointment, given 11:27
16 the history, now that we see of the complexity of the
17 matter?

18 A. To be honest, Chair, when I got the appointment
19 initially I assumed this was a new matter, we'll say,
20 that was coming to me to investigate. Even though, 11:27
21 we'll say, I got the statement he made to Chief
22 Superintendent Scanlan in March, like this was
23 November, so I didn't know was it going to be the same
24 set of circumstances. You know, I didn't know the
25 history of it. So I knew he made that complaint in 11:27
26 March, we'll say, but as I said, I wasn't sure what was
27 I going to investigate. Was I investigating something
28 totally new or was I investigating that complaint?
29 Because the correspondence I had gotten up until then

1 wasn't clear to me or, you know, I wasn't aware of
2 that, you know. As far as I was concerned, we'll say,
3 the meeting of the 1st December was going to be me
4 meeting him to make his -- take his -- whatever,
5 complaint he wanted to make.

11:27

6 145 Q. If we move on to the 1st December, we know that he is
7 notified and you meet him at the Mullingar Park Hotel;
8 isn't that right?

9 A. That's correct, Chair, yeah.

10 146 Q. Now, those notes -- we will just spend a little bit of
11 time on this meeting. Again, it's a complaint of Garda
12 Keogh, he makes a number of complaints in respect of
13 this particular meeting and we will go through them
14 one-by-one. So it's at 4219, is where you will find
15 the minutes of the meeting. Now, it says:

11:28

16
17 "Meeting on the bullying and harassment complaint of
18 Garda Keogh 13:14 1st December 2017 at Mullingar Park
19 Hotel."

11:28

20
21 It outlines the people who were present:

11:28

22
23 "Assistant commissioner Michael Finn. Chief
24 superintendent Tom Myers."

11:28

25
26 We will see his name coming up.

27 A. Yeah.

28 147 Q. He was your main assistant, was he, in the
29 investigation?

1 A. Yeah, the investigation team, Chair, that was the man,
2 yeah.

3 148 Q. Inspector Annette Browne, whom we have seen reference
4 to, Garda Keogh and Mr. Cullen, solicitor. Now you
5 started off and you tell him you have been appointed. 11:28
6 You're mentioning the date being wrong in the letter.
7 That's the reference to September we talked about, is
8 that right?

9 A. Correct, Chair.

10 149 Q. You said you are coming here with no prior knowledge. 11:29
11
12 "I have no history with this so I need verification on
13 the relevant documents. I have one statement and some
14 appendices."

15 A. Chair, a small bit of clarification there. When I 11:29
16 wrote to him, we'll say, initially he didn't get my
17 letter, you know. So within a week, when I hadn't
18 heard back, I actually sent a letter to the regional
19 office in Mullingar and asked them would they deliver
20 it to him. Hence there was a bit of delay there 11:29
21 between the two. Sorry, I don't meant to interrupt.

22 150 Q. Not at all. I think, in fact, you changed the date to
23 the 24th November, isn't that right?

24 A. Yeah. No but that was also the issue, he didn't get
25 the first letter, we'll say, because when I hadn't 11:29
26 heard back from him I asked --

27 151 Q. CHAIRMAN: There was some delay.

28 A. Correct.

29 152 Q. CHAIRMAN: That was nobody's fault.

1 A. Yeah.

2 153 Q. MS. McGRATH: Then he contacts Inspector Browne on the
3 28th; isn't that right?

4 A. Absolutely correct. Sorry, Chair, for interrupting.

5 CHAIRMAN: No, no, that's okay. 11:29

6 154 Q. MS. McGRATH: Can I just ask you generally about these
7 letters, or sorry, these minutes we have in front of
8 us. I think they were taken by Inspector Browne, is
9 that right?

10 A. That's correct, Chair, yeah. 11:30

11 155 Q. Okay.

12 A. I brought her along because I thought I was going to be
13 taking a statement of complaint from him, we'll say, so
14 I had Inspector Browne, I had Chief Superintendent
15 Myers with me. But anyway, she started recording her 11:30
16 own notes of what happened on the day, yeah.

17 156 Q. Were these taken in longhand first and subsequently
18 typed up, or were they typed up on site by Inspector
19 Browne?

20 A. I'd say they were in longhand, Chair. I actually don't 11:30
21 recall observing her doing t, you know, she did it
22 herself.

23 157 Q. If you go right through them, they are a couple of
24 pages long, there's no signature or statement that they
25 have been read over or signed or accepted or 11:30
26 acknowledged by Garda Keogh, is that right?

27 A. That's correct.

28 158 Q. That is something he said in his evidence?

29 A. No, that's fair, Chair.

1 159 Q. okay.

2 A. They were just our notes, we'll say, of the meeting.

3 CHAIRMAN: I know.

4 160 Q. MS. McGRATH: Now, one of the things he also says about 11:30
5 these, he says that he couldn't stand by the notes. He
6 said:
7
8 "They were accurate in general overall."

9

10 He said at one point in his evidence. Then he went on 11:30
11 to say:
12
13 "They were not fully accurate or verbatim."
14

15 would you accept that as a fair observation on them? 11:31

16 A. well, it wasn't verbatim. we didn't have a
17 stenographer there, you know, it's notes. I thought
18 they were pretty good.

19 161 Q. One of the things he also said on Day 109, the notes
20 were not read out to him and not signed by him; is that 11:31
21 right?

22 A. That's fair, Chair, I mean it wasn't like we were
23 doing a --

24 162 Q. CHAIRMAN: It wasn't a criminal interview.

25 A. A criminal thing, yeah. 11:31

26 163 Q. CHAIRMAN: And it's not made by him.

27 A. No.

28 CHAIRMAN: I mean, you would read things back if he
29 said it.

1 A. Yes.

2 164 Q. CHAIRMAN: And you were confirming that these were his
3 words. But it would be unusual, I think it would be
4 unusual to read over minutes to somebody, I think.

5 A. As I say, it wasn't a criminal or discipline 11:31
6 investigation. It was just our notes.

7 165 Q. MS. McGRATH: Sorry, I'm just clarifying as a matter of
8 fact, he just says in his own direct evidence they
9 weren't read out by him and they were not signed by
10 him? 11:31

11 A. Correct.

12 166 Q. I think you accepted that is how the process worked?

13 A. I accept that.

14 167 Q. You said there just something at the beginning, you
15 said you thought you would have been meeting him to 11:31
16 take a statement of complaint because under the policy
17 that would seem to be a normal procedure?

18 A. That's right.

19 168 Q. But it seems that you weren't taking a statement of
20 complaint. Did you accept that he had made his 11:32
21 complaint? Do you accept that at that point?

22 A. But he gave me this documentation as this is my
23 complaint, you know, what he gave me on the day, yeah.

24 169 Q. Okay. But I think what he gave you on the day was what
25 you had received from HRPD, the statement coming via 11:32
26 Chief Superintendent Scanlan; is that right?

27 A. Yeah, plus he added more onto it the day I met him,
28 we'll say.

29 170 Q. I think what he had, am I correct, he gave you the full

1 set of appendices, would that be right, and he also
2 gave you an additional addendum?

3 A. To which addendum as I referred to it, yeah.

4 171 Q. And I think that addendum addressed, for example, the
5 issue of delay in getting started? 11:32

6 A. Yeah.

7 172 Q. Is that right?

8 A. Yeah.

9 173 Q. Okay. And some further matters, which we will see?

10 A. Correct. 11:32

11 174 Q. Okay.

12 A. In essence, as I discovered, Chair, it was basically
13 the same complaint that he made to Chief Super Scanlan
14 in March, is what he was giving to me as his complaint
15 that he wanted me to investigate, plus the two pages. 11:33

16 175 Q. Now, if we can just ask you to go on, there's a
17 discussion there at the outset of mediation but really
18 we get into the meat of it at page 4220. Now, Garda
19 Keogh was taken through this in quite significant
20 detail during his cross-examination, so I just want to 11:33
21 ask you a couple of questions about this and some of
22 his observations on it.

23 A. Hm-hmm.

24 176 Q. At the top of the page it seems to be that Mr. Cullen
25 is telling you that the complaint was originally lost. 11:33
26 It was made on 27th March 2017. It appears odd things
27 happened to it and it went missing.

28 A. Yes.

29 177 Q. You say "who was the complaint made to."

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29

He says:

"John Scanlan, this is the same document given to him but there is an addendum."

11:33

So he is saying what you have and what I am giving you now, that's the complaint and that was what was made to Chief Superintendent Scanlan?

A. Yeah. We're in agreement.

11:34

178 Q. And I think you ask him:

"The full contents of your complaint in this?"

And he says:

11:34

"A. Yes.

Q. Are you submitting it now?

A. Yes, with the additional part."

11:34

I think the additional part is that addendum; is that right?

A. Correct, Chair, yeah.

179 Q. You say:

"Are you accepting I am neutral in this."

11:34

And Mr. Cullen says:

1 "I accept your bona fides."

2

3 A. Yes, Chairman.

4 180 Q. He goes on then:

5

11:34

6 "I will have to go to all the parties and look at
7 extensions of time, I'm only getting this today."

8

9 And I think that's what you had to do; isn't that
10 right?

11:34

11 A. Correct, Chair, and I was kind of pointing out that I
12 have to go to all the parties, which became a relevant
13 piece as the conversation went on, yeah.

14 181 Q. Okay. He says:

15

11:34

16 "Yes, and you need time to read this."

17

18 So there is no objection from the Keogh team at that
19 stage in relation to an extension of time?

20 A. No, no. There is no issue at all, from my perspective,
21 we'll say. 11:34

22 182 Q. Now, can I just ask you, and again, commissioner, I am
23 just putting to you what Garda Keogh complains about.
24 And one of the things he said on Day 104, just before
25 we get into it, he said on Day 104, at page 65, he says 11:34
26 he was asked over and over again about the names and he
27 said, at Day 114, he said it was on obstructive meeting
28 and that he was asked repeatedly who he was complaining
29 about. So can we just bear that in mind when we just

1 look at --

2 A. I wouldn't agree with that at all, Chair, I didn't
3 think it was a bit obstructive. I thought we had a
4 good, cordial meeting. In fairness, I thought we got
5 on well, you know. That is my version anyway. 11:35

6 183 Q. You recorded there:
7
8 "Who are you making the complaints against?"
9
10 And he says: 11:35
11
12 "Pat Murray superintendent and two chief in Mullingar,
13 Mark Curran and Lorraine Wheatley. And there was a
14 sergeant in the chief's office who may have been
15 pulling their strings. I'm not sure but your 11:35
16 investigation will show this."
17
18 Then there is a question:
19
20 "You will have to tell me who you are making the 11:35
21 complaints against."
22
23 Now, Garda Keogh argues, if you just look at the
24 previous paragraph, I have indicated three people.

25 A. Yes. 11:35

26 184 Q. Now this is something that he felt very strongly about
27 when he was giving his evidence.

28 A. I saw that Chair, and I am more than willing to address
29 this issue, Chair, yeah.

1 185 Q. Because you continue on the third line there, you say:
2
3 "There are a lot of people named in the correspondence.
4 I need to know who the complaints are being made
5 against." 11:35

6 A. Correct, Chair, because these were essential items from
7 my perspective. I needed to know who was he making the
8 complaints against here. We mightn't have been on the
9 same waive length here. I was clear because I'm
10 familiar with the policy, I know what it's about, we'll 11:36
11 say. So I know what I need to get from this meeting,
12 we'll say, in terms of clarity about who it is. But
13 maybe he wasn't on the same page as I was. But this is
14 why I was asking those questions, Chair, because it was
15 very important to me. Like at the outset of a bullying 11:36
16 and harassment investigation we need to know who
17 exactly it is you are going to be putting the
18 allegations to. So I needed to get clarity on that.
19 So that's why this matter -- I was, I suppose -- it
20 went on a bit to just get clarity for myself, because 11:36
21 that was a key issue for me, Chair.

22 186 Q. Okay. If you look at your last line there, you are
23 saying:
24
25 "I need to know who the complaints are being made 11:36
26 against."
27
28 Mr. Cullen is recorded as saying:
29

1 "Yeah and he get on with most people. There may be
2 others but some are more central."

3
4 So it doesn't seem to flow from the previous paragraph.
5 So would that be indicating to the Chair that they're 11:37
6 not verbatim or they are not full notes in the fullest
7 sense, if I can put it that way?

8 A. No, I'd say in the context, Chair -- like, this is my
9 perception, okay. I think Mr. Cullen and Garda Keogh
10 had the statement, there was lots of people named in 11:37
11 it, you know, and I even refer back to I think some of
12 the other correspondence or I saw correspondence
13 between AC Fanning, we'll say, and HRM about this, that
14 it wasn't clear who exactly -- it wasn't clear, okay,
15 clear to me anyway, who exactly he was referring to. 11:37
16 Because I think I documented there was 25, I think I
17 had in my note, Chair, 25 or 27 different people
18 referenced in the statement. So I needed to know -- I
19 think it was 25, Chair, if you include -- or 25 if you
20 include higher echelons of Garda management plus senior 11:37
21 Garda management. I won't list out all the others, but
22 I have 25 in my list here, Chair. But if you take it,
23 examining all the people who are mentioned. So you can
24 understand from my perspective, I need to know who.

25 187 Q. But it may be put to you that if you look at the middle 11:38
26 of the page, when he is asked that:

27
28 "Who are you making the complaints against."
29

1 Plain English and plain English answer:
2
3 "Pat Murray chief superintendent, and two chiefs in
4 Mullingar, Mark Curran and Lorraine Wheatley."
5 11:38
6 A. well, Chair, if you go back up to -- a few lines back
7 up there, where he starts off, he says:
8
9 "Pat Murray chief superintendent, and two chiefs in
10 Mullingar and there a sergeant in the chief's office 11:38
11 who maybe be pulling the strings of..."
12
13 I'm not clear that point is it just these people or the
14 sergeant in the chief's office or who else, you know.
15 So that's maybe why I was labouring the point; 11:38
16 188 Q. If we are to be a little bit forensic about it,
17 commissioner, he is clear about three but the one
18 that's vague is the sergeant in the chief's office?
19 A. At that point.
20 189 Q. Okay. And he goes on there near the end of the page: 11:38
21
22 "Pat Murray, that's is crystal clear. Mark Curran.
23 Yes. I am not making a complaint against Noreen
24 McBrien and Lorraine Wheatley, I have an issue..."
25 A. Even at that point, we'll say, he is saying, I'm not 11:39
26 making a complaint against Lorraine wheatley, which I
27 was happy at that point, you know, but then as we roll
28 on, as we see later, Chair, she comes back into the
29 equation. So, as you can understand, I am not clear,

1 you know, so I am trying to tease this out with him as
2 we go along, who. Sorry, Chair, again for
3 interrupting.

4 190 Q. Not at all, no, commissioner. And he says --
5 A. Because he says there "I have an issue with John 11:39
6 Scanlan as well", like you know, so.

7 191 Q. In fairness, he says because the complaint went
8 missing. And you know that that's a live issue?
9 A. Correct.

10 192 Q. That that documentation had been floating around for 11:39
11 some time and it only comes to you in November, so you
12 know that that's an issue?
13 A. Yeah. But I don't know, you see, does he want to throw
14 John Scanlan into the mix in terms of what he's asking
15 me to do, in terms of does he perceive John Scanlan to 11:39
16 be part of the whole bullying and harassment of him,
17 we'll say, Chair. So that's why I was labouring this
18 bit, this part of our interview.

19 193 Q. But I think he had set out in the addendum he handed
20 you at the meeting, his allegation or his issue with 11:40
21 John Scanlan, isn't that right?
22 A. He did, yeah, and we did tease that out later on. But
23 I am just saying, as the interview is going along,
24 we'll say, I am just putting things in context from my
25 perspective, we'll say. 11:40

26 194 Q. Now, you go on then in second last line and you say:
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28 "So against Pat Murray and Mark Curran?"
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And he says:

"My mind is open to Mark Curran. I thought it was him because he was friends with Aidan Glacken. I know it is coming from the chief's office but I am not sure who is doing it." 11:40

He was asked about that in cross-examination on Day 109 and he says that statement, my mind is open to Mark Curran, he says: 11:40

"That's if it was said."

A. Sorry.

CHAIRMAN: Say that again.

195 Q. MS. McGRATH: He says in his evidence on Day 109, on cross-examination, that sentence is put to him: 11:40

"My mind is open to Mark Curran."

And he says: 11:40

"Well that's if it was said."

CHAIRMAN: Sorry.

MS. McGRATH: That's if it was said. 11:40

CHAIRMAN: Oh that's if it was said. But is he saying it wasn't said?

MS. McGRATH: well, that is what I am asking, the recollection of the commissioner in relation to that.

1 Are you satisfied that that is an accurate or a
2 verbatim account of what is said there in the last
3 three lines?

4 A. I wouldn't disagree. I mean, I didn't write the
5 minutes now, this is my secretary. But I'm not 11:41
6 disputing it. That's my perception of it, we'll say.
7 But I think it articulates, Chair, for me anyway, at
8 this point that it wasn't crystal clear who exactly he
9 wanted to make a complaint against, you know. So
10 that's why I laboured it a bit. Maybe he was 11:41
11 frustrated. I didn't getting the sense at the time
12 that I was frustrating him to the extent he's talking
13 about today, but anyway.

14 196 Q. Well, did you get the sense that he might have been
15 confused or finding it difficult or frustrating? 11:41

16 A. Maybe he was, but a lot of the conversation was with
17 his solicitor too, not necessarily with him, shall we
18 say, because there was two of them in the room, we'll
19 say, yeah.

20 197 Q. Could you tell the Chair was there a sense of 11:41
21 frustration being expressed on the other side in
22 relation to these questions being asked?

23 A. I genuinely didn't get that, Chair, no, I didn't get
24 that sense of frustration, you know. Not frustration
25 about this part, maybe frustration this thing was going 11:42
26 on so long, I suppose that was their frustration,
27 that's the frustration I sensed from their side, we'll
28 say.

29 198 Q. Okay. Can we go to the next page, page 4221. Now I

1 just need you to go again about three quarters of the
2 way down the page, where it's coming to you?

3 A. Sorry, Chair, do you mind if I mention that --

4 199 Q. CHAIRMAN: Yes, you are the witness, you are perfectly
5 entitled to. 11:42

6 A. At the top of that page I say:
7
8 "My scope is limited to the policy."
9

10 CHAIRMAN: Yes. 11:42

11 A. So here I am kind of flagging for them, look --

12 200 Q. CHAIRMAN: Go up to the top of the page, Philip,
13 please.

14 A. "My scope is limited to the policy."
15 11:42

16 CHAIRMAN: Mr. Cullen is recorded as saying that he
17 can't pinpoint who as doing it, he can't always
18 pinpoint, it's a matter for investigation and that's up
19 to you. And you are saying I'm limited to the policy.

20 A. Correct. So I am saying he has to tell me who it is he 11:42
21 wants me to investigate.

22 201 Q. CHAIRMAN: So at that point there appears to be two
23 views. One is, an investigation is going to take place
24 which may throw up information about who is doing the
25 bullying? 11:43

26 A. Yes.

27 202 Q. CHAIRMAN: And you're saying, I'm limited to the
28 policy.

29 A. Yeah.

1 203 Q. CHAIRMAN: And your understanding of limited to the
2 policy, correct me if I am wrong, your understanding of
3 it was, I need to know who is being accused?
4 A. Correct. Now, he could have said the whole lot of
5 them, which would have been fine, I'd have went off 11:43
6 with that. If he said all 25 people he named, I'd have
7 went down that road. But I just wanted to get some
8 clarity from him because he was then including and
9 excluding people. I just wasn't sure, Chair. Maybe I
10 did labour it in hindsight but I wasn't doing it 11:43
11 deliberately to frustrate him or anything like that.
12 204 Q. MS. McGRATH: Is there any legitimacy to the statement
13 at the top of the page to the effect of "I can't always
14 pinpoint who is doing it it's a matter for
15 investigation and it's up to you". Is the policy a 11:43
16 straitjacket application?
17 A. No.
18 205 Q. Is that a legitimate perhaps statement to make to you?
19 A. The door was open, Chair, you know, if at some stage I
20 unearthed something and he came back and said, I think 11:44
21 this should also be incorporated within the scope of
22 what you are saying, because, you know, I have
23 discovered that there was a document or something that
24 led to point my investigation in another area which
25 would be relevant to Garda Keogh. Because during this 11:44
26 whole exchange, Chair, I was saying to him, look, we
27 need to take time. Look, if you want to take time out
28 with your solicitor, do it, I'm not forcing you into,
29 you know, saying it has to be only one or two, you tell

1 me how many, who it is.

2 206 Q. And I think that continues in the interview, if you go
3 three quarters of the way down, where you say:
4
5 "I need to be clear about what I am doing." 11:44

6 A. Yeah.

7 207 Q. "I am investigating bullying and harassment against
8 persons. Going on the definition, I need to know who
9 the complaint is being made against."
10 A. Correct. 11:45

11 208 Q. Mr. Cullen says:
12
13 "There's a lot of documents and it's in there."
14
15 You say: 11:45
16
17 "I think he had to know the people."
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19 He answers:
20 11:45
21 "Superintendent Pat Murray is one."
22
23 So, in fairness to Garda Keogh, I think he is
24 consistent in that respect. That is the third time he
25 has mentioned Superintendent Pat Murray. 11:45

26 A. Oh he was crystal clear I think, yeah.

27 209 Q. Then he goes on to say:
28
29 "I'm not sure about Mark Curran but my mind is open.

1 When he left Lorraine Wheatley came and she's sound and
2 that sergeant is there all the time and he is friends
3 on Facebook with A."

4 A. Yeah.

5 210 Q. And you say:

11:45

6
7 "If it is the sergeant, but if I don't get a complaint
8 against him then I won't be putting a complaint against
9 him."

10 11:45

11 So I think if he was to say, well, you know, I can't
12 necessarily pinpoint these people but you are saying if
13 I don't make a complaint against them I can't pursue
14 it. Is that a fair summary of what's happening now at
15 this stage in the meeting?

11:45

16 A. Well, I want to know where I am starting off, we'll
17 say, you know, I mean, I am going to be leaving here
18 today and going to certain people, we'll say, so I
19 wanted to know. I mean, I wasn't saying this is a
20 guillotine here, you know, if you don't do it today
21 I'll never again be back to you. I just wanted
22 directions from his perspective, who was he pointing me
23 towards.

11:46

24 211 Q. Okay. And so he says, this is Garda Keogh himself:

11:46

25
26 "I'm not sure who is responsible for the Mullingar
27 thing. If you go to Mark and Lorraine and say they
28 were busy and just signed the document."

29

1 That suggests that there is a very much fuller
2 conversation going on here in the background, if you go
3 and say they were busy and you just signed the
4 document. So it would suggest that these notes are not
5 a full picture really of the full detailed 11:46
6 conversations that were going on between all of you in
7 the room.

8 A. I wouldn't say they stray too far from it either,
9 Chair, do you know what I mean. To me it's kind of
10 logic enough. 11:46

11 212 Q. Did you know what he was talking about or was he asked
12 what he was talking about?

13 A. I think what he was trying to say there, Chair, that he
14 could have -- we'll say, when my investigation gets
15 going, while he might think it's Mark Curran was doing 11:46
16 something, he could discover, well, Mark is only
17 signing, it's actually the guy in the chief's office
18 who is really having a pop at him and, you know, he's
19 using the chief. That's my interpretation of what he
20 is saying there, Chair. 11:47

21 213 Q. You say:

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23 "I need to find out who you are saying is responsible
24 so that I can put it to the people."
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26 Mr. Cullen says: 11:47

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28 "It's in the documents."
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You say:

"You need to think about it, you need to say who is doing this."

11:47

So again it's his argument, Commissioner Finn, that he is being asked over and over who he is making his complaint against and now we see the question multiple times at this stage. Would that be fair to say in respect of him?

11:47

A. Maybe from his perspective, Chair, he might have been taking it differently. From my perspective, I was just trying to get some clarity, like you know.

214 Q. And he goes on down there, in the first quarter of the page he says:

11:47

"Pat Murray, Mark Curran but my mind is left open to him."

He says:

11:47

"It is Pat Murray and Mark Curran."

Then you say:

11:47

"So you're not saying the sergeant here?"

And then he says:

1 "No, I don't have enough evidence."

2

3 I think the meeting changes a little bit then, where
4 you are talking about the addendum, and you say:

5

11:48

6 "There is stuff in the addendum that is outside the
7 bullying and harassment. If you feel that Chief
8 Superintendent Scanlan comes under this. I believe you
9 may have a complaint with the delay with the
10 investigation. This could be a different matter."

11:48

11

12 So can you just take the Chairman through that, how you
13 saw it at that time?

14 A. The logic, where I was going there, Chair, bullying and
15 harassment is repetitive behaviour against somebody.
16 If, we'll say, Chief Superintendent Scanlan didn't do
17 something, then that would be a matter you would deal
18 as a grievance, we'll say. It wouldn't be
19 appropriate --

11:48

20 215 Q. CHAIRMAN: It's not bullying and harassment?

11:48

21 A. Yes.

22 216 Q. CHAIRMAN: It's inefficiency or incompetence?

23 A. It's a once off thing, we'll say.

24 217 Q. CHAIRMAN: Or delay or whatever it is.

25 A. And we have a grievance procedure that deals with, you
26 know, something that's not captured within the bullying
27 and harassment policy document. So I was kind of
28 pointing, well, you know, if you are talking about a
29 single item against a person, there is another

11:48

1 mechanism for dealing with that, it's called grievance,
2 yeah, a grievance procedure.

3 218 Q. MS. McGRATH: So would it be fair to say that when you
4 met him in December you were taking the view, look, the
5 issue of the delay and how we got there it's not for 11:49
6 me, it has nothing to do with me, you will have to go
7 elsewhere with that. Is that your view?

8 A. What I was trying to explain to him, Chair, if he
9 wanted those matters dealt with, and I wasn't saying
10 that I wouldn't take them from him there today, but it 11:49
11 wouldn't be part of the investigation that Assistant
12 Commissioner Fanning had appointed me to do. I
13 undertook that I would take them from today, if he had
14 other issues, and give them back to AC Fanning and let
15 him progress those matters. But in terms of the 11:49
16 bullying and harassment investigation that I was being
17 appointed to do, I'd have to separate them, if that
18 makes sense, Chair.

19 219 Q. So just to be clear, are you saying it wasn't something
20 to do with you, that was somebody else's issue to 11:49
21 resolve with Garda Keogh?

22 A. Yeah, it wasn't within, we'll say, the terms of
23 reference of my appointment by AC Fanning. AC Fanning
24 appointed me to do literally the bullying and
25 harassment, we'll say. If new stuff came up today and 11:49
26 there was reference to the criminal investigation, I
27 was trying to explain to him, look, my appointment
28 doesn't cover me for those but I will take them from
29 you. I feel I would be obliged to do so, Chair. And I

1 will give them back to AC Fanning so that he could
2 pursue them through another forum, we'll say, with
3 somebody else, if that was the case.

4 220 Q. I think you did subsequently involve yourself in the
5 issue because you did look for explanations somewhat 11:50
6 down the line, isn't that right, from AC Fanning?
7 A. I don't understand the question.

8 221 Q. In the sense of the issue with the delay, it literally
9 almost kept coming back to haunt you?

10 A. Oh I did deal with, I did go back to AC Fanning with 11:50
11 the delay, we'll say, but, we'll say the other matters,
12 which I would call them grievance matters as opposed to
13 part of my terms of reference of the bullying and
14 harassment investigation, I separated them, we'll say.
15 So I went back to AC Fanning and said, look, he has 11:50
16 raised some issues here about why, for example -- using
17 this example, we'll say, why Chief Superintendent
18 Scanlan delayed, we'll say, processing his complaint.
19 Now I didn't know why at the time, I had no knowledge
20 of that, but I am using that as example. So I'd go 11:51
21 back to AC Fanning and say, look, he has raised some
22 other issues here which appear to me to be outside the
23 scope of my investigation, I am alerting you to it, you
24 deal with it, you know, because it's not within my
25 terms of reference. 11:51

26 222 Q. I think we will come to that in a moment in the
27 correspondence.

28 A. Sorry.

29 223 Q. Mr. Cullen says:

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"His original complaint was lost and we're not sure who or where it happened."

You said:

11:51

"I will send the issue to AC Fanning and outline this is a complaint separate to the bullying and harassment complaint."

11:51

And I think that's what you've just said to the Chair, isn't that right?

A. Yes.

224 Q. Garda Keogh tells you:

11:51

"No, it's all part of bullying. It's me that has to push things."

A. That is fair enough, Chair, and that was an opening for him to say, well, I want to include Chief Superintendent Scanlan within your bullying and harassment complaint, or investigation, we'll say.

11:51

225 Q. But there is no further follow on from you to clarify that with him; is that right?

A. Because he didn't ask me or his solicitor didn't say to me, I want you to include Chief Superintendent Scanlan within your investigation, at any point.

11:52

226 Q. All right, but he does say no it's all part of bullying?

A. Garda Keogh said that on the day, he did, in fairness,

1 Chair, I'm not disputing that.

2 227 Q. You go on to say:

3

4 "I need to be clear whom I need to approach and
5 investigate. Right now the complaint is against Mark 11:52
6 Curran and Pat Murray. Nicky will need to tell me if
7 he wants to put allegations to other persons or I
8 won't go to other persons"

9

10 A. Well, I was probably addressing that to his solicitor, 11:52
11 in order to say, look, he needs to tell me, yeah,
12 because if they're not willing to scope then obviously
13 I won't be going to them as part of my investigation as
14 persons complained of as opposed to witnesses, we'll
15 say. 11:52

16 228 Q. So you say:

17

18 "I won't be going to other persons."

19

20 And then Garda Keogh says: 11:52

21

22 "If Mark Curran says it was someone else."

23

24 Then you say:

25

26 "Then I will come back to you and we will take it from
27 there." 11:52

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29 He says:

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"Throw in Lorraine Wheatley so."

Do you remember that?

A. Yeah.

11:53

229 Q. Now, this was put to Garda Keogh in some detail in his cross-examination and he says he doesn't remember saying that, on Day 109, page 129. What do you say to that? He says he doesn't remember saying "throw in Lorraine Wheatley so"?

11:53

A. He did have her in the equation earlier on, we'll say. So, I don't know why he is disputing that now, Chair. I mean...

230 Q. Would you accept that you've just a couple of lines previously said to him "You need to tell me if he wants to put the allegations to other persons or I won't go to other persons"? Would you accept that this was a response, if it was a response, to that a couple of lines up?

11:53

A. Sorry, Chair.

11:53

231 Q. Of concern by Garda Keogh, that if I don't mention the name?

A. I think, Chair, I was only explaining, again I was telling him the process like, you know what I mean. I will investigate whatever you tell me to, but you've got to be specific in terms of what you want me to investigate. That was the logic. But actually, Chair, if you go down to the next comment from me, it says, I'm saying to him:

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"Are you happy with this? Do you want some time out?"

So I am telling himself and his solicitor, guys, look, I'm not putting any pressure here, if ye want to take some time out here, you know, that's fine. We were in Mullingar hotel, I could have left the room and gave them the time out.

11:54

232 Q. And Mr. Cullen replies --

A. I thought I was being fair to him, Chair, yeah.

11:54

233 Q. He replies at the end of the page and says:

"I'm happy that under bullying and harassment complaint that it is these three people but it may be elsewhere."

11:54

And you query on the next page:

"Chief Superintendent Scanlan, your new statement?"

And the answer is:

11:54

"Yes, we don't know where this is going and Commissioner Ó Cualáin's scope."

You say:

11:54

"Bullying and harassment is different to grievance and under the definitions this would go under a different direction. Grievance is a one off thing."

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Garda Keogh says:

"I didn't say John Scanlan didn't do anything."

11:54

So there is quite a detailed discussion about this; whether or not the issue of John Scanlan is in or out of the bullying arena, because you say:

"Are you happy I report to AC Fanning that you have a grievance that the complaint didn't go anywhere?"

11:55

Mr. Cullen replies:

"I don't believe they are totally separate."

11:55

Then you say:

"I have to separate between bullying and harassment and grievance and the next time we meet we have to confirm this."

11:55

A. Yes.

234 Q. So that issue seems to have been left open at that stage in the meeting?

A. Not quite actually, from my perspective, Chair.

11:55

235 Q. Well, is there something that is not reflected in the notes there?

A. Well, no, I'm just saying that in the context of -- again, if you only had a once off interaction with

1 Chief Scanlan and his only issue was the fact, we'll
2 say, that he didn't send the claim or the statement on
3 to AC Fanning fast enough, whatever it was, that
4 wouldn't be in my mind a repetitive behaviour that
5 would fall under the category of bullying. It would be 11:55
6 a single thing, which we would deal with under the
7 grievance policy. And so, I undertook to give -- and I
8 did subsequently post out to Garda Keogh a copy of the
9 grievance procedure, so he would understand the
10 difference between the bullying, repetitive behaviour 11:56
11 and the single item which would be dealt with as a
12 grievance. That's where I was at there, Chair, in
13 relation to trying to explain it.

14 236 Q. Would you accept, commissioner, that this issue in
15 relation to Chief Superintendent Scanlan was not a 11:56
16 straightforward issue in the sense of it was being made
17 clear to you in the meeting that there was a delay.
18 You knew there was. You had already had a letter from
19 Chief Superintendent Wheatley. So you knew there was
20 something there in the background. What the Keogh team 11:56
21 are telling you, we don't know what happened to it.

22 A. That's fair enough.

23 237 Q. So it may be Chief Superintendent Scanlan, it may not,
24 we don't know.

25 A. Yeah. 11:56

26 238 Q. Do you accept that that's fair enough from their
27 perspective, whether he should be included or not in a
28 list, because they don't know, is the answer?

29 A. And neither do I, to tell you the truth, at that stage,

1 chair, because I'm only starting out. But I was just
2 trying to explain to them, you know, if it was just a
3 once off thing with Chief Superintendent Scanlan, that,
4 you know, a grievance procedure might be a more
5 appropriate mechanism. I wasn't excluding anything, 11:57
6 you know. I was just trying to explain the difference
7 between the two.

8 239 Q. And I think Mr. Cullen says, a couple of lines down:

9
10 "You may find when you talk to John Scanlan that this 11:57
11 is minor thing."

12
13 You continue:

14
15 "In the addendum there may be grievances that we need 11:57
16 to call them out and be clear about them."

17
18 It's is accepted by the Keogh team:

19
20 "You will have to do that." 11:57

21
22 You say:

23
24 "Nicky, you might need time." 11:57

25
26 And Garda Keogh says:

27
28 "I have named three names, Pat Murray, Mark Curran and
29 Lorraine Wheatley."

1 Can I ask you, by the end of that meeting --

2 A. Can I just ask you to go on to the next line actually.

3 240 Q. And you say:

4

5 "You need to think about this. I am not limiting this. 11:57

6 A. That's the line I was trying to say there.

7 241 Q. "I will send you on another document about grievance

8 procedures for clarity. In our world they are two

9 separate things, I will give you the guidelines as I

10 did with the bullying and harassment. I want to make 11:57

11 sure that no other grievance gets lost."

12

13 Now, can I ask you, just at the end of that meeting, it

14 was put to Garda Keogh when he was giving his evidence

15 that at this meeting the words that were used were, and 11:58

16 I don't want to have the incorrect ones, is that he was

17 waddling backwards and forwards. That is on Day 109,

18 at page 116. So effectively he was all over the place

19 effectively, it was put to Garda Keogh during his

20 cross-examination. Can I ask you to comment on that? 11:58

21 A. Is he saying that about me?

22 242 Q. No, that Garda Keogh was. That he was waddling

23 backwards and forwards. That's a quote from Day 109.

24 Can I ask you to comment on Garda Keogh that day in the

25 meeting? was it the case that he was all over the 11:58

26 place? were you finding it difficult?

27 A. Actually I thought he was referring to me when he said

28 that, to tell you the truth.

29 243 Q. No.

1 A. No, I didn't have any problem with him at all. I mean,
2 to be honestly fair, I actually thought it was a good
3 meeting, Chair, I thought we got on fine. That was my
4 perception, you know. I thought it was very cordial.
5 It was relaxed in the context that I wasn't trying to 11:59
6 put him under any pressure, trying to be fair and
7 reasonable. We got a location in a room where we could
8 do this in privacy. And I thought I was just trying to
9 do my best to explain to them where we were -- what I
10 was setting out to do, what I was trying to embark on 11:59
11 and trying to get some guidance as to where it would
12 go, yeah. But actually, Chair, I too want to bring the
13 last line of that page, while we're on it, Chair, I
14 finished up by asking:

15
16 "Are you happy? I hope I am being fair and reasonable
17 with you." 11:59

18
19 and Mr. Cullen -- they both said:

20
21 "yes." 11:59

22 244 Q. I think that goes to what you are saying there, of a
23 fair and cordial meeting with Garda Keogh and his team
24 that day?

25 A. That was my perception of it, Chair, yeah. 11:59

26 245 Q. He is saying there at the very end:

27
28 "I have named the three names, Pat Murray, Mark Curran
29 and Lorraine Wheatley."

