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FORMER PRESIDENT OF THE COURT OF APPEAL

HELD IN DUBLIN CASTLE
ON THURSDAY, 20TH FEBRUARY 2020 - DAY 143

143

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 THURSDAY, 20TH
2 FEBRUARY 2020:

3
4 CHAIRMAN: Thanks very much. Just before we start, we
5 had a very long day yesterday and I have just seen the 10:31
6 transcript, which is heavier, thicker than any one we
7 have seen previously. I want to particularly thank
8 Ms. Niamh Kelly here, who is our stenographer, and her
9 colleague, Ms. Nuala Dalton, who also works in the
10 stenography services and who produces the transcript 10:31
11 for us each evening, so it is particularly apt to thank
12 them. I have to thank everybody, but particularly the
13 stenographers, so I just wanted to say a word of
14 appreciation before we begin. Thanks very much. Now.

15 MS. McGRATH: Good morning Chairman, the next witness 10:32
16 is Assistant Commissioner Finbarr O'Brien, please.

17 CHAIRMAN: Thank you. Good morning, commissioner.
18 Thank you.

19
20 ASSISTANT COMMISSIONER FINBARR O'BRIEN, HAVING BEEN 10:32
21 SWORN, WAS DIRECTLY-EXAMINED BY MS. McGRATH, AS
22 FOLLOWS:

23
24 THE WITNESS: Finbarr O'Brien.

25 1 Q. MS. McGRATH: Good morning, commissioner. Chairman, 10:32
26 the commissioner's statement is at page 13412 of the
27 brief. Now, commissioner, just by way of background, I
28 think you're currently attached to Sligo Garda station,
29 is that right?

1 A. No, it's actually Galway. There's been an amalgamation
2 of regions, so I'm now in charge of what's called the
3 northwestern region, but the regional headquarters.
4 But at the time I was in Sligo.

5 2 Q. Oh, sorry, at the time you made your statement to the 10:33
6 Tribunal, is that right?

7 A. That's correct.

8 3 Q. Okay. Now, I think we are trying to address a
9 particular single issue really, which was the review of
10 the Finn investigation that was carried out during the 10:33
11 course of late 2017/2018, okay. Now, I think you were
12 appointed by the executive director at HRPD to review
13 that investigation on 8th January 2019, is that right?

14 A. That's correct, Chairman.

15 4 Q. I think we have a letter of Mr. Alan Mulligan, at page 10:33
16 11982 of the book, please. It should come up there.
17 So I think this is where you were nominated. I think
18 this arises in circumstances, we heard from
19 commissioner Finn yesterday, whereby he had moved into
20 the Eastern Region at this stage and as an investigator 10:34
21 he couldn't review himself effectively under the
22 working policy, isn't that right?

23 A. That's correct.

24 5 Q. Okay. He had moved in early January into that
25 position, I think the 3rd January, he gave evidence 10:34
26 yesterday, and this is how you came into the frame,
27 isn't that right?

28 A. I believe so.

29 6 Q. Now, that letter from Mr. Mulligan says, it's addressed

1 to the Eastern Region, it says:

2

3 "It is the role of the appointing officer to inform the
4 parties of the findings of the investigation, having
5 satisfied themselves that all appropriate steps have 10:34
6 been taken and that a thorough and impartial
7 investigation has been carried out. As Assistant
8 Commissioner Finn was the investigator in this matter,
9 it is not appropriate that he should undertake the role
10 of the appointing officer. 10:35

11

12 To finalise this investigation I nominate Assistant
13 Commissioner O'Brien of the Northern Region to
14 undertake the role of appointing officer in this
15 instance. " 10:35

16

17 And he then asks the Eastern Region to keep him
18 informed of the outcome of the investigation and any
19 developments in that matter. So I think that's, as I
20 say, where you came into the frame on this issue, isn't 10:35
21 that right?

22 A. That's correct, Chairman.

23 7 Q. Now can I ask you first, just generally, before we get
24 into the specifics of what you did, you were appointed
25 effectively then to do what has been called a review, 10:35
26 isn't that right?

27 A. That's correct, under the policy.

28 8 Q. Okay. Now the policy document, we looked at it in a
29 lot of detail yesterday. I just want you to look at

1 your own section. So if we can just look at 7868,
2 which is the policy document, it will come up there.
3 Now, if you go to 7893, the bottom of the page, please,
4 Mr. Kavanagh. So I am looking for 7893. Do you see
5 there, just at the bottom, commissioner, it says:

10:36

6
7 "Review within 28 days."

8 A. That's correct.

9 Q. And:

10
11 "Within 28 days of the complaint being received, the
12 divisional officer/chief superintendent shall review
13 the investigation of the complaint. Where an
14 investigation has concluded, they shall inform both
15 parties in writing of the findings of the
16 investigation, a copy of the investigation file will be
17 sent then to the local assistant commissioner and
18 assistant commissioner HRM."

10:36

10:36

19
20 As we heard yesterday, the references there to
21 divisional officers or chief superintendents, didn't
22 really apply in Garda Keogh's case because it was a
23 higher level appointee for the investigation purposes,
24 isn't that correct?

10:36

25 A. That's correct.

10:37

26 Q. Okay. So it talks about timeframes there, did you
27 understand that any review you would carry out would be
28 within that timeframe of 28 days?

29 A. Yes.

1 11 Q. Okay. It seems that you had two functions; that you
2 shall review the investigation and then notify the
3 parties of the outcome, effectively?
4 A. Yes.

5 12 Q. Okay. Now, just talking about that review, if 10:37
6 Mr. Kavanagh can just go forward to 7896, there's a
7 formal process, a flow chart there. So it's 7896. And
8 it talks there at number 8, you see there at the
9 bottom, I'm sorry it's not a great quality copy. I
10 think number 8 is your section? 10:37
11 A. Yes.

12 13 Q. But, as I say, you were at assistant commissioner
13 level. You were going to issue the decision to the
14 various interested parties. And it says there in the
15 box: 10:38
16
17 "Be satisfied of a thorough and impartial
18 investigation, issue copies of the findings and
19 decision to both parties and to the local assistant
20 commissioner and to assistant commissioner HRM within 10:38
21 28 days."
22
23 I think that is repeated again because you mention it
24 in your statement, I just want to open it, it's
25 mentioned again a couple of pages later, at section 8.9 10:38
26 of the policy. That's 7899, Mr. Kavanagh. I think in
27 your statement you specifically refer that this
28 provision, you say -- section 8.9, you say:
29

1 "It requires me to satisfy myself that all appropriate
2 steps in the investigation have been undertaken, that a
3 fair and impartial investigation has been carried out
4 to make a determination based on the investigation and
5 to communicate the outcome and my decision to all 10:38
6 parties."

7 A. I think it says thorough as opposed to fair, that's the
8 only...

9 14 Q. Okay. That's right. The section itself says:

10 10:38
11 "On receipt of the investigation file, the divisional
12 officer/chief superintendent shall satisfy themselves
13 that all appropriate steps have been taken, that a
14 thorough and impartial investigation has been carried
15 out. Both parties should be advised in writing of the 10:39
16 outcome and the further action that will be taken.
17 Further action will be determined by whether the
18 complaint was upheld or not."

19
20 Now, we know that Commissioner Finn did not uphold the 10:39
21 complaint, isn't that right?

22 A. His investigation, no.

23 15 Q. The investigation did not. Okay. Can I just ask you,
24 just in relation to your role, sometimes it looks
25 straightforward but can I ask you this: Are you 10:39
26 examining substantively the findings or are you looking
27 at the procedure? What do you consider yourself to be
28 doing when you're carrying out this review?

29 A. Well, my view is that what I am doing is I am looking

1 at the findings. So, as I said, first of all I have to
2 satisfy myself, as it says there, that all appropriate
3 steps have been taken and that a thorough and impartial
4 investigation. And then I will look at the conclusions
5 drawn in respect of each of the allegations and then 10:40
6 establish and satisfy myself that the conclusions are
7 based on the evidence provided and that they are
8 reasonable. Then I decide whether I agree with the
9 conclusions or otherwise. That's what I see my role
10 as. 10:40

11 16 Q. Can I ask you this, and really this is a legal type
12 question, when you're reviewing the findings of the
13 investigator, are you adopting them? Do they become
14 your findings?

15 A. No, not necessarily, because I may not necessarily 10:40
16 agree with some of the findings. I may agree in part
17 or in whole, so I don't -- I form an independent view
18 as to the findings.

19 17 Q. Okay. Can I ask you this, you say in your statement
20 that after your appointment -- you were appointed on 10:40
21 the 8th January, and you say in your statement:

22
23 "On the 18th January, I received a complete copy of
24 Assistant Commissioner Finn's investigation file, which
25 consisted of three volumes from inspector James 10:41
26 McCarthy, regional inspector Mullingar Garda station."

27
28 So, Commissioner Finn said yesterday that literally he
29 gives you everything, is that right?

1 A. He gives me the completed investigation file.

2 18 Q. So do you see every statement, every note, every
3 enquiry that was made?

4 A. No. That would be -- that wouldn't be part of the
5 investigation. It would be all of the relevant 10:41
6 material that he has included in the investigation
7 file.

8 19 Q. Okay. So you don't necessarily see working documents?

9 A. No.

10 20 Q. Okay. Okay. So, as you say, on the 18th January you 10:41
11 received the file and you have clarified to the Chair
12 what you were doing, which you say includes looking at
13 the substantive findings and seeing whether you would
14 accept or reject them, is that right?

15 A. That's correct, yeah. 10:41

16 21 Q. Okay. Now, one of the things then that you did -- if I
17 could ask Mr. Kavanagh to open up a document that we
18 were provided with, it's at 12025, if you could look at
19 the top there please, Mr. Kavanagh. There's a
20 handwritten note on my copy certainly. Do you see 10:42
21 that?

22 A. Yes.

23 22 Q. Is that your writing?

24 A. That's correct.

25 23 Q. And you say: 10:42
26
27 "Received by hand from Inspector McCarthy."
28
29 Is that right?

1 A. That's correct.

2 24 Q. "On the 18/9 Finbarr O'Brien."

3 A. Yes FOB, yeah.

4 25 Q. Okay, so you receive the material on the 18th and
5 according to your statement you then carried out a 10:42
6 review of that material on the 21st, a couple of days
7 later, is that right?

8 A. Yes, I commenced the process on the 21st.

9 26 Q. I think this is the document upon which you made your
10 notes, is that right? 10:43

11 A. That's correct.

12 27 Q. Okay. Now, we won't go through it all. For example,
13 if you go down to -- if Mr. Kavanagh can scroll down,
14 you're underlining the document and you're initialling
15 the paragraphs. Do you see that? 10:43

16 A. Yes.

17 28 Q. Can you just tell the Chairman what you are doing
18 there?

19 A. I'm just making notes, outlining parts that I consider
20 may be significant and that. 10:43

21 29 Q. Okay. And if you can keep scrolling down please,
22 Mr. Kavanagh. That's the introductory. We would have
23 opened a lot of this yesterday with Commissioner Finn.
24 If you can just keep going down please. And then just
25 by way of example, at the end of that first section -- 10:43
26 actually, I might ask you to go to -- can I see what
27 page you're on, Mr. Kavanagh, please? 12027. If you
28 can go 13032, please. We can see the document is
29 extensively underlined. Is that your modus operandi of

1 working and how you're reviewing it?

2 A. Yes, with investigation files. With a lot of

3 correspondence I tend to underline and just make notes.

4 30 Q. Okay. I'm sorry, Mr. Kavanagh, it's 12032. At the end 10:44

5 of that first section, for example there, where there's

6 findings that are made, you write "agreed Finbarr

7 O' Brien"?

8 A. Yes.

9 31 Q. Can I just say, we noticed when we were going through 10:44

10 the document, and I will pick out different ones, but

11 mostly that's the pattern which this document takes.

12 And if Mr. Kavanagh kept scrolling there just for a

13 moment, the Chairman will see that you follow this

14 process and at the end of the findings there were 18

15 issues and at the end of each one predominantly you're 10:45

16 marking "agreed Finbarr O' Brien" okay?

17 A. Mm-hmm.

18 32 Q. Can I ask you, if you stop there, Mr. Kavanagh, for a

19 moment, what level of interrogation is this involving?

20 A. Well it's involving reading the covering report and 10:45

21 then I would have referred to a number of the documents

22 that were appended to the file and then drawing on my

23 own conclusions based on the evidence that was

24 submitted on the file.

25 33 Q. If we keep ongoing down, there are some notes which 10:45

26 appear -- as I say, it follows a situation where

27 there's underlining and the marking of agreed and date,

28 but, for example, if I could ask Mr. Kavanagh to open

29 12037. Actually, if you could open 13036. Yes, that

1 is perfect. One of the complaints made by Garda Keogh
2 related to what is termed here the Liam McHugh alleged
3 complaint, all right?

4 A. Mm-hmm.

5 34 Q. And if we go on to the next page, there are Post-Its on 10:46
6 this page, are they your Post-Its?

7 A. Yes.

8 35 Q. Okay. Can you read out what is on them, please, for the
9 Chair, they are a little bit difficult to read.

10 A. Yeah. "Clarification from Superintendent McBrien as to 10:46
11 what other members a report was sought from at a
12 request to the district officer. This complaint may be
13 obviated had the sergeant --"

14 36 Q. "May have been" perhaps?

15 A. "This complaint may have been obviated had the sergeant 10:46
16 sought specific information from Garda Keogh prior to
17 transmitting."

18 37 Q. Okay. Now, what is that? Are these your thoughts?

19 A. Yes.

20 38 Q. Are these just observations? 10:47

21 A. Yes. So, in respect of that, the clarification I
22 sought on that was the fact that somebody had made an
23 allegation that Gardaí had misappropriated funds or
24 basically stolen funds from them. So the concern I
25 would have had was, had that element been finalised in 10:47
26 respect of had that been investigated and had they come
27 to a conclusion. Although it is part of Garda Keogh's
28 complaint in respect of the bullying, the fact that he
29 was asked that, I had a concern to make sure that the

1 investigation, that aspect had been investigated. And
2 then the other area there is my view obviously that the
3 report that the sergeant forwarded should have probably
4 addressed that with Garda Keogh prior to transmitting
5 the report to the superintendent.

10:47

6 39 Q. Okay. So it would appear then that when you are
7 looking at the findings, you are digging into them
8 effectively, and you are considering from an
9 investigative purposes, and I don't mean Commissioner
10 Finn, you're sort of going one level below that and you
11 are saying, well, locally you're querying did X, Y or
12 Z --

10:48

13 A. No, I am bringing my skills as an investigator into my
14 deliberations on the file. So if there are matters
15 that, say, for example, I feel are outstanding or
16 matters that require clarification, I will send them
17 back for clarification. So I am not investigating it,
18 but I am just drawing on the file as the file is
19 presented to me.

10:48

20 40 Q. But in fairness, I suppose one thing we sought to
21 clarify yesterday and again today is that this is a
22 bullying and harassment investigation, but these
23 comments, as I say, seem to be a level below that.
24 They seem to be digging into local management responses
25 and the mechanisms or what was or should have been done
26 correctly or not. Would you agree or disagree? You
27 can agree or disagree with me?

10:48

10:48

28 A. No, I disagree with you, because the essence of Garda
29 Keogh's complaint was that management, that specific

1 members of management had engaged in what I describe as
2 intrusive supervision. And this was an example of
3 where he cited as an example of the level of intrusive
4 supervision. But the point I make there is that based
5 on the report that was submitted to the superintendent, 10:49
6 that I felt -- my view is that the role of the sergeant
7 should have been to address that aspect, rather than
8 just transmit it to the superintendent. So that would
9 be my view.

10 41 Q. Okay. And we will come back to that in a moment 10:49
11 because I think you write a specific letter, don't you?

12 A. I seek clarification, yes.

13 42 Q. Okay. Now number 5 there, was the car tax issue. If
14 you keep going forward, you're marking "agreed" on the
15 findings. I think it's the same for the alleged 10:49
16 oppressive supervision issue. But if we can on down to
17 number 8, which is:

18
19 "Garda A's access to firearms and the same shift
20 pattern." 10:50
21

22 This is at 12042. Here we are. Can I just ask, are
23 they question marks there in the corner?

24 A. They are, yeah.

25 43 Q. Okay, but you don't have any comment there. So can you 10:50
26 tell us why you were marking them with question marks?

27 A. I'll just read them. Yeah, I suppose I was questioning
28 as to what exactly was being alleged here. I mean, if
29 you read:

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"Garda Keogh alleges that Garda A called to the station on 5th May 2015 and took out a firearm from a safe behind the public office."

10:50

That would be -- there would be a normal procedure in respect of the taking out of firearms, so I am questioning as to what is actually being alleged here.

"Garda Keogh raised this issue with Superintendent McBrien on the 17th June. According to Superintendent McBrien's notes while he, Garda Keogh, was concerned but not in a major way he stated that he was not in fear of Garda A attacking him."

10:50

So, I am just kind of questioning as to why this actually was alleged in the first place, or what was being alleged?

10:51

44 Q. It may suggest that you were in the dark about the connection between Garda Keogh and Garda A and what the history was there; namely the protected disclosures issues, the criminal investigation. Were you in the dark? Did you know what the connection was between Garda Keogh and Garda A?

10:51

A. No, I wasn't aware. Because, as I said, it wasn't on the file.

10:51

45 Q. Okay. So you didn't know that protected disclosure had been made concerning this particular garda?

A. No.

1 46 Q. Okay. And again, we'll look at your letters that you
2 sent and again, as I say, we will revert to that issue.
3 Now as we go on down you continue going through the 18
4 issues, you continue to mark as "agreed" but can we
5 stop at issue 12, which is on 12047. So this is: 10:51
6
7 "Critique of investigation of robbery from the person
8 incident."
9
10 A. Yes. 10:52
11 47 Q. If you go to the next page, I think that is one of your
12 Post-Its as well. Can you have a look at that.
13 A. Yeah. "Where is the original correspondence from Garda
14 Keogh PID incident occurred on the 13/9/15."
15 48 Q. Can I ask you, and this is just to clarify because it 10:52
16 is something that has come up here at the hearings,
17 were you querying was there a Pulse record for this?
18 what were you querying?
19 A. No, I wanted to have a look at what the Pulse record
20 said. 10:52
21 49 Q. Okay, so you were looking for the Pulse record?
22 A. Yeah. Well, PID would indicate that there is already
23 an existing Pulse record.
24 50 Q. What was your thought process behind that?
25 A. Well, I think if you look at the event, it was the case 10:52
26 of a robbery and obviously there were queries by the
27 superintendent. So I would like to see what the
28 original Pulse incident said in order for the
29 superintendent to raise a query.

1 51 Q. Okay. Now again, that's issue number 12, and you agree
2 with the next number of issues, but can I ask you then
3 to come to page 12050, which is issue number 14, so
4 it's 12050, yeah. So this is number 14:
5
6 "Mix up regarding reporting of sick leave."
7
8 Okay? You go down through it and it's underlined, but
9 on the next page you have another Post-It, if you can
10 just -- "obtain copy of..." I think it's is 10:53
11 "Superintendent Alan Murray's report", is it?
12 A. Yes. I have a feeling that refers to the discipline,
13 it I ma be stuck in the wrong...
14 52 Q. Okay. This is the discipline for AWOL issues in July
15 2016, is that right? 10:54
16 A. Yes.
17 53 Q. And you're looking to obtain a copy of superintendent
18 Alan Murray's report dated 11/11, requested by Chief
19 Superintendent wheatley?
20 A. Yes. 10:54
21 54 Q. I think that is where she requested the rationale for
22 the imposition of penalty, isn't that right?
23 A. Yeah.
24 55 Q. Okay. As I say, we will come back to that. Now, again
25 the intervening issues, you mark "agreed" on them all, 10:54
26 but can I ask you to go to the next one, where you
27 raise an issue, it's at 12054. This is the denial of
28 commendations issue. If you can just take the Chairman
29 through your Post-Its there?

1 A. "Obtain a view copy of file or correspondence which
2 sought the award to the members on 8/11/16 arising from
3 the rescue on the River Shannon in Athlone on 22/4/15."
4
5 That relates to an allegation by Garda Keogh that I 10:55
6 think his name was deliberately misspelt or misnamed in
7 respect of an award. So what I wanted to do was to
8 have a look at whether the error had occurred in
9 sending up the commendation from within the district or
10 whether the error had occurred outside of the district. 10:55
11 56 Q. Okay. On the next page, I think we are moving into the
12 final issue that Commissioner Finn looked at, which is
13 number 18 and the receipt of the Tribunal order by
14 Garda Keogh, I think the Post-It seems to refer to that
15 issue, is that right? 10:55
16 A. Yeah. "Copy of the correspondence sent to all
17 personnel in Athlone district as a consequence of the
18 order from the Disclosures Tribunal dated 20/2/17 and
19 also copy of the service of the Tribunal order on Garda
20 Keogh on 21/3/17 and precise details of his absence 10:56
21 from duty during the period."
22 57 Q. Okay. So I think they're the issues on which you had a
23 query or that you were minded to interrogate a little
24 bit further, is that right?
25 A. Yeah. On my reading of the file, yes. 10:56
26 58 Q. On your reading of the file, okay. Now, I am going to
27 go to those questions, because you do write a letter
28 but what I want to just ask you in the meantime is, we
29 also in disclosure received some pages of the report

1 with notes on them. Just an example, at 7475, if you
2 just keep going down, please. Do you see that writing
3 there in blue?

4 A. Yeah.

5 59 Q. Now, I think initially when this material was provided 10:57
6 it was thought that these were your handwritten notes
7 and then subsequently we were told that they weren't?

8 A. Yes.

9 60 Q. Can you confirm that position?

10 A. They're not my writing. 10:57

11 61 Q. Do you know, do you recognise that handwriting? Was it
12 anyone who was assisting you?

13 A. No, I couldn't. No, it certainly wasn't anybody,
14 because nobody -- nobody, only myself actually noted on
15 the copy I had. So I can't assist you as to who. 10:57

16 62 Q. Okay. And did you have anybody assisting you? It was
17 a very large investigation, that took 13 months. When
18 you are doing this on the 21st January, does anyone
19 assist you or do you have a team working on it or is it
20 just literally yourself? 10:57

21 A. No, I do it myself.

22 63 Q. Okay. Now, after your review on the 21st, which we
23 have seen your notes, you go on to write a letter the
24 following day to Assistant Commissioner Finn, and
25 that's at 5597, please. Okay. So this is your letter, 10:58
26 is that right?

27 A. Yes. Yeah.

28 64 Q. Okay. So in relation to issue number 4, Liam McHugh:
29

1 "Allegation that Liam McHugh had been searched by a
2 number of Gardaí (including Garda Keogh) who seized
3 money from Liam McHugh and the allegation was that the
4 Gardaí kept and subsequently spent the money."

10:58

5
6 Is this your query then:
7

8 "Can you clarify if Garda Keogh was the only member to
9 submit a report on this matter or did Superintendent
10 McBrien engage with other members to clarify the
11 allegations that Gardaí kept and subsequently spent the
12 money?"

10:58

13 A. That's my query, yes.

14 65 Q. Okay, that's your query. The next one is on issue 12:
15

10:58

16 "Critique of the investigation of the robbery.
17

18 When Superintendent Murray was carrying out his daily
19 PAF he reviewed the incident and was not satisfied with
20 the contents of Garda Keogh's report and the amount of
21 information it contained."

10:59

22
23 And you refer to the appendix.
24

25 "Superintendent Murray was dissatisfied with the lack
26 of detail in the report and the lack of action that had
27 been taken at the time the incident was reported, apart
28 from taking the injured party to point out the scene
29 where the incident was alleged to have taken place.

10:59

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Garda Keogh submitted a subsequent report providing additional information on the action taken on the night in question."

10:59

And then you ask:

"Could it be clarified if it was the Pulse narrative incident report PID 12207121, in which Superintendent Murray referred to in his correspondence dated 13th October 2015 and, if so, I would appreciate a copy."

10:59

How did you think that might assist you, looking for the copy of that?

A. Well, Superintendent Murray, like all superintendents, would review Pulse incidents the following day and based on the narrative of what is set out in the Pulse incident, he would then maybe have concerns as to whether or not the investigation was conducted in an efficient way. So that's really why. So I would look at it to see whether that was reasonable.

10:59

11:00

66 Q. Okay.

67 Q. CHAIRMAN: Sorry, can I just ask, could you have just logged in and got the Pulse? You had the number.

A. That's correct. But I would have preferred to have it formally --

11:00

68 Q. CHAIRMAN: So the more official way was to go through this, you were asking other queries as well, so this one, even though you could have done it yourself, and

1 everybody knows what you're at, is that right?

2 A. Exactly. So it's clear for everybody what the
3 clarification is.

4 CHAIRMAN: Sorry, Ms. McGrath. Thank you very much.

5 69 Q. MS. McGRATH: Not at all. Then at 14: 11:00

6

7 "Mix-up regarding reporting off sick leave.

8

9 Chief Superintendent Wheatley conducted review of the
10 discipline investigation conducted by Superintendent 11:00

11 Murray, Mullingar, concerning breaches committed by

12 Garda Keogh at Athlone Garda Station. Chief

13 Superintendent Wheatley states that the decisions

14 outlined in Superintendent Murray's report of the 11th
15 November 2017 appear to be logical, well thought out 11:01

16 and carefully considered and show an understanding of

17 the concerns for member's welfare and financial

18 circumstances."

19

20 And you look for a copy of that: 11:01

21

22 "I would appreciate a copy of this report which sets
23 out the rationale for the decision-making."

24

25 Okay. And then on the denial of the commendations, you 11:01

26 refer to two incidents of 28th October 2014, 22nd

27 September 2015. You say you note from the contents at

28 appendix 20 from the Irish Water Safety, annual

29 national award ceremony in Dublin Castle on 8th

1 November 2016, that it mentions Nicholas Glennon,
2 Westmeath. So that is what you were trying to get to
3 the bottom of there, is that right?

4 A. Where the mistake occurred.

5 70 Q. And you would:

11:01

6

7 "... appreciate a copy of the original file that was
8 forwarded to the district division on this matter so I
9 can clarify the origins of the spelling mistake."

10

11:01

11 Okay. Now that letter addresses the Post-Its that we
12 saw, that had you on the document.

13 A. Hm-hmm.

14 71 Q. One of the matters that is not there, if you remember,
15 when we looked at issue number 8, you had question
16 marks next to the Garda A and firearms issue?

11:01

17 A. Mm-hmm.

18 72 Q. You don't ask a question about that. Why does that
19 fall away or does it fall away?

20 A. Well, because as I said, I just questioned the fact why
21 it was actually alleged, what was being -- what Garda
22 Keogh was alleging. It wasn't something I needed
23 clarification on.

11:02

24 73 Q. But what was the point of that exercise, I suppose I
25 have to ask you? Where did that lead you? How did you
26 resolve it in your own mind?

11:02

27 A. Well, you know, when you read a file, sometimes you
28 make a little note. My note was I couldn't figure out
29 what Garda Keogh was actually alleging in that. That

1 is what that was about.

2 74 Q. Okay. And how did you resolve it? I mean, you have to
3 sign off --

4 A. I it resolved it on the basis of what Assistant
5 Commissioner Finn, the conclusions he drew and I felt 11:02
6 that the conclusions were appropriate and reasonable.

7 75 Q. So are you saying you had resolved it in your mind by
8 the time you read the next paragraphs?

9 A. No, I am saying I resolved it by the time I drafted up
10 the correspondence seeking clarification on the other 11:03
11 matters.

12 76 Q. But they seem entirely different matters. So I just
13 have to ask you how A could become B effectively?

14 A. Sorry?

15 77 Q. I have to ask you, you asked for clarification on 11:03
16 totally different matters, getting specific responses
17 on specific issues, but I am just asking you how you
18 resolve your difficulty with number 8?

19 A. I resolved it by looking at, as I said, the file. I
20 was satisfied that the conclusions that Assistant 11:03
21 Commissioner Finn formulated on the basis of the
22 investigation, I was satisfied that they were
23 reasonable and appropriate.

24 78 Q. Okay. So, therefore, going back to what I said to you
25 earlier, it seemed that, is it the case you read on a 11:03
26 few paragraphs and you thought, I'm happy enough with
27 that now?

28 A. I couldn't be precise, but by the time I was drafting
29 up the correspondence and then I would also point to

1 the fact that they are ones where I put a Post-It, so
2 they are more significant. This was one where I just
3 put the question marks and my assessment of that is I
4 just interpret what exactly Garda Keogh was actually
5 alleging. 11:04

6 79 Q. Can I ask you, did you ever go back to anyone or seek
7 to clarify with anybody the significance of Garda A?
8 A. No.

9 80 Q. To Garda Keogh?
10 A. No. 11:04

11 81 Q. So you signed off that finding and you weren't aware of
12 any background or context, is that right?
13 A. No.

14 82 Q. Okay. So you write your letter of queries, as we have
15 just seen, on 22/1/2019. Now, we know that 11:04
16 Commissioner Finn, one of his assistants was an
17 Inspector Kennedy, who looks into these matters for
18 him. I opened up a document to the commissioner
19 yesterday, which I would just like you to look at
20 please for a moment, at 5639. Do you see the date 11:04
21 there, 1st February 2019.
22 A. Yes.

23 83 Q. You see the four issues there that you had raised?
24 A. Hm-hmm.

