

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

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

HELD IN DUBLIN CASTLE
ON FRIDAY 21ST FEBRUARY 2020 - DAY 144

144

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 FRIDAY, 21ST
2 FEBRUARY 2020:

3
4 MS. McGRATH: Good morning, Chairman. The first
5 witness this morning is Chief Superintendent Margaret
6 Nugent, please. 10:01

7 CHAIRMAN: Thank you very much.

8
9 CHIEF SUPERINTENDENT MARGARET NUGENT, HAVING BEEN
10 SWORN, WAS DIRECTLY-EXAMINED BY MS. McGRATH, AS 10:02
11 FOLLOWS:

12
13 THE WITNESS: Margaret Nugent, chief superintendent.

14 CHAIRMAN: Thank you very much, chief superintendent.
15 Please sit down. Thank you. 10:02

16 1 Q. MS. McGRATH: Good morning, chief superintendent.
17 Chairman, the chief superintendent's statements is at
18 page 14265 of the book. Now, chief superintendent, I
19 wonder if you could just outline in brief terms your
20 background to the Chairman, concentrating on two areas. 10:02
21 I think you spent some time in HRPD and now you're in
22 Internal Affairs, is that right?

23 A. That's correct.

24 2 Q. Okay. So do you remember when you were first attached
25 to HRPD? 10:03

26 A. HRPD, I was an inspector initially when I was attached
27 in 2005 as an inspector at that stage and I worked
28 mainly on the conciliation and arbitration side and on
29 the policy side, and some of the administration.

1 3 Q. Okay. And I think you moved up the ranks to
2 superintendent while you were there, would that be
3 right?

4 A. After finishing in HR I spent somewhere in the region
5 of three and a half years in HR and then I was promoted 10:03
6 in 2009 to superintendent in Ballinasloe at that stage.

7 4 Q. Okay. Can you tell me then when you would have come
8 back into the HRPD unit?

9 A. I came back at a particular point, as a superintendent,
10 back in 2015, and I was there for a year and a half 10:03
11 just.

12 5 Q. Okay. I think it was during this time you were
13 promoted to the rank of chief superintendent, on 13th
14 July 2016, is that right?

15 A. That's correct, and I was assigned to the Garda college 10:04
16 as director of training at that stage.

17 6 Q. Okay.

18 A. I was there from August 2016, and I was transferred as
19 superintendent Internal Affairs on 8th February 2018.

20 7 Q. Okay. So just so that I have this right, could you 10:04
21 just give me the date there again where you moved out
22 of HRPD?

23 CHAIRMAN: I'm sorry, say that again.

24 MS. McGRATH: The day you moved out.

25 A. At which rank? 10:04

26 8 Q. At chief superintendent.

27 A. At chief superintendent. Well, I was assigned from the
28 Garda College, which comes under the remit of HR & PD.

29 9 Q. Okay.

1 A. It actually comes under the wing of HR & PD.
2 Mr. Mulligan is the acting director of HR & PD. Then
3 I was transferred from the Garda College, which comes
4 under HRPD, to Internal Affairs on 8th February 2018.

5 10 Q. That`s where you are now, isn't that correct? 10:05
6 A. That's correct.

7 11 Q. Now, I suppose one of the reasons I was asking you
8 there about the HRPD unit is because I just want to
9 concentrate on the middle of 2016 and your time there,
10 particularly May, June and July there, in 2016. I want 10:05
11 to ask you about the issue of your role at that time in
12 May, June and July. And what I would like you to have
13 a look at, if Mr. Kavanagh could bring up page 15883,
14 please, so that is 15883. Now, what we are looking at
15 there is an extract from the statement of Detective 10:05
16 Superintendent Frank walsh. Would you prefer to have
17 the hard copies, chief superintendent?

18 A. It doesn't appear to be on the --

19 12 Q. Is your computer on?

20 A. It is. The statement? It's an extract, is it? 10:06
21 13 Q. That's an extract from the statement?
22 A. Apologies.