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28
29

So, whilst it may have taken ins and outs and rounds and abouts to get there, at the end of the meeting, you say you were not limiting it but were you pretty satisfied there were at least those three names in the frame? 12:00

A. Yes, Chair, yeah. But I suppose my take was, look, that was your first meeting, I'm sure he would have to go away with his solicitor and reflect on it. I wasn't closing the door to anything on that day, look, could we meet again? I'll read the statement and you go back and do your bit and we will meet again. 12:00

246 Q. There at the end of the page, when you say:

"I hope I am going fair and reasonable. Are you happy?" 12:00

He says:

"Yes. I'll sign this." 12:00

Do you remember that and, as you say, you don't think he did sign it.

A. No. I don't think I asked him to sign it. I can't recall asking him to sign it. Maybe Inspector Browne did, I don't recall. 12:00

247 Q. Okay. Then at the top of the next page you say:

"Thank you for the meeting. There wouldn't have been

1 any point without the documentation."

2

3

Garda Keogh says and Mr. Cullen says:

4

5

"There should be copies around."

12:00

6

7

It says:

8

9

"Inspector Browne left to make a photocopy of signed statement and returned."

10

12:00

11

12

This is why there is a little bit of confusion surrounding this. Do you remember that?

13

14

A. Yeah, we'll say, he gave me his statement plus the

15

two-page addendum, so effectively this was, from my

12:01

16

perspective, his statement of complaint. So I signed

17

it on the bottom, you know, to say look, okay, here's

18

the statement, here's the date. I don't have it in

19

front of me here now but I think if you bring up the

20

document it will show we both signed it on the date as

12:01

21

being here, this is the formal complaint, you sign it,

22

I sign it, it's dated. You know, that's my

23

understanding of it.

24

248 Q. Okay. I think you were asking was there anything else

25

and he mentioned just the issue in relation to the

12:01

26

disciplinary investigation. You may not have connected

27

the dots there. But it is referencing a statement to

28

Superintendent Lacey, he says:

29

1 "I don't know who is in charge of the investigation, I
2 have written to find out, I don't know."
3
4 And you said:
5 12:01
6 "I'll see if I can find out."
7
8 He says:
9
10 "Good. Would it have been someone who retired." 12:01
11
12 He says:
13
14 "I think it was Jack Nolan."
15 12:01
16 So he just raises that issue with you at the end. And
17 I think it didn't get raised as an issue again.
18
19 Now, I think it is his evidence that he only met you
20 once and that was the one occasion, is that right? 12:01
21 A. That's correct, Chair.
22 249 Q. We will come to correspondence where you do offer to
23 meet him subsequently to sit down with him, is that
24 right?
25 A. Absolutely, Chair. 12:02
26 250 Q. But I think it never happened?
27 A. It didn't happen, even though I did, I think, I counted
28 up nine or ten times where I did offer to meet him,
29 Chair.

1 251 Q. Don't worry, you don't have to look for it,
2 commissioner, I will take you through some of those
3 letters. I think what happened was, that was on the
4 1st November?
5 A. Yeah. 12:02
6 252 Q. And on the --
7 CHAIRMAN: I thought December.
8 MS. McGRATH: Sorry, December. 1st December, sorry,
9 2017. I think, as you say, it was, I will just get his
10 name correctly, Chief Superintendent Tom Myers was 12:02
11 assisting you and we know and we have seen in the
12 papers that he drew up a job sheet effectively for the
13 investigation, is that right?
14 A. Yeah. We met subsequently, Chair.
15 253 Q. It was quite a detailed job sheet. It's at 4234. I 12:02
16 think you didn't simply confine the jobs sheet to the
17 issue of Pat Murray, Mark Curran and Lorraine wheatley.
18 I think you looked into a number of issues in respect
19 of a number of the officers, is that right, on the jobs
20 sheet. Issues arising in respect of Noreen McBrien? 12:03
21 A. We met first, it was a sort of original brain dump to
22 put everything in the mix and see, you know -- I
23 recall, we'll say, going back to my own office and
24 going through his statement, kind of breaking down the
25 different components to it and seeing who was involved 12:03
26 in each one and making up jobs, we'll say, how it was
27 going go. It was kind of, I suppose, a brain dumping
28 initially as to where we were going go, yeah.
29 254 Q. Okay. Now, at this stage then you also send out the

1 grievance document to Garda Keogh, isn't that right,
2 around this time?

3 A. Yes.

4 255 Q. As you had undertaken to do so at the meeting. Now,
5 you also write a letter to the assistant commissioner
6 of Eastern Region, Assistant Commissioner Fanning. If
7 we look at this for a moment, at 4251.

12:03

8 A. Yes, Chair, I have it here.

9 256 Q. And at 4251 you say:

10

12:04

11 "With reference to the above, at a meeting with Garda
12 Keogh in Mullingar he highlighted a number of matters
13 that I consider to be outside of the scope of the
14 matters that I am investigating. These matters are set
15 out in the attached addendum that Garda Keogh provided
16 to me on 1st December 2017."

12:04

17

18 So the synopsis of the matters that you considered to
19 be outside your scope are:

20

12:04

21 "1. Delay in investigating his complaint made under
22 the policy guidelines to Chief Superintendent Scanlan
23 on 2nd March 2017 and the circumstances surrounding the
24 discovery of the delay.

25 2. Sergeant Guinan checked his car on Pulse on 5th May
26 2017.

12:04

27 3. His complaint in relation to an incident on 21st
28 December 2015 involving a motor car which had an
29 incorrect time inserted.

1 4. He is currently incorrectly recorded and marked
2 sick.
3 5. He has not been informed of who is investigating
4 his complaint in relation to Garda collusion in the
5 drugs trade in the midlands." 12:05
6
7 Now, I think they were taken from the addendum
8 effectively that he gave you that day?
9 A. Yeah.
10 257 Q. Is that right? 12:05
11 A. That's my understanding.
12 258 Q. You say:
13
14 "At this point in time it would appear that matters
15 included in this addendum are outside the scope of my 12:05
16 appointment I wish to be dealt with under the grievance
17 procedure. I have explained to Garda Keogh and his
18 solicitor, Mr. Cullen, that these matters are currently
19 outside the scope of my appointment."
20 12:05
21 That is dated 4th December 2017
22 A. Yes, Chairman.
23 259 Q. Now, you get a response, by e-mail I think, from
24 Assistant Commissioner Fanning, at 4278, if we could
25 just look at that. This is a couple of days later, on 12:05
26 the 7th December. He says:
27
28 "I don't want to open the attachment."
29

1 Can you see where I am? Just go down please.

2 A. I have it, thank you, 4278, yeah.

3 260 Q. He says:

4

5 "Give me a shout. 12:05

6

7 I don't want to open the attachment."

8

9 That was the letter I think.

10 A. Yes. 12:06

11 261 Q. "If there is a review I'll have to come to it with

12 clean hands."

13

14 Because at that stage he's the appointing officer and

15 will have to do the review under the policy. 12:06

16 A. Yes.

17 262 Q. "I've had no role whatsoever on the grievance

18 procedure, it would be up to Garda Keogh to utilise the

19 policy if he wishes. I've set out in the code and I'm

20 not aware of any procedure to transfer it across from 12:06

21 B&H to a grievances process.

22

23 I am of the view that if there is an issue about the

24 policy, then you can going to HRPD, as HRPD who owns

25 and monitors the policy. My role is very narrow in the 12:06

26 process.

27

28 My sense is that you investigate all the issues Garda

29 Keogh raises. I'm not sure you can arbitrarily

1 determine something is not bullying etcetera and then
2 progress to determine it is a grievance procedure.
3 Similarly, if there is some criminal allegation then it
4 has to be visited. My sense is you are investigating
5 on the basis of the contents of Garda Keogh's issues 12:06
6 and then decide whether the conduct amounts to
7 bullying, harassment or victimisation etcetera or if it
8 fails to meet the criteria.

9
10 Once you are finished then you sent the parties your 12:06
11 output etcetera.

12
13 If any parties are dissatisfied, then they can ask me
14 review the files. For that reason I don't want any
15 prior involvement." 12:06

16
17 Now, you actually reply back a couple of minutes later,
18 at 8:15, which is just above that, still on 4278.

19 A. Yeah.

20 263 Q. You come back, you say: 12:07

21
22 "I have no problem with B&H stuff but the problem that
23 the new stuff that he brought to the table is not in
24 B&H.

25 12:07

26 I can only take this to JB in HRM if you think that I
27 am on the wrong road but I sense that I am correct as I
28 am only doing B&H and this is additional stuff outside
29 the scope of that."

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So, you know, the lack of clarity in the meeting on the 1st December around this issue has now translated into a letter which you're sending to the assistant commissioner, your appointing officer, but it is put back on your desk effectively; is that right

12:07

A. So to speak, yeah.

264 Q. Is that where it effectively stayed, because the grievance procedure just fell away, would that be right?

12:07

A. Well, I didn't investigate them, Chair, because I didn't think they were in my remit to do that.

265 Q. So, according to your appointing officer it had been put back on your desk and it says you investigate all the issues Garda Keogh raises; is that right? He said that in his e-mail, just down below.

12:08

A. Yeah, sorry.

266 Q. Is that where it stood then, it stayed in your court, so to speak, is that right?

A. I'm not sure, Chair, did I write to -- go back to HRM or somebody in relation to that? I don't think I left it sitting there, you know.

12:08

267 Q. We will move through the correspondence and we will see?

A. Yes.

12:08

268 Q. Because it does come up a little later where you are asking for a timeline later on in your investigation of the delay. So if we just stay with the correspondence for a moment and around this time. We're still in very

1 early December. You get a letter from John Gerard
2 Cullen on the 5th December, this is four days after
3 your meeting. It's at page 390 of the book. If we
4 just look at the headings, the Chairman has seen this
5 letter before. He talks about the fragmentation of the 12:08
6 documenting of the complaint. I think that is
7 effectively a complaint by him that you didn't have all
8 the material on the day you met him?

9 A. That's right.

10 269 Q. You knew that he was unhappy about that, did you? 12:09

11 A. Yeah, I did, yeah. Yeah. While I had a lot of
12 material, I suppose the material wasn't -- what I had
13 wasn't suitable because it didn't have the indexation
14 to it, we'll say, so I couldn't make full sense of it,
15 Chair, yeah. 12:09

16 270 Q. He talks about -- the next page, Mr. Barnes, if --there
17 is the fragmentation of the documentation issue, he
18 talks about procedural fragmentation?

19 A. Yes.

20 271 Q. It being lost and having no answers and nobody has ever 12:09
21 explained what happened. Do you accept that Garda
22 Keogh's position was that at the time, nobody had gone
23 back to him? He seemed unaware to you as to where it
24 had gone for the previous eight months. Would you
25 accept that as a bona fide issue on his part? 12:09

26 A. I think in fairness to him, it was, Chair, yeah. You
27 know, he made the complaint I suppose in, whatever it
28 was, March and here am I in December, you know,
29 November/December. So I think it is probably fair,

1 they had some -- they that he had a complaint in
2 relation to that.

3 272 Q. He talks about conceptual fragmentation, he says:

4
5 "Another issue which arose at the meetings with 12:10
6 Assistant Commissioner Finn was his concept of
7 scoping. "

8
9 Now he was quite critical. There's quite a lot of
10 criticism of this in the letter. What do you have to 12:10
11 say about that to the Chairman?

12 A. I was slightly taken aback, Chair, I suppose, when I
13 got it. I thought -- I thought I was doing a good job
14 trying to explain to him where I was going in the
15 meeting on the day, but he obviously didn't share my 12:10
16 view on it, you know. But then again, I suppose you
17 have to maybe look at it from his perspective. He
18 didn't -- he wasn't aware of the gap between John
19 Scanlan taking the statement and it coming to me. And
20 I suppose he didn't understand why, when I arrived the 12:10
21 first day to meet him, that I didn't have John
22 Scanlan's statement and all the appendices. He didn't
23 understand, I suppose, where I was coming from and
24 maybe I didn't understand where he was coming from.
25 But you could understand why he had this state of mind 12:10
26 to some extent, Chair. But I did think he was being a
27 little bit hard on me, so to speak.

28 273 Q. He clarifies there and talks about Superintendent
29 Murray there in the last two paragraphs in some detail?

1 A. Yes, Chair. And he only named Superintendent Murray,
2 which caused me a little bit of alarm at the time, you
3 know. Because I suppose I had come away from the
4 meeting thinking he has named three people and I am
5 looking for clarity and all I hear in this 12:11
6 correspondence is Superintendent Murray. So I think I
7 write back to him saying, who exactly are we clarifying
8 that you are making a complaint against here.

9 274 Q. Well, if we go on to the next page, he mentions
10 Superintendent Murray again. He says in the second 12:11
11 paragraph:

12
13 "Please note that subject to the foregoing
14 reservations, Garda Keogh is glad that his complaint
15 has now finally been rediscovered and is looking 12:11
16 forward to the adjudication on Superintendent Murray in
17 particular."

18
19 It says: 12:11

20
21 "When the Tribunal of investigation under Assistant
22 Commissioner Finn gets the opportunity to read the
23 entire document and take account of the complaint
24 against Superintendent Murray, Garda Keogh is available
25 through his solicitor to answer any questions relating 12:12
26 to the bullying, harassment and victimisation by
27 Superintendent Murray."

28
29 So, you are quite right, there's a number of references

1 there to Superintendent Murray.

2 A. Yeah. That caused me a bit of alarm now, Chair, when I

3 read that, you know, I was saying, does he just think

4 it's Superintendent Murray. So that's is why I went

5 back to him, Chair. 12:12

6 275 Q. I think that you reply on the same day, at 393?

7 A. Yes, Chair.

8 276 Q. You say, for example, at number 3:

9

10 "I liaised with your client in advance of the meeting 12:12

11 on 1st December 2017 to ascertain the nature of his

12 complaint."

13 A. Yeah, that was the bit about he telling me to get John

14 Scanlan's statement, you know.

15 277 Q. But he is proactive about it, would you accept that? 12:12

16 He is the one who is phoning Inspector Browne and

17 saying there is a complaint here?

18 A. Well, he did that in response to my letter, saying,

19 look, I want to meet you, take a complaint. And he was

20 saying well, before you come to see me, you should 12:13

21 really read this letter or this statement, so I went

22 off and got it, yeah.

23 278 Q. You say at 4:

24

25 "Your client requested that I read the statement that 12:13

26 he made on 27th March 2017 before I meet him. Which I

27 did.

28 5. I was not in possession of the appendices that he

29 referred to in his statement."

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I think you confirmed now in your evidence and clarified you had some of the appendices but not all of them; is that right?

A. Yes, correct, Chair. 12:13

279 Q. "6. The purpose of my meeting with Garda Keogh on the first occasion was to ascertain from your client and not any third party the full details of his complaint."

what did you mean by any third party? 12:13

A. Well, I mean it wasn't his solicitor, we'll say. I wanted to hear from him, tell me, you know, you're the complainant, I need to meet you.

280 Q. You say at the top of the next page:

"I have considered the document I received on 1st December 2017 to your client's complaint."

Is that right?

A. Yes, Chair. 12:13

281 Q. You say:

"I undertook to meet your client again when I had time to read and study the 19 page narrative and 14 voluminous appendices and two page addendum. 12:13

9. I explained to your client that I was not aware from reading his statement the exact nature of the persons that he was alleging were the subject of his complaint."

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You go on to talk about the scope. At number 11.

"I explained to your client that my appointment was to investigate the allegations of bullying and harassment and if any matters are outside the scope it is not within my current terms of reference to investigate such matters." 12:14

At 12 you talk about the grievance issue. 13, you gave him a copy of the policy. Can I ask you to look at 15: 12:14

"Your client named three persons that he stated were the persons that were responsible for bullying and harassing him. The three persons are, Superintendent Pat Murray, Chief Superintendent Mark Curran and Chief Superintendent Lorraine Wheatley." 12:14

So again, I think you're accepting there that you were clear at the end of the meeting on the 1st December who was at issue in relation to the -- 12:14

A. Yeah, but the alarm came from his letter of the 5th December, where he just named Superintendent Pat Murray. If you understand, Chair, what I'm on about here. The previous matter you brought up to me there. 12:14

282 Q. Well, I think it doesn't say that. I think you're saying that he has named three people. You don't in fact refer to the Murray issue in this letter, isn't that right?

1 A. No, but that's the context. I mean that's the very
2 same day I wrote back to him, to say, look, you just
3 wrote to me on the 5th December and you spoke about
4 Superintendent Murray only, which caused me some alarm,
5 I suppose, because I left the meeting on the 1st 12:15
6 December thinking it's three people, here yet in his
7 written correspondence he doesn't make any reference to
8 it. So I just wanted to clarify that point again,
9 Chair.

10 283 Q. At number 19 you talk about the scoping, you say: 12:15
11
12 "It was in the context of establishing identity of
13 persons that your client was making allegations of
14 bullying and harassment."

15 12:15
16 You indicated in your investigation that you would be
17 fair to all parties, you would adhere to the principles
18 of natural justice and fair procedures for all. But
19 you say in number 21:

20 12:15
21 "I have forwarded a copy of your letter to the Garda
22 commissioner, as there are matters contained therein
23 that are currently outside the scope of my
24 investigation."

25 12:15
26 Is that consider?

27 A. Yes, Chair.

28 284 Q. To the Garda --

29 A. That's why I think, Chair, we're missing a little piece

1 there between my correspondence with Assistant
2 Commissioner Fanning, that either he took, undertook to
3 do something or there is another piece missing I think
4 there from the Chief.

5 285 Q. Can you tell us what that piece is? You are saying -- 12:15
6 A. That I am flagging the bits that I felt were outside
7 the scope of bullying and harassment.

8 286 Q. Just to be very precise, commissioner, you flag them to
9 Assistant Commissioner Fanning?

10 A. Yes. 12:16

11 287 Q. Who puts them back in your court firmly?
12 A. Yes.

13 288 Q. But you are saying in this letter that you have
14 forwarded a copy of the letter of the 5th December to
15 the Garda Commissioner. Is that an error? 12:16
16 A. I'd say it's an error, Chair. My understanding is that
17 either AC Fanning told me or -- I'm being unfair to him
18 now. But my understanding that it did go subsequently
19 to either John Barrett or it went up some place along
20 the line anyway. I'm sure if I go rooting, I will find 12:16
21 some piece of correspondence to make that link, you
22 know.

23 289 Q. Again, just to be very clear, did you, because you are
24 saying you forwarded a letter to the Garda
25 Commissioner? 12:16
26 A. No, I didn't, Chair, that's wrong, I didn't do that.

27 290 Q. Okay. To your knowledge were these issues ever brought
28 to the attention past Assistant Commissioner Fanning?
29 A. That the bit, Chair, I think I'm missing. There's a

1 piece of correspondence missing here, you know.

2 291 Q. well, from you, can I just ask you?

3 A. Oh, I can't recall did I write to, we'll say, John
4 Barrett or did AC Fanning say he wrote to J Barrett.
5 But I have a funny feeling I have some piece of 12:17
6 correspondence there, Chair.

7 292 Q. Okay, we can certainly look into that.

8 A. Yeah.

9 293 Q. We just haven't seen in the papers. So on the next
10 page then you confirm you have not been invited to any 12:17
11 meetings between the acting Garda Commissioner and the
12 chef administrative officer in relation to Garda Keogh.

13 A. Yeah. That's in the context of some of the stuff that
14 was in the addendum to the statement that he provided,
15 we'll say. 12:17

16 294 Q. And if he is alleging criminal matters, he must
17 articulate those matters clearly.

18 A. Yeah. Again, I was trying to explain, look, there's
19 reference here to stuff that -- I think there was
20 mention of corporate criminality. Actually, that was 12:17
21 the phrase, yeah. There was a mention of corporate
22 criminality. This wasn't -- I suppose corporate
23 bullying now. This was a phrase his solicitor
24 mentioned to me, corporate criminality. I never heard
25 of corporate criminality, Chair. So that's why I sent 12:18
26 it back to him, you know, if you're alleging corporate
27 criminality, that's outside my scope anyway.

28 295 Q. well, can I ask you now, Commissioner Finn, because at
29 this point there is a very complex factual matrix

1 falling into place here, in the sense that Garda Keogh
2 is somebody who was coming from a protected disclosures
3 background, there had been an extensive criminal
4 investigation and --

5 A. No, I wasn't really privy to that. I didn't know about 12:18
6 that, to be honest, Chair.

7 296 Q. Did you know had all his background, his contextual
8 background in this regard?

9 A. I wouldn't have any great knowledge of it, Chair. It
10 wasn't in my region, so it was really hitting my radar. 12:18
11 Some correspondence relating to Garda Keogh did cross
12 my boughs at one stage when I was acting for Assistant
13 Commissioner Fanning, he was away, but that's a
14 separate matter.

15 297 Q. But certainly in the complaint that you got and in that 12:18
16 extensive statement to Chief Superintendent Scanlan,
17 this issue is dropping into the picture relatively
18 frequently, the issue of the Ó Cualáin investigation,
19 the issue of the complaint he made as a protected
20 disclosure. To what extent were you briefed on that, 12:19
21 did you know about it, could you put any of these
22 complaints in a factual context?

23 A. Not really, Chair, no.

24 298 Q. Okay. You finish your letter and you say:
25
26 "In the light of the extensive correspondence provided
27 by your complaint, I wish to meet with him early next
28 week to further clarify the issues, including the
29 statement of complaint provided to me on 1st December

1 2017."

2

3 Now, as you have said to the Chairman, this didn't
4 actually happen subsequently, isn't that right?

5 A. No, and this is one of examples of where -- I said, 12:19
6 look, I'm prepared to meet your client, yeah, because I
7 took exception to the fact that he said in his direct
8 evidence that there was no second meeting, as if I did
9 nothing, like you know. That wasn't my take on it.

10 299 Q. He comes back to you, Mr. Cullen comes back to you on 12:19
11 13/12/2017. This is at page 396 of the book?

12 A. Yeah.

13 300 Q. Now he is referring to your letter, which was actually
14 the 5th but received on the 7th December I think, isn't
15 that right? 12:20

16 A. Yes, Chair.

17 301 Q. He's referring to the 25 points in your letter?

18 A. Yeah.

19 302 Q. He is referencing again there, in the third paragraph,
20 that there in fact there had been numerous references 12:20
21 in a complaint to Superintendent Pat Murray and to two
22 other persons. So in one way it's similar to the
23 letter of the 5th. And on the next page again. He is
24 talking about the extracts from the complaint that make
25 specific reference to Pat Murray? 12:20

26 A. Yeah.

27 303 Q. And he says, in the middle of the page:

28

29 "Why there was there no awareness at the meeting of who

1 was being complained about?"

2

3

Is that a legitimate question for him to ask?

4

A. No. I think we have gone through that ad nauseam,

5

Chair. It was very unclear. Even, I would call

12:20

6

reading other correspondence, before this ever got to

7

me, that people weren't sure (a) is this something that

8

should be dealt with under bullying and harassment, or

9

(b), who exactly was included. Because, as I said,

10

there were 25 different people named in it.

12:21

11

304 Q. He goes on to say:

12

13

"It is submitted, furthermore, that notwithstanding

14

the written complaint made, there is neither in your

15

letter nor at the meeting any attempt to engage with

12:21

16

any of the detail and/or the text of the complaint made

17

against Superintendent Pat Murray, Chief Superintendent

18

Mark Curran or Chief Superintendent Wheatley. Why?"

19

A. Because that was just my first meeting with him, Chair.

20

305 Q. I think it's one of his complaints to this day that you

12:21

21

didn't engage with him in respect of the detail or text

22

of his complaint?

23

A. At ten different times, Chair, if I am not mistaken, I

24

wrote him looking to have a second meeting. He didn't

25

take it up.

12:21

26

306 Q. I think what became an issue between the two of you

27

effectively then, is at the top of the next page of the

28

letter, where there is a request to have the meetings

29

electronically recorded from then on, is that right?

1 A. That's correct, Chair, yeah, yeah.

2 307 Q. It was noted there at the start of your evidence, when
3 we were talking about the minutes that we looked at,
4 that they didn't appear to be a complete or verbatim
5 record. He says in that page, he says:

12:22

6

7 "Given that a note was being taken by your assistant,
8 it would appear appropriate that an objective effort
9 might be made at the next..."

10

12:22

11 CHAIRMAN: I can't see that, Ms. McGrath.

12 MS. McGRATH: Sorry. I have gone ahead. Sorry,
13 Mr. Barnes, I'm on the top of the next page.

14 CHAIRMAN: what page?

15 MS. McGRATH: 399. The top of the next page. He says: 12:22

16

17 "We respectfully suggest that in future when we are
18 meeting that perhaps the meeting might be
19 electronically recorded in order that there is an
20 objective reference to such meetings and in light of 12:22
21 what happened to Sergeant McCabe in Mullingar. Given
22 that a note was being taken by your assistant, it would
23 appear appropriate that an objective record might be
24 made at the next meeting in circumstances where there
25 have been so many red herrings together with a failure 12:23
26 to investigate any of the details and/or text of the
27 Garda Keogh's complaint in accordance with the official
28 and published Garda procedures and fair procedures."

29

1 So, what do you say to that request by Garda Keogh? I
2 think you didn't reject it out of hand, I think you
3 asked for advice in relation to this. You asked
4 Ms. Hassett, is that right?

5 A. Correct, Chair, in the context this never happened to 12:23
6 me before, that somebody would look to have, you know,
7 like a stenographer present to do a bullying and
8 harassment investigation interview. So I was saying,
9 look, it's outside our norm. So, I said, look, I won't
10 exclude it, I'll go off and ask our own HR people can 12:23
11 we do that. I had never heard of it. But I mean, I
12 was slightly unhappy, Chair, with his reference to,
13 you know, Sergeant McCabe in Mullingar, as if like I
14 was trying to do something untoward here in terms of --
15 that I was trying to be -- 12:23

16 CHAIRMAN: Yes, it's an accusation.

17 A. Yeah.

18 308 Q. MS. McGRATH: I think you go on to look into it but
19 effectively that issue rumbles on between the two of
20 you? 12:24

21 A. It does, yeah.

22 309 Q. Is that right?

23 A. At the end of the day, Chair, I said to him, look, I'm
24 not going to -- there's no provision for us to do this,
25 I'm not going to do it. If you want to record me, 12:24
26 fine, I've no problem with that, you know. At the end
27 of the day, let's agree whatever the minutes are, we
28 will sign them agree them, if that's the case, I have
29 no problem with that, you know. But I didn't -- we

1 didn't have the mechanism in An Garda Síochána, to say,
2 look, you're like a prisoner, bring you in here, you
3 know, put on the cameras. We had no provision for
4 that, Chair.

5 310 Q. Can I ask you, we are now on the 13th December, so I am 12:24
6 sorry this is going a little bit slowly, but can I ask
7 you to look at -- we just mentioned there a moment ago
8 that Chief Superintendent Myers was your assistant and
9 he drew up a job sheet. We have an e-mail here that I
10 would like to ask you about from Chief Superintendent 12:24
11 Myers to you, at page 4263?

12 A. Yeah.

13 311 Q. It's around the time of the first letter from
14 Mr. Cullen, it's the 5th December. Now, we know,
15 having checked, I think the date and time at the top 12:24
16 you can just ignore because that's just a printout
17 date?

18 A. I have it here, Chairman.

19 312 Q. The date of the e-mail is 5/12 at 12:03, that is clear
20 from page 4262 of the book. Anyway, can we just look 12:25
21 at the e-mail? He says:

22
23 "A few observations from the file."

24
25 So he is looking at the statement of complaint to Chief 12:25
26 Superintendent Scanlan, is that right?

27 A. I can only assume that, Chairman, I couldn't clarify
28 that.

29 313 Q. He says:

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"They set out to and clarify, they.

Senior managers, clarify who."

12:25

So it the case that there is still confusion or lack of clarity at this stage, even though we have seen a number of letters.

A. Yes.

314 Q. We've referenced the three people that are at issue?

12:25

A. This is the 5th December, the same day that he wrote to me with just Superintendent Murray on the correspondence. But I would say, to be fair to Chief Superintendent Myers, that this was probably in response to our meeting on the 1st, you know, and the statement that day, yeah.

12:25

315 Q. He says there at number 5:

"Judge McMahon re mini investigations."

12:26

This is coming from Garda Keogh's complaints. It says:

"Judge McMahon not running the Gardaí."

Is this Chief Superintendent Myers' observation?

12:26

A. Obviously, yes, Chair, not mine anyway.

316 Q. He says:

"Is Olivia O'Neill Garda Keogh's source. He emphasises

1 she spontaneously and without..."

2

3 A. I suppose getting back to Judge McMahon, we'll say,
4 just to put that in context, I mean he is the
5 confidential recipient, we'll say, he's the conduit, so 12:26
6 to speak, and it isn't for him for telling the
7 commissioner to be -- you know, that's not his role, I
8 suppose, and I don't think --

9 317 Q. CHAIRMAN: Sorry, that's a reference to Garda Keogh's
10 citation of Judge McMahon, when he quoted Judge McMahon 12:26
11 as saying that you couldn't have mini investigations?

12 A. Exactly.

13 318 Q. CHAIRMAN: Or a number, a multiplicity of
14 investigations.

15 A. Yes. 12:27

16 319 Q. CHAIRMAN: That was Garda Keogh's response to people in
17 Athlone wishing to investigate things and he referred
18 to and cited Judge McMahon as condemning that as being
19 found the Morris Tribunal report?

20 A. Yes. 12:27

21 320 Q. CHAIRMAN: Rightly or wrongly, that's the evidence
22 about that. But I take it this is the chief
23 superintendent looking through the materials supplied?

24 A. On the 1st.

25 321 Q. CHAIRMAN: By Mr. Cullen and Garda Keogh? 12:27

26 A. Correct.

27 322 Q. CHAIRMAN: And he is making notes. Am I understanding
28 that correctly?

29 A. That's correct, Chair, that's my interpretation of it.

1 323 Q. MS. McGRATH: I think what I just want to ask you
2 there, for example, if you look at 11 and 12:
3
4 "A thorough investigation of car insurance issues."
5 12:27
6 Now This was about the motor tax issue and he says:
7
8 "Not our role."
9 A. Yeah.
10 324 Q. What does he mean by that, he is using the words "not
11 our role"? 12:27
12 A. I suppose in the context of bullying and harassment,
13 yeah.
14 325 Q. "Strict supervision by three sergeants. May well be
15 justified." 12:27
16
17 Is that an element of prejudgement of the issues that
18 have come in to your investigation, commissioner?
19 A. It's his note, Chair, it's not mine, like you know.
20 326 Q. He says at number 15, for example: 12:28
21
22 "Sharing of shifts with Garda A. Garda Keogh could
23 have taken up the offer of transfer."
24
25 Again, this is looking at the substantive issues. 12:28
26 A. I think that's probably the issue that came up from his
27 complaint, you know, this thing with the gun, you know,
28 he's saying that Garda A came in.
29 327 Q. What I want to ask you about is this, if you even go to

1 16:
2
3 "Witness writing their own statements."
4
5 He says: 12:28
6
7 "Not good practice."
8 A. Yes.
9 328 Q. "Super being oppressive/irrational. Strong governance
10 perhaps under 6.8 for both theft at Molloy's and 12:28
11 robbery from the person."
12 A. Yes.
13 329 Q. The reason I'm asking you about this is because my
14 understanding of the policy that you go to the persons
15 complained about from a bullying and harassment 12:28
16 perspective and you get their side of the story. This
17 seems a little bit different. This seems to be an
18 analysis of the actual complaint and whether the
19 underlying facts of the complaints themselves stand up
20 at all, even without going to the other people? 12:29
21 A. I'd say it's just probably his assessment of -- you
22 know, he read the statement and they were probably his
23 initial comments having read it, like you know, without
24 having any investigation done at all, like you know.
25 330 Q. He says under annual, for example: 12:29
26
27 "He admitted the breach reaffirmed by Chief
28 Superintendent Wheatley after appeal.
29 20. Chief Superintendent Scanlan's file missing."

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He decides:

"Unsatisfactory."

A. I assume he's referring to the delay, they were missing, you know. Again, Chair, these are his notes. 12:29

331 Q. So this is looking at everything. You were saying you had to separate out B&H from grievances, this is looking at everything, this is looking at the addendum, the complaint. And this is looking at the issues themselves, as in the facts underlying the individual complaints and whether they stand up at all, even before you have spoken to anybody? 12:29

A. I wouldn't say that. That wouldn't be my reading of it, Chair. I think he just read the statement and this is his initial comment from reading it, you know. But like that was before we ever started the investigation. That was... 12:30

332 Q. Now, as you say, you had notified people that you had been appointed, isn't that right? 12:30

A. That's correct, Chair.

333 Q. If we look at this stage -- and, as I say, I'm sorry we are going a little bit slowly. You remember you got that letter in from 13/12 from John Gerard Cullen. You reply back on the 15th, at 4287. And you say to him in the second paragraph: 12:30

"I would like you to confirm that all of the material that your client wishes to provide is included in the

1 correspondence that he gave to me on 1st December 2017
2 and your subsequent e-mail of 5th December 2017.

3
4 As requested in my letter of 7th December 2017, I wish
5 to meet your client again to clarify the matters that I 12:31
6 raised in my correspondence of that date. This meeting
7 will also provide your client with an opportunity to
8 add and provide clarity to his statement and appendices
9 as the entire content of this material was not in my
10 possession in advance of our meeting on 1st December 12:31
11 2017.

12
13 While your correspondence of 13th December 2017
14 indicates clearly that Superintendent Murray is the
15 subject of your client's complaint, his statement makes 12:31
16 reference to a number of other members of An Garda
17 Síochána.

18
19 On 1st December 2017 your client specifically named the
20 following members as being the subject of his 12:31
21 complaint: Chief Superintendent Mark Curran, Chief
22 Superintendent Lorraine Wheatley and Superintendent Pat
23 Murray. "

24
25 So this is going to the issue you talked about earlier, 12:31
26 that his letters were concentrating on Superintendent
27 Murray?

28 A. Yeah.

29 334 Q. And you say:

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"However, in your client's statement you refer to other members but did not confirm if complaints were being made against these persons when clarification was sought by me on 7th December 2017.

12:32

It is for the purpose of seeking clarification that I have sought to meet your client again as outlined in my correspondence of 7th December 2017.

12:32

I would appreciate if your client would meet with me or indicate in writing if persons other than the members outlined above are the subject of his complaint of bullying and harassment."

12:32

Isn't that right?

A. Yes, Chair.

335 Q. Okay. Now, that is a letter back on the 15th to Mr. Cullen and on the 15th December you are writing to a number of people, you are writing actually to Chief Superintendent Mark Curran, Superintendent Pat Murray and Chief Superintendent Lorraine Wheatley. Can I just ask you, we won't look at them all, but 4291, for example, is the letter to Chief Superintendent Mark Curran. You refer to the letter where you told him you were appointed?

12:32

12:32

A. Yes.

336 Q. You tell him on the 1st December you met with Garda Keogh, you sought additional clarification and

1 correspondence:
2
3 "Garda Keogh has confirmed to me that you are one of
4 the people that he is alleging was involved in his
5 complaint. I now wish to meet with you to put to you 12:33
6 the complaint put by Garda Keogh.
7
8 Please note that I have advised Assistant Commissioner
9 Fanning that I will not have been in the position to
10 complete the investigation within the timeframe set out 12:33
11 in the guidelines for working together but I will make
12 every effort to complete the investigation as
13 expeditiously as possible."
14
15 So, you say you want to meet him, isn't that right? 12:33
16 A. Yes, Chair, yeah.
17 337 Q. You also send the same letter to Chief Superintendent
18 Wheatley and you send it to Superintendent Pat Murray,
19 isn't that right?
20 A. That's correct, Chair. 12:33
21 338 Q. So at this stage the investigation is effectively
22 clearly on the road, isn't that right?
23 A. Yes, Chair.
24 339 Q. When you talk to these other people.
25 A. Yeah. 12:33
26 340 Q. When he comes back to you -- I think later on in the
27 month, on the 21st December, John Gerard Cullen comes
28 back to you in relation to this issue. 4324. I am
29 sorry I am opening so much correspondence but I just

1 think in fairness to you, to make it clear what was
2 happening between the two of you and the offers to meet
3 or what was going on. So it's at 4324.

4 A. I have it here now.

5 341 Q. He is talking there at the bottom of that last 12:34
6 paragraph and he is effectively -- we won't go into it
7 too much detail, but he is confirming it's
8 Superintendent Pat Murray, Mark Curran and Lorraine
9 Wheatley, isn't that right, named in the complaint?

10 A. Yes. 12:34

11 342 Q. On the next page, the last paragraph again, is the
12 reference to electronic recording, that you might
13 nominate dates after the holiday period for a further
14 meeting, isn't that right?

15 A. That's right. 12:35

16 343 Q. So effectively you are both getting nowhere on the
17 issue at this stage. It's still a live issue between
18 you with, meeting again or the electronic recording
19 issue, isn't that correct?

20 A. Yes, Chair. 12:35

21 344 Q. CHAIRMAN: Sorry, what do you say to that?

22 A. I'm agreeing, Chair.

23 345 Q. CHAIRMAN: with?

24 A. I'm agreeing that we're still communicating to arrange
25 the meeting and resolve the issues about recording or 12:35
26 how it was going to be conducted, shall we say.

27 346 Q. MS. McGRATH: Can I ask you at this stage to look at a
28 document --

29 A. After the holidays.

1 347 Q. -- you mention in your statement. Because at this
2 stage you had written to the three individuals but
3 Superintendent Murray came back to you on the 20th
4 December and he raised concerns about the legality of
5 the investigation while the civil proceedings were 12:35
6 ongoing, isn't that right?