25 84 Q. He confirmed that this was a draft reply to your 11:05
26 queries, do you see that? If you stay perhaps on the
27 first page. So it's 1st February 2019, and it says:
28
29 "I refer to the above and your correspondence on 22nd

1 January 2019. I have examined your queries and can
2 report the following to clarify the issues raised. "

3
4 There's the Liam McHugh. As I say, it appears to be
5 the working document of one of Commissioner Finn's 11:05
6 assistants and I will take this one by example, we
7 don't need to go into all of them. It says:

8
9 "In respect of this issue I have liaised directly with
10 the district office in Athlone, the divisional office 11:06
11 Mullingar. There is no documentation to indicate that
12 any further enquiries were conducted into the Liam
13 McHugh allegation. While Superintendent McBrien
14 requested D/Superintendent Mulcahy to look into the
15 matter, this was not done as it did not fall within the 11:06
16 remit of his investigation and the file was returned to
17 Superintendent McBrien (copy of file attached). From
18 this point it does not appear that any further
19 enquiries were conducted. "

20
21 And it says: 11:06

22
23 "Note to AC Finn. "

24
25 He confirmed yesterday this was a note to him: 11:06

26
27 "I would respectfully suggest that Superintendent
28 McBrien should be asked to directly respond to this
29 particular query in order that a definitive response

1 can be given to Assistant Commissioner O'Brien."

2
3 Okay? So I asked him was this their document
4 effectively and their draft and he confirmed that it
5 was. Now, I note that you received a response to your 11:06
6 queries three days later. This was on the 4/2/2019.
7 This is 7369 of the book. So if we could look at that
8 document. It's 7369. Sorry, I just want to find the
9 correct version of that. I'm looking for -- I think
10 you received a reply on the 4th February. If you just 11:07
11 bear with me for a moment, commissioner, I will find
12 the 4th February. Okay, sorry, I have given
13 Mr. Kavanagh the wrong number. It's 5637, sorry. I
14 just want to confirm what you actually got, because if
15 you see there at the top, it isn't dated. Do you 11:08
16 remember this the one you got? Because if Mr. Kavanagh
17 goes to the next page, keep going, please, it says:

18
19 "Michael Finn, 4th February 2019."

20
21 Can you just tell the Chairman, did you get the one we 11:08
22 looked at previously? Because you do have some notes
23 subsequently on the one dated the 1st February. I just
24 want to clarify with you, did you receive the 1st
25 February 2019 document we opened or is this the 11:08
26 response that you received? Do you remember?

27 A. I presume it's this one, but I don't see any of my
28 notes on the previous one.

29 85 Q. Well, it's just that there is also in disclosure a copy

1 of -- 12019, do you see this one?

2 A. Mm-hmm.

3 86 Q. This is 1st February 2019, this is the one that appears
4 to have your notes on it?

5 A. Yeah. 11:09

6 87 Q. So is this the one you worked off, do you think?

7 A. That's the one I worked off, yeah.

8 88 Q. Okay. So this would appear to be their working
9 document. You write your notes and you underline some
10 of them, you see that, and you mark them. When you're 11:09
11 initialling them there, are you saying you're satisfied
12 the response or what is your position there when you
13 are noting there your signature and date?

14 A. Yeah. No, in that one I'm satisfied with the response
15 in respect of the investigation into the allegations of 11:09
16 bullying.

17 89 Q. And I think you seem to -- if we stay with the Liam
18 McHugh matter, I think you seem to have concentrated on
19 that to a large extent. If I could ask you to look a
20 note that you made at 12015, do you see that? I think 11:09
21 that is your note, is it, commissioner?

22 A. Yeah, yeah.

23 90 Q. Can you read that out? It doesn't seem to be dated?

24 A. Yeah. "Reference to the fact that the matter of the
25 alleged theft of €600 was not investigated and 11:10
26 Superintendent McBrien should be asked to explain but
27 does not denote bullying either individually or
28 corporately."
29

1 So the issue I have is in respect of the actual offence
2 that was -- or the alleged offence that was disclosed
3 in respect of the theft of money, that that matter
4 should be clarified, not the allegation of bullying.

5 91 Q. Can I ask you, did you make that -- as I say, it 11:10
6 doesn't have a date on it and in fairness and you may
7 not remember, did you make it before or after you got
8 the responses in from the Finn investigation?

9 A. I would -- I can't say precisely. My assessment would
10 be I would have made it before I sent the query to 11:11
11 Assistant Commissioner Finn.

12 92 Q. Okay. Now, one of the things -- if we can go back to
13 that working document that had your initials on it
14 there, the last document just on the screen. I will
15 give Mr. Kavanagh the number of that. I think it's 11:11
16 12019. So you're initialling your responses. At that
17 stage then are you satisfied that all your queries have
18 been answered and are you satisfied that you can
19 proceed then to complete your review? Is that the
20 position? 11:11

21 A. Yes, in respect of the bullying.

22 93 Q. Okay. Now, this brings us then a couple of days later.
23 And just looking at your statement. You say that --
24 and this is at page 13412, in fairness, if we could
25 just put it maybe up in front of you so you can look at 11:12
26 it. 13412. If we can go down to two-thirds of the way
27 down, perhaps or even three quarters of the way down.
28 Keep going, please. Stop around there. The 4th
29 February, do you see that?

1 A. Yes. Commissioner Finn on the 4th February.

2 94 Q. That sentence:

3

4 "I received the responses to my request for additional

5 material and clarification from Assistant Commissioner 11:12

6 Finn on 4th February 2019."

7

8 But you're saying what you got was that letter, the

9 draft typed letter of the --

10 A. I think there might have been some attachments as well. 11:12

11 The correspondences references. So it wasn't just the

12 letter, I think, you know, say, for example, the file

13 in respect --

14 95 Q. I think you got Superintendent Murray's report of the

15 11th November, isn't that right? 11:13

16 A. Yes, and I think also the commendation, the

17 correspondence that was sent up through the channels in

18 respect of the commendation, the awards for bravery,

19 where, as I said, Nicholas Glennon, I don't even -- as

20 opposed to Garda Nicholas Keogh. So it wasn't just the 11:13

21 correspondence, there was other matters attached.

22 96 Q. Okay. And the attachments dealt with the individual

23 issues, isn't that right?

24 A. That's correct.

25 97 Q. You say: 11:13

26

27 "I received this additional material on the 5th

28 February."

29 A. The 4th I think.

1 98 Q. "In receiving this material, I underlined some of the
2 correspondence and affix my initials and the date
3 5/2/209 on some of the documents."
4

5 And that's what we saw there, wasn't it? 11:13

6 A. That's correct.

7 99 Q. You say:

8
9 "Having reviewed the investigation file, including the
10 additional materials supplied, I was satisfied that all 11:13
11 appropriate steps had been undertaken by Assistant
12 Commissioner Finn in his investigation into the
13 allegations of bullying by Garda Nicholas Keogh. That
14 Assistant Commissioner Finn had conducted a thorough
15 and impartial investigation and I agreed with Assistant 11:14
16 Commissioner Finn's conclusion that there was no
17 evidence to support the allegations of bullying against
18 any of the Gardaí referred to in Garda Keogh's
19 complaint."
20

21 So again just to clarify, whilst you're carrying out a
22 review you're adopting his findings effectively, is
23 that right? 11:14

24 A. Yes. Well, I am either accepting them or rejecting
25 them. That's my role. So in this case I accepted his 11:14
26 findings.

27 100 Q. Okay. Now, what we have, you say:

28
29 "I communicated my decision to all parties by official

1 correspondence dated 7th February 2019."

2
3 And you further notified the executive director of HRPD
4 of your decision in correspondence on the same date as
5 the parties were notified. 11:14

6
7 "This statement has been read over to me and I have
8 made and initial ed one amendment therei n."

9
10 Can I ask you about this: You wrote a number of 11:14
11 letters on the 7th February. For example, you wrote to
12 Chief Superintendent Curran, Superintendent Murray,
13 Chief Superintendent wheatley, isn't that right?

14 A. Yes.

15 101 Q. As you say there, you wrote to HRPD and you also to 11:15
16 Garda Keogh, isn't that right?

17 A. That's correct.

18 102 Q. Can we just look at one of those letters, for example,
19 7374, so that the Chairman can see the type of
20 decisions that are you issuing. So this is 7374. And 11:15
21 this is the one by way of example to Chief
22 Superintendent Curran. Do you recognise that one?

23 A. I do.

24 103 Q. If you look at 7384, it's signed and dated by you 7th
25 February 2019, isn't that right? 11:15

26 A. That's correct. It's signed, yes, 7th February.

27 104 Q. Could you go back to the summary there, please,
28 Mr. Kavanagh, just the previous page, just scroll up a
29 little bit there, please. Do you see the summary?

1 A. Yes.

2 105 Q. You use the language, you say:

3

4 "My findings are that you fulfilled your obligations
5 and conducted your duties to ensure an accountable and 11:16
6 professional policing service was being delivered to
7 the public. Your actions are examples of a proactive
8 management that ensured appropriate governance and
9 supervision was maintained to achieve policing
10 objectives and this could not be construed as either 11:16
11 bullying or harassment."

12

13 It continues in that:

14

15 "Furthermore, I found that your interaction with Garda 11:16
16 Keogh was found to be both legitimate and proportionate
17 considering some of the serious issues that you had
18 raised and actively managed by you."

19

20 That would certainly suggest that you, as the reviewer, 11:16
21 you are the decision-maker, is that right?

22 A. Yes.

23 106 Q. Okay. You issued, as I say, a series of those letters,
24 I have listed the names, but one of the things that was
25 provided to us in disclosure that I would just like to 11:16
26 ask you about, is that you also seem to have written a
27 letter on the same day to a Chief Superintendent Duff,
28 do you remember that? If I could look at 13437.
29 13447. Okay. If you scroll down through that. So

1 it's Chief Superintendent Duff, Mullingar.

2

3 "Complaint of bullying and harassment made by Garda
4 Keogh."

5

11:17

6 Can we look at the second page first. Is that signed
7 and dated by you, the 7th February?

8 A. Yes.

9 107 Q. Okay. So this is the same day you issue your decision
10 letters, isn't that right?

11:17

11 A. Yes.

12 108 Q. Can I just ask you about this though? If you go to the
13 previous page again, please, Mr. Kavanagh. So you
14 refer in the second paragraph to the nomination by
15 Mr. Mulligan, you refer to 8.9, which is the review
16 section that we opened earlier?

11:17

17 A. Yeah.

18 109 Q. But you continue and say:

19

20 "However, there is one investigation which believe
21 requires further attention. On 9th June 2014
22 Superintendent McBrien, Athlone, became aware of an
23 allegation that Liam McHugh had been searched by a
24 number of gardaí (including Garda Keogh) who seized
25 money were Liam McHugh and the allegation was that the
26 Gardaí kept and subsequently spent the money."

11:18

11:18

27

28 And you continue. You say:

29

1 "This incident came to light as a result of information
2 received by Garda Aidan Lyons, Athlone Garda Station.

3
4 Superintendent McBrien asked Garda Keogh for a report
5 on the matter. Garda Keogh in his response to 11:18
6 Superintendent McBrien on 27th July 2014 stated that
7 the only interaction that he had with Liam McHugh was
8 when he met him on the beat on 19th July 2014. Prior
9 to that he had no contact or dealings with Mr. McHugh
10 in the previous three months. 11:18

11
12 An investigation was initiated locally and Mr. McHugh
13 was requested by D/Garda Curley to make a witness
14 statement regarding the alleged disclosure to Garda
15 Lyons, Liam McHugh declined to do so. 11:18

16
17 I am to enquire what further investigation took place
18 in Athlone regarding the allegations made by Liam
19 McHugh.

20
21 Report in due course, please. " 11:19

22
23 Can you just explain the background? You had already
24 issued your decisions?

25 A. Yes. 11:19

26 110 Q. You're saying there is one investigation that requires
27 further attention. Can you just tell the Chair why you
28 wrote that letter and why you were raising these
29 queries, notwithstanding the fact that effectively were

1 you functus officio at this stage, you had issued your
2 decisions and the matter had finished?

3 A. No, this relates to the actual allegation by Liam White
4 [sic]. So Liam White is after making an allegation.

5 111 Q. Liam McHugh? 11:19

6 A. Liam McHugh. Liam McHugh is after making an allegation
7 that he was stopped by Gardaí and €400 was taken off
8 him.

9 112 Q. CHAIRMAN: I think it's is €800.

10 A. Sorry. 11:19

11 113 Q. CHAIRMAN: Not that that's is important.

12 A. Yes.

13 114 Q. CHAIRMAN: It appears to be six in some things. It's
14 not important.

15 A. Yes. 11:19

16 115 Q. CHAIRMAN: But he didn't have 600 or 800, it's 800.
17 Sorry.

18 A. So my concern is not in respect of the bullying aspects
19 of it, it is in respect of the fact that a member of
20 the public had made a serious allegation of 11:20
21 inappropriate conduct in respect of members of the
22 Garda Síochána. I wasn't satisfied that I had been
23 given all of the information to satisfy me or to
24 satisfy the chief superintendent there that this aspect
25 had actually been investigated, not the bullying. 11:20

26 116 Q. MS. McGRATH: so you still had some discomfort, or did
27 you, in respect of the Liam McHugh investigation?

28 A. I had discomfort in respect of, yes, whether an
29 investigation had -- a full and thorough investigation

1 in respect of the missing money. So that's why I wrote
2 to the chief.

3 117 Q. Okay. And you felt that you could extrapolate this out
4 and separate it forensically from the bullying aspect
5 of it, is that right? 11:20

6 A. I believe it was a separate matter.

7 118 Q. Okay. You didn't wait for the response from Chief
8 Superintendent Duff before issuing your decision
9 letters, why was that?

10 A. Because it didn't have a bearing, that didn't have a 11:20
11 bearing on the bullying. Because the allegation by
12 Garda Keogh was that this was an example of an
13 inappropriate and intrusive enquiry on him and
14 supervision. That was his allegation. I wanted to
15 find out had an investigation taken place in respect of 11:21
16 the allegation of monies gone missing.

17 119 Q. Do you not think you could have thrown more light on
18 the issue that would have further informed your report?

19 A. No.

20 120 Q. I mean, you clearly raised issues on this but yet you 11:21
21 were happy to make your findings before you had
22 answers?

23 A. No, I would have seen it as separate.

24 121 Q. Okay. Now there's a reply from Chief Superintendent
25 Duff on 11897. 11897. It comes in, in fact it's only 11:21
26 a couple of days later, on 11th February 2019.

27 A. Hm-hmm.

28 122 Q. So we see there the reference to the alleged facts.
29 And the Chairman has seen all of this before. If we

1 continue down onto the next page, it's a repetition of
2 Superintendent McBrien's and Detective Sergeant
3 Curley's -- if can you stop please, Mr. Kavanagh, and
4 how their efforts to address it. There's a reference
5 to the fact that allegedly Mr. McHugh declined to make 11:22
6 a statement. And it says there:

7
8 "Mr. McHugh has not to date made a statement regarding
9 the comments that he made to Garda Lyons in 2014.

10 11:22
11 Superintendent McBrien did speak to Garda Keogh about
12 the matter on 23rd July 2014. Garda Keogh stated that
13 he did meet Mr. McHugh while on the beat patrol on 19th
14 July 2014 and they had a general conversation and that
15 prior to that he had not spoken to Mr. McHugh in three 11:22
16 months.

17
18 From my examination of this file, it would appear that
19 no action occurred to facilitate the taking of a
20 statement from Mr. McHugh since the summer of 2014. " 11:22
21

22 Now you outlined the trigger for you writing to him and
23 what it concerned or made you uneasy. would you accept
24 that this response doesn't really answer your concerns?

25 A. No, I wouldn't. My view is that it's really a matter 11:23
26 for the chief superintendent to satisfy himself that
27 the appropriate steps -- because he's responsible, the
28 superintendent is responsible for the investigation of
29 crime in their locality. My issue was to alert him

1 that this probably hadn't been fully discharged. So if
2 the chief superintendent writes back to me and is
3 satisfied, then I am not responsible for the Eastern
4 Region, that's his responsibility. He is a senior
5 officer, he would be aware of the ramifications of the 11:23
6 allegations and he has satisfied himself there in
7 respect of that matter.

8 123 Q. Well, you see, one of Garda Keogh's complaints in the
9 bullying and harassment investigation, and this is very
10 much paraphrasing it, but using your phrase, was that 11:23
11 this issue was not fully discharged and if it had been
12 fully discharged -- or the fact that it wasn't
13 constituted as bullying and harassment of him and was
14 part and parcel of it all, that you couldn't really
15 separate this issue out. And that's one of his 11:24
16 allegations and something that we are looking into here
17 in the Tribunal. So, do you accept that this continued
18 to bubble away, it's not fully resolved, but you issued
19 your finding nonetheless?

20 A. No, I wouldn't accept that. 11:24

21 124 Q. Okay. Now, one of the things -- I am just almost
22 finished, commissioner. One of the complaints that
23 Garda Keogh made when he was giving evidence before
24 Christmas, he said, for example, that he never met you,
25 he never sat down with you. Can you respond to that? 11:25

26 A. That's correct.

27 125 Q. I take it that when you are carrying out a review, it's
28 a paper review, you don't meet?

29 A. It's a review of the investigation file, that's

1 correct.

2 126 Q. I think you didn't meet anybody who was involved in it.

3 A. No.

4 127 Q. Is that right?

5 A. Yes. 11:25

6 128 Q. He says also it was carried out very quickly, this is
7 your review, and he used the words at one point in his
8 evidence that you simply just rubber stamped the Finn
9 investigation. What do you have to say to that?

10 A. I would refute that. I discharged the obligations in 11:25
11 accordance with the timelines as set out in the policy
12 and I think an examination the file and the manner in
13 which I dealt with the file would indicate otherwise.

14 129 Q. Now, he does say at one point on Day 114 that he's not
15 necessarily pointing a finger at you in many ways 11:25
16 because he says the Finn investigation was so flawed
17 that anything you could have done could not have
18 salvaged the situation. What do you have to say to
19 that?

20 A. I don't accept that. 11:25

21 130 Q. I think you are aware that he subsequently filed an
22 appeal in relation to the Finn investigations,
23 encompassing your review on the 11th February, so that
24 was just a couple of days after the letter he received
25 from you, isn't that right? 11:26

26 A. I am aware of that, yes.

27 131 Q. Okay. I think we will have other witnesses dealing
28 with the appeal. I think effectively it had left your
29 desk at that stage, is that right?

1 A. That's correct.

2 132 Q. I wonder if you could answer any questions.

3

4 END OF EXAMINATION

5

6 CHAIRMAN: Yes, Mr. O'Brien, good morning.

7

8 ASSISTANT COMMISSIONER FINBARR O'BRIEN WAS

9 CROSS-EXAMINED BY MR. O'BRIEN, AS FOLLOWS:

10

11 133 Q. MR. O'BRIEN: Good morning, commissioner. If we could
12 just go back first of all please just to review the
13 Policy again and if we could have page 4205. If you
14 just scroll down to paragraph 8.9, please. Ms. McGrath
15 has taken you through this, assistant commissioner, but 11:27
16 we can see that, as part of your role under the Policy,
17 you have to satisfy yourself that all appropriate steps
18 have been taken and that a thorough and impartial
19 investigation has been carried out, isn't that correct?

20 A. That's correct. 11:27

21 134 Q. So can I ask you, what steps exactly did you take when
22 you received the file in this matter to satisfy
23 yourself that there was an impartial investigation by
24 Assistant Commissioner Finn?

25 A. Well, first of all, I would have looked at the file, 11:27
26 the substantive file, I read the file. I would draw on
27 my experience of 38 years service as an investigator
28 and somebody who reads files on a daily basis. And as
29 I said to the -- as I communicated to all the parties,

1 I would have drawn on the other matters that I alluded
2 to, which was the Garda Síochána Act of 2005, the Garda
3 code of ethics and my own personal values. That's what
4 I would have drawn on, and my expertise.

5 135 Q. Did you ever question Assistant Commissioner Finn, for 11:28
6 example, as to whether he knew any of the parties
7 involved in the complaint prior to taking up his
8 investigation?

9 A. No.

10 136 Q. Can I ask you, in terms of the persons involved in the 11:28
11 investigation, so Garda Keogh, Chief Superintendent
12 wheatley, Chief Superintendent Curran and
13 Superintendent Murray, did you know any of those
14 individuals prior to your involvement in the
15 investigation? 11:28

16 A. I didn't know Garda Keogh, and to my knowledge I never
17 encountered or worked with Garda Keogh. I was a
18 superintendent in Longford for a short period of time.
19 Chief Superintendent wheatley, I would know Chief
20 Superintendent wheatley as I would know all other chief 11:28
21 superintendents within the organisation. I never
22 worked with Chief Superintendent wheatley. She did
23 actually succeed me as the district officer in
24 Donnybrook, when I was promoted. Also, I would work
25 with her on a project currently, which is the uniform 11:29
26 project, of which she is the project manager and I am
27 the project sponsor.

28 137 Q. Just in relation to that, when did that commence, if
29 you can tell us please? Sorry, was that in train at

1 the time of the investigation or is that recent?

2 A. That's recent, it's part of the Commission on the
3 future of policing. It's one of the recommendations in
4 the Commission of future policing. So I was assigned
5 that. So my belief is that it was subsequent to this. 11:29

6 138 Q. would you have a rough date when it commenced?

7 A. I can't give you that. I mean, I can certainly enquire
8 and get back to you, but I don't believe -- I don't
9 believe it's prior to that.

10 139 Q. In relation to Chief Superintendent Curran, would you 11:29
11 know him?

12 A. Again, Chief Superintendent Curran, similar to Chief
13 Superintendent Wheatley, I would know. But the
14 difference with Chief Superintendent Curran is that
15 both of us are from the same part of the city and both 11:29
16 of us attended the same school.

17 140 Q. I see. Do you know him outside of work? Do you
18 socialise together?

19 A. No, we don't socialise together. That doesn't mean
20 that I haven't on occasions been in his company at 11:30
21 social events, but they are collective social events,
22 they're not...

23 141 Q. I see. In terms of Superintendent Murray?

24 A. Yes, Chief Superintendent Murray, again, I would know
25 him, as I said, the same as I would know all officers 11:30
26 of the rank. I never worked with Superintendent Murray
27 directly but he was the regional traffic superintendent
28 for the Western Region, for the former Western Region
29 when I was the chief superintendent in Castlebar.

1 142 Q. I see. In that respect, did he have any reporting
2 duties to you as a senior officer?

3 A. No. He would report to the assistant commissioner but
4 not to me directly. But I would be at the regional
5 meetings with the other chief superintendents and 11:30
6 because he had regional responsibility, he would be at
7 those meetings.

8 143 Q. I see. So I take it then as of January 2019, when
9 you're appointed by Mr. Mulligan to carry out your
10 function, you were satisfied that you had no conflict 11:31
11 of interest with regard to the investigation?

12 A. Yes.

13 144 Q. In terms of your own experience in carrying out
14 investigations of this sort, had you ever carried out,
15 first of all, an investigation as the investigator 11:31
16 under the bullying and harassment policy?

17 A. Yes. I reckon I probably carried out a dozen
18 investigations, well probably a dozen incidents in
19 respect of which I am the investigator or cases where
20 it has come to me for determination. So, yes. 11:31

21 145 Q. That is under the policy that we are currently looking
22 at, that's under that?

23 A. Yes. The Policy. But I would also include the
24 grievance procedure.

25 146 Q. If we could stick perhaps with the Policy that we're 11:31
26 concerned with here. You carried out a dozen
27 investigations or so?

28 A. As investigator. About eight I'd say.

29 147 Q. And the same, you're in the role of deciding officer?

1 A. Yeah, I'd say about four.

2 148 Q. I see. When you received the file, did it surprise you
3 that there were no notes or minutes of interview
4 contained in the papers of interviews, let's say, that
5 Assistant Commissioner Finn had with the persons 11:32
6 complained of? Because we know he met Chief
7 Superintendent Curran, Wheatley and Superintendent
8 Murray? Did it surprise you at all that there were no
9 contemporaneous notes of any of those meetings?

10 A. No. 11:32

11 149 Q. In the investigations that you had carried out, did you
12 interview people?

13 A. No.

14 150 Q. I see. I think you write on the 4th February, if we
15 could just have this letter, the content of it, sorry, 11:32
16 is at 7364. You raise four queries for the attention
17 of Assistant Commissioner Finn. Ms. McGrath discussed
18 the Liam McHugh issue with you a moment ago. If I
19 could ask you to look at issue number 12, which is the
20 critique of the investigation from the robbery of the 11:33
21 person. If you turn over the page, at the top there
22 you say:
23
24 "Could it be clarified if it was the Pulse narrative
25 incident report in which Superintendent Murray referred 11:33
26 to in his correspondence of 13th October 2015 and if
27 so, I would appreciate a copy."
28
29 Did you receive a copy of that report from Assistant

1 Commissioner Finn or his team?

2 A. I believe so. I believe I did.

3 151 Q. If we just move forward to page 7369. I think you told
4 us a few moments ago, this was the document that you
5 were working from. It's the Finn document, it's dated 11:33
6 the 1st February. If you look, sorry, at page 7370.
7 The explanation given is:
8
9 "From examining the reports in this particular
10 incident, it appears that Superintendent Murray had 11:34
11 cognisance of the reports dated 13th September and 2nd
12 October written by Garda Keogh and that they were
13 available to him when he wrote his report on 13th
14 October 2015."
15 11:34
16 I mean, that being the response, were you satisfied,
17 the use of the word "appears"?
18 A. Well, I think if you continue on it says:
19
20 "These reports are within the original appended items. 11:34
21 However, I have attached an individual copy of the
22 completed investigation file retained at Athlone for
23 ease of reference. The original Pulse..."
24
25 So I would say the latter bit... 11:34
26 152 Q. But it doesn't say he had it, it's just an assumption
27 that he it, isn't that correct?
28 A. Sorry, from examining the reports --
29 153 Q. The use of the word "appears", for example, it could

1 have said Superintendent Murray had the report. It
2 doesn't say that. It says it appears. How are you
3 satisfied that he had?

4 A. Well, I satisfied myself on the basis of the documents 11:35
5 that they submitted to me, because my concern was what
6 the actual Pulse narrative said and what the
7 investigation file -- so was it reasonable for the
8 superintendents to have concerns in respect of the
9 conduct of the investigation at that stage.

10 154 Q. I see. I think you wrote to each of the persons 11:35
11 involved on 7th February 2019. If we could just look
12 to your letter, please, to Garda Keogh, for example,
13 and that's at page 7416. As you probably are aware,
14 Garda Keogh is critical of the delay, in the time it
15 took to investigate his complaint of bullying and 11:36
16 harassment, are you aware of that?

17 A. I wasn't, but I have become aware in respect of --
18 presently, yes, in respect of the examination.

19 155 Q. You were.

20 A. I became aware. But on the file, I don't have the 11:36
21 recollection that anything, you know, that he
22 referenced that specific issue in respect of the delay.

23 156 Q. When you received the file, as we know, in January
24 2019, was the initial delay between the month of March
25 2017 and November 2017 something that caught your 11:36
26 attention?

27 A. Not particularly.

28 157 Q. I see.

29 A. I know it's outside the timeframe for the policy, but

1 my experience as an investigator is that it's almost
2 impossible to adhere to the timelines of the Policy.

3 158 Q. Not even that, we know Assistant Commissioner Finn was
4 appointed on 15th November 2017, but the period that I
5 am talking about is the time between which Garda Keogh 11:36
6 makes his statement to Chief Superintendent Scanlan in
7 March --

8 A. Yeah.

9 159 Q. -- and the appointment of Assistant Commissioner Finn
10 in November. Did you consider that period of delay at 11:37
11 all or did you require any explanation from anybody
12 involved in the investigation as to how that occurred?

13 A. No, I didn't seek an explanation as to the delay. My
14 opinion is that the delay is certainly unhelpful and
15 probably was unfair to Garda Keogh, but also at the 11:37
16 same time was equally unfair to Chief Superintendent
17 Murray, Chief Superintendent Wheatley and Chief
18 Superintendent Curran. All parties which would have
19 had a reasonable entitlement or a reasonable
20 expectation that this matter would be expedited. But 11:37
21 in answer, yes, but I didn't feel it actually
22 disadvantaged any of the parties in terms of what the
23 allegations were or what the evidence was adduced.

24 160 Q. We see that in his report, Assistant Commissioner Finn
25 -- I will just get the page for you, it's at page -- 11:38
26 apologies Chairman. 555 -- just at the start of his
27 report, he deals with the delay between the making of
28 the complaint to Chief Superintendent Scanlan and his
29 appointment. Sorry, Chairman.

1 CHAIRMAN: It's all right. This is the report. The
2 Finn report, Mr. O'Brien?
3 MR. O'BRIEN: I apologise.
4 CHAIRMAN: No, no, we will find it.
5 MR. O'BRIEN: It's 5523. You will see at the second 11:39
6 paragraph there.
7 CHAIRMAN: Yes.
8 161 Q. MR. O'BRIEN: It says:
9
10 "While all the parties agreed to cooperate with the 11:39
11 investigation, they were dissatisfied that the
12 investigation had taken such a long period of time to
13 formally commence."
14
15 Then it goes on to say did about 11:39
16
17 "... between the date that Chief Superintendent
18 Scanlan was tasked to take Garda Keogh's statement in
19 March 2017 and 15th November '17."
20 11:39
21 I think in your working papers this was something that
22 you underlined?
23 A. Yeah, it was one of a number of things I would have
24 underlined, yeah.
25 162 Q. You said to the Chairman earlier on in your evidence 11:39
26 that you underline and you outline parts in pen where
27 you consider them to be significant?
28 A. Hm-hmm.
29 163 Q. So you obviously did consider the delay to be

1 significant if it's underlined, is that right?

2 A. Well, what I would have seen that, is that that was the
3 explanation that was provided by Assistant Commissioner
4 Finn in respect of the time it took to bring this -- to
5 conclude this matter. So, you know, if you look at my 11:40
6 report, I would have underlined quite a number of
7 things. So it's not just -- I haven't just highlighted
8 that. But, as I said, that's my explanation.