23 14 Q. Yes, that's right. So it is an extract from the
24 statement of Detective Superintendent Frank walsh, and
25 he was the private secretary to the Commissioner during 10:06
26 this period in 2016. Okay. Now this is an extract
27 from his diaries. And you will see there, if I can
28 just ask you to look at a particular date, 20th May
29 2016, please. And you see there in that box he has a

1 note saying:
2
3 "Appoint superintendent Margaret Nugent to keep track
4 of all welfare issues for PDs."
5 10:06
6 Now that's in May 2016. Can you tell the Chair a
7 little bit about that. He confirmed in his evidence
8 that he did make that appointment at the direction of
9 the Garda Commissioner, is that correct?
10 A. Well, I can clarify that I was never appointed at that 10:07
11 particular month to do anything in respect of protected
12 disclosures. So if a direction or an instruction
13 issued, whether in writing or verbally, it was never
14 communicated to me, Chair.
15 15 Q. Okay. Can I just ask you to look -- 10:07
16 16 Q. CHAIRMAN: So that didn't happen? As far as you are
17 concerned that didn't happen? They may have intended
18 it but it didn't happen.
19 A. Well, it certainly didn't arrive at my level. There is
20 a channel where sometimes instructions can come down 10:07
21 through what we call the channel of communications.
22 17 Q. CHAIRMAN: I follow.
23 A. I certainly received nothing, Chairman.
24 18 Q. CHAIRMAN: But if it says that you were appointed, the
25 only way you could be appointed was if somebody told 10:07
26 you or wrote to you or whatever and said you're
27 appointed?
28 A. That's absolutely correct. But, Chair, in the
29 following month, in June the Commissioner appointed me

1 as the acting protected disclosure manager, verbally,
2 face-to-face, and requested that I would attend to a
3 matter concerning, you probably see it, it has been
4 disclosed, Garda X, because there were issues around
5 pay at the time, and I dealt there and then with that 10:08
6 particular issue.

7 19 Q. CHAIRMAN: Okay. But for this purpose, for
8 Ms. McGrath's chronology, this is not correct as far as
9 you're concerned?

10 A. That's -- 10:08

11 CHAIRMAN: That's okay.

12 A. Yes, Chairman.

13 20 Q. MS. McGRATH: well, just for the sake of completeness,
14 so that when we come back to the transcripts later, can
15 I ask you Mr. Kavanagh to open up Day 135 of the 10:08
16 transcripts? And I absolutely appreciate your evidence
17 on the issue, but I just want you to see the extract
18 from the transcript which dealt with this. It was Day
19 135, when Detective Superintendent Walsh was giving his
20 evidence and it's at page 121, please, Mr. Kavanagh? 10:08

21 CHAIRMAN: Day 135, page 121. Very good.

22 21 Q. MS. McGRATH: Actually if you go to page 120, please.
23 We opened up this extract. If you stop there. The
24 question is:
25 10:09
26 "Q. Okay."
27
28 This is me speaking to Detective Superintendent Walsh.
29

1 "Now, it would seem, if I can go back to two diary
2 entries around this time."
3
4 And if we open up the page we've just looked at, 15883.
5 10:09
6 "If you see there, if you go down just a little bit to
7 the next entry, 20th May. So this is two days after
8 you requested the report but before you received it."
9
10 That's not relevant to you. 10:09
11
12 "You have a diary entry and it says put together files
13 on Keogh and most recent lady if appropriate."
14
15 Continue onto the next page, 10:09
16
17 "But it says: Appointed Superintendent Margaret Nugent
18 to keep track of all welfare issues for PDs."
19
20 And I asked him: 10:09
21
22 "Do you remember that?
23 A. Yes. Again that would be most likely a direction
24 from the Commissioner to put something together on all
25 of the people who had made reports and Superintendent 10:10
26 Nugent, who is now a chief superintendent, obviously
27 she had asked that I would send them to Margaret to
28 look after them.
29 Q. And was she appointed and did that happen."

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And he says:

"I believe it did, yes."

10:10

So that's his evidence on that particular issue. Now, I think is it your response to that, that in May you certainly have no recollection of being asked, to use the words, keep track of all welfare issues for PDs, is that correct

10:10

A. That's correct, Chairman.

22 Q. But then you said the following month you were put in as acting protected disclosures manager, is that right?

A. That's correct, in June.

23 Q. Okay.

10:10

CHAIRMAN: Sorry, can I just confirm. I understood you to say that didn't happen, not I don't remember it happening. I thought you said it didn't happen the way in May, nothing came down to me.