7 A. That's correct, Chair.

8 348 Q. I think this is the first time then this issue is
9 starting to raise its head?

10 A. Yes. 12:35

11 349 Q. Of possible further delay. You acknowledge his
12 correspondence but you say in your statement:
13
14 "I remained unsighted of the legal issues he was
15 referring to." 12:36

16 A. That's correct.

17 350 Q. We know that at this particular time there were civil
18 proceedings issued by Garda Keogh?

19 A. If you bring up that, sorry, what page are you on
20 there? 12:36

21 351 Q. This is on your statement at page 4110.

22 352 Q. CHAIRMAN: It's page 6 of your statement.

23 A. Fine. Thank you, Chair.

24 353 Q. MS. McGRATH: It's that paragraph there.
25 12:36

26 "On 20th December 2017, Superintendent Murray raised
27 issues concerning the legality of my investigation."
28 A. Yes, I am with you now.

29 354 Q. "Highlighting the fact that civil proceedings mirrored

1 and inexorably linked were before the High Court since
2 November 2016. I acknowledged Superintendent Murray's
3 correspondence and advised him that I remained
4 unsighted of the legal issues as they were in the
5 included in my material that I had received." 12:36

6 A. Yes, Chair.

7 355 Q. You forward his correspondence to Joe Nugent CAO, and
8 advised him that:

9
10 "...it was unsighted material, that would suggest the 12:36
11 process that I have embarked on was going to appear as
12 links to other matters before the courts at the times."

13
14 Now, I think this again bubbled along for quite some
15 time, isn't that right? 12:37

16 A. Yeah. I suppose they raised this issue -- or
17 Superintendent Murray raised the issue about, you know,
18 the legality of what I was doing, was it going to be
19 ultra vires, bearing in mind -- so I decided I would go
20 off and get some legal advice on that matter. 12:37

21 356 Q. You speak to Superintendent Murray the following day.
22 There's a note of this conversation in Superintendent
23 Murray's documentation that he has provided to us in
24 audio files. Page 12309, please, if we could just have
25 that? 12:37

26 A. In audio files?

27 357 Q. Well, these are files that were kept by Superintendent
28 Murray. Now you may have seen these in the papers.
29 But he records having spoken to you?

1 MR. MURPHY: Chairman, I wonder if my Friend could
2 establish, she used the word audio but I think it's in
3 a note.
4 MS. McGRATH: It is a note from audio file, sorry, my
5 Friend is correct. 12:38
6 CHAIRMAN: I don't know what an audio file is.
7 A. Recording of audio.
8 CHAIRMAN: I know what the words mean. Could you
9 clarify that, Ms. McGrath.
10 MS. McGRATH: well, if we could open the page maybe, 12:38
11 12305.
12 CHAIRMAN: Yes. Anyway, it's Superintendent Murray's
13 note.
14 A. That's correct.
15 MR. MURPHY: Yes. 12:38
16 CHAIRMAN: Oh, it's a transcript, okay.
17 MS. McGRATH: So, it says transcript of audio notes
18 from bullying file. These were maintained by
19 Superintendent Murray.
20 A. I didn't know he was recording me, Chair. 12:38
21 MR. MURPHY: Chairman --
22 MS. McGRATH: well, it's not a recording, it's his note
23 that he makes afterwards, I understand.
24 CHAIRMAN: He presumably dictated a note after.
25 A. Sorry, Chair. 12:38
26 358 Q. CHAIRMAN: Or at least he may have dictated a note
27 afterwards?
28 MS. McGRATH: Dictated notes, exactly
29 CHAIRMAN: It's actually simply his note.

1 A. Sorry, I was confused, Chair.

2 359 Q. CHAIRMAN: No, no, you're entitled to be confused. I
3 was confused. But I think for the moment we will
4 assume that that is the case,?

5 A. He may have, okay, I'm with you now. 12:38

6 CHAIRMAN: unless directed, that's the default. Okay.

7 360 Q. MS. McGRATH: For example, just so we stay in context,
8 because, as I say, these are all in the brief from page
9 12305 onwards. Sorry, Mr. Barnes, can you go back
10 please just to the cover page that I asked you to open, 12:39
11 12305. So if you go down there to the next page, the
12 14th December, we have already gone past this date but
13 there was:

14

15 "Call from M Finn. Answered. With chief in my office 12:39
16 before policing Commission meeting, so I told him I
17 couldn't talk."

18

19 So you see that he is just making notes of contact
20 between the two of you? 12:39

21 A. Okay, Chair, yeah.

22 361 Q. He says on the 15th, on the next day, for example:
23

24 "Received e-mail from AC Finn with attachment
25 requesting meeting." 12:39

26

27 That is the document, the letter we saw.

28 A. Okay.

29 362 Q. He says on the 20th:

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"I replied by e-mail setting out my position."

A. Yes.

363 Q. So that was the legal issue that we saw, the letter of the 20th December?

12:39

A. Yes, Chair.

364 Q. Then he says you replied to him on the 21st, which you have also recorded in your statement. That was where you said you were unsighted about the legal issues.

A. Yeah.

12:40

365 Q. Now here is his note from the 22/12:

"Phoned him at 15:56 for 23 minutes and 39 seconds. Discussed the various linked issues with him. He said he was unaware of civil case, my promotion issues and that another AC had refused the appointment. Became concerned at all of this."

12:40

Do you remember this phone call?

A. No, Chair.

12:40

366 Q. "Also he said he was not aware we had all received Garda Keogh's material. Explained legal issues to him and PA views as outlined by H Hall to me today and he said he would contact Joe Nugent and Kate Mulhearns re legal issues. He said he could look at my 338-page document and might bring clarity to the PA about the issues through the organisation and J Nugent. I offered to meet him as early as possible. He said he was off with a bad back."

12:40

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That's you, I think, isn't it?

A. That's me, Chair, yeah.

367 Q. "And would be back in the new year. I offered to drive to Cork if necessary. Sent him e-mail then as he requested setting out the legal issues." 12:40

Do you remember that at all? That you were offering to look at his 338-page civil file document?

A. I would disagree with that in the context that as things rolled on, we'll say, he didn't want to share that -- I wouldn't say he didn't want to, he had difficulty sharing that document with me in terms of his legal advice or that was my understanding anyway, Chair, yeah. 12:41

368 Q. Can we be just very clear on this, commissioner, is it the fact that the phone call occurred but you don't remember it, or you're saying you don't think this phone call ever happened?

A. I don't remember it, Chair. It could have happened. I honest to God have no recollection of it, yeah. 12:41

369 Q. I think the issues there are quite serious and clear because you knew there was a legal issue arising on an issue of ultra vires. Are you sure, it's your evidence to the Chairman that you don't remember this discussion and a discussion of perhaps looking at the civil proceedings? 12:41

A. No.

370 Q. Is it something you might have offered to do?

1 A. which bit?

2 371 Q. That you would look at the civil proceedings, his
3 338-page document on the civil proceedings?

4 A. well if it was helping me with my enquiry, I'd probably
5 would be delighted to get it, Chair, yeah. 12:42

6 372 Q. But as you say, did that ever happen?

7 A. No.

8 373 Q. It never came to pass; is that right?

9 A. No, Chair no. I mean I was looking for it, but I
10 didn't get it, you know. 12:42

11 374 Q. Now, that takes us up to the 22nd December and it is a
12 long phone call, 23 minutes, 39 seconds, you'd accept
13 that?

14 A. Absolutely, Chair, yeah.

15 375 Q. Is it surprising that you don't remember the call? 12:42

16 A. Now, Chair, I have to confess, I was in bed with my
17 back at that stage, you know. I think I might have
18 taken a bit too much medication, because when I went
19 initially to the doctor, we'll say, he put me on
20 medication for the back. Sorry, a small bit of history 12:43
21 here.

22 376 Q. CHAIRMAN: Take your time.

23 A. I had a back operation, Chair.

24 377 Q. CHAIRMAN: There's no problem.

25 A. I had a serious back operation going back when I was a 12:43
26 young guard, we'll say, and I ended up working in
27 administration for a file. Anyway, every now and again
28 it does act up on me. And it did act up on me around
29 this time because I remember I was scheduled to chair a

1 meeting about my divisional policing model, which was a
2 project I was leading out on, and I couldn't do it
3 because my back went into seizure. So I was home in
4 Cork.

5 378 Q. CHAIRMAN: We're talking about the 20th and so on of 12:43
6 December?
7 A. Yeah. Those few days, yeah.

8 379 Q. CHAIRMAN: So were you in bed at home?
9 A. I think I was, Chair, yeah.

10 380 Q. CHAIRMAN: Were you doing this on the e-mail from home? 12:43
11 A. Correct.

12 381 Q. CHAIRMAN: Okay.
13 A. If it was a phone call, Chair, probably maybe a phone
14 call over, you know, over the -- I mean obviously I
15 took the phone call. I recall, and my wife will verify 12:43
16 this, I took medication initially, we'll say, you know,
17 and then I went back to my doctor because it wasn't
18 working, and he gave me stronger medication. I think
19 it was overlapping, you know.

20 382 Q. CHAIRMAN: Okay. 12:44
21 A. My wife still refers back to this time. I'm a bit
22 embarrassed, Chair.
23 CHAIRMAN: Okay.

24 383 Q. MS. McGRATH: Now, I think --
25 A. I'm a bit embarrassed because actually she says I was 12:44
26 out for a few days because of my medication. Sorry,
27 Chair. More embarrassing than anything.

28 384 Q. MS. McGRATH: Not at all, commissioner.
29 A. But actually, if this phone call happened at this time,

1 it could be a logical explanation why I can't remember,
2 yeah.

3 385 Q. Now, you say you were -- it records that you became
4 concerned with all of that information that you were
5 getting and I think we do know that, as you said in 12:44
6 your statement, you had written off to Joe Nugent about
7 this issue in any event?

8 A. Yeah, I do remember, Chair, we'll say, he raising the
9 issue about he had a concern himself, we'll say, that
10 there was civil proceedings, you know, giving stuff to 12:44
11 me, would it be a conflict, because obviously whatever
12 he gave to me I was going to be giving to Garda Keogh.

13 386 Q. CHAIRMAN: Yes.

14 A. So I think he had an issue with that. So I knew that,
15 we'll say, at this point in time. 12:45

16 CHAIRMAN: Okay.

17 387 Q. MS. McGRATH: Can I ask you then, what happens next,
18 and you will be glad to know we move into January of
19 2018, on the 2nd January 2018, I think it might have
20 been yourself or it might have been Chief 12:45
21 Superintendent Myers took a statement from Chief
22 Superintendent Scanlan to get the background of the
23 taking of the statement and the timeframe?

24 A. That was myself. That was me, Chair, yeah.

25 388 Q. Okay. So at this stage you were jumping into the 12:45
26 issue, whether or not -- whatever you had said
27 previously about grievances, were you jumping into the
28 issue about the issue of delay, is that why you met
29 Chief Superintendent Scanlan?

1 A. I thought it was much later actually when I met Chief
2 Superintendent Scanlan. I don't think I met him in
3 January, no.

4 389 Q. Well, I think he gives a date in his statement of the
5 2nd -- sorry, you are correct, it's 2nd February 2018. 12:45
6 So it was February when you met him. Would you accept
7 that?

8 A. I can find it, Chair.

9 390 Q. CHAIRMAN: Yes. You can find it if necessary.

10 A. Yeah. I can't actually remember the date. 12:45

11 391 Q. CHAIRMAN: Anyway, it didn't happen in January?

12 A. I'm pretty sure of that, yeah, yeah.

13 392 Q. MS. McGRATH: But you do remember taking a statement
14 from him about the issue of the delay and the taking of
15 his statement? 12:46

16 A. Oh, I did. I met him in his office, Chair, yeah. And
17 in fairness, he actually typed it up there and then
18 that day, you know, his secretary did.

19 393 Q. Can ask you, if Mr. Barnes could just bring up your
20 statement at page 411, in the middle of it. At this 12:46
21 stage you were writing, you see there, the 3rd January,
22 all the personnel that you wrote to?

23 A. Yes, Chair, yeah, yeah.

24 394 Q. Now, I think you clarify in the letter, and I am just
25 taking a sample one, you say: 12:46
26
27 "While no specific allegation has been made against you
28 at this stage, you are mentioned in the statement of
29 complaint in respect of Garda Keogh's interactions."

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Is that right?

A. Yeah. I was trying to put it in context and maybe I suppose to allay some of their concerns.

395 Q. CHAIRMAN: Yes. 12:46

A. They weren't necessarily named as somebody who he was complaining about.

396 Q. MS. McGRATH: You say in the letter, this is the standard cover letter to these people, you say:

"As a result, it is necessary for a member of my investigation team to interview you in respect of the complaint."

A. Yeah.

397 Q. "I would appreciate if you would facilitate the meeting." 12:46

So then we have a reference to interviewing again.

A. Well, I was kind of putting them on notice there, Chair, I didn't want somebody just to arrive out of the blue. I was trying to put it in context. 12:47

398 Q. CHAIRMAN: Of course.

A. I agreed, look, I will write to them first, tell them. And then when they get the phone call from the chief they'll know what it is about like. 12:47

399 Q. MS. McGRATH: In particular, you see number 7 there, Inspector Nicholas Farrell. I think you had a lot of correspondence with his solicitors, Reddy Charlton, because he was concerned well, was a complaint being

1 made against me or not?

2 A. That's correct, Chair, yeah, yeah.

3 400 Q. I think by the end of January you wrote in explicit
4 terms, particularly on 25th January 2018, to his
5 solicitors and said you are not one of the persons
6 against which he is making a complaint; is that right?

12:47

7 A. I didn't know, Chair, that AC Fanning had wrote to him
8 and told him that you are one of the people, you know,
9 that has been named, you know. Obviously I was
10 confusing him then and writing him and saying, well
11 you're not one of the people named.

12:47

12 CHAIRMAN: I think we will take a break there and we
13 will continue after lunch.

14 MS. McGRATH: Thank you, commissioner.

15 CHAIRMAN: Okay, thanks very much. Two o'clock. Thank
16 you.

12:47

17

18 THE HEARING THEN ADJOURNED FOR LUNCH AND RESUMED, AS
19 FOLLOWS:

20

14:00

21 CHAIRMAN: Thank you very much.

22 401 Q. MS. McGRATH: Thank you, commissioner. Commissioner, I
23 wonder if we can look at your statement in the book.
24 It's page 8 of your statement internally, so that is
25 4112?

14:00

26 A. Yes, Chair.

27 402 Q. Just before lunch I had mentioned that in early January
28 you had written to all of the other listed people and
29 you had asked them for any comments and said that your

1 investigators would be in touch with them. So we're in
2 early January at this stage. If we just look at your
3 statement for a while, it might speed things up a
4 little bit, if I try and use it a little bit more. So
5 on page 4112, at the top of the page. We mentioned 14:01
6 earlier how Inspector Farrell had been seeking
7 confirmation as to whether was in the frame and we know
8 by the end of the month there were a couple of letters
9 but you confirmed that he was not.

10 A. Yes. 14:01

11 403 Q. But if we just look at the second paragraph. So as
12 early as 8th January 2018, you say in your statement:
13
14 "With the benefit of legal advice, I learned that the
15 civil proceedings were not a bar to a proceeding with 14:01
16 my bullying and harassment investigation."
17
18 Okay?

19 A. I'm not with you there.

20 404 Q. Sorry, we're in the second paragraph there. 14:01

21 A. Sorry, my apologies.

22 405 Q. Okay. So as early -- because if you remember, just
23 before lunch we were talking about how this had arisen,
24 particularly with Superintendent Murray, who had drawn
25 this issue of the legal proceedings to your attention 14:01
26 and we had talked about that phone call etcetera. So
27 now you had gone and, as you said, you had notified Joe
28 Nugent, the CAO?

29 A. Yeah.

1 406 Q. And here you have the 8th January, you have legal
2 advice coming back to you. Now do you refer to an
3 appendices there, but it's redacted for legal
4 professional privilege?

5 A. Yes, Chair. 14:02

6 407 Q. So there's no point in opening the document. But you
7 confirm that proceedings were not a bar. So what you
8 do then, in your statement you say:

9

10 "On 10th January 2018 I wrote to Chief Superintendent 14:02
11 Mark Curran, Chief Superintendent Lorraine Wheatley and
12 Superintendent Pat Murray to inform them that I had
13 sought legal advice in relation to my investigation. I
14 informed them that the fact that Garda Keogh had
15 instigated legal proceedings was not a bar to the Garda 14:02
16 Commissioner ensuring that a proper investigation was
17 conducted under the bullying and harassment policy."

18

19 okay?

20 A. Yes, Chair. 14:02

21 408 Q. Now, another thing happens on the 10th January, you get
22 a further letter from Mr. Cullen. He is confirming
23 that -- you remember you had asked him, had you given
24 me everything you wanted to give me?

25 A. Yes, yes. 14:02

26 409 Q. He confirms he has. He confirms the identities of the
27 Garda members against whom he was making the complaint.
28 And he again raised the issue of electronic recording
29 of future meetings in the light of what happened to

1 Sergeant McCabe in Mullingar?

2 A. Yes, Chair.

3 410 Q. So move on to the next day there in your statement, on
4 11th January 2018. This is where you e-mail Chief
5 Superintendent Wheatley and copy the letter you wrote 14:03
6 on the 10th January to inform her that I had sought
7 legal advice in relation to the investigative process.
8 And again repeating that it wasn't a bar to you going
9 ahead, isn't that right?

10 A. Yes, Chair. 14:03

11 411 Q. Now, on the 11th January, that day again, you then --
12 Joe Nugent comes back to you requesting a brief of what
13 had you been appointed to investigate. I think he was
14 coming to you, he had received a request from Ms. Hall
15 at the Policing Authority and he wanted some sort of an 14:03
16 indicative timeline for you as to what you were doing,
17 isn't that right?

18 A. I think so.

19 412 Q. We will deal with that in probably more detail when
20 you're recalled on issue number 20. But staying with 14:03
21 the 11th January, you reached out around this time to
22 both Chief Superintendent Curran and Superintendent
23 Murray. If I could just ask you to open page 5956 of
24 the book. So at 5956, if you can just -- so it's 5956,
25 it's from you, the 11th January, the date we're on, to 14:04
26 Mark Curran, untitled. If you go to the next page,
27 just keep scrolling down please, Mr. Kavanagh. It says
28 "talk to me". Can you just tell the Chairman about
29 that e-mail? Was Chief Superintendent Curran not

1 coming back to you or what was this about? what did
2 you want him to talk to you about?

3 A. I'd imagine, Chair, about making -- arranging to meet
4 him, yeah.

5 413 Q. It's phrased in an odd way, maybe. You can accept or 14:04
6 reject that. But you say "talk to me". Do you see
7 where I am?

8 A. I do, yeah. Yeah. It's in response to my letter of
9 the 10th or is it e-mailing to him my letter of the
10 10th? 14:05

11 414 Q. Did you feel that he wasn't coming back to you at this
12 stage or what was the instigation for it?

13 A. I can't recall, Chair, to be honest with you.

14 415 Q. Okay. It's quite informal in the way it's phrased?

15 A. Yeah. 14:05

16 416 Q. would you accept that?

17 A. It is, Chair. I suppose I knew him anyway. He was in
18 headquarters when I was in headquarters. So I suppose
19 would I have known Mark Curran. I don't think I would
20 have known the others, but I would have known him 14:05
21 because he worked in the Commissioner's office when I
22 was in HQ.

23 417 Q. Okay. So you knew him personally and professionally,
24 is it?

25 A. Well, I suppose of all parties, he's the person, we'll 14:05
26 say, I would have known to speak to, we'll say. I
27 mean, I wouldn't have had much engagement with Chief
28 wheatley prior to this or Superintendent Murray. But,
29 as I say, he was in the Commissioner's office probably

1 when I was in HQ. So, you know, we would have -- our
2 paths would crossed, so to speak. He would be around
3 the same vintage as myself too, Chair. We were
4 probably on some promotion list I think at one stage.
5 But I can't recall, I can't put that in context, Chair. 14:06

6 CHAIRMAN: Okay.

7 418 Q. MS. McGRATH: Okay. I think on the same date, on the
8 11th January, you also reached out to Superintendent
9 Pat Murray. If I could ask Mr. Kavanagh to open up --
10 this is a document you have seen already, I just want 14:06
11 to open a different page of it, so 12305, please. This
12 is the transcript of audio notes from the bullying
13 file, which we looked at earlier. Again to clarify,
14 these are Superintendent Murray's notes. If I can ask
15 Mr. Kavanagh to go to 12311. 14:06

16
17 "Call from M Finn."

18
19 This is the 11th January, do you see that?

20 A. Yes. 14:07

21 419 Q.
22
23 "He said he sent me an e-mail. I said he hadn't but he
24 said he thought he did but he might not have. Said it
25 was a courtesy to call me to tell me K Ruane said 14:07
26 [blank]. He said he would send me the advice in an
27 e-mail and could I talk to Ken myself."

28
29 Is that the confirmation that legal proceedings were

1 not a bar?

2 A. That is my interpretation of it, yeah, without seeing
3 it.

4 420 Q. Do you remember this phone call?

5 A. No, I don't, to be honest with you. I mean, I wouldn't 14:07
6 dispute -- it makes sense in the context of -- I
7 probably told him -- oh he rang me I think, did he?

8 421 Q. And what about the next part --

9 A. I rang him I think, sorry. I am reading it as I rang
10 him, sorry, Chair. 14:07

11 422 Q. He is saying that you called him?

12 A. I probably did in the context of, I got the e-mail from
13 Ken Ruane saying look, you know, give me the clearance
14 to go ahead to do the thing.

15 CHAIRMAN: Yes. 14:07

16 423 Q. MS. McGRATH: If you look at the next part, and again,
17 we will be coming back to this on issue 20, but while
18 it's open there:
19
20 "He said --" and this is you. 14:08

21 A. Yes.

22 424 Q. "He said he knew my promotion situation and wanted to
23 do it quickly."
24
25 Does that ring a bell to you? 14:08

26 A. Yeah, I think that was in the context of I think he
27 wanted for me to do my investigation quickly because I
28 think -- this is my understanding of it now, we'll say,
29 that the Policing Authority were probably holding up

1 his --

2 CHAIRMAN: I think we better leave that one.

3 MS. McGRATH: Okay.

4 CHAIRMAN: Because the right people aren't here and we
5 will get confused. I appreciate, Ms. McGrath. 14:08

6 MS. McGRATH: Okay.

7 CHAIRMAN: we are going to deal with that separately as
8 issue 20. Thank you.

9 THE WITNESS: Okay.

10 MS. McGRATH: Okay. Thank you Chair. 14:08

11 CHAIRMAN: As I say, it's just probably more
12 convenient.

13 425 Q. MS. McGRATH: Okay. Staying with your statement
14 please, at 4112, going down to the last two paragraphs.
15 It says: 14:09

16

17 "On 17th January 2018 I wrote to Chief Superintendent
18 Curran, informing him that I had sought legal advice
19 and that my investigation could proceed. I provided
20 him with a copy of Garda Keogh's complaint as it 14:09
21 pertained to him and I also sought his consent to
22 extend the time for the investigation of the
23 complaint."

24 A. Yes, Chair.

25 426 Q. Now, this looks like it could have been the second 14:09
26 occasion on which you told him that the investigation
27 could proceed, that you had your legal advice. would
28 that be right? It looks like you had also done it
29 earlier on the 10th January, is that right?

1 A. If I saw appendix 39, maybe if you can --

2 427 Q. Yes, sure. Appendix 39 is at 4549. So you say:

3

4 "Please find attached a copy of the complaint by Garda

5 Keogh as pertains to yourself. I met him on 1st 14:09

6 December 2017. I sought legal advice."

7 A. Sorry, 4549.

8 428 Q. 4549. Can we go to the stop of that please,

9 Mr. Kavanagh. So that is Chief Superintendent Curran

10 of Ballymun. Do you have it there, commissioner? 14:10

11 A. I do now, sorry, Chair. I have it now. Yes, Chair.

12 429 Q. At this stage you're telling him the various facts of

13 meeting Garda Keogh, the legal advice issue?

14 A. Yes.

15 430 Q. That you outlined it to him already on the 10th 14:10

16 January. You are providing him with an opportunity to

17 respond to the issues raised by Garda Keogh.

18

19 "If you have questions or queries in relation to any of

20 the issues, please revert." 14:10

21

22 The issue of the timeframes. Now, can I ask you, one

23 of the things which wasn't evident from the material

24 that we received was whether you ever met Mark Curran

25 face-to-face. 14:11

26 A. I did, yeah.

27 431 Q. Or have any class of an interview with him?

28 A. It's in my diary I think, Chair, if I am not mistaken.

29 432 Q. For the 17th January?

1 A. Yeah, I think the 17th January I met Mark Curran, yeah.
2 Let me check, sorry. Mark Curran, the 17th January,
3 yeah.

4 433 Q. At 5694.

5 A. He actually came to me in my office, Chair, in HQ, I 14:11
6 think it was in the evening time. I was over in, we'll
7 say, the bureau block and I think he was working, I'm
8 not sure was he in Ballymun or was he still in the
9 Commissioner's office. Anyway, but I do recall him
10 coming to my office, Chair. 14:11

11 434 Q. You record there:
12
13 "Mark Curran - copy of materials."
14
15 Do you see that? 14:11

16 A. Can you give me the page again?

17 435 Q. Sorry, it's 5694.

18 A. Yeah. Mark Curran, I see it there in my diary.

19 436 Q. Was that a face-to-face meeting?

20 A. Yes, Chair, yeah. 14:12

21 437 Q. Okay. Do you remember, was it -- do you have any notes
22 of the meeting or did you keep a note?

23 A. No, Chair. I gave him the actual version of complaint
24 that pertained to him. Now I didn't give everybody the
25 full complaint. 14:12

26 438 Q. CHAIRMAN: Yes.

27 A. I condensed it down and said look, here's some aspects.

28 439 Q. CHAIRMAN: Here's the bit that relates to you.

29 A. Correct, Chair.

1 440 Q. MS. McGRATH: Do you note that anywhere, what was put
2 to him, does he make a response orally to you?
3 A. Not on the night, Chair. It was to give him an
4 opportunity. Look, I'm only giving it to him on the
5 day, look, here's the allegation, you go off and 14:12
6 prepare your submission for me.

7 441 Q. So, I think it wouldn't appear -- and we will come to
8 it, because we did ask you specifically in
9 correspondence there in the last two months to clarify
10 this. 14:12

11 A. Yeah.

12 442 Q. It doesn't seem to be the practice, are notes kept of
13 these meetings?

14 A. No, Chair. I gave him the documentation and I said
15 look, this is the allegation, it's all contained in 14:13
16 this documentation pack that I am giving you here.
17 This is what you have to respond to. I'm giving you an
18 opportunity to go away, consider it, get legal advice
19 if you want to and come back to me with a written
20 response. 14:13

21 443 Q. You also record in your statement, again if we can go
22 back to 4112?

23 A. I have my statement over here, if that's okay, to help
24 speed it up.

25 CHAIRMAN: Page 8. 14:13

26 444 Q. MS. McGRATH: we're at the bottom, the 17th January.
27 So you write to Chief Superintendent Mark Curran, you
28 write to Chief Superintendent wheatley and you write to
29 Superintendent Murray on that day?

1 A. Yeah.

2 445 Q. And at that stage you are again confirming there's no
3 legal bar in proceeding, isn't that right?

4 A. Correct, yeah.

5 446 Q. Now, on the 17th January, I just want to keep this 14:13
6 issue running in the background because I think it's
7 something that is important to you. Just in the third
8 last paragraph there, you acknowledge Mr. Cullen's
9 correspondence of 17th January 2018:
10
11 "I enquired if he had acquired any additional 14:14
12 information as a result of his FOI and data protection
13 enquiries and I also advised him that I sought legal
14 advice with regard to the electronic recording of
15 future meetings." 14:14

16 A. Yes.

17 447 Q. So again we see that bubbling along, isn't that right?

18 A. Yes, Chair.

19 448 Q. Now, if you go on to the next page of your statement,
20 please, commissioner? 14:14

21 A. Yes, Chair.

22 449 Q. You have an entry there for 18th January 2018, do you
23 see that there?

24 A. Yes, I do, yeah.

25 450 Q. This is on your statement? 14:14

26 A. Yes.

27 451 Q. You say:
28
29 "Superintendent Patrick Murray wrote to Mr. Ken Ruane,

1 Head of Legal Affairs, referring to my correspondence
2 to him of 10th January 2018 seeking legal advice and
3 opinion in relation to the issues raised."

4 A. Yes, Chair.

5 452 Q. So there is no issue about that. But that is the only 14:14
6 entry you have on your statement with regard to the
7 18th January. But I notice in your notes, if we can
8 bring it up on the screen, it might be quicker for you
9 to see it, at 5740. So 5740, it will have to be
10 rotated there. I think these are your own notes? 14:15

11 A. Yes, Chair.

12 453 Q. You say there on the 18th January, you say:
13
14 "Met with Superintendent Murray."
15
16 Do you see that? 14:15
17 CHAIRMAN: Yes.

18 A. Yeah.

19 454 Q. MS. McGRATH: Could you read that out, the rest of the
20 sentence there, when you get a chance? 14:15

21 A. It says:
22
23 "18th January, met with Superintendent Murray and gave
24 him the portion of the complaint that pertains to him."
25 455 Q. Okay. Then you have your diary entry, at 5695. Your 14:15
26 diary entry is coming up there, for the same date.
27 CHAIRMAN: Sorry, we have to do a bit of mechanical
28 here. It's in the worst position for Mr. Kavanagh.

29 456 Q. MS. McGRATH: So this is the 18th January. I think,

1 did you travel to Athlone to meet him?

2 A. That's correct, Chair.

3 457 Q. Okay. You met with P Murray. In fact, if you want to
4 read out those paragraphs, it's probably easier for
5 you? 14:16

6 A. I have my original diary here, Chairman.

7 458 Q. CHAIRMAN: Thank you.

8 A. "Travel to Athlone. Meeting with P Murray and gave him
9 documents to go through the allegation. PM to consider
10 his position and to get legal advice in relation to 14:16
11 civil proceedings that are pending. Superintendent
12 Myers to get update for his..."

13

14 That's kind of separate, that's not relating to Pat
15 Murray, that's only just a minute to myself, a note to 14:16
16 myself

17 459 Q. MS. McGRATH: Okay. So Superintendent Murray is
18 telling you there and you are recording that he is
19 going to get legal advice in relation to the civil
20 proceedings that are pending. Now you had obtained 14:16
21 legal advice from Mr. Ruane, isn't that right?

22 A. That's correct.

23 460 Q. And you had told the various parties that it wasn't a
24 bar to proceeding with your investigation?

25 A. Yes. 14:17

26 461 Q. So he was aware of that at the time, is that right?

27 A. And I think my recollection, Chair, was that I went to
28 Ken Ruane, who is our head of legal, and I said, Ken,
29 give me some advice here. He came back to me and I

1 gave it to Pat, but I said to Pat, you probably need to
2 go to Ken Ruane to get your advice as opposed to my
3 advice.

4 462 Q. CHAIRMAN: As far as you were concerned the question
5 had been raised as to whether you were entitled to 14:17
6 proceed with the bullying and harassment investigation.
7 A. Yeah.

8 463 Q. CHAIRMAN: You sought advice and got your clearance?
9 A. Yes.

10 464 Q. CHAIRMAN: It didn't mean that Superintendent Murray 14:17
11 was bound by that, he could go to somebody else and say
12 well, I am going to challenge that, or whatever it was?
13 A. Yeah. That's correct, Chair. And I think he probably
14 had other issues in relation to what he could disclose
15 to me etcetera. 14:17
16 CHAIRMAN: whatever.

17 465 Q. MS. McGRATH: well, can I just stay on the 18th January
18 please, commissioner, because again, for the record,
19 with regards to that meeting with Superintendent
20 Murray, did you keep any further notes? 14:17
21 A. No, Chair, no.

22 466 Q. Or recording of that?
23 A. No.

24 467 Q. Okay. Now, we know that Superintendent Murray has kept
25 some notes in respect of this. And again, it's the 14:18
26 audio transcript type files that you have seen.
27 A. Yes, Chair.

28 MR. MURPHY: Sorry, Chairman, I raised this point
29 before lunch, my Friend keeps on saying that these are

1 audio tapes, and in fact it's dictation, that has been
2 clarified, I would ask that she correct the record.
3 MS. McGRATH: They are dictation notes.
4 CHAIRMAN: They are Superintendent Murray's notes of
5 the meeting. 14:18
6 MR. MURPHY: Yes.
7 CHAIRMAN: we did clear it but I don't think
8 Ms. McGrath is loading it with some significance,
9 Mr. Murphy. I think we're all aware that it looks like
10 -- our understanding is that Superintendent Murray 14:18
11 dictated some notes.
12 MR. MURPHY: That's is fine.
13 CHAIRMAN: And then got them typed. Typed them up
14 himself or got them typed up himself. So maybe it's a
15 bit misleading, Ms. McGrath, to talk about audio notes, 14:18
16 it does suggest that he reached for the tapes like
17 Mr. Butterfield in the White House, he discovered the
18 tapes that were there but then nobody is old enough to
19 remember my reference. Anyway, to discover the tapes.
20 MS. McGRATH: I'm not seeking to mislead, Chairman, I'm 14:19
21 using the title Superintendent Murray had on the
22 document.
23 CHAIRMAN: I understand. Don't worry, Ms. McGrath, we
24 understand exactly what the situation is. Mr. Murphy
25 is perhaps being a little sensitive on the topic, but 14:19
26 that's the situation. They're Superintendent Murray's
27 notes.
28 MR. MURPHY: Thank you, Chairman.
29 MS. McGRATH: I am obliged to my Friend.

1 CHAIRMAN: And that's not a criticism of you,
2 Ms. McGrath.
3 MS. McGRATH: Thank you.
4 CHAIRMAN: I think we all understand exactly what the
5 situation is, or at least I understand what the 14:19
6 situation is.
7 468 Q. MS. McGRATH: Thank you, Chair. Can I ask if page
8 12418 could be opened.
9 A. 12418?
10 469 Q. 12418. 14:19
11 CHAIRMAN: Superintendent Murray's note.
12 A. Yes, Chair.
13 470 Q. MS. McGRATH: His note. Now at 12418, you will see
14 this is a note he made on the 20th. So this is two
15 days later. I am not going to open all this because a 14:20
16 certain amount of this will be dealt with on issue 20,
17 but if I could ask you to go down, say, to the first
18 quarter of the page:
19
20 "I told him of my four and a half meeting with M Finn 14:20
21 on Thursday."
22
23 Do you see that?
24 A. I do, yes, Chair.
25 471 Q. "On 18/1/18 and that M Finn's view is that all is 14:20
26 okay."
27
28 Can I just ask you about that? First of all, was it a
29 four and a half hour meeting with Superintendent Murray

1 that day?

2 A. It could have been. It was at his home actually.

3 472 Q. Pardon?

4 A. It was actually at his home.

5 473 Q. It was at his home. Okay. 14:20

6 A. It was nearer to Athlone I think than I going to the

7 station.

8 474 Q. Okay. As you say, you don't have a record of the

9 meeting of the four and a half hours, is that right?

10 A. No, Chair, no. 14:20

11 475 Q. And he records it as saying:

12

13 "M Finn's view is that all is okay."

14

15 Do you know what he might have meant by that? 14:21

16 A. No, Chair, no.

17 476 Q. Can I just ask you then, he has a further note of the

18 day in question and again it's notes dictated. I am

19 not going to call it anything in particular. If you

20 just look at 12313, please? 14:21

21 A. I have it open here, Chair.

22 477 Q. He says:

23

24 "Meeting AC Finn 18/1/18 went through below with him."

25 A. Yes. 14:21

26 478 Q. He talks about several files?

27

28 "Garda Keogh file. Notes and original exhibits and

29 files re trailer and Ms. B allegations in Tullamore and

1 complaint to Tribunal and Olivia and sickness
2 etcetera."

3

4 So that would seem to reflect that there was a very
5 detailed discussion of the complaint that he had given 14:21
6 to Chief Superintendent Scanlan?

7 A. I'd say that's a reflection of what I actually gave
8 him, because on that date I gave him the documentation
9 that pertained to him, I'd say. Like I done to chief
10 Curran when I met him on the day, you know, I segmented 14:21
11 the -- and that's the bit related to him, I'd say.

12 479 Q. He says "I went through the below with him" and that's
13 the first paragraph, do you remember that?

14 A. Definitely not, Chair, I didn't go through file.

15 480 Q. Okay. He also says -- 14:22

16 A. I told him like what was in the -- the content of the
17 search. Now we didn't go through it as in
18 line-by-line, give an explanation for everything, like
19 you know.

20 481 Q. Well, what about he says -- 14:22

21 A. That's not my recollection.

22 CHAIRMAN: Okay.

23 482 Q. MS. McGRATH: Okay. One of the other matters is the
24 second paragraph, he calls it a civil file. They're
25 broken up and we have seen them in disclosure. This is 14:22
26 a civil file, it seems, that Superintendent Murray kept
27 in relation to the civil proceedings. Did he go
28 through that with you?

29 A. No, Chair, but I knew he had it because he had his big,

1 thick file there, which I suppose I wanted to get hold
2 of, you know. But he had some legal difficulty in
3 terms of giving it to me.