9 164 Q. Can I ask you, just in relation to the reports, sorry,
10 and the paper file that you had, was it open to you, in 11:40
11 your view, from your experience and from your
12 understanding of the Policy, for you to meet with Garda
13 Keogh?

14 A. No, I don't believe so.

15 165 Q. I see. Did you fully understand and appreciate when 11:40
16 you undertook the review the precise complaint that he
17 was making against each of the officers, the senior
18 officers?

19 A. Yes.

20 166 Q. In your own report, I noticed that you refer to 11:40
21 "corporate bullying". Can I just ask, the Policy
22 itself doesn't give a definition of corporate bullying,
23 isn't that correct?

24 A. That's correct.

25 167 Q. Can I ask you, why did then you, I suppose, move 11:41
26 outside of the parameters of the Policy and use this
27 definition of corporate bullying?

28 A. Because the investigators, Commissioner Finn had
29 included it in his report.

1 168 Q. Did you not, when you were looking at I suppose the
2 Policy itself, consider whether that was an appropriate
3 consideration for the investigation team?
4 A. I thought it was reasonable, yes.

5 169 Q. In circumstances where the Policy doesn't actually 11:41
6 provide for that definition?
7 A. I agree, but I would have felt when looking at
8 Assistant Commissioner Finn's report that it was an
9 appropriate thing for him to examine.

10 170 Q. If we could move forward then, we know that your report 11:41
11 doesn't uphold any of the complaints of Garda Keogh,
12 isn't that correct?
13 A. That's correct.

14 171 Q. Just to deal with Mr. Cullen, Garda Keogh's solicitor,
15 appealed the findings of your report and I just want to 11:42
16 ask you a couple of questions just in relation to that.
17 His letter is addressed to the executive director, it's
18 at page 7446. It's dated 19th March 2019. It's a very
19 detailed letter. It's 16 pages long. So I don't
20 propose to open it in its entirety. But one of the 11:42
21 central grounds of appeal is that there was a delay in
22 dealing with Garda Keogh's complaint of bullying and
23 harassment and that your report fails to deal with that
24 delay. Do you accept that?
25 A. No, I don't. 11:42

26 172 Q. He says also that your report is irrational. Would you
27 accept that your report is irrational, that the
28 conclusions that you came to were irrational?
29 A. No, I don't accept that.

1 173 Q. He also questions the use of what he says are, in his
2 words are, stock phrases, that there was no evidence.
3 So what he suggested to you is that you didn't properly
4 interrogate the evidence before reaching your findings,
5 do you accept that? 11:43

6 A. I don't accept that.

7 174 Q. So your conclusions essentially are based on Assistant
8 Commissioner Finn's report?

9 A. His investigation file.

10 175 Q. Sorry, his investigation. I suppose if any of these 11:43
11 findings were found to be incorrect or flawed, then
12 your report would also be the same?

13 A. No, I wouldn't accept that.

14 176 Q. Can we ask you then just to go back to the code. If we
15 can turn to paragraph 8.11. Sorry, it's at page 4206. 11:44
16 This relates to actions where a complaint is not
17 upheld. So that is the situation that you're dealing
18 with, you found that you have not upheld Garda Keogh's
19 complaint. This puts a number of, I suppose,
20 obligations on you as the deciding officer to take 11:44
21 certain steps, doesn't it? For example, if you look at
22 the third -- sorry, at the second paragraph, it says:
23
24 "The divisional officer/chief superintendent."
25 11:44
26 Or you in these circumstances.
27
28 "Will ensure that the complainant is made aware that
29 the bona fide complaints, even if they are not upheld,

1 will not be viewed as malicious."

2

3 I mean, I don't believe that you ever took any steps to
4 write to Garda Keogh in those terms, did you?

5 A. I didn't use those words, but if you look at the 11:45
6 correspondence I sent back, I think it's clearly the
7 logic that was found. That was is the principle. But
8 I certainly didn't say that it was not upheld or would
9 not be viewed as malicious. I mean, I accepted the
10 bona fides of Garda Keogh's complaint and his 11:45
11 entitlement to so do.

12 177 Q. But the Policy, I suppose, puts an obligation on you to
13 go one step further and I suggest to you that you
14 failed to take that step informing Garda Keogh?

15 A. That's what the Policy says, no I didn't, I didn't 11:45
16 discharge that aspect of the Policy. But I would point
17 out in mitigation the fact that it was something that
18 was assigned to me in the absence of the then assistant
19 commissioner.

20 178 Q. I have no further questions, Chairman. 11:46

21

22 END OF EXAMINATION

23

24 CHAIRMAN: Thank you very much. Now, yes. Mr. Dignam,
25 yes. 11:46

26 MR. DIGNAM: Thank you, Chairman.

27

28

29 ASSISTANT COMMISSIONER FINBARR O'BRIEN WAS EXAMINED BY

1 MR. DIGNAM, AS FOLLOWS:

2
3 179 Q. MR. DIGNAM: Assistant commissioner, I just want to
4 cover a few areas with you in general terms rather than
5 getting into the details that have been covered by 11:46
6 Ms. McGrath and Mr. O'Brien. If I could just --
7 firstly, I think you were appointed in January 2019, is
8 that right, by Mr. Mulligan, who was the acting head of
9 Human Resources, Executive Director of Human Resources
10 at that time? 11:46

11 A. That's correct, Chairman.

12 180 Q. You received papers on 18th January 2019 and you
13 covered the steps, the detailed steps that you took.
14 Can the Chair take it that you carefully considered the
15 papers when you received them? 11:46

16 A. Yes, Chair, I did.

17 181 Q. On foot of that consideration, you send out the queries
18 to Assistant Commissioner Finn?

19 A. That's correct.

20 182 Q. And received the replies to those. Now, during that 11:46
21 process, at any stage during your process did anybody
22 try to influence you on how you should determine the
23 issue or try to intervene or interfere with your
24 process?

25 A. No, Chairman. 11:47

26 183 Q. Now, you're aware that the matter, that your process
27 subsequent to that, the Finn investigation was sent to
28 an independent person who was required by his
29 professional Code to act independently and objectively,

1 you're aware of that?

2 A. I'm aware of that.

3 184 Q. But had you no role or involvement?

4 A. No.

5 185 Q. In that procedure or in that review? 11:47

6 A. No, Chair.

7 186 Q. Now, we know that was on foot of the Notice of Appeal,
8 which Mr. O'Brien has just mentioned, which was
9 submitted by Mr. Cullen on behalf of Garda Keogh. Did
10 you see that at the time or have you seen it 11:48
11 subsequently in preparation for this Tribunal?

12 A. No, I haven't seen it.

13 187 Q. You haven't seen it at all?

14 A. No.

15 188 Q. One of the points, Mr. O'Brien has covered this with 11:48
16 you, but one of the points that was raised in that
17 Notice of Appeal was the question of time. Now, it was
18 put to you by Mr. O'Brien that delay was raised, I am
19 recasting it slightly, the point that was raised was in
20 relation to the question of time, okay, and two points 11:48
21 were raised in relation to time. The first is that
22 there was --

23 A. Sorry.

24 189 Q. The first was that there was a delay in the earlier
25 stages before you became involved? 11:48

26 CHAIRMAN: March to November.

27 190 Q. MR. DIGNAM: well, two periods. The March to November
28 and I'll come back to that. And then the actual time
29 it took for the investigation to be conducted by

1 Assistant Commissioner Finn. And Garda Keogh has
2 complained about those two periods of delay. Now, when
3 the Notice of Appeal was submitted, he made a complaint
4 about you acting too quickly. Now, can we take it from
5 your earlier answers to both Ms. McGrath and 11:49
6 Mr. O'Brien and, indeed, to myself, that while you
7 acted quickly, you gave this matter careful
8 consideration.

9 A. Oh yes. I acted within the timelines provided under
10 the Policy, but I certainly gave it very detailed 11:49
11 consideration.

12 191 Q. Now, Garda Keogh, through Mr. Cullen --
13 CHAIRMAN: Sorry, Mr. Dignam.
14 MR. DIGNAM: Not at all.

15 192 Q. CHAIRMAN: Can I just clarify, when did you submit your 11:49
16 report? I am sure I have it, but can you just give me
17 the date.

18 A. It would have been the 7th February when I communicated
19 to all of the parties.

20 193 Q. CHAIRMAN: The 7th February. So the end of the process 11:49
21 was the 7th February. I just don't have it in my
22 chronology?

23 A. Yes.

24 194 Q. CHAIRMAN: And I will put it in, the 7th February.
25 Thank you very much. Sorry, Mr. Dignam. 11:49
26 MR. DIGNAM: Not at all.
27 CHAIRMAN: I see the point now.

28 195 Q. MR. DIGNAM: Just to take up on the Chairman's point,
29 the bullying and harassment policy itself provided for

1 a 28 day period, isn't that right?

2 A. That's correct.

3 196 Q. For the completion of your stage of the work?

4 A. Yes.

5 197 Q. And you received the papers on the 18th January? 11:50

6 A. Yes.

7 198 Q. And can we take it that you were working to that
8 deadline, the 28 day deadline?

9 A. I was. But I was conscious that I was appointed I
10 think on the 7th January, so it's kind of -- that's the 11:50
11 deadline.

12 199 Q. You were on the edge of the timeline as it was?

13 A. Yeah, give or take a day or so.

14 200 Q. Can I put to you, because it was a very clear
15 statement, an allegation against you in the appeal 11:50
16 which was submitted on behalf of Garda Keogh by
17 Mr. Cullen, at page 7447. The Notice of Appeal. I
18 suppose just by way of introduction, you ended up
19 having to deal with this because Assistant Commissioner
20 Fanning wasn't in work, isn't that correct? 11:51

21 A. Yes, he was absent from work. Indisposed.

22 201 Q. This landed on your desk because you had to fill in
23 essentially for Assistant Commissioner Fanning?

24 A. Correct, in this particular matter.

25 202 Q. Now, the allegation is made against you, and I think it 11:51
26 should be put clearly to you, assistant commissioner,
27 is that:
28
29 "Assistant Commissioner O'Brien produced this inchoate

1 decision in accelerated and record time compared to
2 slow process up to that point before AC Fanning was
3 reinstated or could come back."

4
5 I read that, and perhaps Mr. O'Brien will correct me if 11:51
6 I am wrong, but I read that as an allegation that you
7 deliberately fast tracked your process so that it would
8 reach conclusion before Assistant Commissioner Fanning
9 would come back?

10 A. I totally reject that. 11:52

11 203 Q. Now, you were asked about the period of delay from
12 March 2017 to November 2017, this was long before you
13 became involved. You had no involvement in the process
14 at that stage. I am not sure how much you can say
15 about that period of delay, but you have expressed the 11:52
16 view that it was unhelpful and probably unfair to Garda
17 Keogh, Chief Superintendent Wheatley, Chief
18 Superintendent Curran and Superintendent Murray. I am
19 not sure whether you have been following the Tribunal
20 proceedings in any great detail, assistant 11:52
21 commissioner, but you may or may not be aware that on
22 Day 109, on page 106 of the transcript, Garda Keogh,
23 who Mr. O'Brien is asking questions on behalf, in
24 relation to that period of delay, said that he can
25 understand about the delay between March 2017 and 11:53
26 November 2017, but at the time he didn't know why there
27 was that delay. Were you aware of that?

28 A. No, I wasn't actually, no.

29 204 Q. So that is Day 109, page 106, line 23. The passage

1 commences on line 3.

2 CHAIRMAN: 109, page what, Mr. Dignam?

3 MR. DIGNAM: 109, page 106, Chairman.

4 CHAIRMAN: Thank you. And line?

5 MR. DIGNAM: It begins line 3. 11:53

6 CHAIRMAN: Thank you very much.

7 MR. DIGNAM: The answer given by Garda Keogh, which I

8 just read out is line 27.

9 CHAIRMAN: we have gone away.

10 MR. DIGNAM: Sorry, I am over complicating this, 11:53

11 Chairman.

12 CHAIRMAN: No, hold on a second, let's just get the

13 reference first of all. Day 106.

14 MR. DIGNAM: Day 109, page 106.

15 CHAIRMAN: I'm sorry. Day 109, page 106. Day 109. 11:54

16 Can we have Day 109 and page 106. I'm so sorry. It's

17 straight in front of me. Sorry. Now, Mr. Dignam.

18 Sorry, your question is?

19 205 Q. MR. DIGNAM: Assistant commissioner, there is a

20 question asked by Mr. Murphy of Garda Keogh and that 11:54

21 leads to Mr. Murphy saying:

22

23 "So ultimately this is an explanation that was given

24 and read in conjunction with the last document we saw,

25 that's to say Inspector McCarthy's chronology, I have 11:54

26 to suggest to you that what that shows, that's the

27 chronology at page 14078 onwards, what that shows is

28 that a lot of detailed consideration was taking place

29 and there were complicated matters that required to be

1 attended to, but during that period of time you're not
2 accusing Assistant Commissioner Fanning of targeting
3 you in any way?

4 A. No.

5 Q. I have to suggest to you that that delay, such as 11:54
6 it was, is not something that could be regarded as
7 targeting you in any way?

8 A. Judge, just to clarify, again it's similar only on
9 the opposite side of things to what -- I only, again
10 from reading the volumes, can understand about the 11:55
11 delay. At the time I didn't know."

12
13 And then over the page:

14
15 "Q. Sure. Is it fair to say, Garda Keogh, that this 11:55
16 is one example that with the benefit of hindsight you
17 can see that there was good reason things took time?

18 A. Yes. The same as with the break, it was on the
19 other side of the coin, but, yeah."

20 11:55

21 Now, they're not matters that you were familiar with at
22 the time. You didn't even know, and still don't know,
23 because I didn't read out the details, as to what's
24 going on between March and November 2017, but the
25 question was put to you on the basis that Garda Keogh 11:55
26 appears to still be complaining about that.

27 CHAIRMAN: Mr. Dignam, may I politely ask, if he knows
28 nothing about it, what, with all respect to the
29 assistant commissioner, what is the value of any answer

1 he gives? If he said, I think it's insane, I think
2 it's right. He knows nothing about it.

3 MR. DIGNAM: I take --

4 CHAIRMAN: what is the principle of witnesses? we call
5 witnesses to testify as to facts. If they are experts 11:56
6 they give their opinion on established facts. This is
7 a witness to fact. He's no the giving an expert
8 opinion and he knows nothing about this. As if I
9 didn't know that 14078 gives a chronology by Inspector
10 McCarthy and that Garda Keogh was asked about it and 11:56
11 that he has exonerated Assistant Commissioner Fanning
12 on more than one occasion. And what's more, a lot of
13 other witnesses have had their attention drawn to this.
14 I have it, Mr. Dignam, I can assure you. I'm sorry.

15 MR. DIGNAM: No, no, I take that point, Chairman. 11:56

16 CHAIRMAN: Forgive, Mr. Dignam. I get impatient, I'm
17 sorry.

18 MR. DIGNAM: Not at all. I take that point. And I
19 know the Chair has it but I just wanted to correct the
20 position, because the question was put -- 11:56

21 CHAIRMAN: I know, this witness, I was going to say
22 this unfortunate witness, if he doesn't mind me saying
23 it, this unfortunate witness has nothing to say about
24 it. He said, I did this, maybe I was right, maybe I
25 was wrong, maybe the criticisms levelled are correct or 11:57
26 not. That is one of the things we're here to find out.

27 MR. DIGNAM: Yes.

28 CHAIRMAN: Did he disparage Garda Keogh by the way he
29 did his work. we know where we are going on that one.

1 But he doesn't know anything about these other matters.

2 MR. DIGNAM: May it please you, Chairman.

3 CHAIRMAN: All that takes longer, Mr. Dignam, than
4 letting you proceed and ignoring it. Forgive me.

5 MR. DIGNAM: Not at all, Chair.

11:57

6 206 Q. Turning then, assistant commissioner, you were asked
7 about your notes and your Post-Its on the document that
8 had been sent to you by Mr. McCarthy. You have given
9 an answer to it, but can the Chair take it, that they
10 are essentially your thoughts as you're working your
11 way through your reading of the investigation file and
12 of the correspondence?

11:57

13 A. That's correct, Chair.

14 207 Q. Can I take it that you make a note to yourself and that
15 on occasion you revisit it and you say well, actually,
16 I now understand what that's about?

11:58

17 A. Yeah.

18 208 Q. And then the question marks rather than the Post-Its,
19 they're in the same species; they're your working notes
20 or you're working your way through the file?

11:58

21 A. Yes, I reflect and revisit.

22 209 Q. To turn then to page 5969, this is a supplemental
23 statement or a statement of Garda Keogh of 23rd April
24 2019. You'll see, assistant commissioner, that this is
25 a very clear statement that is prepared for this
26 Tribunal as to Garda Keogh's case against you and
27 Assistant Commissioner Finn. I am going to deal with
28 the case against you. What he says in relation to you
29 is that he believes the outcome of this investigation

11:59

1 as comprised by Assistant Commissioner Finbarr O'Brien
2 -- sorry, I better start at the beginning:

3
4 "I hereby declare the statement is true to the best of
5 my knowledge and belief. With reference to item number 11:59
6 18 on the list of items for consideration by the
7 Tribunal, entitled complaints by Garda Keogh in
8 relation to the bullying and harassment investigation
9 carried out by Assistant Commissioner Finn. I believe
10 the outcome of this investigation as comprised by 11:59
11 Assistant Commissioner Finbarr O'Brien constitutes a
12 failure to uphold my rights and entitlements as a Garda
13 officer in that, there is no acknowledgment whatsoever
14 of the correctness of my complaints and having been
15 longly harassed by Garda officers, which has arisen 12:00
16 since I made my protected disclosures in May/June
17 2014."

18
19 Now, do you accept that your review constituted a
20 failure to uphold Garda Keogh's rights and entitlements 12:00
21 on the grounds that he set out there?

22 A. No, I wouldn't accept that, Chair.

23 210 Q. He goes on then and makes the case that it has been
24 confirmed in his opinion:

25
26 "... that the O'Brien report and the investigation
27 conducted by Assistant Commissioner Finn amounted to a
28 conscious and deliberate failure to protect me from
29 harassment and bullying within the force by reason of

1 the conclusions received by Assistant Commissioner Finn
2 as furnished to me and set out at item number 5 of the
3 letter dated 10th November 2018."

4
5 Now insofar as Garda Keogh says that you consciously 12:00
6 and deliberately failed to protect him from harassment
7 and bullying, what do you say about that?

8 A. I don't accept that, Chair.

9 211 Q. If we can then just finally --

10 CHAIRMAN: Mr. Dignam, sorry, before you leave that, 12:01
11 would you mind just reminding us of item 5 of the 10th
12 November 2018? So the assistant commissioner can
13 actually address the specific point.

14 MR. DIGNAM: Certainly.

15 CHAIRMAN: You may want to go on to something else and 12:01
16 come back to that.

17 MR. DIGNAM: I might do that.

18 CHAIRMAN: It's hanging in the air as far as I'm
19 concerned. I probably know it, I've probably seen it,
20 but at this moment it's not in my head. 12:01

21 MR. DIGNAM: I will do that, Chairman. You might give
22 me one moment and I will come back to it.

23 CHAIRMAN: Thanks very much.

24 212 Q. MR. DIGNAM: If I can then just ask you to go back to
25 the Notice of Appeal, assistant commissioner, which is 12:01
26 at page 5969.

27 CHAIRMAN: Yes. Sorry, 5969 was Garda Keogh's --

28 MR. DIGNAM: -- appeal, which led to the peer review.

29 CHAIRMAN: I thought that was the statement we have

1 just been looking at of the 23rd April.

2 MR. DIGNAM: I'm sorry.

3 CHAIRMAN: You're now going --

4 MR. DIGNAM: I gave the wrong --

5 CHAIRMAN: It's all right. Maybe I confused you. 12:02

6 You're now going to the appeal put in by Mr. Cullen,

7 which is a lengthy document, on Garda Keogh's behalf.

8 MR. DIGNAM: Yes.

9 MR. O'BRIEN: 7447, Chairman.

10 CHAIRMAN: Thank you very much. 12:02

11 MR. DIGNAM: The appeal is 7447 and the statement is

12 5969.

13 CHAIRMAN: Thank you very much. 7447. Now, you want

14 to refer to that.

15 213 Q. MR. DIGNAM: Yes. Now, I am not going to take you 12:02

16 through the detail of that, assistant commissioner.

17 But I want to put to you the general complaint that's

18 made by Garda Keogh through Mr. Cullen in relation to

19 your report and your review. You've already dealt with

20 the question of you having fast tracked it in order to 12:02

21 get it done before Assistant Commissioner Fanning came

22 back, but the general complaint that is made in

23 relation to your work, and this is the fourth paragraph

24 in the Notice of Appeal, is that:

25 12:03

26 "It is an irrational, opaque report, wanting in

27 neutrality, that disguises the elephant-in-the-room

28 inadequacy into the (still unconcluded) investigation

29 into police drug peddling in Athlone. It is

1 impossible to distinguish in such report facts from
2 matters that are reported as facts. It is further
3 impossible - in such report - to distinguish AC Finn
4 findings from AC O'Brien's determinations or to know
5 whether the representations contained in the report are 12:03
6 being attributed to any particular witness and/or are
7 factual findings and/or determinations. It proceeds by
8 a partial suppression of the totality of the specific
9 factual matrices in the complaint, by elision. It
10 ignores and/or avoids specificity of the complaints, 12:04
11 where they do not advance any defence for the
12 superintendent or where they appear to involve the
13 investigation into police/peddling. The report is
14 full of logical fallacies, platitudinous, evasive and
15 partial. It is marked by a reliance on anecdotal 12:04
16 evidence. It evinces a want of any forensic empirical
17 investigation. Its propositions appear to be compounds
18 of indiscriminate medleys of unattributed witness
19 testimony, mission statements, remarks from
20 Superintendent Murray where the strains of AC Finn and 12:04
21 AC O'Brien, also lurk indiscriminately, sometimes
22 lyrically, beneath its dissonant discursive surfaces"

23
24 CHAIRMAN: Apart from that, he thinks it's great!

25 214 Q. MR. DIGNAM: Assistant commissioner, that is the 12:04
26 general complaint made and obviously further detail is
27 given. Your report was reviewed by Mr. de Bruir --

28 CHAIRMAN: Can I just stop you for one moment?

29 MR. DIGNAM: Of course.

1 215 Q. CHAIRMAN: It's not easy to understand what the
2 specifics are here of the complaint, let's be blunt
3 about it. But Mr. Cullen does draw attention to one
4 issue I think. The nature of the process, if you like,
5 that you're involved in, you're reviewing a report. 12:05
6 Assistant Commissioner Finn reaches conclusions,
7 whether they're his opinion or determinations or
8 findings, let's not worry, he says he makes findings or
9 decisions. Are you free to say no, he's wrong about
10 those? 12:05
11 A. Absolutely.
12 216 Q. CHAIRMAN: And what's the process by which you come to
13 the conclusion, well, I agree with them?
14 A. Yes.
15 217 Q. CHAIRMAN: Do you follow what I am trying to get at? 12:05
16 A. Yes.
17 218 Q. CHAIRMAN: I'm not sure I am very clear about the -- I
18 know if the High Court makes this finding and it comes
19 to us in the Court of Appeal or it used to come, now we
20 know findings of fact are for the judge, was there 12:06
21 evidence, was there a basis for it and so on?
22 A. Yes.
23 219 Q. CHAIRMAN: But I am not entirely clear on the review
24 that you are doing. Do you understand what I am
25 puzzled about? 12:06
26 A. Yeah.
27 220 Q. CHAIRMAN: It seems to me that Mr. Cullen is drawing
28 attention to that here?
29 A. Yeah. My belief is that I am free to come to a

1 conclusion in respect of any or all of the conclusions
2 by the investigating officer and agree or disagree. So
3 I can, if I do disagree, as I say, seek clarification,
4 get clarification and say, and that clarifies the
5 matter for me. But I can also determine that 12:06
6 notwithstanding what you say, I believe that bullying
7 took place in this matter or that. So I am free, my
8 belief is I am free to make that independent decision.

9 221 Q. CHAIRMAN: Okay. And the way you would do that, if I
10 am understanding, please confirm or disagree with this, 12:06
11 you would look at the paragraphs or section of the
12 report, would you look at the statements that you had?
13 Because this is a paper process.

14 A. Yes.

15 222 Q. CHAIRMAN: This is a paper process. 12:07
16 A. Yes.

17 223 Q. CHAIRMAN: what does Garda Keogh say? what does
18 Superintendent Murray say? whoever does whoever it is,
19 say. So have you a number of documents?

20 A. Yes. 12:07

21 224 Q. CHAIRMAN: Maybe a number of other ones as well from
22 witnesses?

23 A. Yes.

24 225 Q. CHAIRMAN: You put them together and you're free to
25 say, no, I don't think that follows? 12:07
26 A. Yes. Yes. And I would review the accompanying
27 appendices and documents that accompany the
28 investigation.

29 226 Q. CHAIRMAN: So if there is a Pulse report or some other

1 kind of report, or whatever it was, you're free to read
2 it?

3 A. Yes.

4 CHAIRMAN: Okay, thank you very much. Now, sorry,
5 Mr. Dignam. I think that is actually raised, it's a 12:07
6 point raised by Mr. Cullen.

7 MR. DIGNAM: Yes.

8 CHAIRMAN: It is middle of that paragraph.

9 227 Q. MR. DIGNAM: Rather than ask you to comment on the
10 totality of that paragraph, because there is obviously 12:08
11 a lot in it, there are a number of, if I might put it,
12 positive allegations made against you in that
13 paragraph. The first is that your report is
14 irrational, do you accept that?

15 A. I wouldn't accept that. 12:08

16 228 Q. The next is that it is wanting in neutrality?

17 A. I wouldn't accept that.

18 229 Q. The third is that it disguises what he describes as
19 inadequacy in the investigation into police pedalling
20 in Athlone. Were you involved in disguising anything? 12:08

21 A. No.

22 230 Q. The next is halfway down the paragraph, where it's
23 alleged that it proceeds by a partial suppression of
24 the totality of specific factual matrices, were you
25 involved in suppressing -- 12:09

26 CHAIRMAN: If you understand what that means, you might
27 be able to agree or disagree with it.

28 231 Q. MR. DIGNAM: If I put it in general terms, did you
29 approach this with a view or with an intent or an

1 objective of suppressing anyone?

2 A. Absolutely not.

3 232 Q. It goes on to say that it is full of logical fallacies
4 and platitudinous, they are complaints about the
5 outcome, but it says it is evasive and partial, which 12:09
6 comes back to wanting in neutrality point. Do you
7 accept that it was wanting in neutrality or that you
8 approached this in a partial manner?

9 A. No, I don't accept either of those positions, no, I
10 don't accept that. 12:09

11 CHAIRMAN: Mr. Cullen waxes a bit lyrical himself here
12 at times in this paragraph.

13 MR. DIGNAM: The letter of the 10th November --

14 CHAIRMAN: If you don't want to, I am sure you can
15 leave it to Ms. McGrath, if she wants to. 12:10

16 MR. DIGNAM: No, I think we have found it.

17 CHAIRMAN: And are you happy to refer to that? You
18 don't have to if you don't want to, it's a matter for
19 you entirely.

20 MR. DIGNAM: There is a letter of the 10th November -- 12:10

21 CHAIRMAN: It's just that Garda Keogh said, I protest
22 about this report and here is a specific example.

23 MR. DIGNAM: Yes.

24 CHAIRMAN: I don't have it in mind as to what the
25 specific example is. 12:10

26 MR. DIGNAM: Yes. There is a letter of the 10th
27 November from Mr. Cullen, on page 360.

28 CHAIRMAN: Thank you. 360. Is there an item 5 in it.

29 MR. DIGNAM: There is.

1 CHAIRMAN: Very good. Well, let's go to 360 and see
2 what item 5 is.

3 MR. DIGNAM: Item 5 is on page 362. Sorry, it's to
4 Mr. Cullen. Sorry, I said it's from Mr. Cullen. It is
5 a letter from Assistant Commissioner Finn to 12:11
6 Mr. Cullen. Well, we have the date.

7 MR. DIGNAM: It's on page 362.

8 CHAIRMAN: Thanks very much.

9 MR. DIGNAM: Or 360 it begins and goes over onto
10 page -- 12:11

11 CHAIRMAN: Yes this is 10th November.

12 MR. DIGNAM: Sorry for the confusion, Chairman. The
13 actual page in the booklet is 13817.

14 CHAIRMAN: Okay.

15 MR. DIGNAM: That I am referring to. 12:11

16 CHAIRMAN: 13817. Thank you very much. We will get
17 that up.

18 MR. DIGNAM: The relevant reference to item 5 is on
19 page 13819. It's probably more a matter for
20 Mr. O'Brien to confirm that this is what is being 12:12
21 referred to by Garda Keogh in his statement.

22 CHAIRMAN: I understand.

23 MR. DIGNAM: But that seems to be the document.

24 CHAIRMAN: But for the moment we will work on the
25 assumption that the reference made by Garda Keogh -- I 12:12
26 mean, it's a matter of simply telling me in due course,
27 we don't have to clarify it this second, but that's
28 item 5. Okay, thank you very much. That's the matter
29 that is cited by Garda Keogh as being an instance of

1 the unsatisfactoriness, unfairness, whatever,
2 disrespect of rights that he cites in his document.
3 MR. DIGNAM: Yes. And in fact it's in the second part
4 of the statement:

5
6 "It is linked to the conscious and deliberate failure
7 to mitigate rights."
8

9 Rather than the earlier complaint, which is...

10 CHAIRMAN: Thank you very much. 12:12

11 233 Q. MR. DIGNAM: So, Assistant Commissioner O'Brien, you
12 will see that document that we have just been
13 discussing, this appears to be subject to confirmation
14 from Mr. O'Brien that this is being referred to as an
15 example of a conscious and deliberate failure to 12:13
16 protect Garda Keogh from harassment and bullying. The
17 conclusions that are contained in section 5. Have you
18 anything to say in relation to that?