A. Nothing happened in May and I received absolutely no file, Chairman.

10:10

24 Q. CHAIRMAN: That's okay. I just wanted to clarify. It's not that it could have happened and you don't remember it. You are saying that didn't happen. That's a mistake?

10:11

A. That's correct, Chairman.

CHAIRMAN: Okay.

25 Q. MS. McGRATH: Okay. So if we move into the June period then, do you remember when around June that you were

1 appointed as acting protected disclosures manager?
2 A. Actually, it's on an extract on the date that I met
3 Garda X, was the exact date, because the very day that
4 I got the instruction I met Garda X. So I left that
5 particular -- 10:11

6 26 Q. CHAIRMAN: So if we can find the date when you met
7 Garda X, that is date that the Commissioner spoke to
8 you and gave you this instruction?

9 A. That is the date, in June, spoke to me and appointed me
10 personally as the acting protected disclosure manager, 10:11
11 to deal with welfare issues and also to deal with a
12 particular pay issue concerning Garda X.

13 27 Q. MS. McGRATH: Okay. Now in the e-mails we will be
14 opening up in a moment, there is a reference to Garda X
15 and Garda Y and I think we have established during our 10:11
16 evidence here at the Tribunal that Garda Y is Garda
17 Keogh, is that right?

18 A. That's my understanding. But I had no information or
19 dealings with Garda Keogh in respect of that matter.

20 28 Q. Okay. I suppose just by way of confirmation then, 10:12
21 Garda X was not Garda Keogh?

22 A. Absolutely. That is correct.

23 CHAIRMAN: Thank you.

24 29 Q. MS. McGRATH: Okay. So you said there to the Chair
25 that it was really two aspects you were going to deal 10:12
26 with; welfare issues, under this heading of acting
27 protected disclosures manager, and then specifically
28 you were also going to deal with Garda X, that was your
29 evidence, is that right?

1 A. That's correct.

2 30 Q. Okay. How did you see your role then. Let's leave
3 Garda X to one side, let's talk about this welfare role
4 then under this heading. What did that involve.

5 A. Yes. Well, if I could just say that at that point the 10:12
6 protected disclosure manager was Chief Superintendent
7 McLoughlin and at that point Chief Superintendent
8 McLoughlin was on annual leave, from my recollection,
9 and he can confirm this, it was for a number of weeks,
10 in June. So in that particular role, the only person 10:13
11 that I dealt with was Garda X. I was subsequently
12 promoted and moved to the Garda College. I was
13 promoted in July and I moved to the Garda College in
14 August. So my role was short-lived but dealt with a
15 particular issue that was of concern at that particular 10:13
16 time.

17 31 Q. Okay. So then to bring this to a conclusion and be
18 precise, you did not take any action or have a role in
19 relation to the welfare of Garda Nicholas Keogh, would
20 that be right? 10:13

21 A. That is correct, Chairman.

22 32 Q. Okay. Can I ask you then to look at a series of
23 e-mails that have been put to a number of witnesses.
24 It's a chain of e-mails and they start at page 9695
25 please, Mr. Kavanagh. I don't know, chief 10:14
26 superintendent, have you had an opportunity to see
27 these e-mails in the brief? Are you familiar with
28 them?

29 A. I am familiar with them, yes.

1 33 Q. Okay. Well, if you see there, this one, in fact if you
2 go down a little bit further. For many of the e-mails
3 -- if could you please go down to the end of the page.
4 Thanks. That is where we are going to start, on 4th
5 June 2016. Now these have been opened to the Chair in 10:14
6 some detail. You see there you are marked as copied on
7 the e-mail, do you see that, from Chief Superintendent
8 McLoughlin?
9 A. I do, indeed.
10 34 Q. And you see it is entitled "work related stress"? 10:14
11 A. Yes.
12 35 Q. If you go on to the next page, it is an e-mail that
13 covers both Garda X and Garda Y, do you see that?
14 A. That's correct.
15 36 Q. He is there referencing in the second paragraph: 10:15
16
17 "In the case of Garda X and Garda Y, they are both out
18 sick with work related stress, which in their view was
19 caused by the organisation and management. While this
20 is their view, nonetheless it has to be adjudicated 10:15
21 on."
22
23 He references the CMO, he references there that they
24 are both on reduced way. He says:
25
26 "The investigation of work related stress allegations 10:15
27 are ongoing and are likely to be complicated."
28
29 He puts his own view there:

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

He says: 10:15

"As a minimum the pay status should not change without personal contact being made with the members concerned. It requires urgent attention." 10:15

He says his recommendation is that a mechanism is found for pay not to be reduced while matters are under consideration. Now, that's 4th June 2016. At this stage he was still in the office, he wasn't on annual leave, so you weren't in the role of acting protected disclosures manager, but what was your role at that point as a recipient of this e-mail? what was your job effectively at that stage? 10:16

A. I saw the e-mail. In my own mind I thought there was merit in trying to get a resolution, as I understood in my own head at that particular time. I wasn't copied on some of the other e-mails but I was brought back into the loop. So I was aware that Chief Superintendent McLoughlin had raised issues. 10:16

1 37 Q. Okay.

2 A. But I didn't know who Garda X or Garda Y was at that
3 point.

4 38 Q. Okay. If Mr. Kavanagh scrolls up. As you say, you
5 fall in and out in the sense that sometimes you are 10:16
6 copied, sometimes not. The next one, that's the 5th
7 June, you're not involved in that e-mail. Keep going,
8 the 5th June at the top, again that's Chief
9 Superintendent McLoughlin to Inspector Downey. Now
10 moving back up, the next one, on the following day. 10:17
11 Here we are at the 6th June, the following day, and
12 again you are copied on that e-mail, isn't that right?

13 A. I'm copied on it, yes.

14 39 Q. Okay. And that is an e-mail from Inspector Downey, as
15 he was at the time, to Mr. John Barrett, Donal Collins 10:17
16 and we understand that Donal Collins was involved in a
17 working group?

18 A. That's right. I do recall there was a working group.

19 40 Q. And then there's Ms. Carr from HRM as well, isn't that
20 right? 10:17

21 A. Correct.

22 41 Q. Here is a discussion in the e-mail about the working
23 group issue and what they are looking at with regards
24 to the provision of Garda code 11.37. What's your
25 knowledge in around all of that and what was your view 10:17
26 of the e-mail at the time when you received it.

27 42 Q. CHAIRMAN: Did you have anything to do with that? And
28 if so, what was it?

29 A. Not really, Chairman. Maybe on the periphery. I was

1 aware of a working group. I was aware that there were
2 issues around injury on duty and the categorisation.
3 And I was aware that the medical people were trying to
4 resolve that with HR & PD.

5 43 Q. CHAIRMAN: Did this call for you to do anything? 10:18

6 A. No, it didn't.

7 44 Q. CHAIRMAN: And did you do anything as a result of it?

8 A. No, I didn't. It was just in the back of my mind.

9 Nothing else.

10 CHAIRMAN: Okay. 10:18

11 45 Q. MS. McGRATH: If you keep going up into the following
12 day. Keep going please, Mr. Kavanagh, to the next
13 e-mail. Now this is an e-mail from Ms. Carr on 7th
14 June 2016. Again, you are copied as a recipient. I
15 suppose why I want to ask you, have you had an 10:18
16 opportunity to read this e-mail?

17 A. I did at a particular point read it, yes.

18 46 Q. Well, I suppose why I want to ask you a little bit of 10:19
19 detail about this one, is because when Ms. Carr, and I
20 will be more specific in a moment, she gave evidence on
21 Day 134 and she was asked about these e-mails and this
22 issue and she accepted they were contrary views. And
23 this is her view. I think when we will come to your
24 e-mails, you're expressing another view. Here she is
25 with her view on it and she is referring to Brian's 10:19
26 e-mail. She says:

27

28 "Absences as a result of work related stress was
29 discussed through the working groups deliberations on

1 amending 11.37 and I'm of the opinion that..."

2
3 It says:

4
5 "...all sick absences should be categorised as ordinary 10:19
6 illness pending completion of whatever investigations
7 are conducted."

8
9 She continues at the start of the next paragraph for
10 example:

11
12 "However, not all work related stress absences can be
13 attribute to AGS. A lot of the time it is down to the
14 individual's perception of events. Take, for example,
15 a case being investigated under the BMH policy." 10:19

16
17 She continues in that regard, if we go down to maybe
18 the second last substantive paragraph:

19
20 "It may be that it is necessary to look at absences as 10:20
21 a result of work related stress where member or staff
22 have brought an issue under the protected disclosure
23 legislation. This is more difficult due to the
24 confidential nature of the disclosure. However, this
25 difficulty is applicable across the whole of the public 10:20
26 sector as DPER's a position on it.