4 483 Q. He has a bullying file there, do you see that? That's
5 the next one.

14:22

6 A. Yes.

7 484 Q. Did he go through this with you. He says:

8
9 "My letter to commissioner. Extra exhibits and file I
10 got from Fanning telling what I got. Did Fanning give
11 him stuff from my file? Media since September and my
12 promotion."

14:23

13

14 Again, I'm sorry, I don't want to go into issue 20, but
15 he then talks about the promotion file. He records
16 there:

14:23

17

18 "Garda A file. [Blank] info and my suspension of him.
19 Fanning visit trying to create chaos."

20

14:23

21 Etcetera.

22

23 "Leaking to media and Wallace. How if Fanning's
24 motivation. Greene file, info for him to see."

25

14:23

26 Now, this seems like an extremely broad ranging
27 conversation with Superintendent Murray, one might say
28 going beyond the boundaries of a bullying and
29 harassment complaint. Do you remember this, the

1 content here? Does it ring any bells for you?

2 A. I don't specifically, Chair. We were there for a long
3 time, I suppose, you know, it was a cordial enough,
4 we'll say he made me tea, we sat down talking about his
5 family, etcetera, you know. I didn't really know the 14:23
6 guy before then. So I suppose he was kind of
7 introducing himself to me and telling me. But the
8 purpose of my meeting, like, wasn't to get a response
9 from him there and then, I was only giving him the
10 papers. So that was our first time meeting. I'm sure 14:24
11 he probably articulated his views or whatever. I
12 wasn't making any notes, so it wasn't pertinent, it
13 wasn't going to be his response to the allegation. I'm
14 sure he might have protested his innocence or whatever,
15 but I didn't make any notes of it. It wasn't a 14:24
16 pertinent, as I said, part of the investigation as
17 such, other than I physically giving him the
18 documentation and saying, here you are, I've served you
19 now today, you go off, get your advice, come back to me
20 with your response. Yeah. 14:24

21 485 Q. As I say, we will be dealing with this in more detail
22 at issue 20, but do you accept or reject this record of
23 the meeting on that date as being accurate or
24 inaccurate, or can you say?

25 A. It's not my record anyway of the meeting, we'll say, 14:24
26 for one. I mean, I did meet him. It could have lasted
27 four and a half hours, I didn't time it, we'll say?

28 486 Q. CHAIRMAN: Did you have a meal, do you remember? Was
29 it lunchtime, morning time or afternoon, do you

1 remember?

2 A. I'd say it was probably before lunchtime and I'd say he
3 gave me a cup of tea, Chair. It was that kind of --
4 pleasantries.

5 CHAIRMAN: Yes.

14:25

6 487 Q. MS. McGRATH: Can I ask you about the best practice of
7 a meeting such as that without recording any notes or
8 records of the conversation? Do you have a view on
9 that?

10 A. Well, as I say, Chair, I wasn't looking for his
11 response there and then, you know. I mean it wasn't
12 going to be -- he was going to have another occasion to
13 give me his formal response to the allegations, yeah.

14:25

14 488 Q. Now, if you just go to 12378. This is a record of a
15 conversation Superintendent Murray was having with Joe
16 Nugent. I want to be careful here in the sense of
17 you're quite removed from this, this is not a
18 conversation you're involved in, but midway down, just
19 there, just at the end of the screen:

14:25

20

14:25

21 "Told him M Finn view and assurance."

22

23 Now that's the second time Superintendent Murray refers
24 to -- he said "all will be okay" in one record and
25 assurance from you in another record. Can you tell the
26 Chairman what that might be referring to?

14:26

27 A. I've no idea. Unless it's in the context that I was
28 going to do this as fast as I possibly could, you know,
29 maybe he had some -- obviously he wanted me to do this

1 quickly. I suppose it was in his interest that I would
2 get this finished quickly because it was holding up his
3 promotion. But I can't think of any other...

4 489 Q. I have to put it to you, commissioner, would it have
5 been an assurance in relation to the outcome? 14:26

6 A. No, Chair. I hadn't even started. I was only starting
7 giving my documents at that stage.

8 490 Q. Now, if we again go back to your statement and
9 hopefully we can move along a little quicker. Again
10 going back to page 4113. 4113. So we are moving on 14:26
11 from the 18th January. I notice there is no reference
12 in your statement to that meeting, which was very
13 extensive. Is that simply an omission, commissioner,
14 there?

15 A. That's an omission, Chair, because I think I wrote it 14:27
16 into my own notes since that I hadn't put it in, yeah.

17 491 Q. Okay. You say a couple of paragraphs down:
18
19 "On 23rd January 2018 I met with Chief Superintendent
20 Wheatley in Garda Headquarters to discuss the material 14:27
21 that I provided to her and hear her concerns in
22 relation to the investigation."

23 A. Correct.

24 492 Q. Can you tell the Chair a little bit about that meeting?

25 A. If I recall, Chair, that was in the evening time, I met 14:27
26 her in the evening time, I think she came up there at
27 HQ, up in the Officers Club, because I was staying
28 there, I would say, you know, or I think maybe just a
29 private meeting room, you know, I use one of the

1 conference rooms downstairs. So I met her there in the
2 evening. A similar type experience, you know, met her,
3 gave her the documentation, listened to her. I knew,
4 we'll say, she was upset about, you know, (a) she being
5 involved in it, (b) the fact that this was going on so 14:28
6 long, you know. And again, I wasn't looking for a
7 response from her there and then. It was a case of
8 giving her documentation and saying look, these are the
9 allegations, you know, you need to go off and get your
10 advice, whatever the case may be. 14:28

11 493 Q. And again, just for the record, and I don't wish to be
12 difficult, commissioner, but there are no notes on the
13 disclosure files of that meeting?

14 A. No. That's correct.

15 494 Q. Is that right? 14:28

16 A. Yeah.

17 495 Q. Okay. Now if we stay with your statement there at page
18 4113, we see responses coming in. We see
19 Sergeant Yvonne Martin comes back to you on the 25th
20 January, as does Inspector Nicholas Farrell, isn't that 14:28
21 right?

22 A. That's correct.

23 496 Q. On the 26th January there's reference there to
24 assistant commissioner of the Eastern Region requesting
25 an update on the current status of the investigation; 14:28
26 do you see that?

27 A. Yes, Chair.

28 497 Q. I think this is the first of a number of requests for
29 an update that come in over the next couple of months;

1 isn't that right?

2 A. Correct, Chair. I think the office is set up that we
3 send out a reminder every four weeks.

4 498 Q. On the 29th January you go back to Mr. Cullen. You say
5 you have sought legal advice in respect of the
6 electronic recording of meetings, there was no
7 provision in the policy document for this or for a
8 stenographer and you inform him of that, isn't that
9 right? 14:29

10 A. Yes, Chair. 14:29

11 499 Q. Mr. Barrett comes back to you on the 6th February and
12 he also says that there's no provision for a
13 stenographer, isn't that right?

14 A. Yes, Chair.

15 500 Q. But he says that minutes could be agreed, that's at the
16 top of the next page? 14:29

17 A. Yeah, correct.

18 501 Q. Around this time, and I checked it at lunch there, this
19 is around the time, the 2nd February, when you meet
20 Chief Superintendent Scanlan and you ask him about
21 the -- 14:29

22 A. Statement, yeah.

23 502 Q. You get a statement from him in relation to the delay
24 issue; isn't that right?

25 A. It could be, I haven't seen that statement yet now, but
26 if that's the date on it, I wouldn't dispute it. 14:29

27 503 Q. Okay. We're now in early February. On the 7th
28 February, on the next page, this is where Chief
29 Superintendent Lorraine Wheatley comes back with her

1 substantive response to you in writing, is that right?

2 A. She was back very quickly, Chair, with her response,
3 yeah.

4 504 Q. Now, you do a summary there. And rather than opening
5 the document or the submissions, which would take some 14:30
6 time?

7 A. Yes.

8 505 Q. She stated she was satisfied that the breaches of
9 discipline preferred were adequate having cognisance of
10 all the of the prevailing circumstances. 14:30
11

12 So she was dealing with that discipline in relation to
13 the AWOL issue in that July, isn't that right?

14 A. That's correct.

15 506 Q. In 2015. She continues on near the end there of the 14:30
16 paragraph, she said she was satisfied her dealings with
17 Garda Keogh were appropriate, fair and considerate.
18 Chief Superintendent Wheatley refuted the assertion
19 that Garda Keogh was treated differently by her because
20 he had made a protected disclosure. Isn't that right? 14:30

21 A. Yes.

22 507 Q. Now, on 12th February 2018 you wrote to Mr. Cullen,
23 proposing that you would record the minutes of the
24 meeting and that we would agree the minutes and
25 circulate them as an agreed document afterwards? 14:30

26 A. That's correct, Chair.

27 508 Q. You follow that up with a reminder later in the month;
28 isn't that right?

29 A. Yes, Chair. So here I was, Chair, offering to meet him

1 again.

2 CHAIRMAN: Yes.

3 509 Q. MS. McGRATH: Okay. As I say, you did that during
4 February. Now here, the next paragraph, you see
5 Assistant Commissioner Fanning coming back looking for 14:31
6 an update, isn't that right?

7 A. Yes, Chair.

8 510 Q. The following day, Sergeant Yvonne Martin comes back
9 with her responses?

10 A. Yes. 14:31

11 511 Q. And refutes in the entirety the allegations and
12 complaint made by Garda Keogh that may have some
13 connection to her, isn't that right?

14 A. Correct, yes, Chair.

15 512 Q. On the same day you get another letter from Assistant 14:31
16 Commissioner Fanning looking for an update. Now, we
17 are starting to see these coming in pretty quickly.
18 There's no immediate reply to Assistant Commissioner
19 Fanning at that stage. Is there any particular reason
20 for that? 14:31

21 A. I suppose, Chair, these are coming out from his office,
22 which is now my office, on a monthly basis. But I
23 would meet him at the SLT, at our senior leadership
24 meeting, you know, and I'd tell him what the update
25 was, you know. 14:31

26 513 Q. You probably what?

27 A. I would meet him at our senior leadership meetings, you
28 know, our monthly meetings are more frequent, Chair.
29 So I would kind of give him an update.

1 514 Q. Now, at the bottom of the page we see the substantive
2 response coming in from Inspector Nicholas Farrell,
3 isn't that right?
4 A. Yes, Chair.

5 515 Q. He again refutes the assertions by Garda Keogh in their 14:32
6 entirety, isn't that correct?
7 A. Yes, Chair.

8 516 Q. So moving onto the next page, this is your reminder to
9 Mr. Cullen?
10 A. Yes, Chair. 14:32

11 517 Q. Requesting dates when you can meet. And you proposing
12 again that you would agree the minutes and circulate
13 them, isn't that right?
14 A. Yes, Chair.

15 518 Q. On the 26th February. Now, in the interim then, at the 14:32
16 end of February, you still see Superintendent Murray
17 there. The issue of legal advice is still going on, it
18 seems, is that right?
19 A. That's correct, Chair, yes.

20 519 Q. With regard to the civil proceedings. Now during early 14:32
21 March we see a lot of responses coming in there?
22 A. Yes, Chair.

23 520 Q. The sergeants.
24 A. Mm-hmm.

25 521 Q. And down as far as Inspector Yvonne Martin. Can I ask 14:32
26 you, if we go down to the 26th March there, the third
27 last paragraph?
28 A. Yes.

29 522 Q. Sorry, I skipped too far down. On the 6th March you

1 have Mr. Cullen, there in the middle of the page. He
2 comes back?

3 A. Correct.

4 523 Q. He's looking for clarification on some matters?

5 A. Mm-hmm.

14:33

6 524 Q. He wants you to specify precisely what you propose to
7 talk about on the next occasion.

8

9 "He sought confirmation that I had actually read the
10 complaint to Garda Keogh and required confirmation that 14:33
11 the meetings would be electronically recorded."

12 A. Yes.

13 525 Q. Did you consider at that stage that trust had
14 effectively broken down between you and the Keogh team
15 at that stage?

14:33

16 A. I hadn't -- I hadn't considered it, I suppose.

17 526 Q. If we just look at the letter, sorry, Commissioner,
18 4749, if might be easier there?

19 A. Yeah.

20 527 Q. So he says:

14:34

21

22 "We note that you request clarification on unspecified
23 matters. I should be grateful if you might advise what
24 precisely these matters are.

25

14:34

26 There has been an inordinate unexplained delay in
27 dealing with this complaint and with the related
28 substantive matters."

29

1 So at this stage we're now on 6th March and had you
2 been put in place on the 15th November, isn't that
3 right?

4 A. Yes, Chair.

5 528 Q. He goes on to say:

14:34

6
7 "You will note that at the last meeting it was
8 necessary for us to deal with very elementary questions
9 about Garda Keogh's written complaint. You asked
10 repeatedly, for example, who the complaints were
11 against in circumstances where the written complaint
12 made this abundantly clear. It was also clear that the
13 written complaint had been torn into various bits and
14 pieces and bits of it had been discarded and that the
15 remainder was literally all over the place on your
16 desk.

14:34

14:34

17
18 You then raised a series of tangential questions in
19 correspondence, which implied that you had neither read
20 the written complaint nor any interest in investigating
21 the case. You refused to have the meetings
22 electronically recorded and you proposed instead to
23 take written minutes only. Such a written record would
24 only serve to better hide the obfuscation, delay and
25 disguise the absurdity of the performance.

14:34

14:35

26
27 It is in those circumstances that we should be grateful
28 if you might now specify precisely what you propose to
29 talk about on the next occasion, confirm that you have

1 actually read the written complaint of Garda Keogh and
2 further confirm that the meetings will be
3 electronically recorded."
4

5 what do you say about that letter to the Chair? It's a 14:35
6 particular stance that is now being taken by the Keogh
7 team.

8 A. It is, Chair.

9 529 Q. And it's clear.

10 A. It's pretty evident, I suppose, and the letter of 14:35
11 contents speaks for itself and that's it, you know.

12 530 Q. Did it cause you concern, commissioner?

13 A. It didn't upset me. I left it go over my head, Chair,
14 I suppose. You know, I thought it was a bit of --
15 making something -- I didn't mean to be disrespectful 14:35
16 in the context of, yeah, he was entitled to raise that
17 this was going on for a while like, yeah, but I thought
18 it was a bit disrespectful in some sense, parts of it,
19 like you know.

20 531 Q. CHAIRMAN: Indeed. 14:35

21 A. The way he described what I did, like you know. But I
22 didn't get too upset about it.

23 532 Q. MS. McGRATH: well, in the sense did you realise he was
24 upset?

25 CHAIRMAN: Upset? 14:36

26 A. It doesn't sound like he's upset from the --

27 533 Q. MS. McGRATH: well, not upset, but frustrated with the
28 process?

29 CHAIRMAN: well it speaks for itself, Ms. McGrath. I

1 mean the letter says what it says. Those words are
2 there. What interpretation we put on them is another
3 day's work. I mean, it's pretty clear, whatever else
4 you say about it.

5 534 Q. MS. McGRATH: I think you go back to him, that's the 14:36
6 6th March and I just want to stay with the
7 correspondence in your statement. It's a month before
8 you reply. But can we just go back --

9 A. I took some time out there, Chair, in the start of that
10 month, I think it was on holidays after the 6th March 14:36
11 to the 13th March, something like that.

12 535 Q. Okay. Then if we go back to your statement at page
13 4115. There in the middle of the page was the
14 reference to the letter of the 6th March. You have
15 responses coming in from Sergeant Patrick Nyland? 14:36

16 A. Yes.

17 536 Q. Sergeant Moylan, Yvonne Martin?

18 A. Yes.

19 537 Q. You have Superintendent Murray on the 26th March:

20 14:37
21 "...requesting that he be provided with legal advice
22 before he responds to my investigation.

23
24 Do you see that there, the third last paragraph?

25 A. Sorry, yeah. I asked Ken Ruane, yeah. Because I 14:37
26 was -- I suppose I was maybe a little concerned,
27 whatever, that I had asked Ken Ruane -- or I asked Pat
28 Murray to talk to Ken Ruane to get legal advice for
29 himself and I wasn't sure or I got the impression maybe

1 that Pat Murray hadn't got that legal advice back from
2 Ken Ruane. That is my interpretation what I was saying
3 here.

4 538 Q. I think when you get this you write to Ken Ruane and
5 you have an e-mail here at 4359. Now there's no legal 14:37
6 professional privilege here, you're just asking a
7 question. 4359. It's an e-mail of the same day, the
8 26th March?

9 A. Yes.

10 539 Q. Do you see that? 14:38

11 A. Yeah.

12 540 Q. You say:
13
14 "Ken, is Pat Murray awaiting something from us in
15 relation to the Nicholas Keogh investigation. I 14:38
16 thought we answered his query at an early stage!"
17

18 was that your view, that you thought this issue was
19 resolved or why was this still bubbling along?

20 A. Well I had asked, we'll say, or I told Pat Murray, 14:38
21 look, you go off and get your own legal advice from Ken
22 Ruane. I had got my legal advice and I wasn't sure
23 that Ken Ruane had got that legal -- or that Pat
24 Murray had -- or that Ken Ruane had gone back to Pat
25 Murray, we'll say, with that legal advice. That's what 14:38
26 I was asking Ken there. Because I didn't know was that
27 maybe delaying Pat Murray's response to my
28 investigation, we'll say.

29 541 Q. Well, if I can just ask you to look at an e-mail which

1 appears to have triggered this, which is an e-mail of
2 the 23rd March from you to Superintendent Murray and
3 it's at page 4360. It'll come up on the screen there,
4 just at the bottom of the screen. 4360. If you look
5 at 4360? 14:39

6 A. I will just get the hard copy.

7 542 Q. Actually what has just been scrolled there is --

8 A. I have it here.

9 543 Q. -- Superintendent Murray -- sorry, at the bottom of
10 page 4360, you are writing to Superintendent Murray, so 14:39
11 it's from Michael Finn, 23rd March, 15:25 and if you
12 look?

13 A. Oh, yeah, I wrote to Pat Murray saying:

14

15 "Are you in a position to provide a response to my 14:39
16 request?"

17

18 544 Q. Yes. If Mr. Kavanagh can just catch up with you there
19 on the screen?

20 A. The 23rd March. 14:39

21 545 Q. Just scroll down please. That's right.

22 A. 4360. The bottom of page 4360.

23 546 Q. Yes. Quite right, you are saying:

24

25 "Are you in a position to provide a response to the 14:40
26 request, I have most of my data in at this point in
27 time and I'm going to press next weekend."

28

29 Can you tell the Chair what you meant by that, in the

1 sense that it's 23rd March at this point and you have
2 no responses in from either Superintendent Murray or
3 Chief Superintendent Curran at that point. What did
4 you mean by you're going to press next weekend

5 A. I think I was giving him a gentle nudge here to say, 14:40
6 look, can you come back to me, you know.

7 547 Q. Okay. You accept that you didn't have substantive
8 responses in from the two officers at that point?

9 A. I had a lot of the witnesses in though at that stage,
10 you know, yeah. And he came back to me saying 14:40
11 unfortunately the organisation has not corresponded to
12 our correspondence to date. So that is why I e-mailed
13 Ken Ruane and said, Ken, is Pat Murray waiting from
14 something from you here.

15 548 Q. Just looking at the live feed there, you say, I had a 14:40
16 lot of witnesses in at that stage, you know.

17 A. Yeah.

18 549 Q. But would you accept that you didn't have the reply,
19 the substantive replies from two of the main players in
20 the issue; isn't that right? 14:41

21 A. Yes. I had Lorraine Wheatley's in but I didn't have
22 himself and Mark Curran, or probably Aidan Minnock as
23 well, I think I was waiting for him.

24 550 Q. Well, you seem to give the gentle nudge, as you are
25 calling it, to Chief Superintendent Curran. If I just 14:41
26 can ask you to look at 5946. At 5946, if you go down
27 to the bottom of the page there, please, Mr. Kavanagh.
28 Again, it's from you to Mark Curran on the 23rd March.
29 You say:

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"I have most of my data in at this point in time, I am going to press next weekend."

So it's very similar. 14:41

A. Yes.

551 Q. He comes back to you two days later, on the 25th March, and we are moving up, if we move up the screen. We are on 5946?

A. I have it here. 14:42

552 Q. If we go to the middle of the page, please, Mr. Kavanagh. Two days later he comes back, he says:

"Hi Mick. I'll have it for you on Tuesday. Still waiting on DM to get back to me but will give to you regardless. Mark." 14:42

You reply that same day and you say:

"Roger. Thanks, Mark. I am starting writing my report this week!" 14:42

So again, can I just put it to you, commissioner, that Garda Keogh, looking at this exchange, would think, how could you either start or even be thinking about writing your report when you had no reply from either Chief Superintendent Curran or Superintendent Murray at that stage? 14:42

A. I was trying to give them a nudge along, to say come

1 on.

2 553 Q. Si are you saying there's nothing in this, there's
3 nothing to see here?

4 A. From the Tribunal's --

5 554 Q. In the statements there, I'm writing my report next 14:43
6 week?

7 A. Oh no, Chair. I mean, it might have been ambitious to
8 think I would be doing it next week. But as it
9 transpired I was overly ambitious, Chairman. This is,
10 look, a nudge to try and get him to come on, guys, 14:43
11 look, I want to get this thing done, you know. They've
12 had it for a while.

13 555 Q. If I was to say it suggests an element of prejudgement
14 in moving on with the report without responses, what
15 would you say to that? 14:43

16 A. Ah no, Chair, no. I mean I did get advice later on
17 from John Barrett saying, look, if people aren't
18 cooperating with you, you should still go out and
19 finish it. But that was some time later. But anyway,
20 I wasn't in that space here, Chair, yeah. I think, 14:43
21 look, I was trying to get a nudge here, get them moving
22 along, yeah, put on a little bit of pressure.

23 556 Q. Can I say to you, just at around this time, the
24 following day in fact, on the 25th March, there is a
25 letter that is in disclosure at page 4755, that I just 14:43
26 wanted to ask you about. 4755. This is a letter from
27 Assistant Commissioner Fanning's office to John Gerard
28 Cullen. He is writing to John Gerard Cullen and he is
29 saying in the second paragraph:

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"Assistant commissioner Eastern Region further directs me to inform you that he is now in receipt of a report from Assistant Commissioner Michael Finn, who is appointed under the bullying policy and that he anticipates to have the matter concluded before the end of April 2018."

14:44

Can you explain that, where that might have come from?

A. I probably told AC Fanning at one of our SLT meetings, look, I hope to have this done by the end of April, like you know.

14:44

557 Q. But he says "he is in receipt of a report from you" is that an error?

A. It might have been a verbal, probably, I would say, I met him -- we'd meet up at our senior leadership meetings.

14:44

558 Q. But you say it might have been a verbal report?

A. I might have told him, I'd say.

559 Q. Okay. So that's not a substantive report in relation to the investigation in any event?

14:44

A. I don't think I have a record of that, to be honest with you.

560 Q. If we move along, staying in March, when we talked earlier about the grievance issue and the delay issue and the Chief Superintendent Scanlan issue, we start coming back to it now around the 30th March. If I could ask Mr. Kavanagh to open up 4765. At 4765, there is an e-mail there at the very end where you are

14:45

1 writing to Assistant Commissioner Fanning on 30th March
2 2018.

3 A. Yes.

4 561 Q. You say:

5
6 "Just to assist me finish off the Nicky Keogh
7 investigation."

8

9 So you are talking about finishing off the
10 investigation there on the 30th March. What did you
11 mean by that? 14:45

12 A. Well, I am hoping, Chair, to have it done by the end of
13 April, as I said, so, you know, trying to work on it to
14 get it moving together. I think we had a meeting, it's
15 missing actually from my notes, but I think at the end 14:46
16 of March, Chair, we had a meeting of, we'll say, my
17 team, yeah, where I suppose we did a recap of where we
18 are and trying to get it moving, yeah. I think I have
19 a diary note of it, maybe, or something like that.

20 30th March, of where we got together, our team. 14:46

21 562 Q. Okay. And there was a discussion about moving it to
22 conclusion, was there, at that stage?

23 A. Well, trying to move on the investigation, Chair.

24 563 Q. Okay. Well, let's continue with the e-mail.

25 A. And that was probably an outstanding issue from my 14:46
26 perspective, we'll say, look, the gap between John
27 Scanlan and it coming to me, I was going to have to
28 address that in my report.

29 564 Q. Again, Garda Keogh, reading that, might ask the

1 question, how were you going to finish off the Nicky
2 Keogh investigation when you were still awaiting
3 substantive responses?

4 A. Well, I obviously couldn't.

5 565 Q. Would that be a cause of concern, to see that? 14:47

6 A. But sure I couldn't finish it off, Chair, unless I got
7 Pat Murray and Mark Curran back.

8 566 Q. If we stay with the e-mail, it says:
9
10 "He makes reference to the delay in investigating his 14:47
11 original complaint made to John Scanlan. I took a
12 statement from John Scanlan and he confirmed that he
13 took the statement last March and sent it on to you.
14 Can you give me something in relation to the route that
15 it took from Scanlan until I was appointed last 14:47
16 November."

17 A. Yes.

18 567 Q. Can I ask you, commissioner, it's now the 30th March
19 and is this the first time you're asking for that to be
20 clarified with the assistant commissioner? 14:47

21 A. I was trying to get a formal response to see where did
22 it go. I mean, I didn't know the full route but it was
23 obviously -- you know, we had our own get together
24 assessing where we are, it was, I suppose, jumping out
25 to say, look, we are going to have to address the issue 14:47
26 between John Scanlan's statement in March and it coming
27 to me in November.

28 568 Q. Okay. So are you accepting at this stage that the
29 delay issue was firmly in your corner, as it were, that

1 you had to deal with it?

2 A. well, I couldn't ignore it, Chair. I felt I would have
3 to address it in some way in my report, we'll say,
4 yeah.

5 569 Q. If you just look at the reply up above, we won't go 14:48
6 through it in too much detail because, as I say, we
7 have been through the sequencing of this issue,
8 yesterday particularly with Chief Superintendent
9 McLoughlin, but there's a reply back to you from Fintan
10 Fanning and it is giving you a summary of the route 14:48
11 that you asked for, okay?

12 A. Yeah.

13 570 Q. He says in the last paragraph:
14
15 "You can feel free to contact Inspector McCarthy to 14:48
16 clarify any admin issue."
17
18 Isn't that right?

19 A. That's correct.

20 571 Q. In fact, if Mr. Kavanagh scrolls forward to 4770? 14:48

21 A. He did come back to me, Chair, Inspector McCarthy did.

22 572 Q. He came back. You got quite a detailed response, isn't
23 it?

24 A. Absolutely Chair, yeah.

25 573 Q. From Inspector McCarthy in that e-mail? 14:49

26 A. Yeah.

27 574 Q. If you scroll down through it for the next couple of
28 pages, there's no need to read it all, but if
29 Mr. Kavanagh can keep going?

1 A. It gave me a very good insight, Chair, as to the route,
2 we'll say, yeah.

3 575 Q. And in particular 4776, if you just keep going please,
4 Mr. Kavanagh. You get a very, very detailed breakdown
5 from Inspector McCarthy, which should be 4776. There 14:49
6 we go?

7 A. Yes, Chair. It was very useful to me to get that.

8 576 Q. Just so the Chair sees it there, this comes in to you.
9 Now, one of the things Garda Keogh says in his
10 complaint, he said on Day 114 that he never got an 14:49
11 explanation for the delay, why it took so long to get
12 it up and running. So here's an explanation coming in
13 to you, did you see it as part of your role to go back
14 to Garda Keogh and tell him the movement of the
15 complaint or the route it had taken? 14:50

16 A. I think it would have been helpful, Chair, if I did
17 meet him, yeah.

18 577 Q. Had you planned to do that if you had met him, was it?

19 A. Yeah.

20 578 Q. If you sat down with him? 14:50

21 A. Chair, I suppose, you know, it would have been useful
22 to me to get, I suppose, a better understanding of his
23 insights in terms of all of the issues that he brought
24 to the table, we'll say, you know.

25 579 Q. But would it be fair to say that this information that 14:50
26 came to you stayed with you in the sense that it never
27 made its way to Garda Keogh, is that right?

28 A. That's fair. That's correct, Chair, yeah.

29 580 Q. Either in writing or by sitting down?

1 A. I never sat down with him, Chair. I am sure it would
2 have been very useful, Chair, if I did sit down, I
3 think it would have been beneficial for both of us to
4 have a that conversation, we'll say.

5 581 Q. Did you consider the option of in writing notifying him 14:50
6 of the position?

7 A. When you say the position?

8 582 Q. Well, this information that you now have outlining the
9 route of the complaint?

10 A. I didn't, Chair, no. I suppose this was very useful to 14:51
11 me, because it gave me better understanding of how we
12 got to where we are today. But it wasn't really
13 relevant in the context of, you know, the people I was
14 investigating, you know, Mark Curran, Pat Murray or
15 Lorraine wheatley, because they weren't really I 14:51
16 suppose -- it wasn't their fault, I suppose, whatever
17 issues arose, yeah.

18 583 Q. So then to be clear, did you see it as someone else's
19 job to translate this information to him? If he was
20 complaining about the delay. 14:51

21 A. Yeah.

22 584 Q. Did you see it as someone else's role to inform him of
23 the position?

24 A. Yeah, well, I suppose he had legitimate grievances, I
25 was saying at the outset and I was saying, look, if you 14:51
26 want to pursue a grievance about the fact that it
27 didn't go from A to B, you know, you should pursue that
28 maybe as a separate issue, we'll say, yeah.

29 585 Q. Was he getting direction from you in this regard at

1 this point? You ask for the information, it comes in
2 to you and it stays with you, that's your evidence.
3 A. That's it, Chair, yeah, yeah.
4 586 Q. Now, if you go back to your statement because, as I
5 say, this is the end of March, this is the information 14:52
6 you had asked for, you received. So at 4116 of your
7 statement, again I just want to pick out one or two
8 things. On 5th April 2018, this is you acknowledging
9 the correspondence undated from Mr. Cullen. This was
10 the letter where, as we were saying, in stark terms he 14:52
11 was saying, what do you want to talk to me about the
12 next time or can you clarify that?
13 A. Yes.
14 587 Q. You come back to him and you say:
15
16 "I informed him that I had no difficulty if he wished 14:52
17 to electronically record any meeting that takes place
18 with his client. I also informed him that I would not
19 be recording the meeting. I informed him that I would
20 take minutes from the meeting and that I would have no 14:52
21 difficulty sharing with him or agreeing the minutes
22 before the meeting concluded."
23
24 Now, from looking at your statement and from the
25 correspondence that's where that issue finished? 14:53
26 A. Yes, Chair.
27 588 Q. Would that be right?
28 A. I think so, chair, until I wrote on the 12th June or
29 the next time I wrote to him, yeah. When I gave him

1 all the statements, I was saying, look, here's the
2 statement I have taken, do you want to meet with me, I
3 am prepared to sit down. I wrote on the 12th, I wrote
4 again a few days later, a second time, asking him did
5 you get my letter, look, do you want to meet. Because 14:53
6 I assumed that when I gave him all that material that
7 he would be keen to meet me.
8 CHAIRMAN: Yes.
9 589 Q. MS. McGRATH: So that was really the end of your
10 exchange of correspondence on the issue and Mr. Cullen 14:53
11 doesn't come back to you and there isn't a sit down
12 with Garda Keogh ultimately?
13 A. No. Well, he does come back to me at a later stage,
14 all right, yeah.
15 590 Q. Okay. 14:53
16 A. We reengage in September, we'll say, after he has
17 opportunity to go off and get his advice and all that,
18 yeah.
19 591 Q. Okay. Now, staying with your statement there, moving
20 on down through April, you have responses coming in 14:53
21 again?
22 A. Yes.
23 592 Q. Superintendent Minnock, you have Garda A,
24 Superintendent McBrien. And here we have, on 17th
25 April 2018, Chief Superintendent Curran coming back 14:54
26 with his response to you.
27 A. Yes, Chair.
28 593 Q. Did you have any view on -- one of the complaints that
29 Garda Keogh makes is that this investigation was

1 supposed to be done in 28 days and he's complaining
2 about the length of time. He says, in fact, I accept
3 it couldn't have been done in the 28-day timeframe but
4 it took too long, that it was an unreasonable period,
5 is really his view. So you have, back on effectively 14:54
6 the 15th December, notified Chief Superintendent Curran
7 of the position and here we have his response in April.
8 Did you have a view on how long that took or the delay
9 in coming back to you?

10 A. I wanted to give them an opportunity, we'll say, to go 14:54
11 off and get their legal advice in terms of what was
12 going on, we'll say. I suppose I just had to be
13 conscious -- or I was conscious of the fact that they
14 needed to be careful too, I suppose, because whatever
15 was going to come to me was going to go to Garda Keogh 14:55
16 and, we'll say, may be used in another forum at another
17 date. So I thought it was reasonable that I would
18 allow them sufficient time, Chair, to go off and get
19 whatever advice they wanted to get under the
20 circumstances. I mean, if it was a normal bullying and 14:55
21 harassment, you know, where two guys are maybe not
22 getting on together, the sergeant is bullying the guard
23 or something like that, you know, you would have that
24 done in 28 days probably easily enough, you know,
25 unless people were being litigious, I think to be fair 14:55
26 to everyone, or probably getting more litigious? But
27 back in the day when this was written, I'm sure, 2007,
28 removing a bullying and harassment complaint probably
29 wouldn't take as long. You would get it done easily

1 enough. Especially, we'll say, if you only had one or
2 two parties involved, bring them into a room, have a
3 conversation with them. You know, it would be easier
4 to have interaction. Plus, you're probably talking
5 about something that happened in more recent times as 14:56
6 opposed to this, you are actually talking about
7 something that is going back probably two or three
8 years for some of them. So, you know, you'd have to
9 allow them go off, get their papers, you know, look at
10 their files. It wasn't that simple, we'll say, you 14:56
11 know. So I suppose I was being a bit more lenient or
12 consider in that context, Chair, yeah. But I mean, I
13 would have preferred to had that done faster too,
14 Chair, yeah.

15 594 Q. We already said that Chief Superintendent Wheatley had 14:56
16 come back two months earlier effectively, on the 7th
17 February?

18 A. Yeah.

19 595 Q. And here is Chief Superintendent Curran coming back to
20 you on the 17th April. And I just want to be clear 14:56
21 about this, he hadn't raised a legal advice issue after
22 you confirmed the position to him?

23 A. No.

24 596 Q. Way back at the start of January.

25 A. That was Superintendent Murray that had the legal 14:56
26 issue, we'll say.

27 597 Q. So Chief Superintendent Curran, you're saying you're
28 providing time to get legal advice etcetera, that
29 didn't apply to Chief Superintendent Curran, is that

1 right?

2 A. Oh it would apply. He was equally entitled to go off
3 and get legal advice, we'll say, in relation to his
4 issues. We'll say, in comparison to Chief
5 Superintendent Wheatley's issues, he had a lot more 14:56
6 stuff to deal with, I suppose. She had a pretty narrow
7 focus, I suppose, in terms of there was the one
8 discipline complaint really.

9 598 Q. We see that it's over a month later, there at the end
10 of the page, on 29th May 2018, when Superintendent 14:57
11 Murray comes back with his substantive response, is
12 that right?

13 A. That's right, Chair, yeah.

14 599 Q. And again, did you have a view on how long that took
15 Superintendent Murray? 14:57

16 A. I did, Chair. I suppose I was just cognisant of the
17 fact that he was writing to me/the organisation saying,
18 look, I was looking for legal advice, you still haven't
19 come back to me. Was that in March or whatever day
20 that was. So I suppose to be fair to him, you know, I 14:57
21 gave him that bit extra, because of -- he didn't -- he
22 had to get his legal advice, we'll say.

23 600 Q. Did you express or feel any frustration, because we
24 know from your statement on 8th January 2018 you had
25 received legal advice from Mr. Ruane? 14:57

26 A. Yeah.

27 601 Q. That the civil proceedings were not a bar to
28 proceeding. And on the 10th January you had notified
29 Superintendent Murray. So from the 10th January that

1 was your position. And as you said in one of your
2 e-mails, I thought I sorted this out earlier. So did
3 you feel any sense of frustration at the delay or did
4 you feel it was unsatisfactory that it was now the 29th
5 May that material was coming in?

14:58

6 A. Well, to be fair now, I wasn't happy. I'd prefer to
7 have it done earlier. But I suppose you had to be
8 reasonable and to be fair to all the parties. I mean,
9 it was a complex enough situation and there was going
10 to be implications, especially Superintendent Murray,
11 because as I understood it, he was named in civil
12 proceedings, we'll say, and normally civil proceedings
13 are against the State, but not only was it against the
14 State but he was actually a named party, as I
15 understood it, Chair.

14:58

14:58

16 CHAIRMAN: That is correct.

17 602 Q. MS. McGRATH: Now, you outline at the top of your -- if
18 we go on to the next page there, Mr. Kavanagh, please.
19 I think this is just repeating, in the second paragraph
20 there, the evidence you've just given to the Chair,
21 that you wanted to give these witnesses time to get
22 their own legal advice effectively?

14:59

23 A. Yes, Chair, yeah. The 7th June.

24 603 Q. Okay. Now, we're now on the -- sorry, I will just make
25 sure I have the right date, we're on the 29th May?