19 A. I am not unfamiliar with the incident, so I can't
20 really comment. 12:13

21 CHAIRMAN: Okay.

22 MR. DIGNAM: Thank you, assistant commissioner.

23

24 END OF EXAMINATION

25 12:13

26 CHAIRMAN: Very good. Now anybody else want to ask
27 questions?

28 MR. FERRY: Yes, Chairman, I have a couple of short
29 questions in relation to the representation of

1 superintendent Noreen McBrien

2 CHAIRMAN: Certainly.

3

4 ASSISTANT COMMISSIONER FINBARR O' BRIEN WAS

5 CROSS-EXAMINED BY MR. FERRY, AS FOLLOWS:

6

7 234 Q. MR. FERRY: Assistant commissioner, just in relation to
8 your evidence to the Tribunal, you were appointed under
9 the policy that dealt with the investigation of the
10 complaint made by Garda Keogh and you noted this 12:14
11 morning that under that you were to investigate and
12 communicate with the parties. I think the policy at
13 8.9 was referred to, to deal with the conclusion of the
14 investigation. And just, in relation to Superintendent
15 McBrien, an issue arose yesterday afternoon, you may 12:14
16 recall a question my colleague, Mr. Carroll, there was
17 just a concern that Superintendent McBrien has had
18 since, and I think it originates from the time of your
19 involvement in the case, that in circumstances where
20 Garda Keogh had informed Assistant Commissioner Finn 12:14
21 that his complaint of bullying and harassment was only
22 in relation to three identified members, who are all
23 now chief superintendents. However, in relation to
24 your involvement, Superintendent McBrien appeared to be
25 brought back into the equation. In the papers before 12:14
26 the Tribunal, on 7th February 2019, you wrote to a
27 number of people, indicating the outcome of your part
28 of the matter?

29 A. Yes.

1 235 Q. The papers don't seem to be before the Tribunal, but my
2 client also received a letter or a report from you
3 dated 7th February 2019. I think a 13-page document.

4 A. Hm-hmm.

5 236 Q. From that point on it appears that she was also being 12:15
6 communicated to in relation to the outcome of the
7 investigation and that would seem to be under part 8.9
8 of the Policy, it says that, you know, that both
9 parties should be advised in writing of the outcome and
10 further action. So she has a concern that from that 12:15
11 point on it did progress into a review and appeal
12 process and reviewed by a barrister and then Deputy
13 Commissioner John Twomey communicated with the parties.
14 If I can just, in relation to the documents before the
15 Tribunal at, I think it's at volume -- just for ease of 12:16
16 yourself, assistant commissioner, at volume 46, page
17 13125, is a report that is sent out by Deputy
18 Commissioner John Twomey. This report is basically
19 informing parties that the complaint of unacceptable
20 behaviour is now being moved on to an appeal stage and 12:16
21 that he is appointing a member of the Bar to conduct an
22 audit. You will see, and I appreciate this isn't your
23 document, but all of a sudden there's five, I think
24 there's five named individuals and they include
25 Superintendent McBrien. 12:16

26
27 So, it's a long winded way of getting to a question,
28 but how did Superintendent McBrien come back into the
29 equation at the review and appeal stages in

1 circumstances where Garda Keogh from the outset had
2 informed Assistant Commissioner Finn that he had no
3 issue at all with Superintendent McBrien?

4 A. Yes, it's a good point. My own view is that for
5 completeness, all of the parties, and whilst there was 12:17
6 no allegations against Superintendent McBrien, she was
7 included in a number of the matters that were under
8 investigation. So for completeness, I felt that it
9 would be appropriate that she be notified. There
10 certainly wasn't any intention to bring her into a 12:17
11 complaint again. But I think the same thing with
12 Inspector Farrell as well, I wrote to Inspector Farrell
13 as well. So that was the purpose.

14 237 Q. I suppose in reply to that, there were I think maybe up
15 25 officers that had been sort of identified either 12:17
16 directly or indirectly by Garda Keogh, but here
17 expressly narrowed it down to only three. So while I
18 appreciate what you are saying, apart from what you've
19 said, if you didn't write the same letter to 25, why
20 would Superintendent McBrien be included? 12:18

21 A. No, Superintendent McBrien is slightly different in the
22 sense that the first two allegations, she, as the
23 superintendent, had a direct involvement in the sense
24 of communicating, I think one was to do with the CHIS
25 policy and the other one was to do with a Pulse entry. 12:18

26 238 Q. CHAIRMAN: The first four.

27 A. Possibly is, but I just recall --

28 239 Q. CHAIRMAN: I think it's Olivia O'Neill and Liam McHugh,
29 she was also the superintendent for those. There's no

1 allegation. Mr. Ferry, you can be reassured. I mean
2 it may be that, what would we say, ex-abundanti cautela
3 they sent off to everyone in sight, or everyone who
4 might have had any involvement. But I don't think
5 anybody in this room thinks there is any allegation 12:18
6 against Superintendent McBrien. I think everybody,
7 from Garda Keogh, over on one side, everybody on that
8 side, and if I were to produce a report that said
9 Superintendent McBrien was be responsible for this,
10 that or the other, it would be instantly condemned by 12:19
11 the High Court, and rightly condemned.

12

13 MR. FERRY: It's only in the context, Chairman --
14 CHAIRMAN: She may be entitled to feel a bit aggrieved
15 that she got this letters, but that's not this 12:19
16 witness's --

17 MR. FERRY: Yes, but it's only in this context that --
18 and they witnesses that will follow this morning,
19 including Deputy Commissioner John Twomey. It appears
20 that the independent reviewer, the barrister, and it 12:19
21 may also appear that Deputy Commissioner Twomey were of
22 the view, and I would say an incorrect view, that
23 Superintendent McBrien was the subject of --

24 CHAIRMAN: Deputy Commissioner Twomey will be here
25 within minutes, am I right? He is the next. So, 12:19
26 Mr. Ferry, do not fear, you will have sample
27 opportunity.

28 MR. FERRY: But I think this witness has clarified.

29 CHAIRMAN: As far as he is concerned. Thank you very

1 much.

2

3 END OF EXAMINATION

4

5 MS. GLEESON: Chairman. 12:20

6 CHAIRMAN: Yes, Ms. Gleeson.

7 MS. GLEESON: I had some similar questions on behalf of
8 Inspector Farrell but I think it has all been covered
9 in that regard.

10 CHAIRMAN: I think so. And maybe you would equally 12:20
11 like to ask Deputy Commissioner Twomey a question, as
12 to how did your client get into the picture at all.

13 MS. GLEESON: Yes, Chair, but just very briefly in
14 relation to this particular witness.

15 CHAIRMAN: Speak a bit closer to the microphone 12:20
16 Ms. Gleeson, so that we can all hear you.

17

18 ASSISTANT COMMISSIONER FINBARR O' BRIEN WAS

19 CROSS-EXAMINED BY MS. GLEESON, AS FOLLOWS:

20

21 240 Q. MS. GLEESON: In relation to yourself, commissioner, 12:20
22 you wrote to Inspector Farrell together with the other
23 parties, the three named parties, the subject-matter of
24 the investigation, and also Superintendent McBrien. I
25 think that's at page 3443. And I think, I suppose you
26 wrote to them as a matter of course, is that right?

27 A. Yes. It was just, as I said, they were -- they had
28 been referenced in it for a significant feature, so I
29 felt it important to write to them and communicate and

1 clarify.

2 241 Q. CHAIRMAN: Inspector Farrell did feature.

3 A. Yes.

4 242 Q. CHAIRMAN: In dispatches, so to speak.

5 A. Yes. 12:21

6 243 Q. CHAIRMAN: He had some role. His statement was

7 considered.

8 A. Yes.

9 244 Q. MS. GLEESON: And I suppose just in relation to your

10 colleague, Assistant Commissioner Finn, who obviously 12:21

11 conducted the investigation, a similar question was put

12 to him yesterday evening and he said the only reasons

13 they were written to, Superintendent McBrien and

14 Inspector Farrell, at the conclusion of the

15 investigation was because they were included in the 12:21

16 original letter sent by Assistant Commissioner Fanning?

17 CHAIRMAN: Yes.

18 245 Q. MS. GLEESON: That that was his view. It wasn't that

19 they may have had a particular involvement?

20 A. No. 12:21

21 246 Q. It was more that simply their names were on the

22 originating letter and for that reason they were

23 included in the correspondence that led to the

24 investigation?

25 A. Yes, and just to finalise the matters. 12:22

26

27 END OF EXAMINATION

28

29 CHAIRMAN: Thank you very much. Mr. O'Brien, did I see

1 you wanting to --

2 MR. O'BRIEN: Chair, I just wish to clarify an issue.

3 I just need to take one further instruction.

4 CHAIRMAN: That's okay. Turn on your microphone,

5 Mr. O'Brien, so we can hear you. 12:22

6 MR. O'BRIEN: It's misbehaving.

7 CHAIRMAN: Do you want to check something.

8 MR. O'BRIEN: Yes.

9 CHAIRMAN: So you want an opportunity, just for a

10 moment, to come back. well, will I ask Ms. McGrath to 12:22

11 continue and then at the very end we can -- is that all

12 right with you, Ms. McGrath? Have you any questions.

13 MS. McGRATH: I think an issue that is floating around

14 is that letter of the 10th November.

15 CHAIRMAN: Yes. 12:22

16 MS. McGRATH: I had in my papers, at page 511 --

17 CHAIRMAN: Your microphone has gone off as well.

18 MS. McGRATH: Sorry. I had noted that that reference

19 in the additional statement.

20 CHAIRMAN: Yes, Garda Keogh's additional statement. 12:23

21 MS. McGRATH: From Garda Keogh, I had written on my

22 notes that it was to be found at page 5111 in volume

23 17. It's exactly the same letter but it's just

24 appearing in a different place that Mr. Dignam has

25 opened. 12:23

26 CHAIRMAN: Thank you. So just in case we're getting

27 confused, we will just note that it's also at 5111; is

28 that correct.

29 MS. McGRATH: So, unless Mr. O'Brien, wants to leave

1 that matter over, we can look it again later.

2 MR. O'BRIEN: If we could please and I will clarify
3 with my solicitor.

4 CHAIRMAN: Certainly. Mr. O'Brien, it strikes me that
5 it is not something that we need to bring back the 12:23
6 assistant commissioner about. We can clarify it among
7 ourselves and in the unlikely event that we have to
8 have evidence, then we will arrange for that. Are you
9 happy with that?

10 MR. O'BRIEN: Certainly. 12:23

11 CHAIRMAN: So there is no pressure on you. But look,
12 I'm sorry for causing all this trouble, but when I saw
13 the reference I couldn't locate in my mind, I couldn't
14 think, what is that reference to item 5. And clearly
15 Garda Keogh was being quite specific about it. 12:24

16 MR. O'BRIEN: Yes.

17 CHAIRMAN: So now I think I understand what he is
18 talking about. But please clarify as appropriate.
19 Okay. Thanks very much.

20 MR. O'BRIEN: Yes, Chairman. 12:24

21 CHAIRMAN: You can come back to it at any convenient
22 time. Now, Ms. McGrath.

23 MS. McGRATH: There is nothing arising from my side.

24 MR. DIGNAM: I didn't realise Ms. Gleeson and Mr. Ferry
25 had questions for the assistant commissioner, but that 12:24
26 issue they raised in relation to Inspector Farrell and
27 Superintendent McBrien.

28 CHAIRMAN: Indeed.

29 MR. DIGNAM: And the letters being sent at the outset,

1 they are be found at 1352.

2 CHAIRMAN: And we heard that yesterday.

3 MR. DIGNAM: And 66 --

4 CHAIRMAN: In relation to Assistant Commissioner Finn.
5 Because the question was, look it's kind of not very 12:24
6 nice to get letters like this. Anyway, there it is.

7 MR. DIGNAM: Page 1352, at page 662, is where those
8 letters are to be found.

9 CHAIRMAN: Okay, thank you very much. You are free to
10 go and we will proceed. 12:25

11 THE WITNESS: Thank you, Chair.

12

13 THE WITNESS THEN WITHDREW

14

15 MR. MARRINAN: Chairman, the next witness is Deputy 12:25
16 Commissioner John Twomey.

17 CHAIRMAN: Thank you very much.

18

19 DEPUTY COMMISSIONER JOHN TWOMEY, HAVING BEEN SWORN, WAS
20 DIRECTLY EXAMINED BY MR. MARRINAN, AS FOLLOWS: 12:25

21

22 THE WITNESS: Deputy Commissioner John Twomey.

23 CHAIRMAN: Good morning, commissioner, thank you very
24 much. Or good afternoon. Thank you very much.

25 247 Q. MR. MARRINAN: The commissioner's statement is to be 12:25
26 found at page 14671 of the material. Just before we
27 deal with that, deputy commissioner, you have been
28 mentioned in dispatches in relation to the appointment
29 of Assistant Commissioner McMahon but you haven't dealt

1 with it in your statement. If we could just deal with
2 that first of all. We know that initially Assistant
3 Commissioner Kieran Kenny, on 26th June 2015, had
4 appointed Assistant Commissioner Jack Nolan to conduct
5 a disciplinary investigation in relation to Garda A and 12:26
6 three other gardaí, isn't that right?

7 A. That's correct.

8 248 Q. He retired. Then if we could have page 16442 up on the
9 screen. You held the role as deputy commissioner in
10 Policing and Security at Garda Headquarters, a role 12:27
11 that you still hold, isn't that right?

12 A. That's correct.

13 249 Q. And you held that role on the 12th May. We can see
14 here a letter that you wrote to Assistant Commissioner
15 McMahon, where you say: 12:27

16
17 "You are hereby appointed pursuant to section 23 of the
18 Garda Síochána discipline regulations 2007 to
19 investigate the allegations as per the attached form
20 1A31S in respect of." 12:27

21
22 Then you name the parties. You then go on:

23
24 "Attached report on behalf of Assistant Commissioner
25 Nolan recently retired is also attached for your 12:27
26 information. Additional documentation in this matter
27 is held at the office of assistant commissioner, Dublin
28 metropolitan region."
29

1 If we could just, if Mr. Kavanagh could have up on the
2 screen 16458 of the material. If we can scroll down
3 there. We see that on 12th June 2017 Assistant
4 Commissioner McMahon is writing back and expressing a
5 concern that she had. In the second paragraph she
6 says:

12:28

7
8 "It is noted that Assistant Commissioner Nolan was
9 appointed as investigating officer by Assistant
10 Commissioner Kenny on the 26th June in accordance with
11 regulation 23 of Garda Síochána regulations 2007. The
12 report of Garda Adrian Cooke of 8th April 2017 details
13 that an investigation team was established and
14 extensive investigations have been undertaken to date
15 comprising of in excess of 120 jobs.

12:28

12:28

16
17 In consideration of the extensive work conducted to
18 date, it may be that an investigating officer
19 substitution was envisaged to continue with the work
20 commenced by then Assistant Commissioner Nolan. A new
21 investigating officer appointment will require the work
22 conducted to date to be disregarded.

12:29

23
24 Clarification is sought on this matter and subject to
25 your consideration, I can proceed with the existing
26 investigation to bring this matter to a conclusion at
27 the earliest possible opportunity."

12:29

28
29 So that matter was drawn to your attention and you

1 respond on 30th August of 2017. If we look at the
2 paragraph there:

3
4 "I am to advise for the purpose of clarification that
5 you are to take over the investigation pursuant to the 12:29
6 Garda Síochána discipline regulations arising from the
7 above referenced report originally commenced by
8 Assistant Commissioner Nolan, now retired, to
9 completion.

10 12:30
11 Advise in course of your recommendation in respect
12 of..."

13
14 Then you outline the personnel.

15 12:30
16 "As advised previously, it is understood that a
17 substantial volume of documentation has been gathered
18 in the course of the investigation by Assistant
19 Commissioner Nolan, which is retained in the office of
20 the assistant commissioner, Dublin metropolitan 12:30
21 region."

22
23 Was it always your intention that this should be taken
24 over by Assistant Commissioner McMahon as opposed to be
25 a new investigation? 12:30

26 A. It was always my intention that it was to be taken
27 over. It was not a new investigation.

28 250 Q. Yes.

29 251 Q. CHAIRMAN: She was to continue.

1 A. Yes, exactly.

2 252 Q. MR. MARRINAN: Now we had some evidence from Assistant
3 Commissioner Sheehan, who thought that there may be a
4 fault in relation to this. It was one of the matters
5 that he relied on in relation to not establishing a 12:30
6 board of inquiry. What's your view in relation to his
7 view, as it were, that this was a flawed procedure?

8 A. Well, I think there was clarification in the minute
9 that you have just outlined there, that it was to be
10 taken over. So I think any confusion was clarified at 12:31
11 a later stage. So I think when it came to the decision
12 that Assistant Commissioner Sheehan had to make, I
13 think it was -- from my perspective, from August of
14 2017 it was clear to all involved that it was a
15 continuation of the original investigation. 12:31

16 253 Q. Well, that would appear to make sense, because
17 Assistant Commissioner Nolan had been appointed at that
18 stage --

19 A. That's correct.

20 254 Q. -- for a period of two years? 12:31

21 A. That's correct.

22 255 Q. And there had already been an investigation. And you
23 were quite happy that that investigation should
24 continue under Assistant Commissioner McMahon's
25 direction? 12:32

26 CHAIRMAN: Direction.

27 A. That's correct.

28 256 Q. MR. MARRINAN: Now, if we could then go just to your
29 statement at page 14671 of the material. You note

1 there:

2

3 "Under the HR policy Assistant Commissioner Finn of the
4 south Eastern Region was appointed by Assistant
5 Commissioner Finn of the Eastern Region on 15th 12:32
6 November of 2017 to investigate the complaints made by
7 Garda Keogh. "

8

9 Then you note:

10

12:32

11

12

13

14

"In the absence of Assistant Commissioner Fanning, the
investigation file completed by Assistant Commissioner
Finn was considered by Assistant Commissioner O'Brien. "

15

I think at that stage Assistant Commissioner Fanning 12:32
had been suspended; is that right?

16

17

A. That's correct.

18

257

Q. Yes.

19

20

"On completion of that investigation, none of Garda 12:32
Keogh's complaints were upheld and all parties
concerned were notified on 7th February 2019 by
Assistant Commissioner O'Brien. "

21

22

23

24

25

We have heard his evidence in relation to that. You 12:33
then note:

26

27

28

29

"On 19th March 2017, Garda Keogh, through his legal
representative, applied in writing to appeal Assistant

1 Commi ssi oner Finn' s fi ndi ngs. "

2

3

And you note:

4

5

"In accordance with the Garda Síochána Policy dealing 12:33
with bullying in the workplace, in correspondence dated
2nd April 2019 the acting executive director Human
Resource and People Development... "

9

10

who was the acting director at that stage? 12:33

11

A. That was Mr. Alan Mulligan.

12

258

Q. Yes. Requested that you deal with this appeal and
provide a review under paragraph 8(12) of the Policy.

14

15

"The Policy provides a mechanism available to the 12:34
person conducting an appeal to engage an independent
expert to carry out an audit of an investigation."

16

17

18

19

You then go on and note:

20

12:34

21

"To allow me consider the matter Mr. Rory de Bruir,
barrister at law, was engaged to carry out an audit of
the investigation."

22

23

24

25

Just dealing with that, the letter, including the 12:34
grounds or a letter of appeal, as it were, that was
sent by Mr. Cullen, if we could have page 7446 up on
the screen. This is dated 19th March 2019, it's
addressed to the executive director Human Resources,

26

27

28

29

1 who I think may have been John Barrett at that time,
2 was it? Or had Alan Mulligan taken over as THE acting
3 director?

4 A. I think Mr. Mulligan had taken over at that stage.

5 259 Q. Yes. It's addressed to the Commissioner himself and 12:35
6 also to Assistant Commissioner Fanning. It says:

7
8 "We refer to the above and enclose herewith the appeal
9 against the determination by Assistant Commissioner
10 Finbarr O'Brien of the complaint by Garda Keogh dated 12:35
11 7th February 2019.

12
13 We should be grateful if you now determine the within
14 appeal."

15 12:35
16 Then, on the following page, 7447, we have the appeal
17 document, if I can put it that way. It goes to 7462.
18 I don't intend to open it. But he sets out a number of
19 grounds of appeal or grievances in relation to the
20 report or the determination of Assistant Commissioner 12:36
21 O'Brien, isn't that right?

22 A. That's correct.

23 260 Q. If we could just look at the -- because it seems to
24 have become an issue, at the third paragraph:

25 12:36
26 "Findings were apparently made by Assistant
27 Commissioner Finn on 31st December 2018. Such findings
28 were then to be examined by Assistant Commissioner
29 Fanning, who was the natural judge in the

1 circumstances. Assistant Commissioner Fanning was,
2 however, curiously suspended on 2nd January 2019. His
3 suspension was subsequently apparently acknowledged to
4 be unlawful. The effect of his temporary suspension,
5 however, was that the findings of AC Finn were then
6 assigned to another judge, namely AC O'Brien, who
7 produced this inchoate decision in accelerated and
8 record time, compared to its slow progress up to that
9 point, before AC Fanning was reinstated or could come
10 back. "

12:36

12:37

11
12 Could we perhaps have 7463 up on the screen. This is a
13 letter from Assistant Commissioner Fanning dated 22nd
14 March of 2019 to the executive director HRPD. And he
15 notes:

12:37

16
17 "I have received the attached appeal from Garda
18 Nicholas Keogh, Athlone Garda Station, submitted on his
19 behalf by John Gerard Cullen. "

12:37

20
21 Then he sets out the background. Then in the third
22 paragraph, he says:

23
24 "The Policy provides that the assistant commissioner
25 for the region to exercise this function. "

12:38

26
27 which is the appeal function.

28
29 "However, the Policy is silent when an investigation

1 has been concluded by an assistant commissioner. The
2 position is there is no provision in the Policy. I
3 recommend that some external person, e.g. senior
4 counsel, conduct a review in its totality. There can
5 be engagement with the members concerned and any 12:38
6 reasonable request be factored into the process, but
7 ultimately the responsibility rests with the employer
8 as to the investigation.

9
10 I ask that I am not part of any decision-making on the 12:38
11 basis of perceived bias. I have noted the comments at
12 paragraph 3 on page 1 of the appeal. Assistant
13 commissioner Eastern Region has also initiated
14 discipline against Garda Keogh pursuant to the Garda
15 Síochána discipline regulations as well as [REDACTED]. 12:38

16
17 I await your directions."

18
19 was this letter drawn to your attention in around about
20 that time? 12:39

21 A. I don't have a recollection of reading that letter.

22 261 Q. Yes. The suggestion, obviously he is asking -- there
23 are two issues. First of all he's saying he's at
24 assistant commissioner level and he would be
25 effectively dealing with an appeal from somebody at the 12:39
26 same rank, isn't that right?

27 A. That's correct.

28 262 Q. That's the first problem. Second of all, he says there
29 is a perceived bias and he wished to be excused. And

1 the third issue is that he is recommending that the
2 matter be reviewed by an independent external senior
3 counsel, isn't that right?

4 A. That's correct.

5 263 Q. Now, you also set out in your statement that you 12:39
6 thought that you would utilise the provision in
7 paragraph 8.12 of the Policy and ask for a review
8 mechanism externally, isn't that right?

9 A. That's correct.

10 264 Q. Was that totally independent or was it after 12:40
11 consultation perhaps with Mr. Mulligan?

12 A. No, totally independent. It was a decision that I made
13 following my appointment by Mr. Mulligan.

14 265 Q. CHAIRMAN: Was Mr. Mulligan the executive director of 12:40
15 HRPD at the time?

16 MR. MARRINAN: Yes.

17 A. He was the acting executive director and he was the
18 person who appointed me to conduct the appeal.

19 266 Q. CHAIRMAN: I follow. And this is a letter that said 12:40
20 private and confidential, so I don't know what
21 influence that might have on whether it was circulated
22 or not.

23 A. But it's not addressed to me.

24 267 Q. CHAIRMAN: It's not addressed to you and you're not 12:40
25 wear of having read it. Okay.

26 A. No.

27 268 Q. CHAIRMAN: That might possibly be a reason why it
28 wouldn't have gone to you. Who knows.

29 269 Q. MR. MARRINAN: But in any event if we could have page

1 13121 up on the screen, this is a letter from
2 Mr. Mulligan dated 2nd April of 2012 to you. We
3 needn't go through it all. He sets out in the first
4 paragraph the background. And then if we go to the
5 following page, at 13122, in the second paragraph there 12:41
6 he says:

7
8 "As the appointing officer was at assistant
9 commissioner rank, the appropriate rank to process the
10 appeal under paragraph 8.12 of the Policy is a deputy 12:41
11 commissioner. The Policy provides for an independent
12 expert to be engaged to audit the investigation file.
13 That person may be a member of the legal profession or
14 a former rights commissioner with extensive experience
15 in the area of employment law." 12:41
16

17 CHAIRMAN: Yes.

18 270 Q. MR. MARRINAN: "In making the final determination on
19 the appeal, the assistant commissioner will consider
20 the views of the expert." 12:42

21 271 Q. CHAIRMAN: So it's still your decision.

22 A. Yes.

23 CHAIRMAN: But you have regard to the views of the
24 expert. Okay.

25 A. That's correct. 12:42

26 272 Q. MR. MARRINAN: Then we see there, he has attached the
27 following documentation, which was a copy of the entire
28 investigation file, isn't that right?

29 A. That's correct.

1 273 Q. A copy of the notification of the finding to the
2 parties and a copy of Garda Keogh's grounds of appeal.
3 Then there is some correspondence that goes back that
4 is irrelevant, concerning a nomination of the
5 independent person and who it ought to be. If we could 12:42
6 then have page 13125 up on the screen. This is a
7 letter from you dated 8th May 2012 and it's to Chief
8 Superintendent Curran, Chief Superintendent Wheatley,
9 Chief Superintendent Murray and Superintendent McBrien
10 and also Inspector Farrell. It's a complaint of 12:43
11 unacceptable behaviour under the Garda Síochána HRM
12 policy.

13
14 An issue has arisen here as to the notification of
15 Superintendent McBrien and Inspector Farrell and why 12:43
16 they were notified of the appeal process. Can you
17 clear that up for us?

18 A. Well, in the correspondence I received from the acting
19 executive director from HRM, the policy owner, he
20 outlines to me that there are five people in the -- he 12:43
21 names the five people.

22 274 Q. Yes.
23 A. That I have to conduct the appeal for. So it's in that
24 context that I follow on from the correspondence that I
25 have received and in the order of completeness, I feel 12:44
26 I take my instructions and direction from the
27 appointment and that's what that letter is,
28 appointment. Now I am aware that those people had been
29 corresponded with the original investigation file and

1 in the decisions made by Assistant Commissioner
2 O'Brien.

3 275 Q. And then if we have page 13127 up on the screen. On
4 the same date you write a letter to Garda Keogh. If
5 you scroll over, Mr. Kavanagh, to page 13128. You
6 note:

12:44

7
8 "Given the commitments in my role and responsibility as
9 deputy commissioner Policing and Security and as an
10 external independent expert has been asked to conduct
11 an audit of the investigation, it will not be possible
12 to provide my findings within the stipulated timeframe
13 and therefore I seek your approval for an extension to
14 the specified timeframe. I assure you that every
15 effort will be made by me to complete the appeal as
16 expeditiously as possible. I will keep you informed of
17 any delays going forward."

12:45

12:45

18
19 I don't think any of the parties raised any issues in
20 relation to the timeframe, isn't that right?

12:45

21 A. That's right.

22 276 Q. Then we have, at page 13129, your letter to
23 Mr. de Bruir. At page 13130 you ask him to confirm his
24 availability to conduct this audit in accordance with
25 the Policy document.

12:46

26
27 "If you have any queries or wish to discuss the matter
28 further, please do not hesitate to contact my office on
29 the information provided."

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Now, Mr. de Bruir was sent a copy of all the material, isn't that right?

A. That's correct.

277 Q. When you ask him to do an audit, what was it that you were actually asking him to do? 12:46

A. Well, it's an independent audit of the investigation, to have a look at it in the context of the issues that were raised, the investigation that was conducted and the decisions that were made as a consequence. To do an audit of that entire process, to assist me ultimately in coming to a decision and to deal with the review and the issues that were raised. Obviously Mr. de Bruir had sight of the issues that were raised in the appeal also. 12:46

278 Q. Why did you think that it was appropriate in this case that you get someone externally to review the file? 12:47

A. Well, I felt it's a very serious matter and I wanted to give it the seriousness that the issue deserved. I wanted it to be a fair and impartial consideration and I wanted it to be seen as such. I felt that the facility and the Policy enabled that assistance to provide that independent audit, that independent expert advice to me in doing my work and I felt it was appropriate to do that in this case. 12:47

279 Q. Now, I think that Mr. de Bruir conducted his review expeditiously. If we can have page 13224 up on the screen. On 5th June of 2019 he comes back, that's the following month. He notes in his letter to you:

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"Enclosed audit report of the investigation as conducted by Assistant Commissioner Finn into the 18 points of complaint as made by Garda Keogh in March 2017."

12:48

So this was a review of the investigation that had been conducted by Assistant Commissioner Finn and didn't touch on the findings by Assistant Commissioner O'Brien, is that right?

12:48

A. It considered all of the facts, I think, that were available to Mr. de Bruir.

280 Q. All right. He then says:

"I have paid cognisance to the grounds of appeal."

12:49

Then he makes a comment in relation to that. But I think that effectively he went through the letter of Mr. Cullen and dealt with it on the basis of isolating what the ground of appeal was and dealt with it on the basis of looking at the investigation, the findings of the investigation and the grounds of appeal in his report, isn't that right?