14:59

26 A. The 29th May, correct.

27 604 Q. Moving into early June, you have assistant commissioner
28 of Eastern Region looking for an update?

29 A. Yeah.

1 605 Q. The 12th June, you have Mr. Cullen looking for an
2 update?
3 A. No, I wrote -- well, maybe -- anyway, I wrote to him, I
4 think. The 13th, sorry, you're right.

5 606 Q. Yes, he is coming into you on the 12th June? 14:59
6 A. Yeah.

7 607 Q. You acknowledge receipt of this on the 12th June and
8 you do so in an e-mail. And you say:
9
10 "I have a sizable volume of documentation that I wanted 14:59
11 to give his client."
12 A. Yes.

13 608 Q. "And afford an opportunity to respond to."
14 A. Yeah.

15 609 Q. "And I also enquired of Mr. Cullen if they wished for 14:59
16 their client to meet with me to address some of the
17 matters in the documentation."
18 A. Correct.

19 610 Q. You provide that document on the 13th June, the
20 following day, isn't that right? 15:00
21 A. Yes, Chair.

22 611 Q. Now, effectively with regard to -- that's where things
23 stand?
24 A. I followed it up on the 19th, I send him another
25 letter. 15:00

26 612 Q. Okay. Effectively then not much happens in the interim
27 then, you have the -- he acknowledges receipt, do you
28 see there, on the 4th July?
29 A. Yes, yeah. And, we'll say, he undertook to revert once

1 counsel and Garda Keogh had an opportunity to pursue --
2 so I was giving him some time then, Chair, yeah.

3 613 Q. Exactly. He doesn't come back to you effectively until
4 the 6th September; is that right?

5 A. That's correct, Chair, yeah. 15:00

6 614 Q. So does that account for the period then between June
7 and September effectively?

8 A. Yes, Chair, it was resting with him, so to speak.

9 615 Q. Okay. If you look on the next page, the 6th --
10 A. September. 15:00

11 616 Q. -- September. He comes back to you with additional
12 queries?

13 A. Yes, Chair.

14 617 Q. These queries, you record there, pertained to:
15 15:01

16 "Comments made by Superintendent Murray in relation to
17 Garda Keogh's addictive substances dependencies, Chief
18 Superintendent Wheatley's review of Superintendent Alan
19 Murray discipline investigation, a reference made by
20 Paddy Guinan solicitors to disclosure made by the 15:01
21 complainant, Garda Keogh, that he was arrested for
22 drink driving. A query in relation to Gary White's
23 e-mail in relation to check on Garda Keogh's car. A
24 query in relation to Inspector Drea's statement and
25 clarity sought on who investigated the incident and a 15:01
26 query in relation to the recording of Garda Keogh's
27 absence on duty due to illness.

28

29 Now, I've just read those out because I think

1 effectively those queries necessitated you to go out to
2 several people.

3 A. Yes.

4 618 Q. Is that right?

5 A. That's correct. 15:01

6 619 Q. which you did and you recorded there in your statement
7 throughout September, isn't that right?

8 A. Correct, yes, Chair.

9 620 Q. And you get the responses back?

10 A. Mm-hmm. 15:01

11 621 Q. Effectively early October, is that right?

12 A. 5th October, I think, yeah, back with most of the
13 material.

14 622 Q. Now during this process, while this was going on, on
15 the 4th November you get a letter I think from 15:01
16 Assistant Commissioner Fanning, and it's at 4722. You
17 will be glad to know we are just near the end of all of
18 the correspondence, commissioner.

19 A. It's okay.

20 623 Q. He is referring there, he says: 15:02
21
22 "I refer to above and previous correspondence from this
23 office."
24

25 And he is giving a series of dates. Those dates, just 15:02
26 from looking back at your statement, were when he was
27 requesting an update.

28 A. Yeah.

29 624 Q. Do you remember we have seen that in your statement?

1 A. Yes, Chair.

2 CHAIRMAN: Yes, that's right.

3 625 Q. MS. McGRATH: He says:

4

5 "This investigation has now been ongoing for in excess 15:02

6 of 12 months and I would appreciate if the matter could

7 be brought to a conclusion forthwith."

8

9 Do you see that?

10 A. 4722, is it? 15:02

11 626 Q. Yes, 4722.

12 A. Yes. Yeah.

13 627 Q. Is that Assistant Commissioner Fanning saying this

14 needs to be --

15 A. Yes, it is, yeah. 15:03

16 628 Q. And you do produce -- you get your -- I think it's

17 after that date you still have some information coming

18 in from Chief Superintendent Myers. I think you have

19 to go back to Mr. Cullen with the responses, isn't that

20 right? 15:03

21 A. Yes, that's correct.

22 629 Q. I think ultimately that brings us down then throughout

23 November and in fairness, you do set out some movement

24 of correspondence in November and December?

25 A. Yes. 15:03

26 630 Q. And your report is the 20th December and you submit the

27 file by hand, you said, to the office of the assistant

28 commissioner of the Eastern Region; is that right?

29 A. That's correct, Chair. Just, for the record, Chair, I

1 was on an interview board there for six weeks I think
2 in October/November, the same time as Assistant
3 Commissioner McMahon, there was three boards sitting in
4 parallel, I was on one, she was on another one. So I
5 suppose that might have -- 15:03

6 631 Q. CHAIRMAN: Other things were going on.
7 A. Correct, yeah, yeah.

8 632 Q. CHAIRMAN: Besides this investigation.
9 A. Yeah.

10 633 Q. CHAIRMAN: Including a six-week period of interviews. 15:03
11 A. Correct, yeah, and that kind of fills that gap there
12 between, we'll say --
13 CHAIRMAN: That was in October.
14 A. October, November, yeah, correct, Chair.

15 634 Q. CHAIRMAN: September, October, did you say? 15:04
16 A. September, October.

17 635 Q. CHAIRMAN: Okay.
18 A. I started on the interview board on the 25th September.
19 It was over a six-week period. Now, my board might
20 have broken for a week in between. 15:04

21 636 Q. CHAIRMAN: Yes, I understand.
22 A. But I think we were finished up, according to my notes
23 here, on the 2nd November, it was the last day of my
24 interview board, yeah.

25 637 Q. MS. McGRATH: 2nd of? 15:04
26 A. November.
27 CHAIRMAN: November.

28 638 Q. MS. McGRATH: November. Now, as you say there, the
29 report went into the assistant commissioner on the 20th

1 December. Now, Garda Keogh says the following. And I
2 just want to give you an opportunity to respond to
3 them, Commissioner Finn. When he was asked about the
4 Finn investigation in his direct-evidence, he went so
5 far on Day 99 to say the that the Finn investigation 15:04
6 was a joke and he rejects the investigation in its
7 entirety. And one of the things he complains about
8 specifically was the length of time it took. I am
9 going to put these to you so you can answer. And we
10 will talk about your report separately in a moment. 15:05
11 But this is just on the process that we have just gone
12 through in some detail. So, on Day 110 he accepted
13 that it could not have been done within the normal
14 timeframe of 28 days but he says 13 months was an
15 unreasonable period. What do you have to say to that? 15:05
16 A. Certainly, Chair, it took a lot longer than I envisaged
17 the first day. But I think if you go back through it
18 like, there were circumstances that were outside of my
19 control in the context that, we'll say, I had a load of
20 people, we'll say, go off and get their legal advice. 15:05
21 I think they were entitled to that, to be fair to them.
22 There was a period then of three months when I was
23 actually resting with Mr. Cullen, where he was going
24 off, going out to counsel, getting their legal advice.
25 Then he comes back, we'll say, with a number of initial 15:05
26 queries, which took some time to assemble, because
27 again, you were talking about like the sick file, for
28 example, like that was pretty big documentation, which
29 is going back for a considerable period, historical

1 records. So like trying to get them all together takes
2 time, you know, trying to find them, track them down,
3 see where they are. There was another investigation
4 there about this alleged driving thing, you know.
5 Assembling that information, Chair, took a good bit of 15:06
6 time, I'd say. So I wouldn't say all of the delay was
7 -- I don't blame myself for all the delay. But it did
8 certainly take a lot longer than I would expected,
9 Chair. I think it's not unreasonable to say somebody
10 would be unhappy that it took so long, yeah. 15:06

11 639 Q. MS. McGRATH: Can I ask you, from the complainant's
12 perspective was that a satisfactory period of time from
13 his perspective? I think we have been hearing about
14 your view on the others being given an opportunity and
15 time to get legal advice? 15:06

16 A. I think I was fair to everybody, Chair. I mean, I gave
17 him three months effectively during the middle of it
18 there to go off and get his advice and his counsel. He
19 came back with additional queries, which I pursued,
20 which effectively I would say I pursued on his behalf. 15:07
21 I tried to bottom them out. Then, you know, I suppose
22 the challenge for me then was to go off and write the
23 report when I assembled all the material. So I think I
24 was trying to be fair and reasonable to everybody, you
25 know, live within the principles of natural justice and 15:07
26 fair procedure, to all sides, Chair, you know.

27 640 Q. One of the other procedural complaints he makes, and it
28 was at Day 114 when Mr. Patrick O'Brien was
29 cross-examining him, he says:

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"I was never told to have meetings."

That you or Commissioner Finn's had. And he says:

15:07

"I was never given minutes of interviews."

This is why during the course of today I was asking did you keep a minute of that or did you have a record of that meeting etcetera. Because there is a letter from the Tribunal to the CSSO after Garda Keogh gave evidence seeking to clarify this point.

15:07

A. Yeah.

641 Q. You might recall this.

A. I have it here in front of me.

15:07

642 Q. We got a response from An Garda Síochána and it's at page 15214.

A. I have it here.

CHAIRMAN: Yes.

A. I have it here.

15:08

CHAIRMAN: Thank you.

643 Q. MS. McGRATH: This is confirming that whilst there were meetings with witnesses and whilst both you and the investigation team engaged directly, the words that are used "engaged directly with a number of witnesses" it is confirmed on page 15215 that there were no interview notes or other notes from your dealings with these members. Now this is something that Garda Keogh is critical about. What do you have to say to that?

15:08

1 A. what we did, Chair, is that we met people, we gave them
2 the allegations that were against them or the relevant
3 portions that pertained to them and we said, look,
4 there it is, you go off, prepare your response and come
5 back to us. Now, it wasn't a case of, well, we sat 15:08
6 down and kind of interrogated them and said there and
7 then. You know, to be fair to people. Because, as I
8 said earlier on, whatever was going to be said here
9 could have implications for them at a future date, at
10 another venue, another location. So I felt it be 15:09
11 unreasonable and maybe unfair for me to try and say,
12 look, you have to do it here now straightaway. You
13 know, I allow people go off and come back to us with a
14 written response. And having a written response was, I
15 suppose, the best for me, Chair, because at least I 15:09
16 could go back with it, here's the formal response from
17 the parties that I interviewed, so there was no dispute
18 about what was said, you know.

19 644 Q. well, just in relation to that, just even the last line
20 that you said or the implications for the future, 15:09
21 should that not have indicated that notes should have
22 been kept and records should have been kept in writing
23 of these interactions with the various members?

24 A. But there was nothing of evidential value, I suppose,
25 that emanated from them. It was a case, here, I am 15:09
26 giving you the documentation, you go off and prepare a
27 response and come back to me.

28 645 Q. CHAIRMAN: Did you intend this to be an entirely
29 written process?

1 A. Yes, Chair.

2 646 Q. CHAIRMAN: In other words, you come to me with the
3 material for the purpose of making sure I have it?

4 A. Yeah.

5 647 Q. CHAIRMAN: And then I come back with a written 15:10
6 response?

7 A. Correct.

8 648 Q. CHAIRMAN: Is that the way this was done?

9 A. Yeah, Chair, yeah. So there is no dispute then
10 afterwards, give people an opportunity, let them get 15:10
11 their legal advice if they have to get legal advice.

12 649 Q. CHAIRMAN: So you don't talk to them at that stage and
13 say, what's the story here, or X says that and Y says
14 that and what do you say. You don't get into an
15 interrogation? 15:10

16 A. No, no. Give them an opportunity to go off and get
17 their advice, yeah.

18 650 Q. CHAIRMAN: So rightly or wrongly, that was the process?

19 A. Correct, Chairman, yeah. And that's not, I think, in
20 keeping with the Code of Practice, which I referred to 15:10
21 earlier on and going back to statutory instruments
22 saying, look, natural justice, you allow people -- you
23 make them aware of what the accusation is and you give
24 a response to come back to you in writing.

25 CHAIRMAN: Okay. 15:10

26 651 Q. MS. McGRATH: There seems to be an error there on the
27 recording of the answer, that's not, I think, in
28 keeping with the Code of Practice. Did you mean to say
29 that is in keeping with the code practice?

1 CHAIRMAN: No, it wouldn't be in keeping with the Code
2 of Practice to interrogate people when you deliver the
3 papers to them. Is that what you are saying?
4 A. Well, I'm saying in the context of Code of Practice,
5 that the Code of Practice would say -- 15:11
6 CHAIRMAN: Just one second.
7 A. Sorry, Chair.
8 652 Q. CHAIRMAN: A moment ago.
9 A. Go on, Chair, yeah.
10 653 Q. CHAIRMAN: We had this conversation about this being a 15:11
11 written process?
12 A. Yes, Chair.
13 654 Q. CHAIRMAN: And we also covered a question -- I don't
14 mean to be rude, I am just trying to clarify, we also
15 covered a question where, would you question somebody 15:11
16 and say, A says this and B says no, and you said no?
17 A. Correct, yeah.
18 655 Q. CHAIRMAN: And you said the process is that you give it
19 and give them a chance?
20 A. Yeah. 15:11
21 656 Q. CHAIRMAN: You went on to say, that wouldn't be in
22 keeping with the Code of Practice. By which I
23 understand you to mean that questioning people in those
24 circumstances, when you deliver the papers, would not
25 in your view be in keeping with the Code of Practice. 15:11
26 Is that a correct --
27 A. No, that wasn't what I meant, if that's what I said. I
28 said it would be in keeping with the Code of Practice.
29 657 Q. CHAIRMAN: Very good. The way you did it, would be in

1 keeping, was in keeping with the Code of Practice?

2 A. Yeah, correct.

3 CHAIRMAN: Okay. So thank you, Ms. McGrath, you are

4 perfectly right. There was a misunderstanding.

5 658 Q. MS. McGRATH: Okay. It suggests a level of informality 15:12

6 in the engagement, the oral engagement with the

7 parties; is that right?

8 A. I think it was very formal, Chair. I mean, here's the

9 documentation, I want you to give me a formal response

10 to this. I mean, the procedure is set out, Chair. We 15:12

11 have to follow the procedure.

12 659 Q. I think when we looked -- at the very, very beginning

13 of your evidence this morning, when we looked at the

14 policy, you accepted that you were establishing facts

15 and credibility. Now, I think your evidence to the 15:12

16 Chair there a moment saying is that you anticipated

17 this investigation or saw this investigation as

18 primarily a written process?

19 A. Well, that's what I did, yeah.

20 660 Q. Okay. So, were you satisfied you were assessing 15:12

21 credibility from looking at documents without oral

22 meetings or hearings or interactions or interviews?

23 A. Well people had the opportunity to challenge the

24 credibility of the evidence that was produced to them.

25 661 Q. But is it your evidence that you were assessing 15:13

26 credibility but through a written process?

27 A. Yeah. Well, you were hearing everybody's version of

28 how they perceived the matters to be, we'll say, yeah.

29 662 Q. Now, can I just look at your report itself? This

1 report is at page 5521 of our documents. Now, I think
2 we would be here another day if we went through every
3 line of this report. So I just want to ask you a
4 couple of questions about it. Now, Garda Keogh, in his
5 evidence, took the position on Day 104, he says:

15:14

6
7 "The Finn investigation should not have reached the
8 conclusion that it did."

9
10 He said on Day 104:

15:14

11
12 "It was an exercise in circling of the wagons."

13
14 And he also says that:

15
16 "Some of the evidence was downplayed or ignored."

15:14

17
18 So that is his view of the report and he rejects the
19 report in its entirety. So you're aware of that?

20 A. Yes, Chair. Yeah.

15:14

21 663 Q. He made a further statement to the Tribunal, which is
22 at 5969 and he said:

23
24 "The investigation conducted by Assistant Commissioner
25 Finn amounted to a conscious and deliberate failure to
26 protect me from bullying and harassment within the
27 force and by reasons of the conclusions reached by
28 Assistant Commissioner Finn."

15:14

1 So that is the view he takes of this report. I think
2 you would be aware of that?

3 A. Sorry, Chairman, just to catch up.

4 CHAIRMAN: Just a moment. Ms. Doolin is just giving
5 you the bit where he says it's conscious and 15:15
6 deliberate. Very good. Yes, Ms. McGrath.

7 664 Q. MS. McGRATH: Sorry, I was just reading out what Garda
8 Keogh's charge to this Tribunal is in respect of this
9 report. I can repeat them if you like, commissioner?

10 A. I am just reading them. 15:15

11 CHAIRMAN: Okay.

12 665 Q. MS. McGRATH: okay.

13 A. okay.

14 CHAIRMAN: Yes.

15 666 Q. MS. McGRATH: so effectively, as I said, on Day 104, 15:15
16 from page 80 onwards of the transcript, he says the
17 following, and I am going to summarise them to you. He
18 says that the Finn investigation ignored parts of his
19 evidence and downplayed other parts; that there was
20 nothing to see here; that it was a circling of the 15:16
21 wagons; he also says at page 90 you should not have
22 reached the conclusions that you did. So, he says the
23 conclusions that were reached on the findings were
24 incorrect. He also says, as you saw there in the
25 additional statement, he sees it as an exercise in 15:16
26 bullying and harassment of him by the force. Now, just
27 to give you an opportunity to comment on that?

28 A. I refute that, Chair. I disagree with that.

29 CHAIRMAN: I thought you might.

1 667 Q. MS. McGRATH: And in respect of the report itself,
2 which I have asked Mr. Kavanagh -- 5521. Now, the
3 findings are set out individually and I am not going to
4 take you through each one, but I think the findings
5 speak for themselves. If you remember, the standard 15:17
6 you applied was the balance of probabilities, isn't
7 that right?

8 A. Yes, Chair.

9 668 Q. I think you did not uphold his complaint in any respect
10 on the balance of probabilities? 15:17

11 A. That's correct, yes, Chair.

12 669 Q. Okay. If I can ask you maybe just to look at the
13 introduction to the report, because I just want to ask
14 you one or two questions about that.

15 A. Yes. 15:17

16 670 Q. You outline on the first page, this is at 5521, you
17 give details of your appointment, isn't that right?

18 A. Yes, Chair.

19 671 Q. At the top of the next page, this is the issue about
20 where you were going to get a copy of his statement? 15:17

21 A. Yes.

22 672 Q. You talk about meeting with him on the 1st December?

23 A. That's correct.

24 673 Q. And the next paragraph, you told him that you would
25 investigate whatever matters he wanted to include in 15:17
26 his complaint?

27 A. Yes, Chair, yeah.

28 CHAIRMAN: I think we have all this, Ms. McGrath, well
29 and truly.

1 674 Q. MS. McGRATH: Sorry. Therefore then, takes you through
2 the 1st December, the clarification of the members that
3 complaints had been made against. Sorry, what I want
4 to concentrate on is 5523, the next page. And you say
5 there in the first paragraph:

15:18

6
7 "On the 15th December Assistant Commissioner Finn wrote
8 to each of the persons named by Garda Keogh, informing
9 them that they had been appointed."

10 15:18

11 We have seen that:

12
13 "From the outset of the investigation all of the
14 parties involved expressed concern and dissatisfaction
15 with the timeframes in which the complaint was being 15:18
16 investigated. They also expressed dissatisfaction that
17 the bullying and harassment process was being used to
18 compromise the civil proceedings which were running in
19 parallel with the bullying and harassment complaint."

20 15:18

21 And is this what was -- who did this come from, that
22 particular complaint?

23 A. Superintendent Murray.

24 675 Q. And this was his concern, that if you proceeded with
25 your investigation it would compromise the civil
26 proceedings, is that right?

15:18

27 A. Compromise his position anyway, Chair. I think he felt
28 he would be compromised because -- or he was concerned
29 he might be compromised because any material he would

1 have to give to me would be given over to Garda Keogh,
2 we'll say, and I suppose he was concerned that would it
3 have legal implications for him or disclosing
4 documentation -- I think he was concerned that it might
5 have implications for the State side of it too if he 15:19
6 was giving documentation over to me which I was going
7 to be giving over to Garda Keogh. That's my
8 understanding of it, Chair, now.

9 676 Q. And this was coming from Superintendent Murray, is that
10 right? 15:19

11 A. Yeah.

12 677 Q. Effectively. It goes on to say:
13
14 "While all the parties agreed to cooperate with the
15 investigation, they were dissatisfied that the 15:19
16 investigation had taken such a long period of time to
17 formally commence, given the length of time between the
18 date that Chief Superintendent Scanlan was tasked to
19 take Garda Keogh's statement in March 2017 and 15th
20 December... " 15:19

21
22 when you're appointed, okay?

23 A. Yes, Chair.

24 678 Q. "Garda Keogh also made reference to the fact that he
25 first raised this issue in 2016." 15:20

26 A. Yes, Chair.

27 679 Q. And that's it. Is that right? Is that the only
28 reference in your report, it would seem to be, in
29 relation to the delay issue in commencement?

1 A. Sorry, I don't fully understand that question.

2 680 Q. Is that your paragraph dealing with that complaint by
3 Garda Keogh, in particular about the delay in
4 commencement?

5 A. I am just highlighting it there, Chair, that he was not 15:20
6 happy with the fact that the delay -- or all the
7 parties involved had issues about the delay, Chair,
8 yeah.

9 681 Q. But is that your substantive response in the report to
10 the issue? 15:20

11 A. Yes, Chair. This is my report on the bullying and
12 harassment?

13 682 Q. CHAIRMAN: I am understanding the distinction you are
14 making and the point you are making.

15 A. Yes. 15:20

16 683 Q. CHAIRMAN: But counsel is asking you, is that the only
17 reference?

18 A. That is, Chair.

19 684 Q. CHAIRMAN: And the implication in Ms. McGrath's
20 questions is that there is something wrong with that, 15:20
21 that's the implication, that you should have had more
22 of a description of the thing. I am not saying I agree
23 with that but that seems to me to be the implication of
24 Ms. McGrath's question. What do you say to that?

25 A. I thought it was adequate in terms of describing the 15:21
26 intro of the issues, we'll say.

27 685 Q. CHAIRMAN: I understand.

28 A. I could have gone into it more, Chairman.

29 686 Q. CHAIRMAN: I am understanding the distinction you make

1 about grievance about that and so on, and whether that
2 is right or wrong, people will debate in due course and
3 maybe you will be asked about that, I just don't want
4 to express any view about that?

5 A. I know. I suppose I was putting context in my report, 15:21
6 saying, look, leading into it, there is background to
7 this and this is the background to it, that people
8 aren't happy about the delay.

9 687 Q. MS. McGRATH: Perhaps I could cut to the chase and say
10 that if you were Garda Keogh and you were reading this, 15:21
11 you would be none the wiser effectively as to where his
12 complaint was between end of 2016, 2017. would you
13 accept that?

14 A. That'd be fair enough, Chair, yeah.

15 688 Q. Okay. Then there is a reference there: 15:21
16
17 "Parties expressing concern in relation to the length
18 of time that it all took."

19
20 And the issue of civil proceedings and legal advice is 15:21
21 summarised there. And then you go on to say:

22
23 "Garda Keogh raised 18 specific points in his statement
24 of complaint."

25
26 You say: 15:22

27
28 "Not all the matters relate to the three members
29 nominated by Garda Keogh in his statement of complaint."

1 However, for completeness each of the issues raised by
2 Garda Keogh have been addressed in this report."

3 A. Yes, Chair yeah.

4 689 Q. So you didn't confine it to Superintendent Murray,
5 Chief Superintendent Curran or Chief Superintendent
6 wheatley, is that right? You took a broad approach to
7 dealing with all issues in his complaint, is that
8 right?

15:22

9 A. In fairness, I think he raised the 18 issues, I think
10 it is appropriate that I would make some reference, or
11 reference them in response back, Chairman, as best I
12 could.

15:22

13 690 Q. I think if you skip on through your report and, as I
14 say, I'm not going to through the findings but you do
15 say about Garda Keogh's statement, at 5525, there at
16 the very bottom?

15:22

17 A. Yes.

18 691 Q. You say:

19

20 "In his opinion, following the making of a protected
21 disclosure he encountered harassment, victimisation and
22 penalisation."

15:22

23

24 So were you alive to the fact that these complaints
25 were being made in a very particular context for him?

15:23

26 A. Sorry?

27 692 Q. With the background of -- you say there "protected
28 disclosure issues" that it was following the making of
29 the protected disclosures?

1 A. Yes.

2 693 Q. So was that a particular contextual issue for you, that
3 you looked at the complaints against that background?

4 A. Yeah. I mean he outlined that in his statement. I
5 think it was the start of his own statement, we'll say. 15:23

6 694 Q. Now, as we say, the rest of your report goes on in some
7 detail to go through each individual finding and in
8 fact we have a schedule of issues here for the Tribunal
9 and you see that the schedule of issues is very similar
10 to the issues you looked at, isn't that right? 15:23

11 A. Yes.

12 695 Q. For example, when Garda Keogh rejected the conclusions
13 of your report he was asked in blunt terms, well, which
14 conclusions do you disagree with. I think one of the
15 ones he isolated was the Liam McHugh analysis, do you 15:23
16 remember that?

17 A. Yes, Chair.

18 696 Q. Do you have any view on that, in the approach that you
19 took to that issue?

20 A. Well, I have a view in the context, Chair, in June, 15:24
21 we'll say, I gave him all the statements, we'll say,
22 which included an unredacted one, which showed that
23 Garda Lyons was the person who had made the -- had
24 spoke to Superintendent McBrien, we'll say. And if I
25 am correct in saying this, Chair, in August, when he 15:24
26 made statement to the Tribunal -- not the Tribunal --
27 maybe the Tribunal -- he made a statement in August,
28 we'll say, he referred to that, which I wouldn't have
29 sight until later. But in September, when he wrote,

1 when his solicitor wrote back to me, he made no
2 reference to that, which, you know, I would take it, if
3 that was such an issue, why didn't he come back to me
4 and say, McHugh, why didn't you follow that up a bit
5 further, because I now know it was Garda Lyons and all 15:24
6 the issues that flow from that. So I have to say, I
7 was surprised, Chair, that he didn't.

8 697 Q. I think on oral evidence, here at the Tribunal, there's
9 been some movement, bits and pieces here and there in
10 relation to the individual complaints, isn't that 15:25
11 right, in the evidence and you will have seen that?

12 A. I'm not sure exactly what you mean.

13 698 Q. Well, for example, in looking at the Liam McHugh issue
14 and who said what and who did what?

15 A. Oh yeah, yeah. 15:25

16 699 Q. There's been some movement in the evidence, isn't that
17 right?

18 A. That's correct.

19 700 Q. From the date of your report?

20 A. Yes, Chair. 15:25

21 701 Q. Okay. Now, as I say, your conclusion was to the effect
22 that there was no bullying and harassment here in
23 respect of Garda Keogh, isn't that right?

24 A. That's correct, Chair, yeah.

25 702 Q. Did you take a view of what the senior officers were 15:25
26 doing? What was your view of what they were doing in
27 their dealings with Garda Keogh?

28 A. I'm not quite sure what you mean by that.

29 703 Q. Well, I suppose to clarify that, I think you say in

1 respect of a lot of your findings --

2 A. Oh, in the context that they were doing their job.

3 704 Q. Yes.

4 A. We'll say, that this was part of their role and
5 responsibility, like you know, they were 15:26
6 superintendents, chief superintendents in the Guards
7 and you would expect them to be making some of the
8 queries they were asking, we'll say, yeah.

9 705 Q. And is that how you saw it?

10 A. Yes, Chair. 15:26

11 706 Q. One of the things I want to ask you about, just to deal
12 again with something Garda Keogh mentioned in his
13 evidence. You talked about, that you would look at his
14 complaint in the context of bullying and corporate
15 bullying, did you see that? 15:26

16 A. Yes, Chair.

17 707 Q. Garda Keogh says that, for example -- I will just find
18 the day he said, on Day 109. He said he didn't know
19 what this was about and he didn't really understand it.
20 Was that ever explained to him, examining it in the 15:26
21 corporate context?

22 A. No, Chair, no.

23 708 Q. Can you tell the Chairman what you saw as the
24 difference between the two and why you looked at it
25 under both? 15:26

26 A. I think, Chair, when I was looking at -- when I was
27 getting to my report, writing stage, you know, I wanted
28 to, for myself, so I would have the best possible
29 understanding of what bullying and harassment meant,

1 you know, I went looking myself to see, you know, was
2 my interpretation the best, the most appropriate one.
3 So I did my own legal research, we'll say, and I looked
4 at a Supreme Court judgment there, so obviously I took
5 that, because I felt that was from the highest court. 15:27
6 I was using that as my barometer, my yardstick to say,
7 look, you know, I should have a broader perspective on
8 bullying and harassment maybe than what our own
9 guidance would suggest to you, so I used that as a
10 yardstick, Chair. 15:27

11 709 Q. Now, we talked about further issues --
12 CHAIRMAN: That's not Ruffley.
13 A. I wouldn't have had that discussion with, you know,
14 we'll say, Mr. Cullen at the outset when we were
15 staring off obviously. 15:27

16 710 Q. CHAIRMAN: It's not Ruffley, no.
17 A. No, but it's --
18 711 Q. CHAIRMAN: No, that's all right, I am sorry, I was
19 thinking of a different one.
20 A. I looked at that one too, Chair. It is Ruffley v. The 15:27
21 Board of Management at St. Anne's school, that's the
22 one.
23 CHAIRMAN: There you are. A Court of Appeal decision,
24 which I was familiar, because I was one of the
25 judgments. But the Supreme Court went into a lot of 15:28
26 detail, actually gave very helpful advice then on the
27 subject.
28 A. Yeah.
29 712 Q. CHAIRMAN: Okay. So you looked at that. I just

1 wondered, it struck me that might be the case.

2 A. You're right.

3 713 Q. CHAIRMAN: Anyway, tell us about the corporate bullying
4 then that Ms. McGrath was asking you about, where did
5 that come from? 15:28

6 A. I felt, Chair, that we should look at it not just in
7 the individual, looking at the individuals, that I
8 should look at the collective approach to see did --
9 and when I looked at it, all of the parties, did I --
10 would I have considered it to be corporate bullying, 15:28
11 yeah. So I took that into consideration in writing my
12 report.

13 714 Q. CHAIRMAN: In other words, a sort of collective?

14 A. Yes, Chair.

15 715 Q. CHAIRMAN: whatever about the individual persons, that 15:28
16 was there a collective in some way?

17 A. That's it, Chair.

18 CHAIRMAN: Okay.

19 716 Q. MS. McGRATH: Now, we're finishing up, commissioner,
20 just in relation to, you submitted your report and as 15:28
21 we saw from the policy earlier today, there is a
22 provision for a review of the report, isn't that right?

23 A. Yeah. Effectively, Chair, I was reporting back to the
24 assistant commissioner of Eastern Region.

25 717 Q. CHAIRMAN: Yes. 15:29

26 A. Who appointed me.

27 718 Q. MS. McGRATH: Okay. Now however, the appointing office
28 was assistant commissioner Eastern Region but on 3rd
29 January 2019, you took over responsibility for the

1 Eastern Region; isn't that right?

2 A. I had interim responsibility then.

3 719 Q. CHAIRMAN: Yes.

4 A. So effectively I was reporting back to myself, which
5 obviously made no sense. 15:29

6 720 Q. MS. McGRATH: So you couldn't review yourself
7 effectively?

8 A. Correct.

9 721 Q. Then I think that it was at that point that Assistant
10 Commissioner O'Brien of the Northern region was put in 15:29
11 place by Alan Mulligan to undertake the role of the
12 appointing officer and do the review?

13 A. That's right.

14 722 Q. Isn't that right?

15 A. That's correct, Chair. 15:29

16 723 Q. I just want to ask you because it is something I would
17 like to clarify with Assistant Commissioner O'Brien as
18 well, but he came back with some queries to your team,
19 isn't that right?

20 A. Yeah. 15:29

21 724 Q. During the review. Can I just ask you about a
22 document, to see if it is your document. Perhaps if
23 you look at 12019. He came back with queries and I
24 will go through this in more detail with Assistant
25 Commissioner O'Brien, but he came back with a series of 15:30
26 queries. You see these notes "note to AC Finn" do you
27 see that?

28 A. Bear with me.

29 725 Q. This is on, for example, the Liam McHugh issue. We

1 will deal with that in more detail, as I say, with the
2 next witness. But it says:

3
4 "Note to AC Finn: I would respectfully suggest that
5 Superintendent McBrien should be asked to directly 15:30
6 respond to this particular query in order that a
7 definitive response can be given to Assistant
8 Commissioner O'Brien."

9
10 Is that Chief Superintendent Myers writing that note? 15:30

11 Is that a note to you? Do you remember this document?

12 A. I'm just looking at it here, Chair. I think it could
13 be from one of my team but not necessarily Chief
14 Superintendent Myers.

15 726 Q. But it's a note to you? 15:30

16 A. Yeah.

17 727 Q. And so, you considered this?

18 A. Well I passed it on to Assistant Commissioner O'Brien
19 for his team, yeah.

20 728 Q. Okay. So that's a draft document coming, that we are 15:31
21 looking at and dealing with the queries that had been
22 raised, but that's not the final response --

23 A. Oh yeah.

24 729 Q. -- to Assistant Commissioner O'Brien?

25 A. Correct. I think, if my memory serves me correct, 15:31
26 Chair, I did contact Superintendent O'Brien to see did
27 she have any additional materials than what she had
28 already given to me, and she didn't.

29 730 Q. Okay. Then you responded to those queries?

1 A. Yes.

2 731 Q. As I said, we can deal with this with the assistant
3 commissioner, but you responded to the queries and he
4 proceeded on with his review; is that right?

5 A. Correct, yeah. 15:31

6 732 Q. So I think had you no further dealings, after you dealt
7 with the queries you had no further dealing with this
8 investigation, is that right? Okay.

9 733 Q. CHAIRMAN: That's right? That was the end of your
10 involvement? 15:31

11 A. That was the end of my involvement.

12 734 Q. CHAIRMAN: After answering the queries?

13 A. Yeah.

14 735 Q. CHAIRMAN: Thank you.

15 A. It was over to Assistant Commissioner O'Brien then to 15:32
16 take the matter from there.

17 MS. McGRATH: Thank you, commissioner. I wonder if you
18 would answer any questions, please.

19 CHAIRMAN: Thank you. Yes, Mr. O'Brien.

20 15:32

21 ASSISTANT COMMISSIONER MICHAEL FINN WAS CROSS-EXAMINED
22 BY MR. O'BRIEN, AS FOLLOWS:

23

24 736 Q. MR. O'BRIEN: Commissioner, if we could just go back to
25 your statement, at page 4108 please. I think you told 15:32
26 us earlier on this afternoon and you said in your
27 statement here that you have a wealth and knowledge of
28 experience investigating complaints of bullying and
29 harassment, that's is important to establish at the

1 outset against whom the complaint is being made; isn't
2 that correct.

3 A. That's correct.

4 737 Q. You said to the Chairman when you were asked, just in
5 relation to your own experience, that you had 15:32
6 investigated complaints under this policy before, isn't
7 that correct?

8 A. That's correct.

9 738 Q. And did I understand you to say that you had been the
10 appointing officer, I think you described it as being 15:32
11 in the Fanning role?

12 A. Yeah.

13 739 Q. As opposed to the role of investigator, is that right?

14 A. Correct.

15 740 Q. Can I just ask you then, in terms of the amount of 15:33
16 these complaints that you have dealt with in your
17 career in the investigator role, how many times had you
18 performed that role under the policy prior to the
19 investigation of this complaint?

20 A. I'm not a hundred percent sure, Chair, but I would say 15:33
21 probably less than ten. I wouldn't have been doing
22 them very frequently.

23 741 Q. So you had some experience, it's fair to say?

24 A. Yes, Chair.

25 742 Q. In your previous investigations did you perform the 15:33
26 role in the same manner that you performed the
27 investigation in this. So I suppose largely a
28 people-based investigation?

29 A. No, Chair, no I think any of the ones I did in the past

1 were much simpler, you know. A dispute between two
2 staff members, we'll say, you know. It wouldn't be as
3 complex.

4 743 Q. When you say much simpler, now I know obviously there
5 are a large amount of issues within this investigation? 15:34

6 A. Fewer parties, we'll say. Like you might be talking
7 about two members, a dispute between a sergeant and a
8 guard, something like that, you know.

9 744 Q. I see.

10 A. Yeah. 15:34

11 745 Q. If you can just turn please to the policy document
12 itself please. If Mr. Kavanagh could turn to page
13 4199. Again, just to move through this quickly. It
14 confirms that the investigation that you're carrying
15 out was to establish facts, isn't that right, you will 15:34
16 see there in the middle of the page "the investigation
17 will establish facts"?

18 A. What page?

19 746 Q. Sorry, 4199?

20 A. I have the document itself here. Are you on page 20 or 15:34
21 21 of that document, it's down at the bottom corner.

22 747 Q. 28 on the left-hand side.

23 A. Thank you. This will speed it up, Chair. I have it
24 here, Chair, yeah.

25 748 Q. So your role is to establish facts and credibility of 15:35
26 the complaint with due regard to the provisions of fair
27 procedure and natural justice; isn't that correct?

28 A. Yes, Chair.

29 749 Q. Natural justice, in fact -- so if you move forward to

1 the next page, so 4200, it deals with the sensitivity
2 of the complaint and it says:
3
4 "With respect to carrying out an investigation, the
5 divisional officer shall give due consideration to the 15:35
6 sensitivity of the complaint and ensure that the
7 investigating officer behave appropriately with due
8 regard to the established tenets of fair procedure and
9 natural justice in the circumstances."
10 15:35
11 Isn't that right?
12 A. Yes, Chair.
13 750 Q. So as we move through the policy document and if you
14 turn to internal page 32, it's 4203?
15 A. Yeah. 15:35
16 751 Q. I think the spirit and the ethos of the policy
17 essentially is that you would abide by the principles
18 of fair procedures and natural justice, you would
19 remain impartial, would you accept that?
20 A. Mm-hmm. 15:36
21 752 Q. That in doing so, that the investigation wouldn't be
22 biased against any party?
23 A. Yeah.
24 753 Q. It wouldn't be predetermined?
25 A. Correct. 15:36
26 754 Q. Isn't that correct?
27 A. Yeah.
28 755 Q. If you look to 8.6 please, it just says:
29

1 "The role of the investigator."
2
3 Of course that's you in these circumstances. That you
4 be mindful of both the rights of the complainant and
5 the person against whom the complaint is made; isn't 15:36
6 that correct?
7 A. That's fair, yes, Chair.
8 756 Q. Are you satisfied that you followed that procedure and
9 in particular that paragraph throughout this process,
10 the investigation process? 15:36
11 A. I would like to think I did, Chair, yeah.
12 757 Q. That you did?
13 A. Yeah.
14 758 Q. I see. And if you just move down two paragraphs there,
15 in relation to discussing the case, it says: 15:36
16
17 "The complainant and the person complained of should be
18 requested not to discuss the case with any other party
19 not connected with the investigation. This does not
20 preclude discussing the case with one's staff 15:36
21 representatives, medical practitioner or any other
22 professional or family member or nominated friend or
23 colleague."
24
25 Isn't that right? 15:37
26 A. Yes, Chair.
27 759 Q. Are you satisfied that you abided by that provision?
28 A. As best I possible could, Chair, yeah.
29 760 Q. And again then if you move down to the bottom of the

1 page, that the complainant will be provided with a copy
2 of the statement of the person against whom the
3 complaint is being made and given an opportunity to
4 comment on the statement?

5 A. Yes, Chair. 15:37

6 761 Q. I think you did afford Garda Keogh an opportunity to do
7 that?

8 A. Yes, Chair.

9 762 Q. Again, if you turn over the page, you're carrying out
10 your investigation and the results are premised on the 15:37
11 balance of probabilities, isn't that correct?

12 A. Yes, Chair.

13 763 Q. If we could just turn again over the page to internal
14 page 34, and at 8.8 thee you will see it says:

15 15:37
16 "The investigator must avoid discussing the case with
17 any person, whether within or outside of the workplace,
18 other than those to whom they must speak in the course
19 of the investigation."

20 15:38
21 And then it deals particularly with impartiality and it
22 says:

23
24 "During the course of the investigation, the
25 investigator will be impartial and will not indicate 15:38
26 their views with regard to credibility or otherwise of
27 the complaint itself or the evidence given by the
28 complainant, the person against whom the complaint is
29 made or any witnesses."

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And are you satisfied that you complied with that part of the policy?

A. I believe that I did, Chair, yeah.

764 Q. I see. And again, on the next, just moving down to the next paragraph: 15:38

"The investigator will refuse to be drawn into any speculation."

15:38

CHAIRMAN: Mr. O'Brien, can I just ask you, obviously I am assuming you're going to be a few minutes.

MR. O'BRIEN: Yes.

CHAIRMAN: That's all right. I propose to take what they call in Wimbledon a comfort stop at this moment. That will make me better able to concentrate on your questions. There's no problem with that and there's no great hurry. I hope we can finish with the assistant commissioner this afternoon, I am hoping that will be the case. If it means sitting on a little bit, that's not a problem. But anyway, we will take a tiny break for about five minutes. Okay, thanks very much. 15:39

THE HEARING THEN ADJOURNED BRIEFLY AND RESUMED, AS FOLLOWS: 15:39

CHAIRMAN: Thanks very much. Now, Mr. O'Brien. Thanks very much.

MR. O'BRIEN: Just to indicate, you had mentioned

1 before we broke up that it may be possible to finish
2 the cross-examination today.

3 CHAIRMAN: If possible, yes.

4 MR. O'BRIEN: I anticipate that it will take a little
5 bit of time, just in ease of the witness. 15:43

6 CHAIRMAN: Certainly, well let's just --

7 MR. O'BRIEN: I wanted to indicate that.

8 CHAIRMAN: wait now. Without any pressure,
9 Mr. O'Brien, you're entitled to cross-examine. So
10 there is no problem about that. How long do you need? 15:44

11 MR. O'BRIEN: I think it will take 45 minutes certainly
12 or an hour.

13 CHAIRMAN: Okay. Let's assume that's an hour.
14 Mr. Murphy, have you much in the way of
15 cross-examination? 15:44

16 MR. MURPHY: I will be brief, Chairman.

17 CHAIRMAN: Very good.

18 MR. MURPHY: I could finish in perhaps ten or 15
19 minutes.

20 CHAIRMAN: Very good. well, what do you think? Are 15:44
21 you happy to carry on?

22 THE WITNESS: Yes.

23 CHAIRMAN: well, look, we will carry on, Mr. O'Brien.
24 We will proceed to the end. Take as long as you like,
25 and if that takes an hour or more than an hour, then so 15:44
26 be it, okay.

27 765 Q. MR. O'BRIEN: Assistant commissioner, just before we
28 paused there, we were looking at paragraph 8.8 of the
29 policy and we were looking to the second part of that,

1 which states as follows:

2

3 "The investigator will refuse to be drawn into any
4 speculation with any party as to the likely outcome of
5 the investigation and the investigator will maintain a 15:45
6 record of all interviews or meetings held during the
7 investigation. "

8

9 Are you satisfied that you complied with that part of
10 the policy? 15:45

11 A. Insofar as anything of a substantial nature I recorded
12 it. But I mean, as I explained to the Chair earlier
13 on, the process I did is that I met the people, I gave
14 them what, we'll say, the allegations were, the
15 substance were, and I gave them an opportunity to go 15:45
16 away and come back to me in writing. So it wasn't like
17 sitting down and asking them, give me an answer to A,
18 give me an answer to B, I didn't do that, we'll say.

19 766 Q. Well, just on that note, I think the Chairman asked you
20 a question, which was whether you intended for the 15:45
21 investigation to be an entirely written process and I
22 think you answered in the affirmative, isn't that
23 correct?

24 A. That's correct.

25 767 Q. That's what you said? 15:45

26 A. I didn't, yeah.

27 768 Q. If I could ask you to turn over to page 4208, please.
28 So it's internal page 37 of your booklet there.

29 A. Yes.

1 769 Q. You see at the bottom of that page that there's a --
2 sorry it's 4202, internal page 31?
3 A. 31.
4 770 Q. It's 4202. This is a flowchart?
5 A. I have it here. 15:46
6 771 Q. If you look, that's the flowchart of the formal
7 process. If we could scroll down to the bottom part of
8 that please. On the left-hand side there you will see
9 number 6, it's slightly blacked out and it's the
10 actions to be taken by the investigating member. In 15:46
11 the middle of that, you will see under the heading
12 "Activity":
13
14 "Interviews complainant, person complained of and any
15 witness to the incident." 15:46
16
17 Do you see that?
18 A. Yes.
19 772 Q. So I suggest to you therefore that the policy dictates
20 that this can't be a purely paper based investigation 15:46
21 and that it puts an obligation on you to investigate
22 and to meet with these parties, would you accept that?
23 A. I wouldn't say that, Chair. I mean if it was, say, a
24 matter where the parties involved hadn't made a written
25 statement, then I think I would be obliged to, you 15:47
26 know, meet them and find out from them, well, give me
27 an account of it. And then you'd be talking about
28 writing your notes of interviews, then I'd think I'd be
29 obliged to do that if I had that type of scenario, you

1 know. But here it was slightly different in the
2 context, it was different in the context that I
3 actually had the written statement. So everything was
4 there in writing for me.

5 773 Q. I see. I asked you a few moments in particular about 15:47
6 impartiality, which is provided for under section 8.8.
7 would you accept that being impartial, I suppose, is
8 not having any prior dealings with a person either that
9 has made a complaint or, indeed, one of the parties
10 against whom the complaint is being made? 15:47

11 A. I wouldn't say that these guidelines are as rigid as,
12 for example, Chair, our discipline regulations, where
13 it sets out in regulation, discipline regulations,
14 we'll say, which are described often as that, you must
15 do A, B and C, and you can't have any prior 15:48
16 involvement. I don't think our document here --

17 774 Q. Let's put it more simply than that. To carry a fair
18 and impartial investigation into an allegation of
19 bullying and harassment, is it fair to say that it
20 would be best practice at the very least for you not to 15:48
21 know personally or have any dealings with any of the
22 individuals involved in the complaint?

23 A. I wouldn't say that no, no.

24 775 Q. You think it's fair to know some individuals. I just
25 don't understand? 15:48

26 A. If I was in a work setting, Chair, and if I was talking
27 to employees, sure I'd know all the employees. You
28 couldn't be coming with totally clean hands, you would
29 have to know them, we'll say, you know. You couldn't

1 remove yourself totally and say, oh, I have to bring
2 out some chief superintendent from outside to deal with
3 industrial relation, you know, type of scenario. I
4 don't think it would make sense to me, Chair. That's
5 my opinion. That's only my opinion, Chair.

15:49

6 776 Q. Within an organisation the size of An Garda Síochána,
7 for example, you wouldn't know all of the employees?

8 A. No.

9 777 Q. In this case, I think you told the Chairman earlier on
10 that you knew chief superintendent Mark Curran; is that
11 right?

15:49

12 A. Yeah, professionally. I mean, I would have known who
13 he was in the Commissioner's office, we'll say. I was
14 in a different block, I was over in the bureau block,
15 as they call it, he was in the central block where the
16 Commissioner is. So we didn't go out socialising or
17 anything like that, we'll say, you know, I just knew
18 him professionally.

15:49

19 778 Q. Just to understand your answer in terms of, let's say,
20 how you might find a conflict of interest on your part
21 as the investigator. How far do you believe you would
22 have to -- sorry, how well do you believe you would
23 have to know somebody or have had dealings with them
24 before you would say, in fact I am conflicted in this,
25 I can't investigate it impartially?

15:49

26 A. It's hard to answer. I suppose it's speculating in one
27 sense but I can if you want me to be speculative. I
28 mean, if I had dealt with the person previously in a
29 similar type scenario and maybe, you know, I'd lean one

1 way or the other, that I would say, look, maybe prefer
2 to get someone else to deal with it. There was
3 certainly no question of that here, Chair. I knew the
4 guy. It wasn't that we were buddies or anything like
5 that, we'll say, you know what I mean. I knew him, he 15:50
6 was in the chief -- I suppose we would know each other
7 going up through our careers. I'm sure, as I said, we
8 were on some promotion list at some time. We were
9 never on the same promotion course. But I mean, I knew
10 who he was but I had no relationship. Unlike the other 15:50
11 two, we'll say, who had probably minuscule or any
12 relationship.

13 779 Q. I am conscious obviously that the next issue that I am
14 going to touch on is for the next part of the
15 Tribunal's hearings. But just purely in terms of 15:50
16 impartiality, you have actually dealt with
17 Superintendent Murray before, in terms of signing a
18 clearance form, isn't that right?

19 A. Oh yes, sorry. Chair, I will explain that one. It's
20 very simple to explain. I was, we'll say, attached to 15:51
21 HQ, we were in what I call the bureau block, okay. So
22 I was assistant commissioner for policing. You also
23 the executive director for HRPD and you had the
24 assistant commissioner for governance and
25 accountability. And occasionally, we'll say, something 15:51
26 urgent would have to be done, signed by assistant
27 commissioner, and they would come over to me, because
28 they knew I had been there a long time, I suppose,
29 look, will you sign that for us. That was purely the

1 case with that particular case with Superintendent
2 Murray's promotion, like you know. It wasn't my side
3 of the house, it was something I was doing for somebody
4 else, yeah.

5 780 Q. Again, I am not going to get into the promotion issue? 15:51

6 A. Yeah.

7 781 Q. But I think you signed that form in September of 2017,
8 is that right? If we turn to page 12460. Again, I am
9 dealing with this purely on the basis of impartiality
10 coming into the investigation? 15:52

11 A. Yes.

12 782 Q. So that's a clearance form, if I can say it correctly?

13 A. Yes. I think, Chair, this was probably relatively new
14 to us, that, you know, the Policing Authority were
15 coming to us. 15:52

16 783 Q. CHAIRMAN: Yes, I understand.

17 A. I'd say even the staff within the section.

18 784 Q. CHAIRMAN: I understand.

19 A. Governance and accountability, you know, I think they
20 didn't realise that it shouldn't have been coming from 15:52
21 me, I should have just reported back to the
22 Commissioner's office and they should have got onto the
23 Policing Authority. But anyway, it was one of a few I
24 think that signed that day, Chair.

25 CHAIRMAN: Yes. 15:52

26 785 Q. MR. O'BRIEN: I see. Having signed that document, when
27 you were appointed by Assistant Commissioner Fanning to
28 carry out this investigation, did you not question your
29 ability to remain impartial at that point?

1 A. I have actually no doubt whatsoever, Chair, that I have
2 no fathom of -- or partiality towards Superintendent
3 Murray in that regard.

4 786 Q. If we could move forward then please to your meeting on
5 1st December 2017. And this is with Garda Keogh, 15:53
6 Mr. Cullen, solicitor, and it was attended by Chief
7 Superintendent Myers. It's at page 4219 of the papers.

8 A. 4219?

9 787 Q. Yes. It's volume 40.

10 A. I have that. 15:53

11 788 Q. I know we have been through this in detail.

12 A. Yes.

13 789 Q. If you turn to page 4220, please. I think again
14 touching on the fair procedures point, you have asked
15 Mr. Cullen and Garda Keogh to accept that you were 15:54
16 neutral coming into the investigation, isn't that
17 correct? I think Mr. Cullen accepted your bona fides,
18 isn't that right?

19 A. He did, yeah, in fairness, yeah.

20 790 Q. I have to suggest to you that it was made clear to you 15:54
21 by Garda Keogh and his solicitor at this meeting
22 precisely who he was complaining about. Will you
23 accept that?

24 A. No.

25 791 Q. Well, if you look there at page 4220: 15:54
26
27 "Who are you making complaints against?
28
29 Garda Keogh: Pat Murray superintendent, two chiefs in

1 Mullingar. Mark Curran and Lorraine Wheatley."
2
3 Isn't that what it says?
4 A. Yes.
5 792 Q. Then if you turn to page 4223 again, three quarters of 15:54
6 the way down the page.
7 A. Sorry, Chair, if we go back to that. Sorry, Chair.
8 793 Q. CHAIRMAN: Yes.
9 A. If we go back to the first bit you referred to there.
10 794 Q. MR. O'BRIEN: Yes. 15:55
11 A. Where it says -- if you go a few lines up from that, he
12 mentions a sergeant in the chief's office in --
13 795 Q. CHAIRMAN: That's right.
14 A. Yeah.
15 796 Q. MR. O'BRIEN: He does. And he says, again he says: 15:55
16
17 "Pat Murray, Mark Curran --"
18 A. Indeed, there actually is another line there where he
19 says:
20
21 "There may be others."
22
23 CHAIRMAN: The investigation will show it, yes.
24 797 Q. MR. O'BRIEN: I see. What I'm suggesting to you is, at 15:55
25 the end of that meeting it is clear to you, should be
26 clear to you the persons against whom Garda Keogh is
27 complaining about. Do you accept that?
28 A. I wasn't. Chair, I wasn't obviously. I mean, I wasn't
29 myself fully satisfied, may be the best way to describe

1 it, that I knew, and I wouldn't be fully satisfied that
2 he knew himself maybe who he was making the complaint
3 against.

4 798 Q. You dealt with this a little bit earlier on, but in his
5 evidence, Garda Keogh, again it's at Day 114, page 66, 15:56
6 he describes the meeting as being an obstructive
7 meeting more than anything else, on your part?

8 A. That wasn't certainly my take at all, Chair, I object
9 to that.

10 799 Q. At this stage you had read his statement, isn't that 15:56
11 right?

12 A. Yeah. And, Chair, I think if I go to the end of the
13 second last page of the minutes of that, at the bottom
14 of it I ask him:
15
16 "Are you happy? I hope I am being fair and reasonable"
17 and he says:
18
19 "Yes. "
20
21 So... 15:56

22 800 Q. Okay.

23 A. I left thinking that he was happy with what we had
24 done, Chair, that I was being fair and reasonable.

25 801 Q. But again, that is Inspector Brown's note of the 15:56
26 meeting?

27 A. Yes.

28 802 Q. It's not a stenographer's note?

29 A. You're right in that regard. Chair, he's right, that's

1 a fact.

2 803 Q. If we move on then to the 4th December, at page 4234,
3 this is the list of jobs that Chief Superintendent
4 Myers created. I think if we just look through that
5 very briefly. At page 4234, for example, one of the 15:57
6 items relates to Chief Superintendent Curran. It's
7 allocated to you, I suppose, as a task. And that there
8 is no correspondence from Chief Superintendent Curran
9 to this on the file. Garda Keogh requests
10 clarification in respect of the HQ circular but no 15:57
11 advice received. So that was one of the things that
12 you had undertaken to do and to investigate?

13 A. I would describe this as a sort of a brain dumping,,
14 where we set out all the jobs. But like this was at
15 the very early stage of the investigation. You don't 15:57
16 know the full history or the full circumstances. So I
17 can't recall now. Every job here was -- we'll say this
18 was what we had intended to do before we actually
19 started out doing what we were doing. So as the
20 investigation moved forward, Chair, things kind of came 15:58
21 to us in a slightly different way. It wasn't a case of
22 like we had a jobs book here and you were doing like a
23 murder investigation, doing 1 to 10 or whatever, like
24 and we go back and forth.

25 804 Q. I see. At the end of the tasks, I suppose, again other 15:58
26 things that are allocated to you. So page 4241, I
27 suppose is the general complaint of bullying and
28 harassment against Chief Superintendent Curran and
29 Superintendent Murray?

1 A. Yeah.

2 805 Q. Do I take it that you were dealing with those
3 particular individuals in the context of this
4 investigation?

5 A. Correct, Chair, I was, yeah, yeah, I dealt with them, 15:58
6 yeah.

7 806 Q. I think if we just turn over then to page 4227, and
8 this is a letter that you received from Mr. Cullen,
9 solicitor, on 5th December 2012. Again, I want to just
10 raise a couple of issues with you in relation to this. 15:59
11 If we move to page 4228, please. You will see under
12 the title, the paragraph procedural fragmentation?

13 A. Yes, Chair.

14 807 Q. Mr. Cullen indicates to you that this complaint is lost
15 for a period seven or eight months. 15:59

16 A. Yes.

17 808 Q. He says:
18
19 "Why was the complaint mislaid and what were the
20 circumstances of the rediscovery?" 15:59
21
22 Did you ever answer Mr. Cullen's query in that regard?

23 A. I don't think I did, Chair, no, no.

24 809 Q. Why was that?

25 A. It wasn't deliberate. I suppose, issue with me, Chair, 15:59
26 you know. I can't honestly recall now, I mean, why I
27 didn't do it. I mean, I suppose he asked me lots of
28 questions, Chair, in that minute. I mean, did I go
29 fragment each one and ask him -- go back to it, you

1 know.

2 810 Q. I see.

3 A. I suppose I mean, I was doing the investigation in its
4 totality. I didn't think that was -- maybe I should
5 have responded, Chair, it was negligent on my behalf I 16:00
6 didn't. I didn't mean to be offensive to him or
7 anything like that.

8 811 Q. Well, I think we know that you weren't appointed until
9 15th November 2017, and we know that Garda Keogh made a
10 statement to Chief Superintendent Scanlon in March? 16:00

11 A. Yes.

12 812 Q. So would you accept that it is certain on Garda Keogh's
13 behalf and it was put to you by his solicitor at this
14 stage that he was concerned about the delay and he
15 required an explanation for that delay? 16:00

16 A. Yes. Well, I was saying to him earlier on, we'll say,
17 when I met him, you know, if Chief Superintendent
18 Scanlan, we'll say, for example, if he was the person
19 he was saying was responsible for the delay, just --
20 and I'm not saying he did now -- we'll say, if he was 16:00
21 responsible, we'll say, and this was -- and he had an
22 issue with that, we'll say, I was trying to say -- I
23 was saying to him, clearly, look, if you have a
24 grievance then you should pursue that as a grievance.
25 That doesn't really come within the realm of what I was 16:01
26 being tasked to do here in terms of the bullying and
27 harassment complaint, to be honest. Because I mean, I
28 took up the ball from, I suppose, the 1st December,
29 when I met him, or the 15th November when I was

1 appointed and I met him and took the investigation from
2 there. I wasn't looking back at the historical aspect
3 of it, because he didn't name Chief Superintendent
4 Scanlan or anybody else as the persons responsible for,
5 you know -- he didn't name them in the bullying -- in 16:01
6 the context of my investigation he didn't name them
7 out, we'll say, that they did anything, they were doing
8 anything wrong. So I didn't proceed, follow them,
9 we'll say, you know.

10 813 Q. I understand that, but I suppose the point that Garda 16:01
11 Keogh had a difficulty and the concern that Garda Keogh
12 had at that stage was, this was a bullying and
13 harassment complaint which he had made in March 2017
14 and there was no explanation. You're now appointed the
15 investigator and there was no explanation whatsoever 16:02
16 given to him or no comfort given to him as to where his
17 complaint lay for that period of time between March and
18 November, isn't that correct?

19 A. That's correct. But I didn't that was my role, Chair.
20 I mean, I think I just picked up the ball from when I 16:02
21 was appointed, you know.

22 814 Q. Just to move forward. I mean, Mr. Cullen also raised
23 some other concerns on Garda Keogh's behalf. He was
24 concerned about the role that Mr. Nugent had in calling
25 a -- sorry, in relation to meetings that Mr. Nugent had 16:02
26 called?

27 A. Yeah.

28 815 Q. And this reference to a scoping exercise?

29 A. Yeah.

1 816 Q. I mean, did you ever deal with that concern?
2 A. No, but I suppose I did unearth it in the context of
3 the correspondence that I got from Assistant
4 Commissioner Fanning, which kind of outlined the
5 history before it came to me, you know. But I didn't 16:02
6 go back to him, I didn't ask him about it, Mr. Cullen,
7 we'll say, yeah.

8 817 Q. Finally, you will see there Mr. Cullen was concerned
9 and he sets out with the title of conceptual
10 fragmentation there. 16:02

11 A. Hm-hmm.

12 818 Q. He says as follows:
13
14 "The complaint, for the avoidance of doubt, must on the
15 contrary be processed in the accordance with the 16:03
16 standard bullying and harassment grievance procedures
17 and in accordance with fair procedures and any attempt
18 at further fragmentation using concepts such as scoping
19 are inconsistent with any uniform application of
20 standard procedures in this case." 16:03
21

22 So, what I am suggesting to you is that Mr. Cullen was
23 pointing out to you at this stage, you are the
24 investigator, you must investigate this complaint
25 within the bullying and harassment procedure, isn't 16:03
26 that correct?

27 A. Absolutely. And I went to some considerable length to
28 find out from him, who is it that you're making
29 complaint against.

1 819 Q. If we move to page 4265 please. Not to go over it
2 again, but you don't -- so this is your response to
3 Mr. Cullen.

4 A. Yeah.

5 820 Q. It deals with the 21 points. 16:03

6 A. Yeah.

7 821 Q. It refers to his correspondence on the 5th December. I
8 think this letter is from the same date?

9 A. Yeah.

10 822 Q. But again, you don't deal with the delay issue in this 16:04
11 letter, sure you don't?

12 A. Sorry, I don't understand the question.

13 823 Q. In this letter, where you deal with the 21 points?

14 A. Yeah.

15 824 Q. It doesn't deal with the delay from March to November? 16:04

16 A. No.

17 825 Q. Okay. Notwithstanding the fact that that had been
18 raised in the previous correspondence from Mr. Cullen?

19 A. I mean, this issue came up at the start and I was
20 saying, look, I am doing bullying and harassment, a 16:04
21 bullying and harassment complaint, I am doing it within
22 these guidelines, you know. And I tried to explained
23 to him, I think I went to some length to explain to
24 him, if you have other issues, you know, they're not
25 within the remit of the appointment that I got from AC 16:04
26 Fanning, so, you know, you need to take them away and
27 deal with them elsewhere. And I gave him a copy of the
28 grievance procedures that I thought explained that. So
29 I thought I went to some length to explain that to him,

1 yeah.

2 826 Q. Just moving forward through the points in the letter.
3 I think you undertake, at number 8, to meet with Garda
4 Keogh again when you had time to really study the
5 narrative and the appendices, isn't that correct? 16:05

6 A. That's correct.

7 827 Q. But in fact you never met Garda Keogh after 1st
8 December 2017?

9 A. That's a fact, yeah, yeah.

10 828 Q. I see. 16:05

11 A. Not my fault though, but that's a fact, yeah.

12 829 Q. It's clear also from paragraph 15 that at this point,
13 on the 5th December, that the persons complained of are
14 Superintendent Murray, Chief Superintendent Curran and
15 Chief Superintendent Wheatley, isn't that right? 16:05

16 A. Yes, Chair.

17 830 Q. At that point, having studied the papers that you were
18 provided with by Garda Keogh and the appendices, you
19 were obviously satisfied then that you understood the
20 entirety of his complaint, were you? 16:05

21 A. Well, I think I had a good understanding of his
22 complaint, yeah.

23 831 Q. If you broke it down to the three persons complained
24 of, did you understand the entirety of the complaint he
25 was making against Chief Superintendent Curran? 16:05

26 A. Yes, I think did, yeah.

27 832 Q. Without the need to clarify in person with Garda Keogh
28 any further information?

29 A. I think it would have been -- I think it would have

1 been helpful for both of us if we did have
2 conversation. You know, at the outset it would have
3 been easier for me, Chair, because I would have had a
4 better understanding of all his issues. Now I did, I
5 think, find out what all the issues were, but I had to 16:06
6 go through a laborious process to do it. But I think
7 if I sat down with him, if I sat down with him in the
8 context, Chair, that, you know, bullying and harassment
9 is -- we are here trying to resolve an industrial
10 relations, work relations complaint type of scenario. 16:06
11 I think it would have been very beneficial for me to
12 sit down with him and have dialogue through it.
13 Because I suppose I could have shown him other people's
14 perspectives on his complaint, which might have helped
15 him understand, we'll say, you know, when you stand 16:06
16 back and look at the whole scenario in the round, you
17 know, where the super was coming from, where the chief
18 superintendent was coming from. We're not going to go
19 into all the details, but I mean, some of the stuff
20 we'll say, or the work that Pat Murray was doing when 16:07
21 he came to Athlone, we'll say, as a new superintendent,
22 that was in parallel, Chair, with work that I was doing
23 on a national basis to say in response to the, let's
24 say, the Garda Inspectorate's report on crime, you
25 know, where we were being called out by the Commission, 16:07
26 by Garda Inspectorate, by -- in the wake of Bailieboro,
27 the name won't come to me there, Chair, but there was
28 another Commission, all those issues in relation to the
29 Gardaí, how we managed crime and stuff like that, you

1 know, we were introducing best practices. Where I came
2 from in Cork, you know, I think we had pretty good
3 practices there in terms of, you know, we had our daily
4 meetings, we had a process for managing crime, we had
5 crime folders and all that stuff. So we were -- I will 16:07
6 say I part of a team nationally who was trying to
7 promote that we should be bringing in these practises
8 in every district and division in the country. So I
9 suppose I would have understood and explained to him,
10 look, this isn't Pat Murray here trying to do this, 16:08
11 arriving as a new superintendent in Athlone, he is
12 doing this as part of a national campaign, where we are
13 working at this at a corporate level, trying to improve
14 the standards of files, investigations and all these
15 crime files and daily meetings with PAFs, all that as 16:08
16 part of the Garda organisation process. Not
17 Superintendent Murray just picking on Garda Keogh down
18 in Athlone. So I think if I had those conversation
19 with him, I could have put things in context for him
20 and explained to him, maybe he wouldn't have felt the 16:08
21 way he felt, we'll say, that he was being treated, you
22 know. But that's my opinion, Chair.

23 833 Q. I see. So we can take it that your position on the
24 ground then is that you proceeded on the basis that you
25 did understand the complaint because you didn't meet 16:08
26 with Garda Keogh then. Simply put, isn't that the
27 case?

28 A. I mean, I didn't meet him any more. I would have liked
29 to but he didn't accept my --

1 834 Q. Can I ask you to turn to page 4263, please? This is
2 the observations of Chief Superintendent Myers, who is
3 a member of your team.
4 A. Yes.

5 835 Q. You accepted I think a few moments ago that one of the 16:09
6 central principles of, I suppose, fair procedures would
7 be that the complaint would be investigated fairly and
8 wouldn't be the subject of prejudgement, isn't that
9 right?
10 A. Correct, yeah. 16:09

11 836 Q. I see. When you received a -- you received this list
12 from Chief Superintendent Myers, isn't that correct?
13 A. That's right.

14 837 Q. And you read it?
15 A. Yeah, I read it, yeah. 16:09

16 838 Q. Can I ask you to look at number 4, please?
17 A. Hm-hmm.

18 839 Q. That says as follows in relation to specific
19 intelligence from source:
20
21 "Chief Superintendent Curran and Inspector Farrell
22 correct according to CHIS policy."
23
24 That seems like a determination.
25 A. I wouldn't say that. 16:09

26 840 Q. Would you accept that?
27 A. No. In fact, Chief Superintendent Myers, Chair, was a
28 controller, a CHIS controller himself in an earlier
29 iteration of his career, so he would have had good

1 insight into that. I'd say he was offering his opinion
2 from that.

3 841 Q. I know it's a preliminary observation?
4 A. Yeah.

5 842 Q. But you haven't met with Chief Superintendent Curran, 16:10
6 the person to whom this issue relates, isn't that
7 correct?
8 A. Correct.

9 843 Q. At that stage?
10 A. Yeah. 16:10

11 844 Q. And this is, I suggest to you, a statement in relation
12 to the CHIS policy, giving a view one way or another,
13 isn't it?
14 A. Well, I suppose it was his view and I suppose he would
15 have been a CHIS controller, so he probably was -- he 16:10
16 was a CHIS controller himself in the past.

17 845 Q. CHAIRMAN: I understand.
18 A. So he probably had some knowledge of this. Anyway,
19 they're his notes, they're not mine, okay.

20 846 Q. MR. O'BRIEN: If we move to number 11, it deals with: 16:10
21
22 "thorough investigation of car insurance issues not our
23 role."
24 A. Mm-hmm.

25 847 Q. Now, when I asked you a few moments ago about whether 16:10
26 you understood the complaint that was being made by
27 Garda Keogh in relation to Superintendent Murray, for
28 example, you said that you did?
29 A. Yeah.

1 848 Q. But one of issues that Garda Keogh complained about was
2 the issue of the manner that Superintendent Murray
3 dealt with the car tax issue, isn't that right?
4 A. Yes, correct.
5 849 Q. Well then clearly he is giving that as an example of 16:11
6 bullying or harassment, isn't that correct?
7 A. Garda Keogh?
8 850 Q. Garda Keogh.
9 A. Yes, he is.
10 851 Q. Within this complaint to you? 16:11
11 A. Yeah.
12 852 Q. Well then how can it not be your role to investigate
13 it?
14 A. I didn't say that.
15 853 Q. Well that's the view of Chief Superintendent Myers? 16:11
16 A. But he's not investigating, I'm investigating.
17 854 Q. But he is part of your team, isn't he?
18 A. Oh, I know, but he's entitled to say whatever he wants,
19 you know, I'm the boss, it's my investigation, yeah.
20 855 Q. Okay. So you didn't share that view. You were happy 16:11
21 that it was to be investigated?
22 A. Absolutely, yeah, Chair.
23 856 Q. I see. If we move down then to number 20, we will see:
24
25 "Chief Superintendent Scanlan's file missing. 16:11
26 Unsatisfactory."
27
28 Did you have any conversation with Chief Superintendent
29 Myers about issue number 20 there?

1 A. No. I don't recall. I don't recall specifically. I
2 mean, he sent me an e-mail one day, this was his
3 observations. I never sat down with him and went
4 through it all, to say, we'll go through this. I mean,
5 it was just his -- I suppose, as I said to you earlier 16:12
6 on, Chair, he probably read the statement as well too
7 and it was his view, I suppose had a quick, cursory
8 look. But I mean, that's his view, as he's entitled
9 to. He's a member of the team but ultimately it's my
10 responsibility, it's my investigation and I have to be 16:12
11 accountable for it.

12 857 Q. Just to move forward then, just to deal with each of
13 the individual complaints. So if we can first of all
14 deal with Chief Superintendent Curran, please.

15 A. Yeah. 16:12

16 858 Q. I think you write to him on 15th December 2017 and a
17 copy of that letter is at page 4291.

18 A. Yeah, I have it here.

19 859 Q. I am not sure if you have a copy of that letter?

20 A. 4291, yeah. 16:13

21 860 Q. It just says:
22
23 "I now wish to meet with you to put to you the
24 complaint made by Garda Keogh. "
25 A. Yes. 16:13

26 861 Q. So that envisages you, I suppose, sitting down and
27 discussing -- the use of the words "put to you the
28 complaint made by Garda Keogh", discussing exactly what
29 Garda Keogh is complaining about Chief Superintendent

1 Curran, isn't that correct? That's what your letter
2 says that you want to do?

3 A. I would agree with that, yeah.

4 862 Q. And did you do that?

5 A. No, no. 16:13

6 863 Q. You did?

7 A. I didn't, no. I described to the Chair what I did, I
8 met him, I gave him the documentation, I said, look,
9 here it is, this is what I'm doing, explained to him,
10 look, I am doing a bullying and harassment 16:13
11 investigation, here's Garda Keogh's complaint, it's set
12 out here in this documentation, gave him the pack with
13 all the matters that related to him and I said, look,
14 you need to go off, but you come back to me with a
15 response in writing, we'll say. 16:13

16 864 Q. In circumstances where the policy provides for
17 interviewing people?

18 A. Yes.

19 865 Q. And in circumstances where you are investigating a
20 complaint of bullying and harassment against a senior 16:13
21 officer by a member of An Garda Síochána, surely it is
22 incumbent upon you to put that complaint rigorously to
23 the member complained of?

24 A. I gave him the full content that was pertinent to him,
25 we'll say, yeah. So he knew exactly what the 16:14
26 allegation was going out the door.

27 866 Q. But again, and we go back to the policy about dealing
28 with the credibility and finding facts, in order for
29 you to reach that point surely you have to rigorously

1 put the complaint to the person and hear what they say?
2 A. I think it was put pretty comprehensively by Garda
3 Keogh, to be fair. I mean, it wasn't a case where I
4 met him and he didn't have --
5 867 Q. Leaving aside Garda Keogh for a moment? 16:14
6 A. Yeah.
7 868 Q. We're talking about you as the investigator
8 understanding the complaint and putting it to the
9 person complained of?
10 A. Sure. 16:14
11 869 Q. In your capacity as investigator?
12 A. Yes.
13 870 Q. Isn't that what you should have done?
14 A. When I was explaining to the Chair earlier on, if I was
15 investigating a complaint where I didn't have it in 16:14
16 writing and I had to sit down with the parties
17 involved, yes, I would of course make comprehensive
18 notes because there would be no other documentation.
19 But here, I actually had volumes, you know, volumes of
20 material here that, in fairness to Garda Keogh, went in 16:15
21 great detail to set it out. So I felt, in fairness to
22 Chief Superintendent Curran, look, here you are, it's
23 set out in great detail what the allegations are here,
24 over to you now to come back and give your response,
25 we'll say. 16:15
26 871 Q. Just on that, just on that point, I wonder could we
27 turn to page 10369 please. 10369. Just to give you an
28 opportunity. Have you got that page?
29 A. Yeah.

1 872 Q. This is, I think, a job list again. I think it was
2 created by Inspector Browne?

3 A. Yes.

4 873 Q. Chief Superintendent Myers, is that right?

5 A. That's right.

16:16

6 874 Q. If you look at 24, assistant commissioner, it says:

7

8 "Interview and put allegations to Chief Superintendent

9 Curran, general allegation of harassment, exclusion,

10 victimisation and penalisation against the higher

16:16

11 echelons of Garda management."

12

13 okay, so we know that that wasn't done.

14 A. I don't accept that now.

15 875 Q. Did you put the allegations to the chief?

16:16

16 A. Yes. It was there in writing, I gave it to him.

17 876 Q. Number 26:

18

19 "Ask Chief Superintendent Curran if he was aware of the

20 internal investigation being conducted by Commissioner

16:16

21 Ó Cualáin."