12:49

A. That's correct.

281 Q. If we then go on to page 13225:

12:49

"I believe that my report covers such questions as posed without having to spill out every such question and address it separately.

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The investigation addressed each point of complaint separately and in the order as listed.

The complaints can also be looked at from a different perspective and in the relevant timeframe in which they relate. I have commented in part on this. It is not within my remit to supplement the investigation but to evaluate the investigation itself." 12:50

And that was his remit, isn't that right? 12:50

A. That's correct.

282 Q. Then he sets out his report extensively, it appears at 13138. It is headed "audit of investigation". He deals with the chronology of the complaint. And then on the following page, 13139, Garda Keogh's complaint of bullying and harassment. And then 13140, he isolates the 18 separate incidents or points cited by Garda Keogh that were listed in the documentation. And then at 13141, he identifies the Garda officers who were named in the above complaints. He sets those out. Then he sets out to deal with each of the complaints 1 to 18. As I say, the manner in which he did that we will see at 13144. He deals with complaint number 1 and he deals with it on the basis of analysing the investigation and the findings. Then if we go over the page, 13145, he deals with the grounds of appeal. He goes through each of the complaints in a similar way; isn't that right? 12:51 12:52

1 A. That's correct.

2 283 Q. And ultimately expressed his view at the conclusion of
3 the report. If we could have page 13222 up on the
4 screen. At 25.1 he says:

5 12:52

6 "I have sought to address the relevant points of appeal
7 that can be discerned in the appeal submission and were
8 not specifically addressed point by point, I believe
9 are encompassed within the reasons for the findings and
10 conclusions of Assistant Commissioner Finn. The 12:53

11 findings and conclusions are logical, rational and are
12 based on the reports and responses provided by the
13 Gardaí, sergeants, inspectors, superintendents who
14 worked with and/or supervised and/or interacted with
15 Garda Keogh during the period May 2014 to December 2015 12:53
16 answer any of the points of appeal not specifically
17 addressed. Seventeen complaints relate to this
18 period."

19
20 He then goes on to say: 12:53

21
22 "Chapter 3 of the booklet Working Together to Create a
23 Positive Working Environment specifies that harassment
24 has to be based on the relevant characteristic of the
25 person outlining the policy and procedures. It 12:53
26 specifies the relevant characteristic and provides that
27 in cases where the inappropriate behaviour is not
28 linked to one of the nine discriminatory grounds, then
29 it is not covered by the above definition. Garda Keogh

1 does not come within the nine characteristics.

2
3 The definition of penalisation in section 3 of the
4 Protected Disclosures Act 2014, includes harassment in
5 relation to a person who makes a protected disclosure. 12:54
6 Garda Keogh's complaints can be said to have been
7 addressed and investigated as if the specified
8 characteristics included persons who make their
9 protected disclosures. Assistant Commissioner Finn did
10 investigate the complaints of harassment and did not 12:54
11 find any instance of inappropriate behaviour on the
12 part of the named officers.

13
14 Chapter 5 of the booklet Working Together to Create a
15 Positive Working Environment outlines forms of 12:54
16 bullying, the list is not exhaustive. There is the
17 allegation of oppressive supervision and the allegation
18 of irrational scrutiny and a minute criticism of
19 investigation work.

20 12:54
21 25. These were not borne out in the reports and
22 responses provided by the Gardaí, sergeants,
23 inspectors, superintendents who worked with and/or
24 supervised or interacted with Garda Keogh during the
25 period of May 2014 to December 2015. Reports 12:55
26 specifically stated that Garda Keogh was not bullied or
27 harassed. "

28
29 Then finally he says:

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"A comprehensive investigation was carried out in relation to all complaints as made by Garda Keogh and the findings of Assistant Commissioner Finn leading to the decision of Assistant Commissioner O'Brien arose from a thorough, fair and impartial investigation."

12:55

And it is signed by Mr. de Bruir, dated the 4th June of 2019. That was his view but that didn't determine the appeal, because that was then a factor that you had to take into account in making a decision; is that right?

12:55

A. That's correct.

284 Q. And what documentation did you then review in relation to arriving at your decision?

A. I looked at the investigation file as submitted by Assistant Commissioner Finn, along with the appendices, I looked at the report and the decisions of Assistant Commissioner O'Brien, I looked at the grounds of appeal as submitted on behalf Garda Keogh, and I looked at the report as submitted to me by Mr. de Bruir. So I considered all of those and I considered them in the context of what I had been asked to do, was to do an audit of the investigation in the context of the complaints that had been made.

12:55

12:56

285 Q. Then, on page 13233 of the materials, please. This is a letter to Mr. Mulligan, dated 11th July 2019:

12:56

"We are requested by your office in a minute dated 25th April 2019 to consider an appeal by Garda Keogh against

1 the decision of Assistant Commissioner O'Brien in the
2 above matter. I now return complete file together with
3 copy of notification of my decision to all parties
4 concerned.

5
6 You will be aware that as part of the appeal process I
7 engaged an independent expert to conduct an audit and
8 attach his complete report to the file. Having
9 considered all the documentation made available to me
10 by your office together with the comprehensive report 12:57
11 from the independent expert, the investigation was
12 carried out in a thorough, fair and impartial manner
13 and on that basis I do not uphold the complaints of
14 bullying made by Garda Keogh against the main
15 personnel." 12:57

16
17 Your decision was communicated to the parties, at
18 13234, on 11th July of 2019. You write to Chief
19 Superintendent Curran, Chief Superintendent Wheatley
20 and again to Superintendent McBrien and Inspector 12:58
21 Farrell and also Chief Superintendent Murray. In that,
22 at page 13235, if I can highlight this passage:

23
24 "I concur with the findings of Assistant Commissioner
25 Finn and subsequent decisions by Assistant Commissioner 12:58
26 O'Brien that each officer fulfilled their obligations
27 and conducted their duties to ensure an accountable and
28 professional policing service was being delivered
29 within their area of responsibility. The actions taken

1 equate to proactive management ensuring appropriate
2 governance and supervision to achieve policing
3 objectives, which I do not believe can be construed as
4 either bullying or harassment. "

12:59

5
6 On the same day you write to Garda Keogh, it's at page
7 13236 of the material. It sets out the history of it.
8 Then if we go to page 13237, it says:

9
10 "I concur with the findings of Assistant Commissioner 12:59
11 Finn and subsequent decisions by Assistant Commissioner
12 O'Brien that each officer fulfilled their obligations
13 and conducted their duties to ensure an accountable and
14 professional policing service was being delivered
15 within their area of responsibility. The actions taken 12:59
16 equate to proactive management, ensuring appropriate
17 governance and supervision to achieve policing
18 objectives, which I do not believe can be construed as
19 either bullying or harassment.

12:59

20
21 Having considered in depth all documentation available
22 to me in this matter, I am of the firm belief that a
23 comprehensive investigation was carried out and the
24 findings resulted from a thorough, fair and impartial
25 investigation and accordingly I can find no 13:00
26 corroborative evidence in support of the complaints and
27 I am unable to uphold any complaint of bullying made by
28 you against the named personnel. "

1 Could I just ask you about that? I mean, there is no
2 requirement of finding corroborative evidence. A
3 decision is based on the balance of probabilities,
4 isn't that right?

5 A. That's correct, yes. 13:00

6 286 Q. Yes. But did you regard it as a requirement that in
7 some form that there should be some independent
8 evidence of the person making the complaint that
9 supported his allegation?

10 A. Well, I found that on the balance of probabilities, 13:00
11 that I had to consider everything that was in front of
12 me and I did need some evidence in support of it. And
13 I needed -- I needed -- I suppose if I come at it from
14 the other way, in doing the review, I found that there
15 was no evidence that any of the actions taken could be 13:01
16 construed as either bullying or harassment. And I was
17 focused on the behaviours of the people that were
18 involved and the evidence and the information that I
19 had in front of me in the context of the investigation
20 files and reports. 13:01

21 287 Q. It may well be that are you not using corroboration in
22 the strict legal sense?

23 A. Correct.

24 288 Q. But what that might tend to suggest is that you are 13:01
25 placing some onus that was greater than on the balance
26 of probabilities on the complainant. Do you
27 understand?

28 A. I wouldn't accept that.

29 289 Q. But I mean, were there circumstances when you reviewed

1 the findings of Assistant Commissioner Finn and the
2 decision of Assistant Commissioner O'Brien, were there
3 occasions when you reviewed the evidence where you were
4 happy to make a decision, if it had to be made, in
5 favour of Garda Keogh, even though there wasn't 13:02
6 evidence outside his assertion to support that?

7 A. I was happy based on the information and the evidence
8 that I had in front of me.

9 290 Q. Yes.

10 A. That there was nothing where I could believe anything 13:02
11 could be construed to be either bullying or harassment.

12 291 Q. Thank you very much.

13

14 END OF EXAMINATION

15

16 CHAIRMAN: Now, have you some significant time, 13:02
17 Mr. O'Brien. I don't want to rush you at all. If it
18 is merely a matter of a few questions, no problem, we
19 will try to dispose of the deputy commissioner.

20 MR. O'BRIEN: It won't be long. 13:03

21 CHAIRMAN: So should we carry on and then break for
22 lunch. Is that convenient? Are you happy with that,
23 deputy commissioner.

24 THE WITNESS: Yes.

25 CHAIRMAN: Okay. 13:03

26

27

28 ASSISTANT COMMISSIONER FINBARR O'BRIEN WAS
29 CROSS-EXAMINED BY MR. O'BRIEN, AS FOLLOWS:

1

2 292 Q. MR. O'BRIEN: Just a couple of questions, deputy
3 commissioner. Just in relation to the work that you
4 carried out on the investigation and the audit, as you
5 described it. Do you have any working papers where you 13:03
6 considered the issues that Garda Keogh had raised and
7 formed your own view in relation to those?

8 A. Well, the working papers I have are the documentation
9 that I have referred to earlier on, in terms of what
10 was provided me by the acting executive director of HRM 13:03
11 and the report of Mr. de Bruir. I think I have
12 outlined the documents that I used in coming to my
13 determination.

14 293 Q. Is see. So, as you said, you have the entire file and
15 appendices, you have the O'Brien report, the grounds of 13:04
16 appeal and the de Bruir report, but you yourself didn't
17 make any notes with your own views on any of the issues
18 raised by Garda Keogh; is that right?

19 A. That's correct.

20 294 Q. So you relied entirely, as it were, on the findings, I 13:04
21 suppose, of Mr. de Bruir, or was it Mr. de Bruir, in
22 reaching your decision not to uphold any of Garda
23 Keogh's complaints?

24 A. I relied on all of the documentation that I had before
25 me, which was the investigation file of Assistant 13:04
26 Commissioner Finn, the decisions reached by Assistant
27 Commissioner O'Brien, the appeals as submitted on
28 behalf of Garda Keogh and the report of Mr. de Bruir.
29 So I used all of those documentation in coming to my

1 determination.

2 295 Q. I see. I know you communicated your decision to Garda
3 Keogh on 11th July 2019. If we just have that, it's
4 at page 13236. I am just wondering, in this letter, it
5 doesn't set out any reasons for your decision, would 13:05
6 you accept that, as to how you arrived at your
7 decision. You merely state that you're concurring with
8 the findings of Assistant Commissioner Finn and
9 subsequent decisions?

10 A. I think it sets out that I conduct the -- that I have 13:05
11 been asked to do the appeal and in concluding the
12 appeal, this is my decisions.

13 296 Q. Can I ask you, how did you satisfy yourself that the
14 investigation of Assistant Commissioner Finn complied
15 with the Policy first of all? What exercise did you 13:05
16 carry out?

17 A. Well, I considered in reading the file and the
18 documentation that I had in front of me, that's how I
19 considered it and I was particularly -- I compared that
20 with the Policy document, that is the organisation's 13:06
21 policy. So in completing the work that I was tasked to
22 do, I examined the investigation file.

23 297 Q. For example, you fully understood the complaint that
24 Garda Keogh was making against the senior officers, is
25 that correct? 13:06

26 A. That's correct.

27 298 Q. When you received the file and the appeal document that
28 Mr. Cullen had sent in, I take it you understood the
29 appeal that Garda Keogh was making against the decision

1 of both the Finn and O'Brien investigations?
2 A. Yes, that's correct. Yes. I had the appeal as
3 submitted by Mr. Cullen on behalf of Garda Keogh.
4 299 Q. would you accept that one of the grounds of appeal that
5 Mr. Cullen raised and one of the issues that Garda 13:06
6 Keogh has with this is the delay from the time he made
7 his complaint to Chief Superintendent Scanlan in March
8 2017, up to the appointment of Assistant Commissioner
9 Finn to investigate in November 2017? Do you accept
10 that that is an issue that Garda Keogh has? 13:07
11 A. well, I might accept that that's an issue that has,
12 however --
13 MR. MURPHY: I beg your pardon, Chairman, can I raise
14 one point? The question is being asked on the basis
15 that Garda Keogh is maintaining a complaint about the 13:07
16 period March to November. Also, as the Chairman has
17 noted earlier, that was expressly obviated by his
18 evidence in the passage that was sought to be opened by
19 Mr. Dignam.
20 CHAIRMAN: He has given that evidence, Mr. Murphy. 13:07
21 MR. MURPHY: Yes. Our concern is that it would appear
22 from the questions, that notwithstanding his evidence,
23 Garda Keogh is still through counsel trying to make the
24 same submission.
25 CHAIRMAN: Yes. what do you say, Mr. O'Brien. 13:07
26 MR. O'BRIEN: I am simply looking at the process.
27 CHAIRMAN: I understand.
28 MR. O'BRIEN: At the time.
29 CHAIRMAN: At the time when the investigation was

1 proceeding.

2 MR. O'BRIEN: Yes.

3 CHAIRMAN: Whatever about the evidence and its
4 significance give at this inquiry, there was a question
5 being maintained of the delay. 13:08

6 MR. O'BRIEN: Yes.

7 CHAIRMAN: Isn't that really what are you saying?

8 MR. O'BRIEN: Exactly. Consistently.

9 CHAIRMAN: And I mean, there is no doubt that there was
10 such a thing and the significant of Garda Keogh's 13:08
11 answers will in due course have to be evaluated, isn't
12 that right? Do you understand, deputy commissioner?
13 Just to explain where we are. Mr. Murphy draws
14 attention to answers given by Garda Keogh in evidence,
15 which on the face of them would appear to exonerate 13:08
16 Assistant Commissioner Fanning and all his associates
17 so to speak, I don't mean that offensively in any way,
18 but all his colleagues, either Garda or non-Garda, in a
19 delay between the 27th March, when Garda Keogh made a
20 statement to Chief Superintendent Scanlan, and the 15th 13:09
21 November, when Assistant Commissioner Finn was
22 appointed. However, Mr. O'Brien is saying, look here,
23 at the time of which we are speaking, and Mr. Cullen's
24 correspondence confirmed it, there was an issue about
25 delay. Now I am sorry to make a big song and dance 13:09
26 about that, but that's the context of where we are. Is
27 that right?

28 300 Q. MR. O'BRIEN: Exactly. What I am asking, deputy
29 commissioner, is, you don't address that delay and

1 neither does Mr. de Bruir, isn't that correct?

2 A. That's correct, we don't address the delay, that's

3 correct.

4 301 Q. Did it not jump out at you as being significant that a

5 complaint was made in March and the investigation 13:09

6 didn't take place -- sorry, and that Assistant

7 Commissioner Finn wasn't appointed to investigate until

8 November '17?

9 A. No. It didn't, Judge, no.

10 302 Q. I notice that you sent your decision by post to 13:10

11 Mr. Cullen. It's at page 13239. And to Garda Keogh,

12 as we just outlined. Is there some reason why you

13 didn't enclose Mr. de Bruir's audit or Mr. de Bruir's

14 report which set out the reasoning behind your

15 decision, to either Garda Keogh or to Mr. Cullen in 13:10

16 that?

17 A. No. I think I communicated my decision, which is what

18 I think is appropriate in the case.

19 303 Q. Would it not have been fair to Garda Keogh, given that

20 you were relying, I suppose, on the review or the audit 13:10

21 carried out by Mr. de Bruir, that he would have sight

22 of the underpinning reasons for your decision?

23 A. I was relying on many things, not just the report of

24 Mr. de Bruir. I think the requirement is that I

25 communicate my decision and that's what I did on that 13:11

26 date.

27 I don't have any further questions.

28 CHAIRMAN: Thanks very much, Mr. O'Brien.

29

1 END OF EXAMINATION

2
3 CHAIRMAN: Now, anybody else into the picture? I know
4 the questions they're going to ask you.

5
6 DEPUTY COMMISSIONER JOHN TWOMEY WAS CROSS-EXAMINED BY
7 MR. FERRY, AS FOLLOWS:

8
9 304 Q. MR. FERRY: Deputy Commissioner Twomey, on behalf of
10 Superintendent McBrien, the only question I have is,
11 were you --

12 CHAIRMAN: Sorry, Mr. Ferry, you're for Superintendent
13 McBrien.

14 MR. FERRY: Yes.

15 CHAIRMAN: So Mr. Ferry wants to ask, yes, Mr. Ferry.

16 305 Q. MR. FERRY: You communicated to her in relation to
17 conducting an appeal and appointing Mr. de Bruir and
18 then you also communicated to her in July 2019 both the
19 outcome of your decision. And my question is: From
20 your perspective, being deputy commissioner, were you
21 of the view that Superintendent McBrien had been the
22 subject of a complaint of unacceptable behaviour by
23 Garda Keogh?

24 A. No. It was clear in the documentation that
25 Superintendent McBrien was not named in it. However,
26 it was in the correspondence that I had received from
27 the executive director of HRM and it's in that context
28 I corresponded.

29 306 Q. Thank you, deputy commissioner.

1 307 Q. CHAIRMAN: So that was the only reason?
2 A. Yes.
3 308 Q. CHAIRMAN: You got materials with these names?
4 A. Correct.
5 309 Q. CHAIRMAN: And you notified. Does that answer your 13:12
6 question, Ms. Gleeson?
7 MS. GLEESON: If I might very briefly.
8 CHAIRMAN: Yes, of course, there's no problem.
9
10 DEPUTY COMMISSIONER JOHN TWOMEY WAS CROSS-EXAMINED BY 13:12
11 MS. GLEESON, AS FOLLOWS:
12
13 MS. GLEESON: Just put the letter dated 18th April
14 2019, that's at 16361, the previously received draft
15 letter at -- 13:12
16 CHAIRMAN: Is your microphone on or are you too far
17 away from it, Ms. Gleeson, because I am straining a
18 tiny bit. What's the number of the page.
19 MS. GLEESON: Sorry, it's 16361 is the letter dated
20 18th April. 13:13
21 CHAIRMAN: 16361.
22 MS. GLEESON: That's right.
23 CHAIRMAN: 16 -- hold on a second. Blood sugar is low.
24 wait now. we will all get this. 16361.
25 MS. GLEESON: That's right. 13:13
26 CHAIRMAN: Thank you. Now, 8th May 2019.
27 MS. GLEESON: '18.
28 CHAIRMAN: Deputy Commissioner Twomey's letter. What
29 do you want to ask about that, Ms. Gleeson.

1 MS. GLEESON: Just to say that was a letter received by
2 Inspector Farrell and I suppose while you say that he
3 wasn't named as somebody who had been involved in
4 unacceptable behaviour, I suppose, despite the previous
5 correspondence from Assistant Commissioner Fanning, 13:13
6 which was 9th November 2017, 6455, and I know you're
7 aware of the intervening correspondence, obviously
8 Mr. Cullen on behalf of Garda Keogh made it abundantly
9 clear that there was no cause of action against
10 Inspector Farrell and your colleague Assistant 13:14
11 Commissioner Finn wrote to Inspector Farrell on 25th
12 January 2018, stating that certainly no cause of action
13 against him. Also, your colleague, Assistant
14 Commissioner O'Brien, then wrote to Inspector Farrell,
15 7th February 2019, saying matter finalised. And in 13:14
16 fact, in that letter, that's at 7443, Assistant
17 Commissioner O'Brien referred to the meeting in the
18 Mullingar Park Hotel, 1st December 2017, where again
19 Garda Keogh confirmed that there was no cause of action
20 against Inspector Farrell. You can understand then 13:14
21 while he is receiving your correspondence --
22 CHAIRMAN: You think he is entitled to be a little bit
23 alarmed.
24 MS. GLEESON: Yes.
25 310 Q. CHAIRMAN: Even though apparently he is not being 13:15
26 accused. That does seem to be a reasonable point.
27 Sorry, do you think that is a reasonable point of view
28 for Inspector Farrell and Superintendent McBrien, to
29 say, everybody says I'm not involved but why am I

1 getting this correspondence?
2 A. I think it is not unreasonable. But in the context of
3 the task that I was assigned, I felt it necessary to
4 close it off and I felt this was the most appropriate
5 way to do that. 13:15
6 CHAIRMAN: Okay.
7 311 Q. MS. GLEESON: Deputy commissioner, was that essentially
8 because obviously there was an originating letter from
9 Assistant Commissioner Fanning stating these are the
10 five people in respect of whom we are going to make -- 13:15
11 there's going to be an investigation. Obviously in the
12 meantime there was an investigation, it was clear that
13 there was no cause of action against Inspector Farrell
14 but because his name was on the originating
15 documentation, as it were, he was then included in your 13:16
16 work and your correspondence.
17 312 Q. CHAIRMAN: If I understand, what you did was based on
18 what the executive director sent to you.
19 A. My appointment.
20 313 Q. CHAIRMAN: So we have to look upstream of the executive 13:16
21 director to find the cause of it. But it is accepted
22 that it is a reasonable or a not unreasonable
23 apprehension on the part of the officers concerned, why
24 they were getting the correspondence.
25 MS. GLEESON: Yes. 13:16
26 CHAIRMAN: That seems to be the situation. You're
27 happy with that.
28 A. Yes.
29

1 END OF EXAMINATION

2
3 CHAIRMAN: Mr. Murphy.

4 MR. MURPHY: Yes, Chairman, very briefly.

5
6 DEPUTY COMMISSIONER JOHN TWOMEY WAS THEN EXAMINED BY
7 MR. MURPHY, AS FOLLOWS:

13:16

8
9 314 Q. MR. MURPHY: Could I ask you to be shown document 7446
10 please? This is a letter that has been referred to I
11 think in your evidence this morning, it's a letter from
12 Mr. Cullen dated 19th March 2019. If you just turn
13 over please to the next page, which is 7446, and it's a
14 letter addressed to the commissioner Harris and then
15 also to AC Fintan Fanning. Do you see that?

13:16

16 A. That's correct, yes.

17 315 Q. Yes. And then turning over to the next page, page
18 7447. First of all, could I ask you to look at the
19 third paragraph, it begins with the word "findings", do
20 you see that?

13:17

21 A. Yes.

22 316 Q. It says:

23
24 "Such findings were then to be examined by AC Fanning,
25 who was the natural judge in the circumstances."

13:17

26
27 First of all, can I ask you to confirm for your
28 evidence this morning that in fact AC Fanning agreed
29 with you and suggested that he should not be the

1 natural judge in this case?

2 A. That would be correct, yes.

3 317 Q. You detailed how subsequently, and I will come back to
4 the letter in a moment, that you had a discussion with
5 him or wrote to him and you both agreed that it would 13:18
6 be inappropriate?

7 A. I think that correspondence was probably maybe with the
8 executive director of HRM.

9 318 Q. Yes.

10 A. I was not in contact with Assistant Commissioner 13:18
11 Fanning.

12 319 Q. Yes, I see. But in terms of the communications that
13 were shown to you this morning, here.

14 A. Correct. That is correct, yes.

15 320 Q. And then secondly, there's a reference to AC Fanning 13:18
16 being suspended on 2nd January 2019, his suspension was
17 subsequently apparently acknowledged to be unlawful. I
18 think that is also incorrect. There has been no
19 judicial ruling or acceptance --

20 CHAIRMAN: Mr. Murphy, I don't think we should be 13:18
21 getting into this. Somebody is going to say that I am
22 going to have to look at another question that I can
23 see and I just want to steer away from that.

24 MR. MURPHY: Yes.

25 CHAIRMAN: The fact is he was there or he wasn't there, 13:18
26 he was available or he wasn't.

27 MR. MURPHY: Yes.

28 CHAIRMAN: I think we should leave it at that.

29 MR. MURPHY: Very good, Chairman

1 CHAIRMAN: Counsel for Assistant Commissioner Fanning,
2 Mr. O'Connor is there, Mr. O'Connor is going to be
3 worrying about whether he should be intervening or not
4 and I am going to reassure him that he doesn't need to
5 be intervening. 13:19

6 MR. MURPHY: Chair, I am not seeking to cast any
7 aspersions.

8 CHAIRMAN: I understand.

9 MR. MURPHY: The point I'm trying to make for the
10 purpose of clarification, Chairman, is that in this 13:19
11 paragraph there's a suggestion that somehow but for the
12 actions --

13 CHAIRMAN: That's right.

14 MR. MURPHY: whereas in fact the reality is that
15 Assistant Commissioner Fanning himself agreed that he 13:19
16 shouldn't be. That's the point I wished to make,
17 Chairman.

18 CHAIRMAN: Okay.

19 321 Q. MR. MURPHY: If I could ask you to be shown 7463,
20 please. This is the letter that you were shown this 13:19
21 morning. If you scroll down. In fact, I think that
22 that letter was opened to you this morning. Can you
23 agree with me that that confirms that in fact the
24 recommendation to appoint the external came from
25 Assistant Commissioner Fanning. 13:20

26 A. That's correct.

27 322 Q. You felt that was a wise course of action yourself?

28 A. That's correct.

29 323 Q. CHAIRMAN: But he didn't know about that. As it

1 happens, we discover that was his idea but
2 independently the deputy commissioner had decided that
3 was a good idea, isn't that right?
4 A. That's correct.
5 324 Q. MR. MURPHY: So there is no discord on that basis. 13:20
6 A. That's correct.
7 325 Q. I think also in that context, Assistant Commissioner
8 Fanning would have had a lot of experience with the HR
9 related supervision in An Garda Síochána and would know
10 the Policy very well? 13:20
11 A. That's correct.
12 326 Q. So you would have viewed it from the same angle, that
13 this was a prudent step, to secure an independent
14 person's assistance in this particular stage of the
15 process? 13:20
16 A. Absolutely.
17 327 Q. Then finally, if you can confirm to us that you
18 examined the documentation that you outlined this
19 morning, that is to say the file, the grounds of
20 appeal, the O'Brien report, the de Bruir report, all 13:21
21 the information that you were in a position to study,
22 evaluate and come to your decision.
23 A. That's correct.
24 328 Q. Thank you. 13:21
25
26 END OF EXAMINATION
27
28 MR. MARRINAN: I am sorry, Chairman, just one point
29 that I overlooked.

1 CHAIRMAN: Thank you very much.

2

3 DEPUTY COMMISSIONER JOHN TWOMEY WAS THEN RE-EXAMINED BY
4 MR. MARRINAN, AS FOLLOWS:

5

13:21

6 329 Q. MR. MARRINAN: If we could have page 16473 up on the
7 screen. This is coming back to the disciplinary
8 investigation conducted by Assistant Commissioner
9 McMahon. She gave evidence to us in relation to this.
10 I opened this letter to her.

13:21

11 CHAIRMAN: Yes.

12 330 Q. MR. MARRINAN: That was sent by Inspector Noonan on her
13 behalf. And it concerns a complaint that Garda Keogh
14 has in relation to the fact that he wasn't notified who
15 had taken over the disciplinary investigation?

13:21

16 CHAIRMAN: Oh yes.

17 331 Q. MR. MARRINAN: From Assistant Commissioner Jack Nolan.
18 You will see there in the second paragraph, this is
19 addressed to you, dated 25th September 2017:

20

13:21

21 "Clarification is sought as to whether the members
22 concerned, including the complainant and those members
23 complained of, have been formally notified that
24 Assistant Commissioner McMahon has been nominated to
25 take over to completion the investigation."

13:22

26

27 we don't seem to have any follow up documentation in
28 relation to that. Do you recall this letter coming to
29 you in relation to this concern that she had?

1 A. I don't specifically remember the documentation.

2 332 Q. Yes.

3 A. But I am aware that those members that were involved
4 and those members that were complained of were
5 corresponded to by me at a later stage. Following on 13:22
6 from this letter the members that were mentioned in the
7 discipline, I notified them.

8 333 Q. CHAIRMAN: The people who were being investigated.

9 A. Yes.

10 334 Q. CHAIRMAN: But the assistant commissioner obviously 13:22
11 envisaged that Garda Keogh would also be notified. It
12 doesn't appear he was notified, is that right?

13 A. It doesn't, it doesn't. However, in a discipline
14 investigation, it's slightly different to a bullying
15 and harassment investigation or some other forum like 13:23
16 that. The genesis of the discipline investigation is
17 the findings of the Ó Cualáin report. So that would
18 have been the information and the evidence that he
19 brought to the table and he would have -- based on his
20 findings, he would make a recommendation that on the 13:23
21 information that I have gathered during the course of
22 the investigation, there should be a discipline
23 investigation. And that would be the commencement of
24 the proceedings. So there wouldn't be a single
25 complainant as such. 13:23

26 335 Q. MR. MARRINAN: So there was a decision made in relation
27 to this and a decision was made not to notified Garda
28 Keogh, as perhaps has been suggested there by Assistant
29 Commissioner McMahon?

1 A. Well, the decision that was taken was to write to the
2 members complained of.

3 336 Q. CHAIRMAN: Yes. Was there a decision taken, as far as
4 you know, not to write to Garda Keogh, or did it just
5 happen that way? 13:24

6 A. I would suggest it probably just happened that way,
7 Judge.

8 337 Q. CHAIRMAN: I mean that's one of his complaints, that
9 Assistant Commissioner Nolan came and retired, he says
10 he didn't know what was happening after that and 13:24
11 certainly that would appear to be the case. Okay.
12 Very good.