22

23 what was that about?

24 A. This document here, Chair, was prepared by I think

25 Inspector Browne in advance of our get together on the

16:16

26 1st January, we'll say. So I think she had got through

27 documentation over the Christmas period and she came up

28 with a lot of these, we'll say. I put the allegations

29 to -- the route I took, Chair, was slightly different

1 to what was suggested here, as I described today, where
2 I gave them the documentation, I said, look, here it
3 is, you come back to me with your written response.
4 which is actually, Chair -- I mentioned this earlier
5 on, it's in keeping with the Code of Practice 16:17
6 because --

7 877 Q. We can move down through them. I don't intend to go
8 through each one, assistant commissioner. But for
9 example, if you turn over the page, it says at number
10 100: 16:17

11
12 "Garda Keogh was concerned about Garda A working the
13 same shifts as him. He felt it was an orchestrated
14 attempt to induce fear in him or leave him in a
15 position where he would opt for a transfer. Was this 16:17
16 working arrangement considered by Chief Superintendent
17 Curran?"

18
19 I mean, are you satisfied, this is a job that's
20 identified under a job list, matters for consideration 16:18
21 by the investigation, are you satisfied that in the
22 investigation that was answered by Chief Superintendent
23 Curran?

24 A. I'm satisfied, Chair, because it wasn't a matter for
25 Chief Superintendent Curran, as it transpired it was a 16:18
26 matter for Superintendent McBrien and Superintendent
27 Murray. They were the superintendents, they were
28 responsible for it. And, indeed I think, if my
29 recollection serves me, that Superintendent McBrien

1 actually spoke to him and reassured her --

2 878 Q. CHAIRMAN: No, but specifically Mr. O'Brien's question
3 is, was this done?

4 A. Oh, yeah, I didn't -- no.

5 879 Q. CHAIRMAN: And you say no, it wasn't 16:18

6 A. No.

7 880 Q. CHAIRMAN: Not only that, but you think it was
8 inappropriate. But this is Inspector Browne's initial
9 job list?

10 A. Yes, before we met up at all. 16:18

11 881 Q. CHAIRMAN: Before you had met with your team, Chief
12 Superintendent Myers?

13 A. Yes. She brought this to our meeting I think the first
14 day.

15 CHAIRMAN: Okay. 16:18

16 882 Q. MR. O'BRIEN: If we move forward then to page 10375.
17 You will see that there is a list of tasks pertaining
18 to, I suppose, queries in relation to Garda Keogh
19 himself. Sorry, if you turn over the page. So it
20 commences at number 9 on the top, the top left. If you 16:19
21 look at, for example, number 82, this is in relation to
22 the sick report of Garda Keogh.

23 A. What number was that?

24 883 Q. Sorry, 10376. Number 82 on the left-hand side?

25 A. Yes. 16:19

26 884 Q. You see there it says:

27

28 "2nd April 2015, his sick report dated the 2nd April
29 was left in his pigeonhole - not sure what the issue is

1 here. "

2 A. Yes.

3 885 Q. This seems to suggest that there were queries left for
4 Garda Keogh to clarify, but that's not done, is it?

5 A. Because that issue didn't become -- I don't recall, 16:19
6 we'll say, his sick report of 2nd April 2015 becoming
7 an issue during the course of the investigation.

8 886 Q. If we can move on then. You met with Chief
9 Superintendent Curran, I think it's 17th January 2017,
10 isn't that right? 16:20

11 A. Yes, Chair, yeah.

12 887 Q. why do you not refer to that meeting in your statement
13 to the Tribunal?

14 A. Well, I think I wrote to him, I gave him -- I actually
15 met him the same day that I say in my statement here I 16:20
16 wrote to him. I actually met him, he called into the
17 office for it.

18 888 Q. You don't make any reference though to the meeting, is
19 there some reason for that?

20 A. Actually it's in my notes that disclosed, Chair. 16:20

21 889 Q. But it's not in your statement, is it?

22 A. No. In the statement I say I wrote to him, but I
23 actually met him that day, yeah.

24 890 Q. Okay. So can you tell us why you didn't make reference
25 to the fact that you had a meeting? 16:21

26 A. Yeah. Actually, Chair, I wrote it here on the back of
27 my file cover.

28 891 Q. CHAIRMAN: Sorry, say it again.

29 A. I wrote it on the back of my file cover which I had at

1 the time.

2

3 "17th January, met with Mark Curran and gave him part
4 of the complaint that pertained to him:

5 16:21

6 That's dated 17th January 2018.

7 CHAIRMAN: Okay.

8 892 Q. MR. O'BRIEN: I think Chief Superintendent Curran
9 responded to you on the 17th April, that is his
10 substantive response, isn't that right? 16:21

11 A. Yes, Chair, yeah.

12 893 Q. That's at page 4549. In circumstances where Chief
13 Superintendent Curran wasn't taking legal advice, why
14 was he allowed a period of four months to respond to
15 the complaint? 16:21

16 A. I don't know, Chair, whether he did or did not get
17 legal advice.

18 894 Q. Isn't that an inordinate amount of time to allow Chief
19 Superintendent Curran to respond?

20 A. To get legal advice? 16:22

21 895 Q. But he wasn't taking legal advice.

22 A. I don't know that.

23 896 Q. Well did he write to you to say that he was?

24 A. No.

25 897 Q. So do we take it then that it's your assumption that he 16:22
26 was?

27 A. A number of parties, Chair, a large number of parties
28 had gone off for legal advice. I thought it was fair
29 to him that be able to get legal advice too.

1 898 Q. I accept that.

2 A. He was a substantial -- he was a main -- he was one of
3 the principals, Chair.

4 899 Q. Chief Superintendent Curran wasn't one of those
5 parties, was he? 16:22

6 A. I don't know that.

7 900 Q. Well, you know from the correspondence of each of the
8 other individuals, don't you, that they are looking for
9 an opportunity to take legal advice?

10 A. Yes, Chair. 16:22

11 901 Q. That either they wrote to you or their solicitors wrote
12 to you, isn't that right?

13 A. Yeah.

14 902 Q. Chief Superintendent Curran wasn't one of those?

15 A. Neither did, we'll say -- if you look at the 16:22
16 correspondence that I got from Superintendent Murray,
17 it didn't come from his solicitor, but he got legal
18 advice. I assumed that Chief Superintendent Curran did
19 the same thing, that he went off and got his legal
20 advice. 16:22

21 903 Q. I'm not asking you about Superintendent Murray,
22 assistant commissioner, I'm asking you in relation to
23 Chief Superintendent Curran and your dealings with him?

24 A. Yes.

25 904 Q. And it's a simple question: He wasn't looking for an 16:23
26 opportunity for time to take legal advice, was he?

27 A. Chair, I assumed he got legal advice.

28 905 Q. You assumed. I see. So that being the case, will you
29 accept that it was an inordinate amount of time to give

1 Chief Superintendent Curran an opportunity to deal with
2 this complaint, it's nearly four months?

3 A. I wouldn't say that no, Chair. I mean, he was entitled
4 to get legal advice the same as Superintendent Murray
5 was. I didn't think it was inordinate under the 16:23
6 circumstances. I didn't press him as to why, I mean...

7 906 Q. Can we move then to deal with your dealings with Chief
8 Superintendent wheatley? We know that Chief
9 Superintendent wheatley took issue herself with the
10 delay that the investigation took initially. So Chief 16:23
11 Superintendent wheatley was concerned that she wasn't
12 informed in a timely fashion that a complaint of
13 bullying and harassment had been made against her,
14 isn't that right?

15 A. That's correct. 16:24

16 907 Q. I think she outlined that to you?

17 A. Yeah. To be fair, Chair, she was not happy.

18 908 Q. She was concerned about that, wasn't she?

19 A. She was, Chair, yeah.

20 909 Q. And you met with Chief Superintendent wheatley on the 16:24
21 23rd January, isn't that correct? I think your diary
22 confirms at page 5698. You have been through this with
23 Ms. McGrath.

24 A. Yeah, 23rd January. Correct. In Garda Headquarters,
25 yeah. I recall it. I recall the meeting, Chair. 16:24

26 910 Q. If we could have the transcript for Day 113, please, at
27 page 75. Ms. Mulligan asked Chief Superintendent
28 wheatley just about the meeting that you had. It was
29 just the two of you in the office, is that correct?

1 A. That's correct, yeah.

2 911 Q. I see. And do I take it that you adopted a similar
3 approach with Chief Superintendent Curran, in putting
4 the complaint to Chief Superintendent Wheatley you
5 merely gave her the complaint of Garda Keogh? 16:25

6 A. That is putting the complaint to her in my book.

7 912 Q. What did you discuss with Chief Superintendent Wheatley
8 about it?

9 A. I'm saying here's the complaint against you that Garda
10 Keogh has made, it's set out in the attached 16:25
11 documentation, it's there in clarity, we will say, it
12 is there in detail, I'd like you to consider it and
13 come back to me with a written response.

14 913 Q. Why did you not keep any notes of that meeting?

15 A. I don't think there was anything that I would consider 16:25
16 to note obliged to note. I met her. I gave her the
17 documentation. It was a service of documentation
18 meeting, so to speak, Chair, on her. I already told
19 her that I was going to do it, so here's my opportunity
20 to meet her in person and say here's the documentation, 16:26
21 here's the pack in relation to you, give you an
22 opportunity to respond to it.

23 914 Q. I mean, the policy envisages that you would keep a
24 record of interviews, is that right?

25 A. Yeah. 16:26

26 915 Q. So are you breaching the policy, I suggest to you then?

27 A. No, Chair. I think I have explained.

28 CHAIRMAN: He says that wasn't an interview.

29 MR. O'BRIEN: If we can turn then --

1 MR. KELLY: well, Chairman, with respect, he did say
2 that that was his idea of what an interview was in this
3 case.
4 CHAIRMAN: well, I think it's not an interview. But
5 somebody may suggest to me that it is an interview and 16:26
6 ought to have been recorded. That may be a legitimate
7 suggestion. But my position, as I understand it, is,
8 if somebody goes along with a bundle of documents and
9 says there they are, I would like to give you an
10 opportunity to come back to me in writing, I don't 16:26
11 think there's any need to write that down. Because
12 it's a fact that's happening. It's not an exchange
13 where anything matters what anybody says, but that's
14 not a decision. I depend on the evidence and the
15 submissions for that. But you may as well know, you 16:27
16 may as well know that's what I think. And rightly or
17 wrongly, whether it was correct or not to do it that
18 way that's what the assistant commissioner says he did.
19 A. I did.
20 CHAIRMAN: As I say, rightly or wrongly. That is a 16:27
21 matter for debate, discussion evidence whatever.
22 916 Q. MR. O'BRIEN: Just moving forward then to deal with
23 Superintendent Murray. You meet with Superintendent
24 Murray on the 18th January 2018.
25 A. That's correct, Chair, yeah. 16:27
26 917 Q. And in terms of, I suppose, going back to what I was
27 asking you again about impartiality in dealing with
28 this investigation, just, you said to the Chairman
29 earlier on that it was a cordial meeting at

1 Superintendent Murray's house, you had tea and you were
2 chatting with his family?
3 A. No, not with his family. About his family.
4 918 Q. About his family. Sorry.
5 919 Q. CHAIRMAN: Just the two of you? 16:28
6 A. Yes.
7 920 Q. CHAIRMAN: One on one.
8 A. Yes.
9 921 Q. CHAIRMAN: For four and a half hours.
10 A. Yeah. 16:28
11 922 Q. CHAIRMAN: He says four and a half hours and you don't
12 quarrel with that, if I understand.
13 A. Yeah, I didn't time it.
14 923 Q. CHAIRMAN: He tends to record times?
15 A. Yeah, very good. 16:28
16 924 Q. CHAIRMAN: It was a substantial length of time?
17 A. Yeah, I was there for a good while, Chair. It was a
18 pleasant kind of -- it was an informal thing.
19 925 Q. MR. O'BRIEN: Superintendent Murray has a note of the
20 meeting, it's at page 2897. So you are there to 16:28
21 discuss Garda Keogh's bullying and harassment complaint
22 as we know.
23 A. To hand over the documentation.
24 926 Q. Yes.
25 A. Similar to what I did with Chief Curran. 16:29
26 927 Q. I see. It says as follows:
27
28 "We went through his complaints and my 338-page
29 document and discussed all."

1

2

Is that your recollection of the meeting?

3

A. No, Chair. No, no. Definitely not.

4 928

Q. So Superintendent Murray is incorrect in his
recollection?

16:29

6

A. Didn't go through it. I knew he had this big document,
Chair. It was of interest to me, I would have loved to
have got a hold of it, but he said he couldn't give it
to me but he had it, like, you know.

10 929

Q. Again just in terms of impartiality if I could ask you
to turn to page 2896, please. Superintendent Murray
makes a second note --

16:29

11

12

13

A. Yeah.

14 930

Q. -- in relation to a meeting, it's at that same meeting,
he says:

16:29

16

17

"Met M Finn at 11:00 to 3:15. Went over all the
documents I had. He indicated that PA needed assurance
and that seeing my information he was willing to
provide that. He gave me Garda Keogh's complaint. I
had that already."

16:29

22

23

In relation to the assurance, was that assurance in
relation to the outcome of this investigation; that
Superintendent Murray had nothing to worry about
essentially?

16:30

26

27

A. Chair, I was only starting out my investigation that
day.

28

29 931

Q. If you were there, though, to deal with a bullying and

1 harassment complaint or to hand over documents, as you
2 say, and you are impartial, why are you having any
3 conversation at all about any other issues?

4 A. I think his concern was about delay. I mean, he was
5 keen that I would complete this quickly because I think 16:30
6 he felt that it was holding up his promotion for the
7 Policing Authority.

8 932 Q. I see. But just the use of the word "assurance"
9 there --

10 A. Yes. 16:30

11 933 Q. -- suggests that you were moving on, you would move
12 this on to the benefit of Superintendent Murray?

13 A. Well, I wasn't going to delay. I mean I was, he was
14 keen that I would get my investigation done, I was
15 saying, yeah, look, I'm keen to get it done too. I'm 16:31
16 not going to delay it deliberately to cause him
17 difficulty or as the case may be.

18 934 Q. I mean, in circumstances where you are there as an
19 impartial person, can I suggest to you that that was
20 not fair to Garda Keogh as the complainant, that you're 16:31
21 having any conversation outside of the bullying and
22 harassment investigation with Superintendent Murray?

23 A. Chair, like, when you meet someone the first day to
24 serve, this is my first time meeting him, I mean the
25 human nature is they are going to, I suppose, try and 16:31
26 offload their frustration, whatever it is, about the
27 process. Whether that frustration is about the delay,
28 whether the frustration is about their promotion being
29 held up, they do articulate stuff like that, but that

1 wasn't the purpose of my meeting them. My purpose was
2 to serve the documentation on them and to let them go
3 away and come back. Regardless of what they said to me
4 on the day, it was of no material fact to my
5 investigation. It was their response in writing it was 16:32
6 going to be what I was going to take into
7 consideration.

8 935 Q. Is there any reason why your diary entry for that date
9 doesn't record any conversation about that issue?

10 A. I didn't make any note of it because there was nothing, 16:32
11 we'll say, of, to use the term, evidential value to me
12 in terms of my investigation.

13 936 Q. Well, it's interesting that you note that you discuss
14 the bullying and harassment piece, but at the same time
15 you don't note that -- 16:32

16 A. I didn't note anything.

17 937 Q. Well sorry, if you just look to your diary entry, it
18 says you met -- page 5695, it says as follows:
19

20 "Meet with Pat Murray and give him document and go 16:32
21 through allegations."

22 A. Yeah.

23 938 Q. Is that not the same thing?

24 A. I don't understand. I mean, I met him. I gave him --

25 939 Q. The allegations presumably are the bullying and 16:33
26 harassment allegations, is that right?

27 A. Garda Keogh's statement, yeah.

28 940 Q. Yes. So you note that.

29 A. That's what I did. I met him. I gave him the

1 documentation in relation to --

2 941 Q. You also note on the same day:

3

4 "PM to consider this position and get legal advice in
5 relation to the civil proceedings that are pending." 16:33

6 A. Yeah.

7 942 Q. So, you were aware of that then obviously?

8 A. Well, that was an issue for him, we'll say, Chair, in
9 terms of...

10 943 Q. Then you go on to say that you spoke to Chief 16:33
11 Superintendent Myers and so on?

12 A. That is separate.

13 944 Q. But absent from that is any record of the fact that you
14 had a discussion about the Policing Authority. Why is
15 that? 16:33

16 A. I don't think it was relevant to my investigation. It
17 wasn't of any evidential value to my investigation.

18 945 Q. Is it because you shouldn't have been discussing it
19 with him?

20 A. But sure, look, no more than the civil thing. It was 16:33
21 an issue for him, in terms of the civil issue was
22 holding up, the civil action, he was saying to me,
23 well, he couldn't cooperate with me or give me the
24 stuff he wanted to give me because he had to get legal
25 advice in relation to that. That was part of his, I 16:34
26 suppose, frustration in terms of having the
27 conversation with him. Equally he had this concern
28 about, that he wasn't getting promoted because the
29 Policing Authority had held it up and my investigation

1 was going to be holding him up, so he was anxious, he
2 was keen, I'd say, to tell me look, would you get your
3 investigation done as quick as you and I said yeah,
4 look, I'll do it as quick as I can but...

5 946 Q. If we move forward then in the process, you receive 16:34
6 Superintendent Murray's response on the 29th May and in
7 June you send the copies in accordance with the policy
8 of all the statements that you collected and the
9 reports on to Mr. Cullen. I had think there is a delay
10 between June and September in Mr. Cullen reverting to 16:34
11 you, isn't that the case?

12 A. Yeah. He wanted to get advice from counsel, yes.

13 947 Q. And when he does -- I see. when Mr. Cullen reverts to
14 you, he raises a number of issues and comments that he
15 has on the statements that he has received, isn't that 16:35
16 right?

17 A. Correct.

18 948 Q. And I think you forward, did you forward that on to,
19 for example, Chief Superintendent wheatley and to
20 Superintendent Murray? 16:35

21 A. Mm-hmm.

22 949 Q. If we could just look to page 5012, please. I think
23 you write to Chief Superintendent wheatley by e-mail on
24 the 6th September. And if you just scroll to the top
25 of that page, please, Mr. Kavanagh. If you just stop 16:35
26 there please. And Chief Superintendent wheatley
27 responds to you in the following circumstances --
28 sorry, in the following terms:
29

1 "Mick, I have provided you with the discipline file and
2 the appeal and the rationale provided by the deciding
3 officer."

4
5 A. Mm-hmm. 16:36

6 950 Q. So it is quite an unequivocal response I suppose?

7 A. Yes.

8 951 Q. I suppose, is there a lack of formality there,
9 assistant commissioner, just in relation to the manner
10 in which you are being addressed? 16:36

11 A. I think it was a bit of frustration more than anything.
12 I think it was a bit of frustration on her behalf that
13 I was going back looking for more and she was saying,
14 look, I've already given you the stuff, like, you know.
15 I am not sure, Chair, where she was at that point in 16:36
16 time as a chief superintendent. If she was now in
17 South Central I probably would have had more
18 interaction with her because her division, that South
19 Central division was one of the areas where I was doing
20 the pilot of our new model of policing, and it is 16:36
21 divisional structure. I think she took over from Chief
22 Frank Clerkin, actually. So she might have been in
23 there at that particular time. So I suppose I would
24 probably have had more interaction with her as a
25 consequence of she moving into South Central. 16:37

26 952 Q. I think you wrote then as well to Superintendent
27 Murray. If we look to the bottom of page 5014. And
28 Mr. Cullen raised an issue where he says -- it's at the
29 bottom of the page.

1 A. Yeah.

2 953 Q. If we pause there please. It says:

3

4 "1. Re the letter of Chief Superintendent Pat Murray
5 dated 29/5/18 which states in the second last paragraph 16:37
6 'his addictive substances dependencies', what does
7 Chief Superintendent Murray mean by this?"

8

9 I think you forwarded that on to Chief Superintendent
10 Murray. And if you look at page 5033, you don't -- if 16:38
11 you just look, this is Superintendent Murray's reply to
12 you.

13 A. Yeah.

14 954 Q. He doesn't actually address what he means, does he?
15 Are you satisfied that you understood what he meant? 16:38

16 A. Yes.

17 955 Q. You were? Without any further need for investigation?

18 A. Yeah. But I was prepared to move on without him. If
19 he didn't come back to me, Chair, I was at the stage
20 where I am moving on anyway. 16:38

21 956 Q. When you write back to Mr. Cullen then, if we turn to
22 page 5112, and if you look to number 2, and it says:
23

24 "Letter of chief superintendent."
25 16:38

26 It's in the middle of the page there, if we pause there
27 please.

28

29 "Chief Superintendent Murray is referring to the

1 medical and welfare support that was provided to Garda
2 Keogh to deal with his alcohol addiction. "

3

4 I mean, where did you take that from?

5 A. From his report and from the reports I got from 16:39
6 Dr. Oghuvbu and other parties. My interpretation,
7 Chair, was that Superintendent Murray had taken some
8 proactive steps to get a case conference to deal with
9 the fact that Garda Keogh was having work related
10 issues. I think the most appropriate channel for him 16:39
11 was to refer him on to our own medical people, the CMO,
12 and have a case conference to see, look, what can we do
13 collectively to help him.

14 957 Q. Well, if you look to page 4673, please, this is the
15 response of Superintendent Murray of the 29th May, I 16:39
16 don't think he actually refers to alcohol under 2 at
17 all or indeed --

18 A. No, Chair. I picked up that from, certainly either
19 from the CMO's, documentation I got from the CMO or...
20 I couldn't be specific now, Chair, but I knew that 16:40
21 anyway.

22 958 Q. So you didn't get it from Superintendent Murray
23 himself, you got it from a review of the files?

24 A. Review of the files, yeah.

25 959 Q. Even though you would say Superintendent Murray is 16:40
26 referring to the medical and welfare report provided to
27 Garda Keogh to deal with his alcohol addiction?

28 A. Yeah.

29 960 Q. Just moving on to deal, you delivered your report on

1 the 20th December 2018, we've been to that, it's at
2 page 5221?

3 A. Yes, Chair.

4 961 Q. Just in terms of writing this report, did you write
5 this report yourself or did Inspector Kennedy write the 16:41
6 report and you finalised it? How did that work?

7 A. No. No, Chair. I did the first draft of it, we'll
8 say. Actually I think I started it in August. It was
9 a quiet month. I remember spending a few days, we'll
10 say a weekend at it I think, Friday to a Monday. It 16:41
11 might have been a bank holiday weekend or whatever. I
12 started drafting it, we'll say. And I gave him I think
13 that draft at our meeting in October or November and
14 then we started on our final report then.

15 962 Q. I think that again there's no explanation for the delay 16:41
16 from March to November in that report, isn't that
17 correct, as to where Garda Keogh's complaint was?

18 A. Correct, yeah.

19 963 Q. How is that fair to Garda Keogh, that that is not
20 explained to him in the context of this investigation? 16:41

21 A. I didn't see it as being --

22 964 Q. I suggest to you it is unfair to Garda Keogh?

23 A. I didn't see it as being, we'll say, a role for me. I
24 dealt with, I suppose, what I was charged to do by AC
25 Fanning, which was to do with bullying and harassment 16:42
26 against the people that Garda Keogh named.

27 965 Q. In the findings that you made I think the expression of
28 words used is that there's no evidence to support the
29 complaint of Garda Keogh, isn't that correct?

1 A. That's correct.

2 966 Q. I think that's what you found on each of the headings
3 that you were investigating. It doesn't, none of the
4 findings refer to a test at all on the balance of
5 probabilities, which is provided for in the policy 16:42
6 document. Why is that?

7 A. Well, that's what I did.

8 967 Q. But you don't expressly refer to it, do you?

9 A. I don't recall whether I did or didn't. I mean, it was
10 an omission by me if I didn't, Chair. But I mean, that 16:42
11 was clearly what I was doing, like, you know.

12 968 Q. Just moving forward then, we know that Assistant
13 Commissioner O'Brien was the deciding officer in this
14 case?

15 A. Yes. 16:43

16 969 Q. Would you accept that if the findings in your
17 investigation -- I suppose his review is a paper
18 review, isn't that right, as provided for under the
19 policy?

20 A. I think I gave him all the material I collected. 16:43

21 970 Q. Exactly. He doesn't interview witnesses and so on?

22 A. I don't think he did.

23 971 Q. He didn't?

24 A. I can't speak for him. I'm sure --

25 972 Q. Then the independent audit that was conducted by 16:43
26 Mr. de Bruir again is premised upon your investigation,
27 isn't that right?

28 A. Correct.

29 973 Q. Would you accept, therefore, that if any of the

1 findings made in your report, for example, were
2 incorrect that the knock on effect would be that
3 Assistant Commissioner O'Brien's report and that of
4 Mr. de Bruir would also be incorrect?

5 A. No. I mean, I presume whoever -- I can't speak for 16:43
6 them, Chair, but whoever would come after me would look
7 at the report in its entirety, not just my findings.
8 They'd have to read the entire documentation and come
9 to their own conclusion. I don't think they would just
10 be going by what I found. But that is not a matter -- 16:44
11 I suppose that is a matter for those witness
12 themselves, Chair.

13 974 Q. Can I ask you, when Garda Keogh was asked about the
14 investigation that you carried out, at Day 104, page
15 81, and Ms. McGrath referred to this earlier on, he 16:44
16 described it as an exercise in circling the wagons.
17 And I suggest to you that that is what occurred in the
18 context of your investigation?

19 A. No.

20 975 Q. That it was a circling of the wagons in favour of the 16:44
21 senior officers, do you accept that?

22 A. No, Chair. I think that was his perception of what
23 happened there.

24 976 Q. To discredit Garda Keogh.

25 CHAIRMAN: Say again. 16:44

26 MR. O'BRIEN: That it was a circling of the wagons in
27 favour of the senior officers to discredit Garda Keogh.

28 CHAIRMAN: In fairness, Mr. O'Brien, wouldn't you have
29 to have some evidence of that? I mean, that's Garda

1 Keogh's opinion, his contention, but if that stands as
2 a bald allegation -- I can tell you at some point I
3 will be saying, if that's the case I would like
4 reference to evidence.

5 MR. O'BRIEN: Very good. I wonder could we have 16222 16:45
6 please.

7 CHAIRMAN: I mean, as I understand it, that is a
8 suggestion that this is a fraudulent report. That he
9 set out simply to cover up, circling the wagons to
10 cover up and protect senior officers who were -- that's 16:45
11 what I am understanding circling the wagons to mean,
12 i.e. and this is a fraud. That is what I am
13 understanding that to mean.

14 MR. O'BRIEN: Essentially my question --

15 CHAIRMAN: I don't want to be unfair to you, but you 16:45
16 may as well know, if you say this is an exercise in
17 circling the wagons, it is to protect these people and
18 you are covering up.

19 MR. O'BRIEN: I suppose what I am saying is that, I am
20 suggesting to you that the investigation was prejudged 16:45
21 and predetermined.

22 CHAIRMAN: So he had made up his mind beforehand --

23 MR. O'BRIEN: Yes.

24 CHAIRMAN: -- I am going to clear these guys come what
25 may. 16:46

26 MR. O'BRIEN: That's what I am suggesting. If we look
27 to page --

28 A. Do you want to give me an opportunity to refute that,
29 Chair?

1 CHAIRMAN: I understand.

2 A. I'm not agreeing with that. I totally disagree with
3 that.

4 CHAIRMAN: Now, Mr. O'Brien, you want to refer to some
5 specific point. 16:46

6 MR. O'BRIEN: Could we have volume 57, page 16222?

7 CHAIRMAN: Yes.

8 977 Q. MR. O'BRIEN: This again is a note of Superintendent
9 Murray. And I appreciate that it's Superintendent
10 Murray's note. And it's from Saturday, 13th January 16:46
11 2018. So that's shortly before you meet him on the
12 18th. And it deals with a conversation that you have.
13 And it says as follows, I will just ask you to comment
14 on it in a moment:

15 16:46

16 "I text M Finn re his request for a meeting."

17

18 First of all, do you recall speaking to Superintendent
19 Murray on the 13th January 2018 by phone?

20 A. I can't recall specifically having a conversation with 16:47
21 him, Chair, but I wouldn't dispute that I did. He says
22 I rang him. I didn't. I think in the context of we
23 arranging the meeting that was going to take place on
24 the Thursday --

25 CHAIRMAN: Okay. 16:47

26 A. -- to serve the papers on him.

27 978 Q. MR. O'BRIEN: It says as follows:

28

29 "He replied at 12:57 asking if I was free to talk. I

1 rang him at 12:58 for 5 minutes and 55 seconds."

2

3

Do you recall that?

4

A. No.

5

979 Q. He says that you spoke about --

16:47

6

A. Not specifically.

7

980 Q. -- Chief Superintendent Healy who examined the entire situation. And he attributes this to you, he says:

9

10

"He now knows of the meticulous files and records and notes I have. He said he knew nothing of the corrections I made in Athlone and was now being punished for doing so."

16:47

11

12

13

14

15

Did you say that to Superintendent Murray?

16:47

16

A. No, Chair. And I think if I was to put that in context, Chair: On the week before this I got a substantial volume of material from Superintendent McBrien, where she gave me the material that she had given to Chief Superintendent Fergus Healy, we'll say, who was doing the material for the civil action, we'll say. I rang Chief Superintendent Healy to say, listen, have you got this material? He said, yeah, he has. So he confirmed what she gave me was correct, we'll say. And he also said look, yeah, by the way, you know, Superintendent Pat Murray has an even bigger, larger volume of material in relation to that material. I think Superintendent Murray already told me that in terms of an e-mail, that he had this 338-page volume of

16:48

25

16:48

26

27

28

29

1 material. So that was the context, which I think -- if
2 that was said.

3 981 Q. Again he attributes the next sentence to you.

4
5 "He spoke of Chief Superintendent Myer's reception from 16:48
6 people accused he spoke to and his view of the ethical
7 calibre of people accused."

8
9 So it is a quite detailed note, would you accept that?

10 A. It's a detailed note, but I wouldn't necessarily agree 16:48
11 with it, Chair.

12 982 Q. "I explained the situation in Athlone, how Chief
13 Superintendent Wheatley and I work closely to make
14 corrections with fairness to everyone in a very careful
15 way being aware of the sensitivities involved. I told 16:49
16 him of the calibre of the other people accused and
17 their frustration and annoyance at this contrived
18 situation. He said he understood."

19 A. I don't agree with that, Chair. I mean, I wouldn't
20 have said that to him. 16:49

21 983 Q. "He confirmed that CS Curran, Wheatley and I were the
22 ones Garda Keogh was accusing primarily."

23

24 Then he says:

25

26 "AC Finn offered a view that Garda Keogh and his
27 solicitor were only looking for money in a civil
28 claim."

29 A. I dispute that. I wouldn't have said that, Chair. I

1 mean, that would be very unprofessional and unethical
2 of me to say something like that. I might have said I
3 knew, because they had a civil action, but I wouldn't
4 have expressed a view. That is a very derogatory
5 comment to make, Chair. I think it would be highly 16:49
6 inappropriate and unprofessional for me to say
7 something like that.
8 CHAIRMAN: Okay.
9 984 Q. MR. O'BRIEN: And just finally he says that --
10 A. Chair, sorry go on. 16:50
11 CHAIRMAN: Go on.
12 A. You finish off. I will come back.
13 985 Q. MR. O'BRIEN: It is Superintendent Murray's own view --
14 A. I would say, Chair --
15 CHAIRMAN: Go on. Hold on. Speak. 16:50
16 A. I am just looking here, he says it's a Saturday
17 morning, okay?
18 986 Q. CHAIRMAN: Yes.
19 A. So I am thinking of putting the context of this, if he
20 rang me on a Saturday, if I rang him Saturday morning, 16:50
21 if this played out the way it did, my normal routine,
22 okay, Chair, on a Saturday morning is I go to Kerry. I
23 am originally from Kerry. My family is down there.
24 CHAIRMAN: Okay, take your time.
25 A. My brother passed away Christmas Day. 16:50
26 CHAIRMAN: Okay.
27 A. We were going down to --
28 CHAIRMAN: Take it easy now, just --
29 A. We were organising a month's mind mass. It would make

1 sense to me, Chair, if he did text me in the morning by
2 the time I got to Kerry, two and a half hours later, I
3 would have rang him back.

4 987 Q. CHAIRMAN: Yes.

5 A. Now, where I live in Kerry, Chair, where I come from, 16:51
6 it's at the side of the mountain, telephone reception
7 would be poor. So if I had a conversation with
8 Superintendent Murray it's quite possible - this is my
9 perspective, Chair - that you're in and out of
10 coverage. If you walk around the house, we'll say, you 16:51
11 know, you wouldn't get the full conversation of
12 something. So it's quite possible that Superintendent
13 Murray picked up my conversation wrong or got a bit of
14 it or I responded to something that he said. Because I
15 wouldn't have said the things that he is attributing to 16:51
16 me here in this note. I can guarantee you, assure you
17 of that, Chair.

18 988 Q. MR. O'BRIEN: Can I just come back one page then, to
19 16221? Again this is a note of Superintendent Murray.
20 Again it is volume 57. If I can just -- and this isn't 16:51
21 related to you directly. Were you aware that
22 Superintendent Murray had met with Chief Superintendent
23 Myers and the inspector on the 11th January 2018?

24 A. Yes, I'm aware of that, yeah.

25 989 Q. You were aware of that? 16:52

26 A. That was when they called to the station. They were
27 meeting some of the witnesses and I think they bumped
28 into him, is my understanding, yeah.

29 990 Q. Indeed he says he had no prior knowledge of them

1 calling to the station?

2 A. Yeah. I didn't write to them. I didn't write to him.
3 I wrote to the witnesses to say these people would be
4 coming. I didn't tell Superintendent Murray they would
5 be coming. 16:52

6 991 Q. what I particularly want to ask you about is, it says
7 as follows:
8
9 "Emphasised that M Finn is honest and ethical and would
10 make sure that everything was done right so that there 16:52
11 was nothing to worry about. Spoke about an extra pip
12 on my shoulder."
13
14 Can you assist us with what that might mean? I suggest
15 to you that it means -- 16:52

16 A. I would like to think that he said I was honest and
17 ethical. I take a bit of comfort in that, Chair. But
18 I'm not sure what the rest of it means.

19 992 Q. The use of the words, and again I know that this is
20 Superintendent Murray's note, "that there was nothing 16:53
21 to worry about" --

22 A. Yes. That I am honest and ethical.

23 993 Q. -- I suggest to you that that is in relation to the
24 investigation as a whole?

25 A. I wouldn't agree with that, Chair, no. 16:53

26 994 Q. Finally, I suggest to you on behalf of Garda Keogh that
27 the investigation was not, was not impartial.

28 A. No, I disagree with that, Chair.

29 995 Q. I say that, I suggest to you it wasn't carried out in

1 accordance with fair procedures, and I suggest to you
2 that the investigation was carried out in a manner that
3 was discrediting to Garda Keogh.

4 A. I disagree with that, Chair.

5 MR. O' BRIEN: No further questions, Chairman. 16:53

6 CHAIRMAN: Thank you very much. Now Mr. Murphy.

7 MR. MURPHY: Thank you.

8

9 ASSISTANT COMMISSIONER MICHAEL FINN WAS THEN EXAMINED

10 BY MR. MURPHY AS FOLLOWS: 16:54

11 996 Q. MR. MURPHY: Assistant Commissioner Finn, can I ask you
12 to be shown document, please, 10478? This is a
13 document you've seen before, this is the memorandum
14 from Inspector McCarthy on behalf --

15 A. Oh yeah. 16:54

16 997 Q. -- of Assistant Commissioner Fanning explaining the
17 delay between March and November 2017?

18 A. Yes.

19 998 Q. You are now familiar with this document, is that
20 correct? 16:54

21 A. I am, Chair.

22 999 Q. You have been asked questions about why in December
23 2017 you didn't bring this information to the attention
24 of Garda Keogh's solicitor, do you recall those
25 questions? 16:54

26 A. I do, Chairman.

27 1000 Q. Can you confirm that in fact you didn't receive the
28 information until April of 2018?

29 A. That's a fact, Chair, yeah.

1 1001 Q. Was this information supplied to you as a result of a
2 query raised by you with AC Fanning?
3 A. Yes, Chair. I asked AC Fanning to explain to me, so
4 that I could incorporate it maybe into my report as to
5 what the delay was. 16:55

6 1002 Q. So in that situation would it have been possible for
7 you to reply in December or even up to that date in
8 April in relation to your recommendation?
9 A. That's a fact. Yeah, that's a fact, Chair.

10 1003 Q. I think in relation to Garda Keogh being asked lots of 16:55
11 questions about the alleged unfairness of this not
12 being made known to Garda Keogh, and I know you have
13 not been here for all of the evidence, but I wonder if
14 we could bring up please on the screen, Day 111, at
15 page 160? 16:55
16 A. Page 160?

17 1004 Q. Yes, please. And it's line 3, question 681. At this
18 point I think Garda Keogh --
19 A. Sorry, the page?

20 1005 Q. At this point I think Garda Keogh admitted that he 16:56
21 accepted the evidence.
22
23 "Have you no criticism of Assistant Commissioner
24 Fanning's stewardship of managing the file between that
25 date in March 2017 and November 2017?" 16:56
26
27 Were you aware of that from your review of the
28 transcripts in this case?
29 A. Sorry, Chair, I had the wrong page. I am with you now.