13

14 END OF EXAMINATION

15

16 CHAIRMAN: Thank you very much, deputy commissioner,
17 and you're free to go now. I again thank everybody,
18 including Ms. Kelly, for once again putting in an extra
19 stint to facilitate the work and to facilitate the
20 deputy commissioner. Okay. Thank you very much. What 13:24
21 time is it? 2:30, all right, thank you very much.

22

23 THE WITNESS THEN WITHDREW

24

25 THE HEARING ADJOURNED FOR LUNCH

26

27

28 THE HEARING RESUMED, AS FOLLOWS, AFTER LUNCH:

29

1 CHAIRMAN: Thank you very much.

2 MR. McGUI NNESS: Chairman, the next witness is the
3 Former Assistant Commissioner Nolan.

4 CHAIRMAN: Thank you very much.

5 MR. O' BRIEN: I just want to clarify in relation to the 14:31
6 issue that arose before lunch.

7 CHAIRMAN: Yes. You can come on up, Mr. Nolan, thanks
8 very much.

9 MR. O' BRIEN: Just to confirm that Mr. Dignam was
10 correct, it is page 5111 in relation to the number 5 14:31
11 issue that you asked me to --

12 CHAIRMAN: We were right. Sit down there for a moment.
13 We were right in thinking that that was the reference
14 that he was making. Okay.

15 MR. O' BRIEN: That's right. Just to formally clarify 14:32
16 that.

17 CHAIRMAN: It was the Inspector Drea matter. Okay,
18 thank you very much.

19 MR. O' BRIEN: Thanks, Mr. O'Brien. Now.

20 14:32

21 RETIRED ASSISTANT COMMISSIONER JACK NOLAN, HAVING BEEN
22 SWORN, WAS DIRECTLY-EXAMINED BY MR. McGUI NNESS, AS
23 FOLLOWS:

24

25 THE WITNESS: Jack Nolan. Retired assistant 14:32
26 commissioner.

27 CHAIRMAN: Thanks very much.

28 338 Q. MR. McGUI NNESS: I am going to refer to you as
29 assistant commissioner, if you don't mind, because it

1 relates to your period as such. I think you retired
2 from An Garda Síochána on 20th April 2017?

3 A. That's correct, Chairman.

4 339 Q. After nearly 40 years service?

5 A. Just about 40 years. 14:32

6 340 Q. Could you give a brief outline of your career up to the
7 date of your retirement?

8 A. Okay. I joined An Garda Síochána in 1977, was based in
9 Cork city. Moved from there to the Laois-Offaly

10 division. Was in several stations there. Promoted to 14:33

11 sergeant. Went to Clones in County Monaghan. Back to
12 Laois-Offaly for a while. Promoted inspector and went

13 to Garda Headquarters, where I served in a number of
14 branches in Garda Headquarters, change management,

15 which was in the IT section at that time, the office of 14:33
16 deputy commissioner strategic resource management.

17 Then I was promoted superintendent. I was seconded to
18 the UK police for a while. Then I was the chief

19 superintendent in the Garda college. Then I was
20 promoted assistant commissioner and served in the 14:33

21 Western Region, the Southern Region for a short while,
22 the Southeastern Region. During those periods I

23 retained responsibilities for organisational
24 development and strategic planning branch in Garda

25 Headquarters and then I took over the DMR and the 14:34
26 community relations and public safety branch. And

27 several of those portfolios I held at the same time
28 during 2015, '16, '17.

29 341 Q. I think you retired then, as we have said, in April

1 2017, while you were assistant commissioner for the
2 DMR?

3 A. That's correct.

4 342 Q. But at the time we're primarily concerned with, I think
5 you were the assistant commissioner for the
6 Southeastern Region when you were appointed to do a
7 disciplinary inquiry?

14:34

8 A. That's correct, Chairman

9 343 Q. We will come to that in a moment. In your statement,
10 which is to be found in the Tribunal papers at volume
11 14, page 4103, you draw attention first of all to the
12 statement made about you by Garda Keogh, which is page
13 5 of his statement furnished to the Tribunal
14 originally, it's page 120 of our books. We don't need
15 to look at it. You have set it out there accurately
16 insofar as it relates to you. I think he sets out
17 there a suggestion that you had been the subject of
18 criticism in a published report of a commission of
19 inquiry?

14:34

14:35

20 A. That's correct, Chairman. I was the Garda liaison
21 officer to Judge Fennelly's Commission. While I was
22 never the subject of any adverse commentary, I was
23 significantly praised by Judge Fennelly for the role I
24 performed while a liaison officer to that Commission,
25 in conjunction with my colleagues of that time,
26 Superintendent Michael Flynn and the then Inspector
27 Majella Armstrong. So that suggestion that I was
28 adversely commented upon or criticised is totally
29 inaccurate.

14:35

14:35

1 344 Q. CHAIRMAN: Totally inaccurate?
2 A. Totally inaccurate.

3 345 Q. CHAIRMAN: You say it's quite the opposite.
4 A. Exact opposite, Chairman.

5 346 Q. MR. MCGUINNESS: You have included a quotation from the 14:36
6 report there in your statement, is that right?
7 A. I did, indeed, Chair.

8 347 Q. Can I ask you, did you have any knowledge of Garda
9 Keogh when you were appointed to conduct the discipline
10 inquiry? 14:36
11 A. I had no knowledge of Garda Keogh. I never met Garda
12 Keogh.

13 348 Q. And in terms of the inquiry, I think you were appointed
14 to inquire into the conduct of four members at the
15 time? 14:36
16 A. That's correct, Chairman. I would have been appointed
17 by Assistant Commissioner Kieran Kenny, who was from
18 the Northern Region and who was acting in the role, at
19 administrative functions associated with the office of
20 the deputy commissioner in relation to Internal Affairs 14:37
21 and discipline.

22 349 Q. Yes.
23 A. Hence he being the appointing the officer as delegated
24 by the Garda Commissioner. So he appointed me to
25 conduct the disciplinary investigation on 25th June 14:37
26 2015.

27 350 Q. Perhaps we will just look at the letter of appointment,
28 at page 16439, which is volume 15. There is reference
29 there to four IA31 forms. He signs it obviously as

1 assistant commissioner for the deputy.

2 A. Yes, Chairman, I have those in front of me now, yes.

3 351 Q. Now, one of the matters that Garda Keogh has given
4 evidence about, the complaint really, that you were
5 appointed and they knew you were going to retire. NOW 14:38
6 did you retire at the normal age?

7 A. Yes. I retired on the last day of my service,
8 according to the statutory age limit. I would have
9 been 60 on the following day.

10 352 Q. All right. In any event, as of the 25th June you had 14:38
11 some 22 months of service ahead of you?

12 A. I had, indeed, Chairman. Yes.

13 353 Q. If we go to the next page, 16440?

14 A. Yes.

15 354 Q. This is the IA31 form in relation to Garda A? 14:39

16 A. Yes, indeed, Chairman.

17 355 Q. On top of the brief details of the act or conduct
18 alleged, you were appointed to investigate the matters
19 set out there?

20 A. That's correct. 14:39

21 356 Q. They're not specified breaches of discipline in the way
22 that they are formulated. They are indicative of the
23 conduct that you are required to inquire into?

24 A. That's correct, Judge, yes.

25 357 Q. You don't and weren't presented with, as it were, fully 14:39
26 fledged alleged breaches of discipline?

27 A. That's correct.

28 358 Q. They appear later in the process?

29 A. That's correct.

1 359 Q. Following upon the establishment of a board of inquiry,
2 isn't that right?

3 A. That's correct. That's at the end of the investigative
4 process, when a recommendation is made by the
5 investigating officer. 14:40

6 360 Q. Yes. Now, I think that's all you received at that
7 time, isn't that right? You received nothing with
8 that, in terms of a file or any documents, statements
9 or exhibits?

10 A. That's correct, Chairman. 14:40

11 361 Q. Can I ask you: What view did you take at that point in
12 time? Did you know that there was a criminal
13 investigation ongoing?

14 A. I would have been generally aware that there was an
15 investigation in the Athlone Garda Station, without 14:40
16 knowing any of the specifics of that investigation. So
17 as a result I sought a copy of the investigation file
18 that precipitated the disciplinary allegations.

19 362 Q. Yes. Well, we will come to that in due course, but
20 what I am going to do is, perhaps counter intuitive, I 14:41
21 am going to jump forward to the end of your tenure.
22 Obviously those in headquarters, HRM, Internal Affairs,
23 knew that you were actually going to retire in and
24 around the period just before you did retire, isn't
25 that right? 14:41

26 A. That's correct. You would get a notification that your
27 tenure in the organisation was about to expire.

28 363 Q. Yes. Could we look at page 16434? Perhaps if we go to
29 16431, I beg your pardon.

1 A. Okay.

2 364 Q. This is from Chief Superintendent Nyland to the
3 assistant commissioner, Northern Region. It records
4 there that you were appointed to investigate the matter
5 and it says:

14:42

6

7 "In relation to Assistant Commissioner Nolan's
8 discipline investigation, as Assistant Commissioner
9 Nolan is due to retire shortly from An Garda Síochána,
10 he should be replaced as investigating officer in this
11 matter to allow for a handover period before his
12 retirement. Every effort should be made prior to
13 Assistant Commissioner Nolan's retirement for any
14 evidence gathered to date in his investigation to be
15 provided to the new officer."

14:42

14:43

16

17 Now, did you see any difficulty from your point of view
18 as being replaced at that point in time?

19 A. I did not see any difficulty. I assumed that that
20 would be the normal course of events, that the
21 investigation would continue under a new investigating
22 officer.

14:43

23 365 Q. Yes. Now, Chief Superintendent Nyland had referred to
24 your report in a letter dated 16434. This is a letter
25 from the chief superintendent to the assistant
26 commissioner. You have been asked, I think, by letter
27 of the 4th April, at an earlier date obviously, to
28 provide a report on the extent of your discipline
29 investigation to date. I think Garda Adrian Cooke was

14:44

1 part of your team at that point in time?

2 A. That would be correct, Chairman.

3 366 Q. He said:

4

5 "Please find attached report of Garda Adrian Cooke, 14:44
6 regional organised crime investigation unit, dated 11th
7 April 2017, which was forwarded to deputy commissioner
8 Governance and Strategy on 3rd April 2017 by assistant
9 commissioner DMR.

10

14:44

11 Garda Cooke reports that at the time of his report
12 there have been five conferences held at Dungarvan
13 Garda station, chaired by Superintendent Lacey, with
14 the most recent being 9th March 2017.

15

14:44

16 It is reported that a lengthy desktop review of over
17 100 witness statements have been conducted and jobs
18 have been issued where appropriate. A substantial body
19 of work has been completed. A large number of
20 witnesses, both civilian and Garda have yet to be 14:45
21 approached about their original statements made to the
22 criminal investigation. Arrangements have been put in
23 place by the investigation team to interview
24 approximately 20 Garda witnesses and as many civilian
25 witnesses in relation to their original statements. 14:45

26

27 It is reported that the investigation team consisting
28 of Superintendent Michael Lacey, Inspector Seamus
29 Maher, Detective Sergeant Shea Keevans, Sergeant Thomas

1 and Garda Adrian Cooke and D/Garda Conor Breslin..."

2

3 There is a reference then to the suspension of Garda A.

4 Then there is an issue then about your retirement and

5 your replacement there. Garda Cooke's report is at 14:45

6 page 16448, if we just perhaps look at that. You're

7 familiar with this, I take it? Or you were at the

8 time, I'm sure. It's dated the 8th April.

9 A. It's directed to Superintendent Lacey.

10 367 Q. Yes. 14:46

11 A. I am not quite sure that I saw this report before.

12 368 Q. Yes.

13 A. I would most likely be familiar with most of the

14 contents.

15 369 Q. Yes. 14:46

16 370 Q. CHAIRMAN: This is a report of the progress of the

17 Nolan report?

18 A. Yes.

19 371 Q. CHAIRMAN: of the Nolan investigation, I should say.

20 A. Yes. 14:46

21 372 Q. MR. McGUI NNESS: This was your investigation at the

22 time, obviously?

23 A. Yes, indeed.

24 373 Q. The matters are summarised there:

25 14:46

26 "Since 26th October 2016 there have been five

27 conferences held at Dungarvan Garda station, chaired by

28 Superintendent Lacey with the most recent being 9th

29 March 2017. "

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Then it says:

"In order to streamline the matters under investigation, three jobs books containing in excess of 120 job sheets have now been opened and address matters individually as follows. . . "

And then it describes the progress there. But was that the first conference held in the context of the disciplinary inquiry, October 2016?

A. That would be -- that's quite possible, that that was the first working conference as such.

374 Q. Yes. We will come back to the reasons for that, but we have seen from our papers, just to show you an example of Assistant Commissioner McMahon's view about an issue that is of potentially some relevance, that is the discipline inquiry being in abeyance. If we look at document 16465, of the same book.

A. Yes, I have that.

375 Q. What happened when she had taken over the investigation was, that a statement had been obtained from Ms. B, which she referred on to the Ó Cualáin inquiry as of February 2018. And she expresses the view here, in the second paragraph:

"The current status of the discipline inquiry is that it must be put in abeyance pending the outcome of the criminal investigations interaction was Garda A. "

1 A. Okay. This would be after I have retired.

2 376 Q. Yes.

3 A. So I wouldn't be familiar with that particular aspect.

4 377 Q. Yes. She repeats that in other letters. But was your
5 investigation in abeyance from the date that you were 14:49
6 appointed until October 2016?

7 A. No, Judge. I sought the background information, the
8 copies of witness statements and the investigation file
9 in order that I could familiarise myself, brief myself
10 and also to bring an investigation team up to speed 14:49
11 with the context and the background to the
12 investigation. I never actually put or never sought to
13 put the investigation into an abeyance. Indeed, at one
14 stage I sought advice from our Internal Affairs or
15 legal section, I am not quite sure which it was at the 14:49
16 time but I am sure there is a record of it.

17 378 Q. Yes. We have Assistant Commissioner McMahon's
18 completed investigation report, in which she gives a
19 summary of matters relating to your period in that
20 position? 14:50

21 A. Yes.

22 379 Q. Could I ask you to look at that? It's in volume 42,
23 commencing at page 11870. If we just start down at the
24 bottom of that page, paragraph 3.1, it notes your
25 appointment, it notes that you signed the IA32, which 14:51
26 is the notice to the member concerned there that this
27 relates to. And it appears from paragraph 3.3 that was
28 signed on the 22nd July. There's an issue there about
29 whether it should have contained eight or nine

1 allegations. But that was served on the garda and we
2 will come back to him in a moment. But at paragraph
3 4.1, if we turn onto the next page, 11871, it says:

4
5 "A full copy of this investigation file which
6 precipitated this discipline inquiry was requested from
7 the then Assistant Commissioner Donal Ó Cualáin."
8

14:51

9 Can you just help us as to the date that you first saw
10 that?

14:52

11 A. It would have been very early in the investigation.
12 The exact date, I can't recall right now, but if you
13 can show me a document, I would...

14 380 Q. It goes into a little more specifics in terms of dates
15 and we will come to those in due course. But it is a
16 fact that you sought that?

14:52

17 A. I did indeed seek the investigation file, background
18 information, copies of statements.

19 381 Q. Yes. At paragraph 4.2 it says:

20
21 "Certain concerns were raised by the then Assistant
22 Commissioner Donal Ó Cualáin in respect of the
23 provision of the complete investigation file and
24 following on from those concerns there was a protracted
25 period of time when legal advice was sought from Ken
26 Ruane, head of Legal Affairs in respect of the issue."
27

14:52

28 Was that advice that you sought or that Assistant
29 Commissioner Ó Cualáin sought?

1 A. It is my understanding that Assistant Commissioner Ó
2 Cualáin sought that advice.

3 382 Q. If we could turn over to the next page, that is 11872.
4 At number 5 there it says that you appointed Chief
5 Superintendent Dominic Hayes, is that right? 14:53

6 A. That's correct, Chair, yes.

7 383 Q. You were writing then to the executive director, it
8 would appear, on the 28th July, telling him that a full
9 copy of the file was awaited?

10 A. Yes. 14:53

11 384 Q. Did you see him as having a function in it?

12 A. The HRM section, Internal Affairs, department 6 within
13 the HRM section and the executive director of HRM would
14 be the head of that section. That's most likely why I
15 wrote there. It would be pretty normal in an 14:54
16 investigation that a copy of the file could be obtained
17 via the HRM/Internal Affairs section.

18 385 Q. Yes. Perhaps you may or may not have been aware that
19 the file had been completed at that time. Had you any
20 knowledge of the progress of the investigation? 14:54

21 A. I didn't know whether the file was complete or not. I
22 worked on the assumption that there would be material
23 available, seeing as the request for an appointment to
24 investigate disciplinary matters had been made.

25 386 Q. Yes. You seem to have written on the same date to 14:54
26 Assistant Commissioner Ó Cualáin, if point number --
27 no, sorry, you were writing also to Assistant
28 Commissioner Kenny, is that right?

29 A. Assistant Commissioner Kenny would have been the

1 appointing officer.

2 387 Q. Yes.

3 A. He was in the Northern Region, whether he was acting in
4 the Western Region on that particular date, I'm not
5 sure. 14:55

6 388 Q. Yes. It's recorded at point number 9 there that:
7
8 "Assistant Commissioner Ó Cualáin corresponded with you
9 outlining concerns over the release of the full
10 investigation file for the purpose of the discipline 14:55
11 inquiry and suggests a meeting is convened to discuss
12 the matter, which is held at Garda HQ on 10th August
13 2015."
14
15 Is that correct? 14:55

16 A. That's correct, yes. I certainly met with the then
17 Assistant Commissioner Ó Cualáin in Garda Headquarters.

18 389 Q. Yes. We don't appear to have a note of that meeting
19 from any source. Can you help us as to how that
20 meeting progressed and what the outcome was? 14:55

21 A. Yes. My recollection of that meeting was, myself and
22 Chief Superintendent Dominic Hayes attended and AC
23 Ó Cualáin and I believe it was Superintendent Matt
24 Nyland from the Internal Affairs section at that time.

25 390 Q. Yes. 14:56

26 A. We had a discussion about the investigation. And it
27 was concluded that only witness statements would be
28 made available.

29 391 Q. What was the rationale for that, if I could ask?

1 A. The rationale was, to the best of my recollection now,
2 that the criminal investigation was still in progress
3 and as such no file would have been forwarded to the
4 DPP at that stage. So only the witness statements that
5 were then available would be made available.

14:56

6 392 Q. Yes. But was it your expectation they would be made
7 available to you immediately or as soon as may be?

8 A. Well, certainly as soon as they were available I would
9 have expected them, yes.

10 393 Q. There is a reference to this issue of abeyance in a
11 text sent to Assistant Commissioner Ó Cualáin by
12 somebody else, as an issue that ought to go into his
13 report. It doesn't appear to be in his report. But
14 could I ask you just to look at that issue in terms of
15 what the text says? It's at page 11384. It's part of
16 Assistant Commissioner Ó Cualáin's disclosure. If we
17 just down the page. It should appear on the screen or
18 if you want to see the paper copy, it will be handed to
19 you there. It's just a short paragraph there:

14:57

14:57

20
21 "I e-mailed you the paragraph re A Nolan and the
22 meeting where it was agreed to put it in abeyance
23 pending the submission of your investigation file. I
24 think I have made it too wordy and I am trying to
25 figure out where best to put a full stop. Everything
26 else is complete."

14:57

14:58

27
28 There wasn't, as I see it, any reference to the meeting
29 or the disciplinary inquiry being put into abeyance,

1 but that appears to suggest that there had been a
2 decision reached to put the disciplinary inquiry into
3 abeyance as a result of the meeting?

4 A. I cannot comment on that. I haven't seen this before.

5 394 Q. Yes. 14:58

6 A. I am not quite sure of the context.

7 395 Q. Okay. Let's leave the text aside. Was it your
8 position that your inquiry under the discipline
9 regulations was in abeyance until the criminal
10 investigation had finished? 14:58

11 A. That's not my recollection, because I did not have
12 enough material to come to a decision or a conclusion
13 that an investigation should be put into an abeyance,
14 bearing in mind that the general principle is that
15 investigations should be conducted as swiftly and as 14:59
16 expeditiously as possible.

17 396 Q. Yes. In any event, going back to the sequence as
18 outlined in the McMahon report, for convenience. At
19 page 11872, at the bottom, point number 10.

20 A. Yes, I can see that, number 10, yes. That would appear 14:59
21 to be in order, yes.

22 397 Q. Were you made aware that Detective Superintendent
23 Mulcahy was the point of contact with the confidential
24 reporter, Garda Keogh?

25 A. I don't recall that, because I was dealing direct with 15:00
26 the private secretary to the Commissioner, as the
27 conduit for anything to do with confidential reporting
28 or confidential recipient. That would be the normal --
29 that was the normal route when confidential reporting

1 was involved.

2 398 Q. Yes. It would appear that Garda Keogh was informed of
3 your appointment by Detective Superintendent Mulcahy on
4 3rd September 2015. This is a report, Chairman, you
5 have previously seen when Detective Superintendent 15:00
6 Mulcahy was giving evidence. It is his report of the
7 3rd September 2015. If we just look at page 7688. And
8 if we go down to the very last paragraph on that. The
9 report is dated the 3rd September. This relates to
10 events on the 30th July. He says: 15:01
11
12 "I made contact with the confidential reporter, he
13 advised me he had written a letter about the
14 investigation to the Minister for Justice and the
15 office of Director of Public Prosecutions. On the same 15:01
16 date I advised the confidential reporter that a
17 discipline investigation had also commenced and was
18 being overseen by Assistant Commissioner Jack Nolan.
19 The confidential reporter stated that there were two
20 other investigations with GSOC." 15:01
21
22 There is the reference then to another person and a
23 reference to you there. In terms of your
24 investigation, just going back to the sequence at
25 11873. It would appear that there was some element of 15:02
26 public controversy brought out in October of 2015,
27 because Deputy Daly and a reporter, Mr. John Burke from
28 RTÉ, raised the issue publicly. Do you recall that
29 being made an issue at the time

1 A. I recall that this occurred, that there was publicity
2 about the investigation.

3 399 Q. Yes.

4 A. I didn't have anything to do with that publicity.

5 400 Q. Yes. Well, perhaps we will look at volume 39, page 15:02
6 11022. This would appear to have been a query --
7 sorry?

8 A. Thank you. 11022, yes.

9 401 Q. Yes. A query initiated I think in the normal way
10 between Mr. Burke and the Press Office? 15:03

11 A. Okay, yes.

12 402 Q. And it's raising an issue, if we go down the page, it
13 says:
14
15 "Can you give me an update in relation to an issue we 15:03
16 previously covered on the This Week radio programme
17 some weeks ago; specifically the decision by the Garda
18 Commissioner Nóirín O'Sullivan to appoint Assistant
19 Commissioner A J Nolan to take a leading role in the
20 disciplinary process into a senior garda, despite the 15:04
21 expression of concern by a Garda whistleblower that
22 they had a concern over a possible conflict of interest
23 between the senior garda in question, who was under
24 investigation and AC Nolan.
25 15:04

26 What steps are being taken to ascertain the existence
27 of conflict of interest as between the two men as
28 alleged.
29

1 Is Assistant Commissioner Nolan still performing the
2 task as described, taking a senior role in the internal
3 disciplinary investigation or has he been asked to step
4 aside from this role, as he had volunteered to step
5 aside. "

15:04

6
7 I think that related not to the to Garda A but to one
8 of the other members that you were also being asked to
9 investigate, that reference to a senior guard?

10 A. Yes, that is another member --

15:04

11 403 Q. Another member.

12 A. -- mentioned on the IA32, yes.

13 404 Q. This appears to have been the subject of further
14 discussion on the This Week radio programme on 4th
15 October 2014. Do you recall that being raised at the
16 time?

15:05

17 A. I didn't hear the radio programme. But it was brought
18 to my attention that the investigation had been raised
19 on the radio programme. Then I sought advice as to
20 whether I should continue in the role of investigator
21 in this particular disciplinary case. And I wrote to
22 Assistant Commissioner Kenny, who, as I have outlined,
23 held that administrative function associated with
24 disciplinary investigations. And he subsequently
25 responded to me that he had no concerns about my role
26 in the investigation or my impartiality.

15:05

15:05

27 405 Q. Yes. The transcript of that radio programme is at page
28 11025, going on to page 11026.

29 A. I have not seen this before now.

1 406 Q. Is that right.

2 A. Absolutely, yes.

3 407 Q. Okay. I am really just concerned to ask you about one
4 particular portion, which is there now on the screen.
5 It says:

15:06

6

7 "Independent TD Clare Daly has also raised this issue
8 in the Dáil since the Dáil has resumed. We are now
9 told that an examination is being carried out by gardaí
10 in relation to issues raised. Those issues being that
11 there is a potential conflict of interest between this
12 high ranking Garda appointed to lead the disciplinary
13 inquiry into the senior Garda the subject of that
14 inquiry. So our understanding is that this has led to
15 the disciplinary inquiry being temporarily suspended
16 pending the outcome of that investigation."

15:06

15:06

17

18 Is it factually correct that you suspended the
19 disciplinary inquiry for this reason alleged?

20 A. No. I never suspended the disciplinary investigation.

15:07

21 408 Q. This appears to have led to a Parliamentary Question
22 then to the Minister. If we look at page 11042 to 3.
23 11042 is the Commissioner's private secretary referring
24 the assistant commissioner in the western Region, who
25 would have been your appointing officer, to the PQ,
26 which is attached there. And then on the next page,
27 the PQ is there. It's a simple -- it looked like a
28 simple enough question to the Minister, asking that she
29 provide an update on the investigations into serious

15:07

1 of the Commissioner, I point out that I was unsighted
2 as to the paper trails around this particular issue.

3 411 Q. Yes.

4 A. So I have never seen this before.

5 412 Q. Yes. I am really just asking you then about the 15:09
6 previous answer you gave me, that you did seek legal
7 advice?

8 A. I did seek legal advice on several aspects. One, about
9 putting the matter into an abeyance; and two, whether I
10 should continue with my investigation. 15:09

11 413 Q. Yes. I am not asking you to disclose the legal advice,
12 but did you put the matter into abeyance at any stage
13 or did you continue with the investigation?

14 A. I did not put the matter into -- I did not put the
15 investigation into an abeyance at any time. I 15:10
16 continued with the investigation but did I have the
17 material that enabled me to continue the investigation.

18 414 Q. Yes. All right. Could we return to Assistant
19 Commissioner McMahon's report and the timeline given
20 there? If you go back to page 11873. 15:10

21 A. Yes, I see that.

22 415 Q. Point 13, it's going back slightly in time.

23 A. Yes.

24 416 Q. You're being informed by Assistant Commissioner Nolan
25 that you had no prior knowledge of the investigation? 15:11

26 A. Sorry, I'm being informed, by Chief Superintendent
27 Ward.

28 417 Q. Chief Superintendent Ward, I beg your pardon, that, and
29 that you should liaise with the Northern Region on the

1 matter?

2 A. Yes.

3 418 Q. The issue then arose, at point 15 of the
4 correspondence, relating to your views on Garda A and
5 any concerns displayed by local management. Do you
6 recall that issue becoming live at that point in time?

15:11

7 A. Okay, I recollect this. When I corresponded with Chief
8 Superintendent Ward in Internal Affairs, I believe I
9 was corresponding with him about issues raised by the
10 chief superintendent of whom allegations had been
11 raised. And he replied that he had no prior knowledge
12 and that I should contact Assistant Commissioner Kenny
13 in the Northern Region, who was the original appointing
14 officer. And that I believe is the sequence in that,
15 Chairman.

15:12

15:12

16 419 Q. Yes. Perhaps we could look at volume 39, page 11039.

17 A. Yes, I have that.

18 420 Q. It would appear that as a result of your service of the
19 discipline form on Garda A, that he brought that to
20 Superintendent Murray's attention and Superintendent
21 Murray said that he:

15:13

22
23 "... would be obliged if enquiries could be made to
24 ascertain if Garda A presents a risk by being left in
25 the present workplace. "

15:13

26
27 Etcetera. Now, Superintendent Wheatley, if we go back
28 to 11038, reports the matter up to the Chief
29 Superintendent in Internal Affairs. That was Chief

1 Superintendent ward, I think, was it?

2 A. Internal Affairs would have been Chief Superintendent
3 ward at that time, yes.

4 421 Q. This is referred on to you, if we look at page 11037.
5 There's an e-mail from Assistant Commissioner Fanning 15:14
6 there, saying:
7
8 "Please see attached which makes concerning reading. I
9 appreciate if this matter could be progressed urgently
10 and the question of his suitability for the workplace 15:14
11 be evaluated urgently. Please let me know if there is
12 anything I can add to my previous correspondence."
13

14 You appear to send that on to David McCarthy, if we
15 look at the top of that page, 11037? 15:14

16 A. Okay, yes.

17 422 Q. For discussion Tuesday?

18 A. Okay.

19 423 Q. Just to clarify matters, who is David McCarthy?

20 A. David McCarthy would have been the inspector in the 15:14
21 regional office in Kilkenny, in the Southeastern
22 Region.

23 424 Q. Yes. That would appear to be the context for your
24 correspondence with Assistant Commissioner Kenny, which
25 is referred to at point 15, if we go back to page 15:15
26 11873?

27 A. That's correct.

28 425 Q. Is that correct then?

29 A. Yes, that would appear to be, yes.

1 426 Q. Did you become at some stage that Garda A had in fact
2 been suspended?
3 A. I don't recall anybody telling me about it.
4 427 Q. Yes. I think you subsequently received letters from
5 Garda A's solicitors, but we will come to those in due 15:15
6 course?
7 A. Okay.
8 428 Q. You may recall that?
9 A. I recall those, yes.
10 429 Q. The issue of your correspondence with Ken Ruane appears 15:15
11 to be dealt with at points 19 onwards to 22, on page
12 11874. During this period had you received anything
13 from the Ó Cualáin investigation, to the best of your
14 knowledge?
15 A. Just on those points. 15:16
16 430 Q. Yes.
17 A. I believe that that record relates to Mr. Ruane's
18 correspondence with AG in relation to advices for the
19 Commissioner, as distinct for advices for me.
20 431 Q. Yes. Well at point 22, it appears that you had 15:16
21 correspondence in early December with Mr. Ruane.
22 A. Yes.
23 432 Q. I think there is some advice there?
24 A. Yes, and I sought his advice and he responded that his
25 section did not provide advice in relation to 15:17
26 disciplinary investigations.
27 433 Q. Yes. Was that a surprise or did you expect to be
28 getting that advice?
29 A. I probably expected to get the advice, seeing as I

1 asked for advice.

2 434 Q. Yes. At point 23 there, it records Assistant
3 Commissioner Kenny corresponded with you stating there
4 is no issue with the discipline investigation
5 progressing? 15:17

6 A. Yes. Assistant Commissioner Kenny would have replied
7 in that vein. I think I outlined that earlier.

8 435 Q. Yes. It is said:
9
10 "It is also noted that none of the members named in the 15:17
11 alleged breaches objected to the appointment of
12 Assistant Commissioner Nolan, nor did the confidential
13 reporter."

14 A. Yes.

15 436 Q. Was any objection to your appointment made known to you 15:17
16 directly or indirectly?

17 A. No objection to my appointment was made known to me
18 directly. We have already touched off the issues that
19 were raised in the radio programme, but nobody made
20 that to me directly. 15:18

21 437 Q. Yes. The issue of legal advice seems to be bubbling
22 along there in points 24, 25. And you're recorded then
23 at point 26 as:
24
25 "Corresponded with Assistant Commissioner Kenny citing 15:18
26 concerns raised of his appointment as investigating
27 officer and the current employment status of one of the
28 named members under investigation."
29

1 And you are recorded then as enquiring is there any
2 reason for preventing your progression of this
3 discipline.

4 A. Yes.

5 438 Q. Do you recall getting a reply to that at that point in 15:19
6 time?

7 A. I believe the reply to that was the response from
8 Assistant Commissioner Kenny to say that he no concerns
9 about myself conducting the disciplinary investigation.
10 There was at the next point, there was also a 15:19
11 correspondence ongoing in relation to queries that the
12 chief superintendent had raised about the validity of
13 the disciplinary allegations made concerning him and I
14 corresponded again with AC Kenny, who would have
15 drafted the original alleged breaches. 15:19

16 439 Q. Yes.

17 A. The advice I got was that they were a mere outline of
18 potential breaches of discipline, as distinct from
19 being the actual breaches that would be preferred, if
20 we got to a board of inquiry in due course. 15:20

21 440 Q. Yes.

22 441 Q. CHAIRMAN: They were headings, not charges, if you
23 like.

24 A. Correct. Correct, Chair.

25 442 Q. MR. McGUI NNESS: we have a letter from Chief 15:20
26 Superintendent wheatley to Internal Affairs of the 26th
27 January, at page 9587. If we just perhaps look at
28 that, just very briefly. It's the paragraph at the
29 bottom of that page. It says:

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"The discipline investigation being conducted by Assistant Commissioner Nolan has commenced and is currently ongoing. It is anticipated that the discipline investigation will only be concluded following a determination in respect of the criminal matters under investigation."

15:20

Then it continues on over the page:

15:20

"In the light of the foregoing, the continued suspension of the member from duty to allow for these matters to be brought to a conclusion is recommended."

Does that paragraph on the previous page represent what was happening in your investigation?

15:21

A. Could I just go back and see it again.

443 Q. Yes. Scroll back. Just the last paragraph at the bottom?

A. Who is this addressed to?

15:21

444 Q. That is addressed to Internal Affairs?

A. Oh right, okay.

CHAIRMAN: Just go down, Peter, so that we can see the whole thing.

445 Q. MR. MCGUINNESS: It is not suggesting that it is --

15:21

CHAIRMAN: Sorry, just one second, Mr. McGuinness. No, go down the other way so we take it from the top first of all. You can see this on the screen? I would like to see the heading, I would like to see the top of the

1 page and then I would like to move to the bottom of the
2 page. Go further, so we see the full top of the page.
3 Okay. Thanks very much. Chief superintendent Internal
4 Affairs, and it's going down. Do you see that?

5 A. Yes. 15:22

6 CHAIRMAN: Does that make sense?

7 A. Indeed, Chairman.

8 CHAIRMAN: Thanks very much. No, go down to the
9 bottom, Peter. Thanks very much.

10 446 Q. MR. MCGUINNESS: It's not saying that it's in abeyance, 15:22
11 it says it's currently ongoing but it's anticipated
12 that it will only be concluded following the
13 determination in respect of the criminal matters.
14 would that reflect your position vis-à-vis the
15 disciplinary inquiry? 15:22

16 A. Normally a criminal investigation would take precedence
17 over a disciplinary investigation.

18 CHAIRMAN: Of course.

19 447 Q. MS. MCGUINNESS: And even then, if it proceeds to a
20 prosecution, the disciplinary aspect will await that? 15:22

21 A. Correct. Correct.

22 448 Q. Could we look at page 9589? It's only two pages down
23 from that. This is sent by Assistant Commissioner
24 Kenny to you, which is the correspondence from the
25 chief superintendent of Internal Affairs. So if we go 15:23
26 to 9590, the next page, we will see what that is.
27 There's a reference there in the middle paragraph
28 there:
29

1 "Records at this office indicate that in August 2015
2 Assistant Commissioner Nolan intended to place the
3 discipline investigation in abeyance pending the
4 outcome of the criminal investigation."

15:24

5
6 Then last:

7
8 "By way of clarification, I am to enquire as to the
9 present position of the discipline investigation being
10 conducted by Assistant Commissioner Nolan in relation 15:24
11 to this matter, in particular if it remains in abeyance
12 at present. If the matter was placed in abeyance in
13 August 2015, I also wish to seek confirmation as to
14 whether Assistant Commissioner Nolan informed the
15 members concerned at that time."

15:24

16
17 Do you recall that being referred to you?

18 A. Obviously that documentation was addressed to me. I
19 may have seen it, I believe I replied that the matter
20 was -- that the investigation was never placed in 15:24
21 abeyance and I'm not sure, I don't know anything about
22 the records retained in Internal Affairs section.

23 449 Q. Yes. Perhaps we would go back down then to the
24 sequence in Assistant Commissioner McMahon's report?

25 A. Okay.

15:25

26 450 Q. At page 11875. It has at point 29 there:

27
28 "9th February - Inspector Farrell disseminates date for
29 conference for the nominated investigation team to

1 attend."

2

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6

Can you recollect, had you been made aware that Assistant Commissioner Ó Cualáin had submitted his investigation file to the Director at that point in time?

15:25

7

A. I don't think I was ever made aware of that.

8

451

Q. It would appear that you made additional appointments to the investigation team then at point 31?

9

10

A. That's correct.

15:25

11

452

Q. That would perhaps make it look as if you were gearing up to commence, I mean to bring it to an operational phase, would that be correct?

12

13

14

A. That action would suggest that, yes.

15

453

Q. At point 32, this has you notifying Internal Affairs that you never sought to have it placed in abeyance?

15:26

16

17

A. That would appear to be the response to the query on the last information item.

18

19

454

Q. Yes. That you notified the chief superintendent in Mullingar then, at point 34, that it remained ongoing?

15:26

20

21

A. Okay. Yes.

22

455

Q. I think just to look at that, it's volume 39, page 11178. Now, that's your letter to the chief superintendent, isn't that correct?

23

24

25

A. That's my letter, definitely, yes.

15:27

26

456

Q. The director's decision had been made, as it were, or communicated in early March, it's dated 3rd March 2016. At point 34 of the narrative, on page 11875, at the bottom of the page, after you send this letter, it

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says:

"Assistant Commissioner Nolan notified Deputy Commissioner Ó Cualáin that all impediments had been clarified in respect of criminal investigation file and that a copy is now requested to fully brief the discipline inquiry team." 15:27

And at point 35, on the next page, 11876, it is recorded here that: 15:28

"Deputy Commissioner Ó Cualáin directs that only witness statements contained within it be made available." 15:28

As of this point, had you received anything?

A. I don't recall receiving a written notification that the DPP had directed no prosecution.

457 Q. Yes.

A. But from this, the tone of this correspondence, it would potentially indicate that I had been told in some form or other that's why the investigation was constituted. And it would appear, that's what it would appear to me. But I don't recall getting a copy of the DPP's instructions or anything to that effect. I am not saying it didn't come to the office, but I don't recall seeing it. 15:28

458 Q. Yes. The sequence of events is set out here. Point 36, you're corresponding with Internal Affairs looking

1 for a copy of the witness statements. They reply that
2 they don't have them. There's an e-mail sent to
3 Superintendent Mulcahy seeking them. A reply saying
4 they're preparing them, that they are going to be
5 provided. And at point 41, it says more or less you 15:29
6 don't want any further delaying the matter; is that
7 correct?

8 A. Yes. I recall contacting retired Superintendent
9 Mulcahy saying that we can't countenance any further
10 delays now. 15:29

11 459 Q. And I think you were given them the next day, is that
12 right?

13 A. That's correct. They came by e-mail to the office
14 e-mail, as far as I recollect.

15 460 Q. Yes. Point 43 refers to an issue relating to some 15:29
16 media reports relating to GSOC?

17 A. Yes.

18 461 Q. And their conducting an investigation?

19 A. Yes.

20 462 Q. Did you go to a meeting with GSOC at some point, can 15:30
21 you recall?

22 A. Yes. A media report, I think it was the Sunday
23 Business Post, had an article about GSOC investigation
24 into the same set of circumstances. I enquired then as
25 to were GSOC conducting an investigation, because a 15:30
26 GSOC investigation normally over takes a Garda
27 disciplinary investigation. I then subsequently -- and
28 it took many months to arrange a meeting with GSOC, and
29 the meeting was subsequently held, and the date is

1 probably in this chronology of events, somewhere along
2 there.

3 463 Q. Yes. If we go to the next page, 11877, at point 44.
4 You're told by Internal Affairs that GSOC had been
5 notified of the matters? 15:31

6 A. Yes.

7 464 Q. Under investigation the previous year?

8 A. Yes.

9 465 Q. And that it wasn't known what course of action they'd
10 be taking? 15:31

11 A. Yes.

12 466 Q. I think point 45 there reflects your proposal that a
13 meeting be convened?

14 A. Yes, that would appear to be accurate, yes.

15 467 Q. I think ultimately it came to pass that they were 15:31
16 suggesting that they would have a representative, a
17 senior investigating officer at case conferences
18 relating to the discipline inquiry?

19 A. Yes. And then the legality or appropriateness of that
20 became the subject of examination, as to whether that 15:31
21 was covered in the legislation within the Garda
22 Síochána Act, etcetera.

23 468 Q. Yes.

24 A. And I recall that the advices from Internal Affairs was
25 that this didn't appear to be an appropriate course of 15:32
26 action.

27 469 Q. Yes. It didn't proceed on that basis, it proceeded on
28 the basis of your appointment under --

29 A. The Garda Síochána disciplinary regulations.

1 470 Q. Garda discipline regulations?
2 A. That's correct.
3 471 Q. Your assembly of the investigating team that you had
4 appointed?
5 A. Yes. 15:32
6 472 Q. That was sanctioned and the investigations that they
7 had done up to that point?
8 A. Correct.
9 473 Q. At point 49, this appears to record then the first
10 conference held, is that right? 15:32
11 A. Yes. That appears to be right. Yes.
12 474 Q. The issue then of Garda Keogh's consent being sought to
13 the use of his statements and the disclosure of his
14 identity I think obviously also arose and arrangements
15 were made to have -- 15:33
16 A. That's right, over the Christmas period of that year.
17 475 Q. -- him then interviewed?
18 A. Yes.
19 476 Q. And give his consent. That took place on 22nd February
20 2017, is that correct? 15:33
21 A. That's correct, yes.
22 477 Q. The next matter recorded is that it was placed -- the
23 discipline investigation was placed into abeyance due
24 to the retirement. But Garda Cooke's report that we
25 looked at, at the beginning, did that represent the sum 15:33
26 total of the work that had been done under your
27 stewardship up to that point?
28 A. Yes. Yes. That was it. Yes.
29 MR. McGUI NNESS: Thank you, assistant commissioner. If

1 you would answer any other questions.

2 A. Thank you very much.

3

4 END OF EXAMINATION

5

15:34

6 CHAIRMAN: Now.

7 MR. O'BRIEN: Just one question.

8

CHAIRMAN: Certainly.

9

10 RETIRED ASSISTANT COMMISSIONER JACK NOLAN WAS

15:34

11 CROSS-EXAMINED BY MR. O'BRIEN, AS FOLLOWS:

12

13 478 Q. MR. O'BRIEN: Assistant commissioner, you were
14 appointed, as we know, in July 2015 and you retired in
15 April 2017. So, as Mr. McGuinness outlined, a window
16 of about 22 months while you were in charge of the
17 investigation. Would you accept that the delay
18 compromised the investigation during that period? That
19 there was a period of delay and that it compromised the
20 investigation?

15:34

21 A. Well, I think with Mr. McGuinness we have gone through
22 the chronology of many issues that emerged that needed
23 to be fleshed out or finalised during the course of
24 what on the surface looks like a lengthy period of
25 time, but there were particular reasons for each,
26 including the fact that the investigation file/witness
27 statements were not available for a considerable
28 period.

15:34

15:35

29 479 Q. But there was a delay though, wasn't there, assistant

1 commissioner?
2 A. well, it's a lengthy period of time. As regards
3 whether it was a delay, it wasn't a matter that things
4 were not being considered or things were not being
5 done, it just wasn't possible to move on due to the 15:35
6 issues that emerged.
7 480 Q. Was there any particular reason why the investigation
8 team didn't meet with Garda Keogh until 2nd January
9 2017?
10 A. Well, it would be related to the finalisation of all 15:35
11 the issues that had emerged, which we have gone through
12 in chronological order here, unless we need to go back
13 through them all again.
14 481 Q. Finally, would you accept that those delays in that
15 period are to the discredit of Garda Keogh? 15:35
16 A. I wouldn't think they were. That would not be my
17 understanding.
18 MR. O'BRIEN: I don't have any further questions,
19 Chairman.
20 15:36
21 END OF EXAMINATION
22
23 CHAIRMAN: Thanks very much. Now, anybody else? No.
24 Yes, Mr. Murphy.
25 MR. MURPHY: A few questions arise, Chairman. 15:36
26
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28
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1 RETIRED ASSISTANT COMMISSIONER JACK NOLAN WAS THEN
2 EXAMINED BY MR. MURPHY, AS FOLLOWS:

- 3
- 4 482 Q. MR. MURPHY: Assistant commissioner, can I ask you in
5 relation to the questions you have just been asked. 15:36
6 You outlined to Mr. McGuinness that the fact that the
7 criminal investigation conducted by the Ó Cualáin team
8 was clearly a very important investigation?
- 9 A. Absolutely.
- 10 483 Q. Is it the case from what you have said to 15:36
11 Mr. McGuinness that you had to approach the material in
12 that investigation with care because it was a protected
13 disclosure and had that special feature?
- 14 A. That would be a very fair summation, yes.
- 15 484 Q. In terms of your interaction with Commissioner 15:36
16 Ó Cualáin, I think the position was from all that you
17 can demonstrate in your evidence that there was a joint
18 concern to make sure nothing was done to impede the
19 criminal investigation or slow it down?
- 20 A. That is accurate, yes. 15:36
- 21 485 Q. Insofar as have you sought legal advice or spoken to
22 your colleagues as outlined in the communications trail
23 which Mr. McGuinness has outlined, it's been suggested
24 that this was all effectively discrediting to Garda
25 Keogh. Did anything you did or not do at the time 15:37
26 discredit Garda Keogh?
- 27 A. I don't believe anything emerged that discredited Garda
28 Keogh during that time.
- 29 486 Q. When we look at page 11877, which is the 2nd February

1 2017?

2 A. Yes.

3 487 Q. At that stage it says that Superintendent Lacey and
4 Inspector Maher met with Garda Keogh at Portlaoise
5 Garda station?

15:37

6 A. Yes, that's correct.

7 488 Q. During that meeting Garda Keogh provided consent for
8 his disciplinary investigation to use all his previous
9 witness statements?

10 A. That's correct.

15:37

11 489 Q. During the course of your tenure in the conduct of the
12 disciplinary investigation, did Garda Keogh ever
13 complain to you or to your staff that you're
14 collectively or individually discrediting him by
15 delaying the investigation deliberately?

15:37

16 A. No, Chairman, not to my knowledge.

17 490 Q. In fact, did he cooperate with your investigation at
18 the time?

19 A. He did, indeed, yes.

20 491 Q. Can I ask you please just to be shown page 120? This
21 is Garda Keogh's statement to this Tribunal. Can I
22 just draw your attention to the second paragraph. In
23 the middle of that paragraph, there is a sentence
24 beginning "subsequently, Assistant Commissioner Jack
25 Nolan" do you see that paragraph?

15:38

15:38

26 A. Yes.

27 492 Q. First of all, I think it says:

28

29 "Assistant Commissioner Jack Nolan was appointed by

1 Commissioner Nóirín O'Sullivan to carry out
2 disciplinary investigation' into [blank] and Garda A in
3 relation to my substantive complaint notwithstanding
4 the fact Jack Nolan had been the subject of criticism
5 in the report of the honourable Mr. Justice Fennelly." 15:38

6
7 Just pausing there for a moment, that was factually
8 false?

9 A. That is an incorrect assertion, yes.

10 493 Q. And the Fennelly report, I understand, you agree with 15:38
11 me, is available publicly on the internet?

12 A. Publicly available.

13 494 Q. And in your statement I think the quotation which
14 Mr. McGuinness referred to is coming from that report?

15 A. That's correct, Chairman. 15:39

16 495 Q. And this is a statement made in preparation for this
17 Tribunal?

18 A. Yes.

19 496 Q. And then moving on, to add fuel to the fire, this
20 statement says that you: 15:39

21
22 "Jack Nolan was also under simultaneously under
23 investigation by GSOC in respect of disclosure of
24 confidential information contrary to the Garda Síochána
25 Act 2005 and the Protected Disclosures Act 2014." 15:39

26
27 Is that true or false?

28 A. That's false, Judge.

29 497 Q. Insofar as both of these points are made in a statement

1 to this Tribunal, perhaps you'd indicate to the
2 Chairman how you felt when these things were said
3 wrongly about you?

4 A. Judge, I feel very disappointed that such comments
5 would be made about myself personally when they are
6 totally inaccurate. 15:39

7 498 Q. Thank you very much.

8
9 END OF EXAMINATION

10
11 CHAIRMAN: Okay. Very good. 15:40

12 MR. McGUI NNESS: Nothing further.

13 THE WITNESS: Thank you, Judge, thank you very much.

14 CHAIRMAN: Thank you, assistant commissioner. Thank
15 you. 15:40

16
17 THE WITNESS THEN WITHDREW

18
19 MS. McGRATH: Thank you, Chairman. The next witness is
20 Superintendent Michael Lacey, please. 15:40

21 CHAIRMAN: Okay.

22
23 SUPERINTENDENT MICHAEL LACY, HAVING BEEN SWORN, WAS
24 DIRECTLY-EXAMINED BY MS. McGRATH, AS FOLLOWS:

25
26 THE WITNESS: Superintendent Michael Lacey. 15:40

27 CHAIRMAN: Thank you very much. Good afternoon,
28 superintendent. Thank you.

29 499 Q. MS. McGRATH: Thank you, superintendent. Your

1 statement is at page 15751 of the book.
2 Superintendent, I think at the time when you made the
3 statement to the Tribunal you said you were attached to
4 Dungarvan Garda station, is that right?

5 A. That's correct. 15:41

6 500 Q. Are you still in that position?

7 A. I am, indeed.

8 501 Q. Okay. I think you had been attached to that station
9 then for a number of years. You were certainly
10 attached to the station during the disciplinary 15:41
11 investigation, isn't that right?

12 A. That's correct.

13 502 Q. Okay. would it be fair to describe you as the lead
14 investigator or one of the lead investigators of that
15 disciplinary investigation? 15:41

16 A. I was appointed to assist Assistant Commissioner Nolan
17 in the investigation and continued that on with
18 Assistant Commissioner McMahon.

19 503 Q. Okay. Vis-à-vis the team and hierarchy in your
20 investigation team, can you just tell the Chairman who 15:41
21 was it?

22 A. There was myself -- well, Assistant Commissioner Nolan
23 was appointed as investigating officer, I was appointed
24 to assist and then there was a number of personnel from
25 around the region selected to also participate. 15:41
26 Detective Inspector Maher, Garda Cooke, Detective
27 Sergeant Keevans, a number of other personnel, two
28 other people from Dublin and then other people then
29 were attached when Assistant Commissioner McMahon took

1 it up.

2 504 Q. Okay. And you were appointed on 24/2/2016; is that
3 right?

4 A. That's correct.

5 505 Q. You knew that at that time the investigation had been 15:42
6 going on for a number of months at that stage, it
7 commenced on 25th June 2015, under the retired
8 Assistant Commissioner Nolan, is that right?

9 A. Yes. I was aware he was appointed to investigate, yes.

10 506 Q. Okay. Now, can I ask you just to look at notes in and 15:42
11 around this time? As I say, your date of appointment
12 is 24th February 2016. Can I just ask you to look at
13 page 15800 of the brief please. If Mr. Kavanagh can
14 scroll down there please a moment. So that was 15800,
15 please. Are these your notes that you provided to the 15:43
16 Tribunal?

17 A. Yes.

18 507 Q. Okay. These are the typed versions. I know we have
19 handwritten versions as well, isn't that right?

20 A. Yes. 15:43

21 508 Q. Now, you see the date there is 25th February 2016,
22 which is a date after your appointment but what I want
23 to ask you about first is the entry beforehand. So if
24 Mr. Kavanagh scrolls back up. It's 15800 again. You
25 see there at the top, it's not dated. I am just 15:43
26 presuming it was before the 25th?

27 A. It was the 24th.

28 509 Q. So it was on the 24th, okay.

29 A. Yes.

1 510 Q. Can we just look at that note? You say there is a
2 meeting in Kilkenny re the Athlone investigation, is
3 that right?
4 A. That's what I was saying, in the regional office in
5 Kilkenny, yes. 15:43
6 511 Q. Assistant Commissioner Nolan to seek advice
7 re-interview of confidential reporter Nicky Keogh, is
8 that right?
9 A. That's correct, yes.
10 512 Q. A number of issues arise. There is one there just at 15:44
11 the end of this meeting:
12
13 "Pat Murray, superintendent Athlone, arranged meeting."
14
15 Do you remember that? 15:44
16 A. Yes, he was the district officer in Athlone I think at
17 the time and just to arrange with a meeting with him to
18 tell him that we were part of the discipline
19 investigation team and to make the necessary kind of
20 connections, that we would get material or meet people 15:44
21 or arrange to meet guards etcetera, during the course
22 of the investigation.
23 513 Q. Okay. And did that happen and was it just a courtesy
24 meeting?
25 A. That was a courtesy meeting, yes. 15:44
26 514 Q. Okay, because we know that he was never interviewed?
27 A. No, he was never interviewed. No.
28 515 Q. That's right. Okay.
29 A. It was just to make the necessary arrangements.

1 516 Q. Then, as we note there, the following day you also have
2 a note of some work that you were doing on the
3 investigation. I think nothing is arising there. Now,
4 I think at the time that you were appointed, you just
5 heard from the retired assistant commissioner there 15:45
6 that there was an issue with regard to receiving the
7 Ó Cualáin material, isn't that right?
8 A. That's correct.
9 517 Q. In fact, you came in, in February and it was May by the
10 time that material came in, in 2016, is that right? 15:45
11 A. That's correct.
12 518 Q. Okay. Now, you then have also provided a note for a
13 meeting. There was meeting reference there and an
14 issue arose in respect of GSOC. You heard the evidence
15 just recently there with the assistant commissioner, 15:45
16 that there was an issue regarding GSOC and there was a
17 meeting with GSOC. And you gave us those notes at
18 15801. In fact, if you just scroll down, Mr. Kavanagh.
19 20/9/2016, is that right?
20 A. That's correct. 15:45
21 519 Q. I think all of that page relates to that meeting, is
22 that correct?
23 A. That's correct.
24 520 Q. I think you say who is there, including Robbie Butler
25 from GSOC. If you keep going down please, 15:45
26 Mr. Kavanagh. I think very early on, do you see there
27 in the middle:
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29 "Interview protected disclosure."

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Is that meant to reference Nicholas Keogh there?

A. Yes.

521 Q. Okay. So very early on this issue is alive as to whether or not the team is going to meet and interview Garda Keogh; is that right? 15:46

A. I suppose it's to make the necessary arrangements and how to go about that, in relation to getting permissions to meet Garda Keogh and interview him in respect of the statements or the allegations he was making. 15:46

522 Q. Okay. We know and I think you will accept that it's several months, in fact the following year in February before it actually happens, isn't that right?

A. Yes. I think it was February 2017 I met with Garda Keogh, myself and Inspector Maher. 15:46

523 Q. Okay. We will stay with the sequence of the years, because you're now in September 2016, we have heard from the assistant commissioner that the first case conference is 9th November 2016. But can I ask you, you also provided us with the jobs book for your investigation. I just want to ask you about one question from the jobs book. It's at page 8510. Do you see that? I think that is a jobs book from your investigation, is that right? 15:46

A. That is just the status, it's not the actual jobs book but the status of each of the jobs. 15:47

524 Q. Okay. If you just go down to the end of the page, I wanted to ask you about number 15, job number 15. So

1 it refers there and it's yourself, you're tasked with
2 this:

3
4 "Pulse intelligence record 4085409 indicates Ms. B was
5 dealing in heroin. Intelligence created by Garda 15:47
6 Nicholas Keogh on 18th May 2014. Obtain statement in
7 respect of this intelligence report from Garda Keogh."

8 A. Yes.

9 525 Q. Again there is another reference then to getting a
10 statement from Garda Keogh, and this was on a specific 15:47
11 issue, did that ever happen?

12 A. He was interviewed in February 2017 and he provided his
13 statement in relation to the allegations he was making.

14 526 Q. So if you look at the statement that he gave you,
15 because I suppose we are reaching that point now in any 15:48
16 event, is this the one you're talking about, at page
17 5974? Is that it?

18
19 "On today's date in Portlaoise Garda station by
20 appointment." 15:48
21

22 A. Yes.

23 527 Q. That's yourself and at the time it was Inspector Maher.
24 That's the statement he gave you, is that right?

25 A. Yes. 15:48

26 528 Q. But you'd accept that it's not a statement of statement
27 of a Q&A in relation to the intelligence issue?

28 A. No.

29 529 Q. Okay. But he hands over material to you?

1 A. Yes.

2 530 Q. Okay. But if we are being precise, you didn't obtain
3 the statement from him on that issue?

4 A. That's correct.

5 531 Q. Okay. Now, you met him on that particular day and you 15:48
6 took the statement from him. Can I ask you something,
7 that's your record of the meeting with him, is that
8 right?

9 A. That's the statement, yes.

10 532 Q. Okay. It's just that when he was giving his evidence, 15:49
11 and that is at page 104, I will Mr. Kavanagh to bring
12 it up. Sorry, Day 104 and it's at page 102. So Day
13 104 of the transcripts, and it is page 102, line 11.
14 And he is saying:

15 15:49

16 "Except that, when I met Superintendent Lacey and
17 Inspector Maher, I actually pointed out, there's four
18 members that's being disciplined but two of them
19 shouldn't be disciplined. That they were spreading,
20 spreading, let's say, the wrongdoing out to make it 15:50
21 appear maybe basically less serious. Spreading it out.
22 I pointed out to them that two of those I believe
23 shouldn't have been disciplined in relation to that."
24

25 Etcetera. And he goes on like that. Do you remember 15:50
26 this conversation with him?

27 A. He may have spoken about that, I'm not sure. But I
28 know that the appointment that we were investigating,
29 there was four members and two were from the drugs unit

1 in Dublin, the national drugs unit.

2 533 Q. Do you have any notes?

3 A. No.

4 534 Q. You have provided handwritten and typed notes?

5 A. No. 15:50

6 535 Q. But we didn't see any notes for that around date?

7 A. No.

8 536 Q. Is that right? But do you accept that he may have said
9 that to you?

10 A. He may have, yes, he may have. 15:50

11 537 Q. Okay. Can I ask you this then: we know and we have
12 heard that the investigation then takes on a new
13 assistant commissioner, Assistant Commissioner McMahon,
14 isn't that right, on 26th April 2017?

15 A. That's correct. 15:51

16 538 Q. Okay. Now one of the issues that Garda Keogh has is
17 that he wasn't notified as to who was taking over the
18 investigation. If I can just -- this issue -- there's
19 no need to bring up the transcript unless you wish me
20 to, but Assistant Commissioner McMahon was asked about 15:51
21 this:

22

23 "Did anybody tell him about your appointment?"

24

25 This is Day 140. And she said she didn't do so, but 15:51
26 she understood that Garda Keogh and the four guards
27 would be notified. Was that your job? Is that
28 something that you considered that you should have
29 done?

1 A. No.

2 539 Q. Okay. who do you think would generally notified the
3 persons involved?