1 1006 Q. Page 160. Do you see it is line 3 onwards. Garda
2 Keogh accepts, down at line 14, that he has no
3 criticism of Assistant Commissioner Fanning's
4 stewardship of managing the file between that date and
5 November 2017, isn't that right? 16:57

6 A. Yes.

7 1007 Q. You see his answer at line 14?

8 A. At line 7?

9 1008 Q. At line 14.

10 A. Yeah. 16:57

11 1009 Q. You see that he accepts --

12 A. Yes.

13 1010 Q. -- he has no criticism to make of Assistant
14 Commissioner Fanning?

15 A. I am with you, yeah. 16:57

16 1011 Q. You have been asked a large number of questions today
17 about that period of delay, but would you agree with me
18 that this transcript confirms that he has now, in the
19 light of this information provided to the Tribunal,
20 accepts that he has no criticism of that period of 16:57
21 time?

22 A. Correct, Chairman. That is what he would appear to be
23 saying, yeah.

24 1012 Q. And can I ask you then to turn back to page 158,
25 please? And if I can draw your attention please to the 16:57
26 middle of the page and in particular line 11. Could I
27 just ask you to confirm, were you present when this
28 evidence was given, where Garda Keogh accepted that he
29 would have been visited by Inspector McCarthy on behalf

1 of Assistant Commissioner Fanning roughly five times in
2 2017?

3 A. I wasn't present when that was given, Chair, but I am
4 reading it here.

5 1013 Q. Yes. Do you see from line 18 onwards there's reference 16:58
6 to:
7
8 "He gave me correspondence --"
9
10 That is Inspector McCarthy. 16:58
11
12 "-- in relation to the bullying and harassment thing,
13 because there was confusion in relation to it. Two
14 superintendents were appointed. I still didn't really
15 know what was going on. Any letters he gave me would 16:58
16 be in the documentation."
17
18 Do you see that?

19 A. Yes, I see that, Chair. Yeah.

20 1014 Q. Very simply, were you aware of that line of 16:58
21 communication --
22 A. No.

23 1015 Q. -- in 2017?

24 A. No, Chair.

25 1016 Q. If I can ask you to move forward, please, to the 16:58
26 meeting, the first meeting you had with Garda Keogh and
27 his solicitor. I wonder if you could be shown, please,
28 a document that has been referred to earlier at page
29 4220. First of all, can I ask you to confirm that on

1 this page there's reference to your introduction and
2 you say at the top of the page:
3
4 "Are you accepting I am neutral in this?"
5 A. Yes. 16:59
6 1017 Q. And Mr. Cullen says:
7
8 "I accept your bona fides."
9 A. Correct.
10 1018 Q. You have been asked a number of questions about this 16:59
11 particular discussion and if I ask you just to move
12 towards the middle of the page, would you agree with me
13 that when the answer was given:
14
15 "Who are making complaints against?" 16:59
16
17 Garda Keogh replied:
18
19 "Pat Murray, superintendent
20 Two chiefs in Mullingar. Mark Curran and Lorraine 17:00
21 Wheatley. And there was a sergeant in the chief's
22 office who may have been pulling their strings, I'm not
23 sure but your investigation will show this."
24 A. Yes.
25 1019 Q. Is that your recollection of what Garda Keogh said? 17:00
26 A. Yes, Chair. Yeah.
27 1020 Q. And looking down two further lines, Mr. Cullen, did
28 Mr. Cullen then say and is it your recollection he
29 said:

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"There may be others but some are more central."

A. Correct. Yes, Chair.

1021 Q. In the light of that intervention did you believe that there was some uncertainty about exactly who was the subject-matter of the complaints?

17:00

A. Exactly, Chair. I think that is fair as to why I was not clear at the end of the day who he was exactly making a complaint against, which was crucial to my investigation.

17:00

1022 Q. would you please look several lines further down, Garda Keogh is recorded as saying:

"Pat Murray, that is crystal clear.
Mark Curran, yes."

17:00

Then he said:

"I am not making a complaint against Noreen McBrien and Lorraine Wheatley."

17:00

A. Correct, Chair, yeah.

1023 Q. So at that stage he was not making a complaint against Lorraine wheatley?

A. Yes, that is my position. That is why I was surprised later on when he put her back into the equation.

17:00

1024 Q. And is it your evidence that he then went on to say:

"I have an issue with John Scanlan because the complaint went missing."

1 A. Correct, Chair.

2 1025 Q. Did that cause you to have a concern as to whether
3 Mr. John Scanlan was going to be the subject of a
4 complaint?

5 A. Absolutely. 17:01

6 1026 Q. Then when you asked him specifically in the next
7 question about Pat Murray and Mark Curran, his answer
8 is:
9

10 "My mind is open to Mark Curran. I thought it was him, 17:01
11 because he was friends with Aidan Glacken. I know it
12 is coming from the chief's office, I'm not sure who was
13 doing it."

14 A. Correct, Chair.

15 1027 Q. So by that stage in the conversation did you still 17:01
16 think there was some uncertainty about --

17 A. Absolutely. I had a doubt then whether Mark Curran was
18 supposed to be a part of my investigation.

19 1028 Q. And was that because of the things that were said to
20 you -- 17:01

21 A. Correct.

22 1029 Q. -- by Garda Keogh and his solicitor?

23 A. Correct, Chair.

24 1030 Q. Just turning to the top of the next page, 4221 please,
25 Mr. Cullen again intervened, and is it your evidence 17:01
26 that this is what he said to you in substance:
27

28 "Garda Keogh is complaining about adverse treatment but
29 he can't always pinpoint who is doing it. It's a

1 matter for the investigation and that's up to you."

2 A. Correct.

3 1031 Q. So did you take it from that, that it was not entirely
4 clear who was the subject of the investigation?

5 A. That was my opinion at the time, Chair. 17:01

6 1032 Q. Yes. And can I ask you then to turn down to the end of
7 the page, and the third last entry, you said:
8
9 "I need to know the people."
10 17:02

11 And Garda Keogh is recorded as saying:
12
13 "Superintendent Pat Murray is one. I'm not sure about
14 Mark Curran, but my mind is open."
15 A. Yes, Chair. 17:02

16 1033 Q. Did you take that as reflecting a lack of certainty on
17 the part of Garda Keogh as to who he was accusing?

18 A. Yes, Chair.

19 1034 Q. And then he goes on to say:
20 17:02

21 "When he left Lorraine Wheatley came and she's sound."
22
23 Did you understand that to mean that he was saying that
24 Lorraine wheatley was --
25 A. Correct, yeah. 17:02

26 1035 Q. -- a good person?

27 A. Especially in the context of what he said about her
28 previously, you know.

29 1036 Q. At the end he said:

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"I'm not sure who is responsible for the Mullingar thing."

Do you see that?

17:02

A. Yes, Chair.

1037 Q. And again over the top of the page, 4222, you say:

"I need to find out who you are saying who is responsible so that I can put it to the people."

17:02

A. Correct.

1038 Q. Did you say that because of all the preceding answers which had been given to you?

A. Yes, that is why I pursued at length I suppose what I did on the day.

17:03

1039 Q. It has been suggested that you were being obstructive in this meeting, is that correct?

A. Yes, Chair, I disagree with that, Chair. I thought I was being very fair to him on the day.

1040 Q. And do you see in the middle of the page you put the question:

17:03

"So you're not saying the sergeant here?"

A. Yeah.

1041 Q. Was this the sergeant who he referred to earlier but had not named?

17:03

A. Correct, yeah.

1042 Q. And did Garda Keogh then say to you:

1 "No, I don't have enough evidence."
2 A. Yes.
3 1043 Q. So did that reflect your understanding that Garda Keogh
4 at that time knew that before he made the complaint he
5 had to have some evidence? 17:03
6 A. Correct.
7 1044 Q. And in fact he didn't make a complaint against the
8 unnamed sergeant thereafter, is that right?
9 A. No, Chair, he didn't, no.
10 1045 Q. Then can I ask you to move down, where you say: 17:03
11
12 "I need to be clear who I need to approach and
13 investigate. Right now the complaint is against Pat
14 Murray and Mark Curran. Nick will need to tell me if
15 he wants me to put allegations to other persons or I 17:03
16 won't go to those persons."
17 A. Yes, Chair.
18 1046 Q. Does that reflect your understanding at that part of
19 the conversation?
20 A. Yes, Chair. And I was trying to make things as clear 17:04
21 as possible to him and, you know, be articulate about
22 it.
23 CHAIRMAN: Okay.
24 1047 Q. MR. MURPHY: Is it your evidence that Garda Keogh then
25 said: 17:04
26
27 "Throw in Lorraine Wheatley so."
28 A. Correct.
29 1048 Q. Were you surprised that he said it in such a casual and

1 throwaway fashion?

2 A. I did, yes, Chair. To be fair to Ms. wheatley.

3 1049 Q. Mr. Cullen, at the very last sentence on the page

4 Mr. Cullen says:

5

6 "I am happy with the bullying and harassment complaint

7 that it is these three people but it may be elsewhere."

8 A. Yes.

9 1050 Q. Did you take it from that intervention that Mr. Cullen

10 was suggesting that it might be more people?

11 A. Correct, Chair. And that's why I wrote back to him

12 afterwards to say, look, is there somebody else you

13 want to put into this? Give me clarity here.

14 1051 Q. And in terms of the meeting itself, did Mr. Cullen

15 speak a lot at the meeting?

16 A. I think I probably did a lot -- most of my dialogue was

17 probably with him, we'll say, interspersed with Garda

18 Keogh jumping in, yeah. So I was happy, Chair, that at

19 least Garda Keogh had the presence of a solicitor to

20 give him legal advice. That I wasn't trying to catch

21 him on the hop on his own, we'll say.

22 1052 Q. Moving forward from that meeting, you have been asked

23 questions about your first meetings with Chief

24 Superintendent Curran, Superintendent Murray and

25 Superintendent wheatley?

26 A. Yes.

27 1053 Q. And can you confirm, that insofar as they spoke to you

28 about the need for a speedy investigation they were

29 anxious that it would not be delayed?

1 A. I think they were, Chair. That is a fair comment,
2 Chair, yeah.

3 1054 Q. And in terms of Chief Superintendent Wheatley, I think
4 you have indicated that she was -- was she annoyed or
5 upset that this complaint was brought to her attention? 17:05

6 A. I think she was upset, Chair, from the outset. Like, I
7 mean, she was upset the night I met her up in the Garda
8 Officers' Club anyway.

9 1055 Q. Yes. And was Superintendent Murray upset also?

10 A. He was, Chair, yeah. I would say he was stressed by 17:05
11 the whole thing, yeah.

12 1056 Q. And just to put that in context, I wonder if you can be
13 shown, please, page 670 of the materials?

14 CHAIRMAN: Have you seen this before? This is the High
15 Court action. 17:05

16 A. No.

17 CHAIRMAN: I know about it, Mr. Murphy.

18 MR. MURPHY: Thank you. I was going to put to the
19 witness that he hadn't seen it at the time. I think
20 this -- 17:06

21 CHAIRMAN: I mean, does it matter what he thinks about
22 it?

23 MR. MURPHY: Just one question on fact, Chairman. It
24 may just assist the Tribunal.

25 CHAIRMAN: Okay. 17:06

26 1057 Q. MR. MURPHY: Can I ask you, at the bottom, this is the
27 personal injury summons, and you will see at the top of
28 it that Patrick Murray is named as a defendant.

29 A. Yes.

1 1058 Q. So is that an unusual thing for members of An Garda
2 Síochána to be named personally?
3 A. It was, Chair.
4 CHAIRMAN: He actually said that earlier.
5 A. Yeah. 17:06
6 CHAIRMAN: That is a matter of comment, if you like. I
7 think we would all know, but the assistant commissioner
8 actually said that.
9 MR. MURPHY: Yes.
10 A. I did, Chair. 17:06
11 1059 Q. I think that was the position on the 13th April 2017 --
12 A. Yes.
13 1060 Q. -- but by the time you met with Superintendent Murray
14 you knew that he was the subject of an application to
15 PIAB. Was he stressed by that, by the fact that he was 17:06
16 now being sued individually?
17 A. I think he was, Chair, yeah. It upset him. I could
18 see that. I could tell that from his demeanour.
19 1061 Q. And insofar as there is any reference to files or 17:07
20 litigation files, did his concerns in that regard stem
21 from the fact that he was a named defendant in civil
22 proceedings?
23 A. I think that is a fair comment, Chair, yeah. That is
24 why I felt it was appropriate that he would get
25 separate legal advice from Ken Ruane rather than my 17:07
26 advice, Chairman, shall we say.
27 1062 Q. And were you also aware of the fact that at the time he
28 was seeking independent advice separately from An Garda
29 Síochána?

1 A. Yeah, I was aware of that, Chairman.

2 1063 Q. And insofar as that was the case, was that also a
3 concern he expressed to you?

4 A. Yes, Chair. It was, yeah.

5 1064 Q. And insofar as the litigation was concerned, were you 17:07
6 concerned that the litigation was a claim for damages?

7 A. Correct, Chair.

8 1065 Q. For money?

9 A. Yeah.

10 1066 Q. And insofar as the position was concerned, what did you 17:07
11 see your function as being in that early meeting with
12 him, with Chief Superintendent Curran and with
13 Superintendent Wheatley?

14 A. To give them the accusation or the charge against them,
15 so to speak, Chair, that was set out from Garda Keogh 17:07
16 when I met him and took a statement, yeah.

17 1067 Q. It's been suggested to you by Mr. O'Brien that you
18 approached this in a manner which is designed to cover
19 up or to conceal or that you were guilty of
20 prejudgement with a view to targeting Garda Keogh, what 17:08
21 is your response to that allegation?

22 A. I reject that, Chair. I totally refute that, yeah.

23 1068 Q. And in terms of the length of time it took to carry out
24 the report, can you indicate to the Chairman how you
25 tried to operate in the course of those months to 17:08
26 finalise the task? Were you conscious of the delay
27 factor?

28 A. I was, Chair. I was trying to speed along, some of the
29 examples there, I was trying to nudge them along gently

1 to give me a response, you know. I suppose I followed
2 up as best I can, bearing in mind, Chair, that this was
3 only one of many jobs that I had to do in my day-to-day
4 work as an assistant commissioner in charge of a
5 region. And you always have other tasks, which I have 17:08
6 noted them here, Chair, I don't think I need to go
7 through them all.

8 1069 Q. In relation to a question I asked you a moment ago, I
9 think I may have asked you incorrectly. "Were you
10 concerned about the fact that there was a claim for 17:09
11 damages?" What I meant to ask you was: Were you aware
12 there was a claim for damages?

13 A. I was aware, yes.

14 1070 Q. In terms of the approach towards the investigation, you
15 have indicated to the Chairman you were aware of the 17:09
16 obligation to be fair to all persons involved. It has
17 been specifically put to you that it was unfair of you
18 not to provide Garda Keogh with the information, for
19 example, about delay in March to November 2017?

20 A. Yeah. 17:09

21 1071 Q. What is your response to that?

22 A. I didn't think that was within my remit, Chair, such
23 to, you know, provide that information to him, you
24 know.

25 CHAIRMAN: Yes. 17:09

26 1072 Q. MR. MURPHY: And finally, insofar as your own work was
27 concerned can I ask you, did you do anything
28 deliberately or otherwise to discredit or target Garda
29 Keogh by your actions in conducting this investigation?

1 A. Absolutely not, Chair.
2 MR. MURPHY: Thank you.
3 CHAIRMAN: Anyone else?
4 MR. CARROLL: I wonder, Chairman, could I just clarify
5 one matter on behalf of Superintendent McBrien? 17:10
6 CHAIRMAN: Yes, of course.
7
8 ASSISTANT COMMISSIONER MICHAEL FINN WAS THEN
9 CROSS-EXAMINED BY MR. CARROLL AS FOLLOWS:
10 1073 Q. MR. CARROLL: Assistant Commissioner Finn, I will 17:10
11 short-circuit it given the time of the hour. Just in
12 relation to matters to clarify it, when you undertook
13 your investigation, in terms of Superintendent McBrien
14 there was no allegation of harassment or bullying and
15 that became clear when you had your meeting with 17:10
16 Mr. Keogh in December 2017, is that correct?
17 A. That's correct, Chair.
18 1074 Q. I think you then proceeded upon your investigation as
19 you outlined to the Tribunal today, culminating in your
20 report? 17:10
21 A. Yes, Chair.
22 1075 Q. And again that report focused on looking at the
23 allegations in relation to the three named officers --
24 A. Mm-hmm.
25 1076 Q. -- officers Curran, Wheatley and Murray -- 17:11
26 A. Yes.
27 1077 Q. -- and making conclusions therein. Now to
28 short-circuit matters, a number of things happened then
29 in terms of Assistant Commissioner O'Brien dealing with

1 matters and then ultimately a review by a barrister,
2 Mr. de Bruir. And I suppose one way I can
3 short-circuit it is this, there's one document I am
4 going to ask the Tribunal to put up, it's 13126.
5 13126. This may short-circuit the questions I have. 17:11
6 Yes. Can you go to the top of that page? If you go up
7 a bit further. To the top of that page. Top of that
8 letter. Can you stop there? The position, this is
9 what I want to ask you, one question really about, the
10 position seems to have altered and my client, 17:12
11 Superintendent McBrien, at this point, when matters
12 were progressing, received this letter on the 8th May
13 which listed Chief Superintendent Curran, Chief
14 Superintendent Wheatley, Chief Superintendent Murray,
15 Superintendent McBrien and Inspector Farrell. It then 17:12
16 goes on to talk about the complaint. It then goes on
17 to talk about the appeal being taken and Mr. de Bruir
18 being assigned and effectively that being carried out
19 under those procedures. So the question I have for you
20 is this: In the time you did your report and completed 17:13
21 it, which was an investigation into Chief
22 Superintendent Curran, officers Wheatley and --
23 CHAIRMAN: I'm taking your promise there is a question
24 coming, Mr. Carroll.
25 MR. CARROLL: There is. I am trying to short-circuit 17:13
26 it.
27 CHAIRMAN: That's not the way it looks here. What is
28 the question? Is Superintendent McBrien in the clear?
29 1078 Q. MR. CARROLL: Things move on, where it would appear

1 Superintendent McBrien is now lumped back in, if I can
2 use that phrase --

3 A. Yes.

4 1079 Q. -- with the three people you investigated into, and
5 including Inspector Farrell, in circumstances where 17:13
6 there was no allegation of harassment and bullying and
7 what I am asking you is --

8 CHAIRMAN: Is that correct.

9 1080 Q. MR. CARROLL: -- that's correct first of all, what is
10 your knowledge of that, I suppose? 17:13

11 A. By way of explanation, even though it's not relevant to
12 me per se, my understanding is, because these five
13 people were named originally, were written to
14 originally by Assistant Commissioner Fanning, I think
15 for completeness -- 17:14

16 1081 Q. CHAIRMAN: Only because they had been written to
17 originally.

18 A. Correct.

19 1082 Q. CHAIRMAN: But am I right in thinking --

20 A. And for clarity for them. 17:14

21 1083 Q. CHAIRMAN: -- and Mr. Carroll wants to establish, that
22 at no point in your investigation was there a claim or
23 allegation made against Superintendent Noreen McBrien?

24 A. Garda Keogh made no complaint against Superintendent
25 McBrien. 17:14

26 1084 Q. MR. CARROLL: But as well as that, there was no
27 complaint made, there was no finding in relation to
28 you --

29 A. Oh no.

1 1085 Q. -- because they weren't under investigation, neither
2 Superintendent McBrien nor Inspector Farrell were under
3 investigation and yet they end up effectively --
4 CHAIRMAN: But he didn't write this letter,
5 Mr. Carroll. You can complain to Deputy Commissioner 17:14
6 Twomey when we get to him.
7 MR. CARROLL: But I wanted to --
8 CHAIRMAN: But she's in clear, as matters stand at the
9 moment --
10 MR. CARROLL: Very well. 17:14
11 CHAIRMAN: -- Superintendent McBrien, and this witness
12 has nothing to say against Superintendent McBrien.
13 Okay. Now.
14 MR. CARROLL: Thank you.
15 CHAIRMAN: Ms. McGrath. 17:15
16 MS. GLEESON: Sorry, my apologies, Chairman.
17 CHAIRMAN: I am sorry, Ms. Gleeson, yes. Who are you
18 for Ms. Gleeson, remind me?
19 MS. GLEESON: Inspector Farrell, Sergeant Lyons and --
20 CHAIRMAN: Right. The same applies to Inspector 17:15
21 Farrell as to Superintendent -- the same, a shorter
22 form, as they say in Key and Elvaston.
23 MS. GLEESON: That is very helpful.
24 CHAIRMAN: So you can take it that you are in the same
25 boat. Thank you very much. Inspector Farrell, the 17:15
26 same position.
27 MS. GLEESON: Thank you very much, Chair. If you don't
28 mind, I realise it is very late --
29 CHAIRMAN: Sure, yeah, yeah.

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ASSISTANT COMMISSIONER MICHAEL FINN WAS THEN
CROSS-EXAMINED BY MS. GLEESON AS FOLLOWS:

1086 Q. MS. GLEESON: on behalf of Sergeant Lyons, just looking at your report, commissioner, your report is obviously at 5521. At 5532 you deal with the McHugh issue. Now I know we have obviously had the views of Garda Keogh with regard to your report in his evidence to the Chairman. However, you obviously had an opportunity to assimilate the materials with regard to this particular issue, is that right? 17:15

A. Yes.

1087 Q. Insofar as you could?

A. Mm-hmm, yes.

1088 Q. The Liam McHugh issue? 17:16

A. Yes.

1089 Q. I represent Sergeant Lyons, as you know, but I suppose my question is: Under the heading "Findings" there, if we can scroll down slightly, I suppose what you found, having looked at the materials yourself, commissioner, is that Sergeant Lyons received this intelligence in good faith. That is his e-mail which the report would suggest on numerous occasions, I don't propose to refer to it specifically, but that that was received by him in good faith. I suppose that is obviously your finding, is that right? 17:16

A. That was my understanding, Chairman.

1090 Q. Yes. And you very helpfully just outlined that during the course of your investigation you gave an unredacted

1 version of that e-mail to Garda Keogh, is that right?

2 A. That's correct, Chair.

3 1091 Q. And I suppose on the 13th June of 2018, I don't propose
4 to refer specifically to that letter but you wrote to
5 Mr. Cullen, isn't that right? 17:17

6 A. That's correct.

7 1092 Q. And you gave him lots of materials that you had
8 assimilated thus far in your investigation?

9 A. Which included the material which identified Sergeant
10 Lyons as being the person who raised the issue. 17:17

11 1093 Q. Yes. And for the purpose of the record, that's at
12 4903. And Mr. Cullen, no criticism, took some time, I
13 suppose, to consider that and get advice and take
14 instructions I presume?

15 A. Correct. 17:17

16 1094 Q. And he then wrote back to you on the 6th September
17 2018?

18 A. Yes.

19 1095 Q. And that's at 4998. And I suppose, can you confirm,
20 assistant commissioner, and obviously the material is 17:17
21 there for us to see it, nowhere in that correspondence
22 does it say that he is concerned that this particular
23 complaint in relation to Mr. McHugh or I suppose the --
24 I'm calling it a complaint, it's actually Garda Keogh's
25 complaint, as it were, in relation to that issue, but 17:18
26 he doesn't say that he is concerned that that had been
27 fabricated?

28 A. That's correct, Chair.

29 1096 Q. It doesn't say that, and also that Sergeant Lyons was

1 requested to get involved in this issue, that he was
2 put up to it, as it were?

3 A. That's correct, Chair. That wasn't brought to my
4 attention.

5 1097 Q. Thank you. And then just finally in relation to -- I 17:18
6 represent Inspector Baker, Sergeant Moylan, Sergeant
7 Monaghan and Sergeant Martin as well. Now I know that
8 you wrote to them in the course of your investigation
9 and Ms. McGrath has referred to that letter. That's
10 dated 3rd January of 2018. The one referring to 17:19
11 Sergeant Moylan is at 4374 and no need to go over that
12 in too much detail, Ms. McGrath has already covered it.
13 But essentially you write to them and you say, well,
14 there's no specific complaint made against you?

15 A. Yes. 17:19

16 1098 Q. But there is:

17
18 "You have interacted with Garda Keogh and you are
19 mentioned in his statement of complaint in respect of
20 Garda Keogh's interactions... and you may be 17:19
21 interviewed."

22
23 Isn't that what was relayed to them --

24 A. That's correct.

25 1099 Q. -- in that correspondence? 17:19

26 A. That's correct.

27 1100 Q. And I know that obviously each and every one of those
28 officers obviously responded and I believe that there
29 was nothing outstanding and that their response was

1 satisfactory to you, you didn't require any further
2 information after that, is that right?

3 A. They all did respond, Chair, in fairness, yeah.

4 1101 Q. I suppose the involvement of the sergeants was in
5 relation to alleged denial of over time, alleged micro 17:19
6 supervision, isn't that right?

7 A. That's correct, Chair.

8 1102 Q. And perhaps the denial of commendations as well?

9 A. Yes, Chair.

10 1103 Q. I suppose they're the issues that the sergeants were 17:20
11 sort of directly in a position to provide information
12 or assistance to you in relation to those matters?

13 A. Correct. But there was no complaint against them,
14 Chair.

15 CHAIRMAN: Very good. 17:20

16 1104 Q. MS. GLEESON: There was no complaint made against them,
17 but I suppose as far as they're concerned obviously
18 they got that letter and I suppose it was only within
19 the context of this Tribunal that, for example, I
20 suppose as far as they were concerned that that was -- 17:20
21 that there may be an allegation of wrongdoing on their
22 behalf, and I suppose you may not be aware of this but
23 in, for example, their statements to the Tribunal they
24 had to deal with each and every one of those issues.

25 CHAIRMAN: But this is not a question for this witness, 17:20
26 Ms. Gleeson. This is a submission or a comment. And
27 maybe you're right and maybe you're wrong, but
28 receiving a letter is not exactly a disaster even now.
29 Okay. Thank you very much. Now, Ms. McGrath.

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ASSISTANT COMMISSIONER MICHAEL FINN WAS THEN
RE-EXAMINED BY MS. McGRATH AS FOLLOWS:

- 1105 Q. MS. McGRATH: Commissioner, very merely, something
Ms. Gleeson raised there. The material that you're 17:21
working with in the investigation, is this material
that you source independently, you or your
investigators, or is this the material you get from the
various parties you write to? As in, what material,
for example -- she raised the issue of Mr. McHugh and 17:21
Garda Lyons, are you working off the material that's
provided by, for example, the appendices to Chief
Superintendent Curran's submissions, the appendices
that you get in from Superintendent Murray, is that
material you work off or does your team go off and 17:21
source this independently?
- A. Oh, they go off as well, Chair. I mean, if there is
something referred to, like a document, they would go
off and look for the document as well to support it, if
there was a piece of document missing or whatever the 17:21
case may be.
- 1106 Q. Just coming out of that then, you got the submissions,
we know, from the officers. February, April and May,
the three main submissions came in. Other than Garda
Keogh raising queries and going back looking for some 17:22
further material, were queries raised by you or your
team on those submissions? Did you go back to any of
those three officers with queries on their submissions
or interrogations or checking?

1 A. My recollection, Chair, only when Assistant
2 Commissioner O'Brien came back to me and raised some
3 queries did I go back to follow up on some of the
4 queries, we'll say.

5 1107 Q. And then, I'm sorry to keep you, but just one very last 17:22
6 thing, I just want to be crystal clear on this, page
7 16222, which is the entry for the 13th January 2018
8 that was opened to you. It was your evidence, and it
9 will come up there, it was your evidence that you don't
10 think you would have said what is attributed to you in 17:22
11 that record. Do you see that record there? This is
12 the Saturday morning phone call.

13 A. Yes.

14 CHAIRMAN: Have you got that in front of you? Yes.

15 1108 Q. MS. McGRATH: Do you accept or reject that there was a 17:23
16 phone call?

17 A. Oh, I accept there was a phone call, Chair. We were
18 arranging the meeting for the following week I'd say.

19 1109 Q. Okay. And then --

20 A. He was probably telling me where to go. I didn't know. 17:23

21 1110 Q. Okay. So there was a phone call and you accept that.
22 But do you reject in its entirety the note of the phone
23 call or are you only rejecting some of it?

24 A. Well, there's some parts that I would hopefully reject
25 straightaway. 17:23

26 1111 Q. Can we clarify what they are because I think this is
27 important?

28 A. Yeah.

29 1112 Q. If you look, he said -- this is you --

1 A. where I have greatest exception with, Chair, is the
2 line where it says:
3
4 "AC Fanning offered a view that Garda Keogh and his
5 solicitor were looking for money in a civil claim." 17:23
6
7 I reject -- I never said that, Chair. I might have
8 said I knew that they were looking for money. And
9 that's what I was saying, I was putting this in the
10 context of, if I was down in Kerry on a Saturday 17:23
11 morning, he was ringing me, you know. He could have
12 been picked up a bit of the conversation, I could have
13 picked up a bit of the conversation. Sorry, Chair.
14 CHAIRMAN: I appreciate that. If you stop for one
15 second. What Ms. McGrath is going to do is going to go 17:23
16 through the various bits of the thing --
17 A. Yeah.
18 1113 Q. CHAIRMAN: -- and see is there any part of it that you
19 agree with.
20 A. Sorry, Chairman. 17:24
21 1114 Q. CHAIRMAN: I appreciate your own all point is --
22 A. Yes.
23 1115 Q. CHAIRMAN: -- you did not -- this does not represent --
24 your point is, this does not represent a dismissal of
25 the complaint as of January 2018. That is your overall 17:24
26 point.
27 A. Yes.
28 1116 Q. CHAIRMAN: Ms. McGrath wants to ask you a number of
29 specific questions. And if she hadn't asked you them,

1 I would be asking you them.

2 A. Right.

3 1117 Q. MS. McGRATH: Thank you. The second line. We will try
4 and do this as quickly as possible:
5
6 "He said he spoke to CS F Healy who examined the entire
7 situation re mirrored civil claim between January and
8 August 2017."
9
10 Is that correct or incorrect? It is attributed to you. 17:24

11 A. That is incorrect. I don't think I said that. As I
12 explained to you earlier on, Chair, I was aware --
13 CHAIRMAN: Hold on. Go slowly, Ms. McGrath.

14 A. I was aware of the fact that Chief Superintendent Healy
15 had done something. I became aware of that the week 17:24
16 before when I got the substantial submission --

17 1118 Q. CHAIRMAN: In relation to the civil action?

18 A. Correct.

19 1119 Q. CHAIRMAN: Is that correct?

20 A. Yeah. Because we'll say Superintendent Noreen McBrien 17:25
21 had given me a large volume of material the previous
22 week --

23 1120 Q. CHAIRMAN: I follow, yes.

24 A. -- which was very helpful to me, and I spoke to Chief
25 Superintendent Healy to say is this factual, that 17:25
26 material.

27 1121 Q. CHAIRMAN: So it is correct to say, yes, I did speak to
28 Chief Superintendent Healy?

29 A. Yeah, I wouldn't dispute that. I wouldn't have a

1 problem.

2 1122 Q. CHAIRMAN: You wouldn't quarrel with that?

3 A. No, Chair.

4 MS. McGRATH: Okay.

5 1123 Q. CHAIRMAN: And that the topic was the civil claim? 17:25

6 A. Correct.

7 CHAIRMAN: Okay, thank you.

8 1124 Q. MS. McGRATH: Okay. So you accept there was a
9 conversation with CS F Healy and you are saying you
10 didn't tell this, you don't recall saying this to 17:25
11 Superintendent Murray?

12 A. When you say "saying this" what do you mean?

13 1125 Q. Well, he is recording you as telling him in this
14 conversation that you had spoken to CS Healy?

15 A. I wouldn't dispute, Chair, if I did say that to him, I 17:25
16 wouldn't have a dispute. I wouldn't dispute that.

17 1126 Q. CHAIRMAN: I understand that. And he wouldn't know it
18 unless you had said it, presumably.

19 A. Correct.

20 1127 Q. MS. McGRATH: "He said he knows of the meticulous files 17:25
21 and records and notes that I have."
22

23 Is this you? Did you say this? Or could he possibly
24 be talking about CS Healy but --

25 A. I could have said it -- 17:26

26 CHAIRMAN: No, he is referring to -- sorry, he is
27 referring to Assistant Commissioner Finn. He is
28 referring to the phone call, he says --

29 MR. KELLY: Chairman, with respect, I think it might be

1 better if the witness were allowed to answer.

2 CHAIRMAN: Fair point. Except that's rather helpful to

3 your point. It's clearly not Chief Superintendent

4 Healy he was speaking --

5 MS. McGRATH: We just need to clarify, Chairman. 17:26

6 CHAIRMAN: But, point taken.

7 1128 Q. MS. McGRATH: So, did you say to Superintendent Murray

8 in this phone call that you know he keeps meticulous

9 files and records and notes?

10 A. I can't recall saying those words to him. I wouldn't 17:26

11 dispute it, Chair, in the context, and maybe for

12 myself --

13 1129 Q. I'm sorry, commissioner, I think maybe if you say yes,

14 no or maybe I said it.

15 CHAIRMAN: I think he's entitled to answer the way he 17:26

16 wants to. And Mr. Kelly is right: The witness and

17 only the witness will answer the question.

18 MS. McGRATH: Okay.

19 A. I am saying that I wouldn't dispute it in the context

20 that Chief Superintendent Healy told me that Pat Murray 17:27

21 had a large volume of material which he had given Chief

22 Superintendent Healy --

23 CHAIRMAN: Okay.

24 A. -- for his civil case. That is my answer.

25 1130 Q. MS. McGRATH: okay. 17:27

26

27 "He said he knew now of the corrections I made in

28 Athlone and was now being punished for doing so."

29

1 Did you say that to him?

2 A. I have no recollection, Chair. I don't think I would
3 have said that.

4 1131 Q. Okay.

5

17:27

6 "He spoke of CS T Myers' reception from people accused
7 he spoke to and his view --"

8

9 which again looks like you.

10

17:27

11 "-- his view of the ethical calibre of the people
12 accused."

13

14 Did you say both of those things to him in that
15 telephone call?

17:27

16 A. No, Chair. But I would take that piece as being
17 referring to Chief Superintendent Myers' view of the
18 ethical calibre of the people he spoke to. But I know
19 that Chief Superintendent Myers had been in Athlone
20 we'll say earlier on that week and he met -- you know,
21 he served the papers on the people that were the
22 witnesses and in fairness to him, I think he said to
23 me, you know, that they got a good reception when they
24 went there. Nobody wasn't prepared not to engage with
25 them, they didn't get any hostility or negativity when
26 they approached people. That would have been my
27 perception of what he said.

17:28

17:28

28 1132 Q. Okay. But I think at the start of that answer you said
29 you didn't say this to chief superintendent?

1 A. I don't recall it saying it to him, yeah.

2 1133 Q. "I explained the situation in Athlone, how Chief
3 Superintendent Wheatley and I work closely to make
4 corrections with fairness to everyone in a very careful
5 way of being aware of the sensitivities involved." 17:28
6
7 Do you recall Superintendent Murray saying that to you?
8 A. I don't recall, Chair, but I wouldn't have an issue
9 with -- you know, he probably did say it to me.

10 1134 Q. "I told him of the calibre of other people accused and 17:28
11 their frustration and annoyance at this contrived
12 situation."
13
14 Did he say that to you?
15 A. He may have, Chair. 17:28
16 1135 Q. Okay.
17 A. I didn't take any notes of it.

18 1136 Q. He records you as saying you understood, is that
19 correct?
20 A. I don't recall, Chair, if I said -- I didn't make these 17:29
21 notes, these are a conversation -- I'm trying to
22 recall. I wouldn't dispute any issue, I wouldn't have
23 any -- I may have said it, yeah.

24 1137 Q. Did you say you understood? It's a very direct --
25 A. I don't know is the answer so, if you are looking for a 17:29
26 direct answer. I don't know.

27 1138 Q. Okay.
28 A. I can't recall specifically.

29 1139 Q. He says that you "confirmed that CS Curran, Wheatley

1 and I were the ones Garda Keogh says he is accusing
2 primarily." Did you say that?
3 A. I can't recall, but I wouldn't have a difficulty if he
4 said I said that, that's a fact I think, yeah.
5 1140 Q. Okay. And we know with the final sentence that you say 17:29
6 you didn't say the final sentence, is that right?
7 A. Correct, yes, Chair.
8 1141 Q. Okay. Thank you commissioner.
9 CHAIRMAN: Thank you very much.
10 THE WITNESS: Thank you, Chair. 17:30
11 CHAIRMAN: You're free to go until the next time, isn't
12 that right?
13 MS. McGRATH: That's right.
14 CHAIRMAN: Because the assistant commissioner is
15 relevant to issue number 20, which we will do in due 17:30
16 course. Thank you very much.
17 MS. McGRATH: Thank you, commissioner.
18
19 THE WITNESS THEN WITHDREW
20 17:30
21 CHAIRMAN: Very good.
22
23 THE HEARING THEN ADJOURNED UNTIL THURSDAY, 20TH
24 FEBRUARY 2020 AT 10:30AM
25
26
27
28
29

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