4 A. In relation to a discipline investigation, the members
5 concerned would be notified by the investigating 15:51
6 officer.

7 540 Q. The investigating officer?

8 A. Or the appointing officer.

9 541 Q. So is it your evidence to the Chair that Assistant
10 Commissioner McMahon had the responsibility to notify 15:52
11 the four gardaí and Garda Keogh?

12 A. Well, I think she referenced that in her evidence as
13 well, that she enquired if they had been notified.

14 542 Q. I think we might as well open it up, if there is an
15 issue about it. Day 140 and it's page 11. Keep going 15:52
16 down. She said:

17

18 "I got confirmation that the guards who were the
19 subject of the investigation were notified. I didn't
20 get any confirmation that Garda Keogh was notified." 15:52
21

22 But what I am asking you is: whose job was it to do
23 the notification and was it your team or not or you as
24 one of the investigators or not?

25 A. No. Assistant Commissioner McMahon sought the 15:53
26 application in that regard. We were dealing with a
27 discipline investigation. It certainly wasn't my
28 function to notify Garda Keogh.

29 543 Q. Okay. Now, that's in April and we know then that the

1 investigation continued throughout. You have other
2 notes in your diary, which move us into the period of
3 2018. That's at page 15803. I am going to look at
4 both your statement and just look at this page. And
5 this is just the final issue I want to put to you. 15:54
6 This was an issue which arose in respect of contacts
7 made with Garda Keogh to update him on the
8 investigation. I wonder if you are aware from the
9 transcripts that there was this issue as to whether he
10 was kept updated in relation to your investigation. 15:54
11 Now, we have a meeting here on 14th August 2018 and
12 this is a meeting in Dublin, do you see that, at the
13 end?
14 A. Sorry.
15 544 Q. You see the attendees there, you have Assistant 15:54
16 Commissioner McMahon. You have Orla McPartlin there.
17 I think she subsequently did a peer review on the
18 investigation?
19 A. That's correct.
20 545 Q. Do you remember, can you confirm if she was at this 15:54
21 meeting with you?
22 A. She was.
23 546 Q. Okay. She was there, Chief Superintendent Nyland, who
24 is Internal Affairs, and Margaret Nugent was Internal
25 Affairs at that stage; isn't that right? 15:54
26 A. That's correct.
27 547 Q. And D/Inspector Coppinger, was he then from the
28 criminal side, the criminal investigation side?
29 A. Yes.

1 548 Q. And Inspector S Maher and Sergeant John Grace. I think
2 these were your team, I think Garda Henry Burke, Garda
3 Adrian Cooke, is that right?
4 A. That's correct.

5 549 Q. If you go on down. There is a discussion there 15:55
6 concerning the statement of Ms. B and concerning Garda
7 A. I think at this stage, isn't it by this stage that
8 her statement had been withdrawn? I think she withdraw
9 it on the 2nd August, is that right?
10 A. Through her solicitor, yes. 15:55

11 550 Q. Okay. So this was the live issue. Was this the live
12 issue, I should ask you, at this meeting?
13 A. It was a discussion, yes, certainly was, yes. The
14 meeting was arranged to discuss this issue.

15 551 Q. Okay. Through the solicitor's statement -- sorry, it 15:55
16 says:
17
18 "Though solicitor statement withdrawn and wants no
19 further contact with gardaí criminal investigation to
20 re-interview Garda A and Ms. B regarding disclosure 15:55
21 made by Ms. B."
22
23 Is that an accurate record of the...

24 A. That's my record, yes.

25 552 Q. Was there a discussion of putting the discipline 15:56
26 investigation on hold or not because this was to
27 happen, do you remember that?
28 A. It certainly would have been a factor to consider
29 because if the Gardaí, the criminal investigation team

1 were going to re-interview Ms. B and Garda A in respect
2 of this particular aspect in her statement, then we
3 wouldn't be interviewing Garda A in respect of
4 disciplinary matters until that was concluded.

5 553 Q. Okay. But was there an express discussion with regard 15:56
6 to suspending the criminal investigation to allow this
7 issue to proceed or what do you recall?

8 A. That's my note of the meeting and I would imagine that
9 if a decision was made to interview Garda A in respect
10 of this, following interview with Ms. B, then the 15:56
11 discipline side wouldn't continue to interview Garda A
12 until such time as that had been done.

13 554 Q. CHAIRMAN: Do you think that was the understanding of
14 the people at the meeting?

15 A. Yes, yes. 15:57

16 555 Q. CHAIRMAN: In other words, even if they didn't say,
17 well that means --

18 A. Yes.

19 556 Q. CHAIRMAN: -- it's suspended for the moment. That was
20 actually the understanding? 15:57

21 A. Yes. We weren't going to proceed to interview Garda A
22 until that was done.

23 CHAIRMAN: Okay.

24 557 Q. MS. McGRATH: You certainly didn't, he wasn't
25 interviewed until the 4th December, isn't that right? 15:57

26 A. That's correct.

27 558 Q. Okay. But you have a note there tend:
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29 "C S Nyl and."

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He is Internal Affairs.

"To make arrangements to contact the confidential reporter on the matter."

15:57

Can you just tell us about that.

A. That's just my note of what was said at the meeting.

559 Q. So what's your recollection? Was he to contact him to tell him about this issue, that there was going to be another -- a re-interview?

15:57

A. Yes, I imagine so.

560 Q. Okay. So what you are saying there related back to the previous paragraph?

A. Yeah.

15:57

561 Q. Okay. Now, one of the issues -- one of the reasons you were asked to give a statement to the Tribunal recently was because of references to contacts that were put in evidence during Garda Keogh's cross-examination. Contacts, that you had made contacts or tried to make contacts with his solicitor during August and September 2018, do you remember that?

15:58

A. Yes.

562 Q. Okay. You say in your statement, you made contact with his solicitor's office on 24th August 2018, at 11:40am.

15:58

A. That's right.

563 Q. And that's your statement. Now, what I am going to do is look at two documents. That's your statement. If we can open the reply Mr. Cullen has put in on behalf

1 of Garda Keogh, at 1527. Now, 1527, in respect of the
2 28th August, he says his office received a voicemail at
3 11:40 from Superintendent Lacey. It gives the number.
4 He says:
5
6 "This is the day apparently on which Ms. B withdraws
7 her statement made on the 15th February."
8
9 But we know that it was an earlier date, isn't that
10 right? 15:58
11 A. Yes.
12 564 Q. "No subject-matter was identified by the
13 superintendent."
14
15 Is that right? 15:59
16 A. I don't know. I don't know, maybe he has the
17 voicemail. I can't remember what was said in respect
18 of it. I don't know.
19 565 Q. You left a voicemail or did you speak to -- it was a
20 voicemail, you accept that? 15:59
21 A. No, he -- that's what it says here, isn't it?
22 566 Q. But is that what it was, you left a voicemail?
23 A. I presume, if that's what he is saying.
24 567 Q. Okay.
25 A. I'm not sure. 15:59
26 568 Q. You refer to another call on 28th August 2018. You say
27 the call duration was 35 seconds on that date, in your
28 statement. You see the response there. He said he has
29 no note recording that the superintendent telephoned

1 other than that now received from the Tribunal. Now
2 you have included records, isn't that right?

3 A. That's correct.

4 569 Q. Okay. Is it your evidence that you did leave a
5 message? 15:59

6 A. I may have spoken to someone, I am not sure.

7 570 Q. Well, I suppose from Garda Keogh's perspective, he may
8 wish to know whether you spoke to someone, whether you
9 left a message, whether you identified who you were,
10 was it the investigation, etcetera. Can you give us 16:00
11 any detail. Do you remember?

12 A. I'm afraid not. I kept no notes of who I spoke to.

13 571 Q. Okay. As I say, you do have a record of that, from
14 call records, at 15766, but there is no need to open
15 those? 16:00

16 A. Yeah.

17 572 Q. You refer to another call, 4th September 2018, at
18 12:22, and you say that's 26 seconds. Now, Mr. Cullen
19 said that you did call the office and spoke to a staff
20 member and left a landline number but no message, is he 16:00
21 correct in that regard?

22 A. Obviously I spoke to someone and that's what he is
23 saying. I think the call lasted 24-25 seconds, so I
24 must have spoken to someone.

25 573 Q. Okay. Now, you say you did not keep a note of the 16:00
26 contacts or who you spoke to, is that right?

27 A. That's correct.

28 574 Q. One of Garda Keogh's issues he raised in that letter
29 was that you didn't write to the office raising any

1 matter?

2 A. No.

3 575 Q. Do you have anything to say to that?

4 A. No, I didn't write.

5 576 Q. I mean, would you take that as a criticism by Garda 16:01
6 Keogh in relation to the nature of the contacts you
7 were making?

8 A. No.

9 577 Q. I think other than those three incidents, they seem to
10 be the only contacts that you could aver in your 16:01
11 statement, is that right?

12 A. They're the only contacts I had, yeah.

13 578 Q. Okay. Thank you, superintendent. If you could answer
14 any questions, please.

15 16:01

16 END OF EXAMINATION

17

18 SUPERINTENDENT MICHAEL LACY WAS THEN CROSS-EXAMINED BY
19 MS. MULLIGAN, AS FOLLOWS:

20 16:01

21 579 Q. MS. MULLIGAN: Good evening, superintendent. I have
22 very few questions for you. Just in relation to the
23 issue of notification and I suppose keeping Garda Keogh
24 abreast of information. You have given your evidence
25 to the Tribunal that you didn't necessarily feel that 16:01
26 that was your role, am I correct in that?

27 A. That's correct.

28 580 Q. In terms of other investigations that you have done, is
29 there a person who you believe would ordinarily be the

1 person who would do that?

2 A. In relation to discipline, no, Judge.

3 581 Q. No, just the appointing or investigating officer's
4 role, is that correct?

5 A. That's correct. 16:02

6 582 Q. Okay. So it's not a specific additional person, it
7 falls within the very prescriptive role as we have seen
8 already?

9 A. No.

10 583 Q. In relation to the issue of the arrest, we have seen 16:02
11 certainly in the very later papers that there was
12 correspondence between the parties regarding the
13 criminal and civil aspect of Garda A and Ms. B's
14 statement. Did anyone actually question whether or not
15 Garda A should have been arrested on foot of Ms. B's 16:02
16 statement?

17 A. Once we had interviewed Ms. B and she made a statement
18 in relation to it, we forwarded that on to the criminal
19 investigation team to take whatever steps they deemed
20 appropriate. 16:02

21 584 Q. And you felt that that was the extent of your role, is
22 that right?

23 A. That's correct.

24 585 Q. Do you maintain that that is still the correct thing to
25 have done? 16:03

26 A. Yes.

27 586 Q. Very well. Just in relation to the issue of delay, you
28 were on the case for almost two years as well, am I
29 right about that?

1 A. That's correct.

2 587 Q. That's correct. Do you accept that that is a very long
3 time for an investigation to be trundling along?

4 A. No. In relation to this particular investigation, it
5 just wasn't Garda Keogh, there were three other 16:03
6 members, there had to be investigations conducted in
7 respect of those. So I wouldn't accept that, no.

8 588 Q. So is it your position that that was a reasonable
9 length of time?

10 A. Yes. 16:03

11 589 Q. Okay. On that basis, you don't accept that it had any
12 affect on Garda Keogh in terms of discrediting his
13 position, am I right about that?

14 A. Absolutely not.

15 590 Q. No further questions. 16:03

16

17 END OF EXAMINATION

18

19 SUPERINTENDENT MICHAEL LACY WAS EXAMINED BY MR. DONAL
20 McGUINNES, AS FOLLOWS:

21

22 591 Q. MR. DONAL McGUINNES: Superintendent, just a couple of
23 questions. In relation to Garda Keogh, he raised three
24 principal allegations, and only three allegations
25 against the inquiry process. One was a failure to 16:04
26 arrest on the occasion of Ms. B making a statement?

27 A. Yes.

28 592 Q. What was your view at that time as to whether it would
29 have been appropriate to arrest?

1 A. For the discipline side.

2 593 Q. For the disciplinary --

3 A. It wouldn't have been appropriate, no.

4 594 Q. That was a matter for the criminal investigation?

5 A. Yes. 16:04

6 595 Q. The second issue that Garda Keogh complains of has
7 already been canvassed in some detail today, but the
8 actual complaint is of deliberate delay. In your view
9 did you ever deliberately delay or did your colleagues
10 ever deliberately delay the investigation? 16:04

11 A. No, Chairman.

12 596 Q. With a view to discrediting Garda Keogh?

13 A. Absolutely not, no.

14 597 Q. And then the third complaint is the failure to keep
15 Garda Keogh informed. You've already referred to the
16 interview in February 2017? 16:04

17 A. Yes.

18 598 Q. Then there were the three attempts that you made to
19 contact Garda Keogh's solicitor?

20 A. Yes. 16:05

21 599 Q. Did he contact you back?

22 A. No.

23 600 Q. By correspondence or otherwise?

24 A. No.

25 601 Q. And your colleague, Superintendent Maher, we will hear
26 from him, he too made a series of contacts with Garda
27 Keogh and he was successful on one occasion, on the
28 16th March. 16:05

29 A. That's correct.

1 602 Q. 2018, you're aware of that?

2 A. Yes.

3 603 Q. Then he made attempt to contact him on the 30th July,
4 seen him on 31st July?

5 A. That's correct.

16:05

6

7 END OF EXAMINATION

8

9 SUPERINTENDENT MICHAEL LACY WAS RE-EXAMINED BY MS.

10 McGRATH, AS FOLLOWS

11

12 604 Q. MS. McGRATH: Just one matter arising there, arising
13 from something Ms. Mulligan said. Ms. B made her
14 statement to you on 25th April 2017; is that right?

15 A. That's correct.

16:06

16 605 Q. Assistant Commissioner McMahon confirmed in her
17 evidence on Day 140, at page 84, this statement was
18 forwarded, which you already said, isn't that right?

19 A. That's correct.

20 606 Q. To Inspector Coppinger on the 15th February 2018, isn't
21 that right. 16:06

22 A. That's correct.

23 607 Q. That's the date she gave?

24 A. That's the date, yeah.

25 608 Q. So that's is a three month period?

16:06

26 A. Yes.

27 609 Q. Do you know why it took three months to forward it on,
28 given that you were on the ground in the investigation,
29 can you help the Chairman why it took that time?

1 A. No. We forwarded it on to her office I think almost
2 within a week of it being obtained.

3 610 Q. Sorry, I just missed that?

4 A. We forwarded it on to her office, to Assistant
5 Commissioner McMahon's office, for onward transmission 16:06
6 then to the criminal investigation team.

7 611 Q. I think it was also put to Assistant Commissioner
8 McMahon, at page 54 on that day, 140, whether or not
9 during this period, from the forwarding on in February
10 until after she had withdrawn it, was the investigation 16:06
11 effectively in abeyance or postponed or suspended at
12 that time. Did you know anything about that?

13 A. No.

14 612 Q. No. Did you get any instructions?

15 A. No. 16:07

16 613 Q. Or directions in that regard?

17 A. No.

18 614 Q. Okay. Thank you, superintendent.

19

20 END OF EXAMINATION 16:07

21

22 CHAIRMAN: Thank you very much, superintendent. You're
23 free to go. Thank you very much.

24

25 THE WITNESS THEN WITHDREW 16:07

26

27 MS. McGRATH: Chairman, there is one final witness we
28 might do today, a very short witness, it's
29 Superintendent Maher.

1 CHAIRMAN: Very good. He has been here all day. Okay,
2 superintendent, we will hear you. But on the condition
3 that he is very short.

4 MS. McGRATH: He is.

5 CHAIRMAN: Full stop. 16:07

6 MS. McGRATH: It's a single issue.

7 CHAIRMAN: So all present bear that in mind.

8

9 SUPERINTENDENT SEAMUS MAHER, HAVING BEEN SWORN, WAS
10 DIRECTLY-EXAMINED BY MS. McGRATH, AS FOLLOWS: 16:07

11

12 THE WITNESS: Superintendent Seamus Maher, strategic
13 transformation office.

14 CHAIRMAN: Thank you very much. Sit down.

15 615 Q. MS. McGRATH: Thank you for waiting all day, 16:07
16 superintendent. I think, superintendent, you were
17 appointed on the same day as Superintendent Lacey to
18 the investigation, is that right?

19 A. That's correct, Chairman.

20 616 Q. So that's 24th February 2016; is that right? 16:08

21 A. 2016, that is correct.

22 617 Q. Can I clarify, were you at the rank of detective
23 inspector at that time?

24 A. No, I was a detective sergeant at that time. I was
25 subsequently promoted to inspector, appointed detective 16:08
26 inspector in 2017 and superintendent in 2019.

27 618 Q. Okay. Now, he mentioned you there when I asked him
28 could he outline the team. What was your role in the
29 team in the investigation?

1 A. So I was a detective sergeant at the time, so I would
2 have taken statements, reviewed material and I think
3 later on I was monitoring the jobs book with the
4 incident room coordinator, Garda Cooke, and essentially
5 taking statements and recording data. 16:08

6 619 Q. Okay. Now, you say in your statement, and I should
7 have said, Chairman, it's at page 15808, you say that
8 you had two direct contacts with the confidential
9 reporter, this is Garda Keogh, and the first one was on
10 2nd February 2017, when you met him with Superintendent 16:08
11 Lacey. That's the statement that we opened up there
12 earlier, is that right?

13 A. That's correct, at Portlaoise Garda station.

14 620 Q. Okay. I did ask the superintendent did he have any
15 notes other than what we saw recorded in the statement. 16:09
16 Did you take any notes other than what is in the
17 statement?

18 A. No, the statement was our record of the meeting.

19 621 Q. Okay. Do you recall him raising issues about the
20 spreading out of the investigation or anything of that 16:09
21 nature?

22 A. To be fair to Garda Keogh, I did think he mentioned the
23 two members from the Garda national drugs unit at the
24 time.

25 622 Q. CHAIRMAN: Sorry, to be fair to him, you do think he 16:09
26 mentioned it.

27 A. I believe so.

28 CHAIRMAN: Yes. Thank you.

29 623 Q. MS. McGRATH: Now, the second set of contacts you had

1 with him were actually much later in 2018. And this is
2 the reason effectively why the Tribunal requested a
3 statement from you?

4 A. That's correct.

5 624 Q. That's in relation to a phone call you say you had with 16:09
6 Garda Keogh on 6/3/2018; isn't that right?

7 A. That's is correct.

8 625 Q. Now you say in your statement that you spoke to him at
9 10:15 in the morning and you give the telephone number
10 and you say you made contemporaneous notes of the call 16:10
11 in your officer's journal?

12 A. That's correct.

13 626 Q. Okay. Those notes are at 15810, if Mr. Kavanagh could
14 open them up. Now, can I just say and remind the
15 Chair, that during Garda Keogh's cross-examination it 16:10
16 was put to him that he had had this conversation with
17 you and he said he didn't remember the conversation?

18 A. I understand.

19 627 Q. But he didn't deny that he had such a conversation, he
20 said he couldn't recall it? 16:10

21 A. I read the transcript.

22 628 Q. And he described it as an unusual.

23 CHAIRMAN: Oh yes, you read the transcript.

24 A. I read the transcript, Chairman.

25 CHAIRMAN: Thank you. 16:10

26 629 Q. MS. McGRATH: He described it as unusual but, as I say,
27 he didn't say that this did not take place, isn't that
28 right?

29 A. That's correct.

1 630 Q. So these are your notes. 15810. You give the date
2 from your official journal. You say:

3

4 "Note: Possibly inebriated."

5 A. That's correct, Chairman.

16:10

6 631 Q. Can you tell the Chairperson about this call. You say
7 you introduced yourself, you were ringing from a
8 landline, if you can take it from there. Please?

9 A. Yes. 10:15 I made a note in my officer's journal to
10 ring Garda Keogh. I wanted to update him with the
11 progress of the investigation. No so much in detail,
12 but to let him know that we were dealing with matters
13 as expeditiously as possible. I was tasked at a
14 conference I think in Kilkenny, maybe in January or
15 February, by Assistant Commissioner McMahon to make
16 efforts to contact Garda Keogh. I was able to get the
17 phone number from -- Garda Keogh's phone number from a
18 previous statement. So I made that contact. I think
19 may have asked Aidan Minnock, Superintendent Minnock
20 the day before or previous to that for Garda Keogh's
21 contact details but I was able to retrieve them myself.
22 The following is a narrative and contemporaneous notes
23 of a discussion that I had with Garda Keogh in relation
24 to the investigation. I did explain that I was ringing
25 on behalf of AC Anne Marie McMahon, my details are at
26 SM, Garda Keogh's details are at NK. While I don't
27 have all the detail, it's a fair description of the
28 conversation that took place.
29 CHAIRMAN: Okay, well, we can read what you say you

16:11

16:11

16:11

16:12

1 said and you say possibly inebriated. Just scroll down
2 a bit there.

3 632 Q. MS. McGRATH: Chair, maybe if it could be read into the
4 record, it's probably the quickest.

5 CHAIRMAN: All right. 16:12

6 A. Yes, Chairman.

7 MS. McGRATH: It might be the quickest way of doing it.

8 CHAIRMAN: All right.

9 A. "10:15 rang number. Introduced myself. Rang from
10 Nenagh Landline." 16:12

11
12 I was an inspector in Nenagh at the time.

13
14 "I don't want to be rude inspector but you can meet me
15 through my solicitor. It's this shit with Donie 16:12
16 Ó Cualáin. Read some of the replies from chief
17 superintendent and they are crazy.

18
19 SM: "
20
21 Myself. 16:12

22
23 "I just want to give you an update on where with our
24 investigation. 16:12

25
26 NK: I have very good contacts, there is no need to
27 tell me an update. You're not at fault. No one was
28 ever arrested. Pull yourself away. No one was ever
29 lifted. I have no hassle with ye, I have no issues

1 with ye. I have with Ó Cualáin. Anything new you can
2 tell me over the phone. I'm not recording this.

3
4 SM: I explained I am ringing on behalf of AC Anne
5 Marie McMahon. 16:13

6
7 NK: Not a good fit. Do you know who her husband is?
8 Best superintendent I ever had. He was one of the best
9 to tackle crime. He was one who supported Nóirín
10 O'Sullivan when she was what she was. Anne Marie 16:13
11 McMahon is a friend of Nóirín O'Sullivan."

12
13 At this point I note I tried to intervene

14
15 "NK: Something about being a bigger game." 16:13

16
17 when I wrote something it was a little incoherent, I
18 didn't understand what that precursor was, so I wrote:

19
20 "Something about being in a bigger game. Ó Cualáin 16:13
21 turned a blind eye to what's going on in Athlone.
22 Drugs going missing and two other mega things. It's
23 all going to come out.

24
25 Talk to D/Inspector Declan Mulcahy. He'll explain the 16:13
26 serious investigation is about.

27
28 SM: I'm just part of the investigation.

29

1 NK: You see what's happening with McCabe stuff. I
2 heard word Ó Cualáin is trying to bring Garda A back
3 and wasn't arrested.
4
5 Ring Declan Mulcahy, that's all I'm asking. 16:14
6
7 SM: I asked to meet you again.
8
9 NK: Meet you again Cig - no problem.
10 16:14
11 SM: I explained with Superintendent Lacey.
12
13 NK: Don't know what to make of him. I found nothing
14 bad.
15 16:14
16 SM: I explained we can meet in a coffee shop, plain
17 clothes. Update and picture of what's going on.
18
19 NK: Someone at the door."
20 16:14
21 I noted that the dogs are barking. He asked to ring
22 back in five minutes. I rang at 10:30. FPP relates to
23 fingerprinting of a particular issue. Rang at 10:38,
24 message minder
25 633 Q. Okay. Now you say you made that phone call because you 16:14
26 had been tasked by Assistant Commissioner McMahon to do
27 that, is that right?
28 A. That is correct.
29 634 Q. Now, again, and this is also in your statement, you

1 have two notes of attempting to make telephone contact,
2 one on 30th July 2018 and on 31st July 2018. You just
3 left messages on his message minder, is that right?

4 A. That's correct.

5 635 Q. Did you ever succeed in making contact with him? 16:15

6 A. Not from that point onwards, no. And I escalated it at
7 the next conference to Assistant Commissioner McMahon,
8 informing her of my failure to make contact and then
9 that's when Superintendent Lacey got involved and was
10 asked to contact Mr. Cullen's office. 16:15

11 636 Q. Thank you, superintendent. If you can answer any
12 questions.

13

14 END OF EXAMINATION

15

16:15

16 CHAIRMAN: Any questions?

17

18 SUPERINTENDENT SEAMUS MAHER WAS THEN CROSS-EXAMINED BY
19 MS. MULLIGAN, AS FOLLOWS:

20

16:15

21 637 Q. MS. MULLIGAN: Superintendent, very briefly. My
22 apologies, Chairman, very briefly in relation to
23 similar questions to your colleague. In relation to
24 the arrest, is your position the same, that essentially
25 your obligation was to hand over the statement of Ms. B 16:15
26 and after that, if an arrest was to occur, it was for a
27 different --

28 A. That's correct, Chairman. It was a discipline
29 investigation. Essentially it was for the criminal

1 team to determine those matters.

2 638 Q. That's your position?

3 A. That's my position.

4 639 Q. Just in relation to the notes, you have given your
5 evidence there, just in relation to the first 16:16
6 conversation, was there any -- would there have been
7 any value in identifying there had been, I suppose,
8 some move in the criminal investigation to Garda Keogh
9 at that time?

10 A. Essentially it was going to be very non-specific, it 16:16
11 was a discipline investigation, there were parties
12 complained on, served with allegations, I just wanted
13 to give a timeline as to completion and a very brief
14 update that we were progressing as expeditiously as
15 possible, without any great detail. 16:16

16 640 Q. Is there any reason why you didn't just do that in
17 writing when you had difficulty in corresponding via
18 telephone?

19 A. Essentially I just had a phone number. I had no
20 specific address for Garda Keogh. 16:16

21 641 Q. I presume, for the purposes of the transcripts, your
22 position is the same as your colleague in relation to
23 the delay, that you don't accept there was a delay?

24 A. Chairman, I think it was a very difficult
25 investigation. It was voluminous. There was a number 16:16
26 of statements. There was four volumes of statements
27 from the criminal team. There was 28 different
28 conferences. We had to add to the investigation team
29 at a later point when Assistant Commissioner Anne Marie

1 McMahon came on board. I suppose a lot of the
2 witnesses were throughout the country, that's why we
3 brought gardaí from around the country to assist our
4 investigation, due to geography, volume and capacity.

5 642 Q. Would you accept that it would have been very difficult 16:17
6 for Garda Keogh to understand this delay given the lack
7 of information that he had at the time?

8 A. Well, I understand that there's an office dealing with
9 Garda Keogh at that time, informing him of different
10 matters. But I don't think it was a matter for the 16:17
11 discipline investigation team to go into specifics with
12 Garda Keogh.

13 643 Q. Just in relation to that question, do you mean the EAS
14 in that regard, that it's obligation of the employment
15 assistance team to keep him up-to-date? 16:17

16 A. I don't think so. It was the protected disclosures
17 office.

18 644 Q. Just so we are clear.

19 A. Yes.

20 645 Q. It's your position that in relation to the 16:17
21 investigation, that is should have been the protected
22 disclosures team to keep Garda Keogh abreast?

23 A. No, in relation to any matter.

24 646 Q. Okay, any and all matters?

25 A. Exactly. 16:18

26 647 Q. Very good. No further questions.

27

28 END OF EXAMINATION

29

1 SUPERINTENDENT SEAMUS MAHER WAS EXAMINED BY MR. DONAL
2 McGUI NNESS, AS FOLLOWS:

3
4 648 Q. MR. DONAL McGUI NNESS: Superintendent, just one
5 question. In relation to the note that you took when 16:18
6 this was put to Garda Keogh during his
7 cross-examination or during his examination-in-chief,
8 he said:

9
10 "Judge, I have no note of that. It's a very strange 16:18
11 thing. A solid thing. I don't remember that
12 conversation. I have no note of it. I am not saying
13 it didn't happen but it's a very serious thing the way
14 that thing was done."

15 16:18
16 That is on Day 104, page 95, but I don't think we need
17 to bring it up. The only question I have in relation
18 to that: was this note made by you in anything other
19 than the normal course of your duties and recording
20 what happened and what transpired in the call between 16:18
21 you and Garda Keogh?

22 A. In the ordinary course of business an inspector or an
23 officer of rank is expected to maintain a diary, a
24 journal, an officer's journal, and that's why I would
25 have kept it in my officer's journal. 16:19

26 649 Q. Thank you.

27
28 END OF EXAMINATION
29

1 CHAIRMAN: Very good.
2 MS. McGRATH: Nothing arising, Chairman.
3 CHAIRMAN: Thanks very much. You're free to go now,
4 superintendent. Very good. Well you were true to your
5 word, Ms. McGrath, thank you. 16:19
6
7 THE WITNESS THEN WITHDREW
8
9 MR. McGUINNESS: Chairman, in relation to tomorrow, we
10 have two witnesses to get through and we were going to 16:19
11 suggest, if it suited you, Chairman, and the parties,
12 that we would commence at 10:00am to hear the evidence
13 of Chief Superintendent Nugent and then Mr. Alan
14 Mulligan.
15 CHAIRMAN: Yes. Are we all happy with that? It might 16:19
16 give us a chance to finish early. So we can do that if
17 we are all happy with that. Very good. So we will do
18 it at 10:30.
19 MS. McGRATH: 10:00am.
20 CHAIRMAN: Sorry, did I say -- ten o'clock, I am sorry. 16:19
21 Let me start again. A half an hour earlier tomorrow;
22 10:00am. Thank you very much.
23
24 THE HEARING THEN ADJOURNED UNTIL FRIDAY, 21ST FEBRUARY
25 2020 AT 10:00AM 16:20
26
27
28
29

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