27
28 While it is not ideal to reduce a member's salary when
29 they are absent on sick leave, AGS continue to

1 implement the current sick leave regulations."

2
3 Now, the reason I am opening this in some detail to you
4 is because you have a subsequent e-mail expressing a
5 view on this process. 10:20

6
7 "Where sick absences following appropriate
8 investigation are determined to be either an injury on
9 duty or an occupational injury, once the amendment to
10 Code 11.37 has been approved or indeed covered by the 10:20
11 critical illness protocol, any monies due to the member
12 will be refunded. This will also benefit AGS in the
13 management of overpayment of salary to members absent
14 on sick leave."

15
16 Okay. So, I think in summary, Ms. Carr is expressing
17 the view that the members on work related stress leave
18 should be categorised as they were being at that time,
19 as ordinary illness pending completion of an
20 investigation, isn't that right? 10:21

21 A. Correct.

22 47 Q. She does acknowledge that the issue of protected
23 disclosures regulation was more of a difficult nut to
24 crack effectively, is that right?

25 A. That is correct, Chairman. 10:21

26 48 Q. Okay. Now, that is an e-mail on the 7th June, at, as I
27 say, 3:00pm, it's copied to you. If we keep going up.
28 You come back in here with your own e-mail on the 9th
29 June, at 13:40, and you reply to Ms. Carr, Mr. Barrett,

1 Inspector Downey, Fiona Broderick and Donal Collins.

2 You say:

3
4 "Hi Monica, given the issues highlighted by Chief
5 Superintendent McLoughlin..."

10:22

6
7 Are you referring back to his earlier e-mail of the 4th
8 June effectively and the issues he has raised with
9 Garda X and Y?

10 A. I am.

10:22

11 49 Q. Okay.

12
13 "Can the matter be reviewed and a process agreed in the
14 short-term to deal with such sensitive cases on a
15 case-by-case basis."

10:22

16
17 So you saw these as sensitive cases. Can you tell the
18 Chairman what you meant by that?

19 A. Well, what I meant by that is, I was aware from Chief
20 Superintendent McLoughlin's e-mail that he was dealing
21 with people under protected disclosures legislation.
22 And I would regard anybody coming forward making a
23 disclosure, it would be a sensitive matter. I had also
24 been instructed, just that morning, to meet somebody
25 that had a pay issue, who had made a protected
26 disclosure. So it was in my mind before I ever went to
27 meet the particular person and I just wanted to
28 highlight it to see could something be -- some kind of
29 process be agreed so that I had some level of

10:22

10:22

1 authority, so to speak, when I was dealing with the
2 person or that I had some level of extra knowledge that
3 maybe the situation could be dealt with in such a way
4 that it would be in compliance with regulations and it
5 would be dealt with properly given the sensitive nature 10:23
6 of the issue.

7 50 Q. Okay. I think the next e-mail, which is later on that
8 evening on the 9th June, develops your thoughts on that
9 and develops what you have just said there in evidence.
10 It is at 6:18 on that day, the 9th. I think you 10:23
11 mentioned earlier that particular day that you met
12 Garda X and I think this might be the day, is that
13 right?

14 A. It is. But I also want to say that I'm not absolutely
15 sure if Garda X is the same Garda X that Chief 10:23
16 Superintendent McLoughlin was referring to. I just
17 want to say that.

18 51 Q. Okay.

19 A. I don't know. But I use the term Garda X.

20 52 Q. CHAIRMAN: But for this purpose? 10:24
21 A. For this purpose.

22 53 Q. CHAIRMAN: It strikes me it doesn't matter?
23 A. It doesn't matter, for this purpose.

24 54 Q. CHAIRMAN: I mean we could call him Garda B, C, D or E?
25 A. Correct. 10:24

26 55 Q. CHAIRMAN: A garda who made a protected disclosure, you
27 are confronting the issue that has been discussed in
28 the e-mails?
29 A. Correct, Chairman.

1 CHAIRMAN: Yes. And you express the view here.

2 56 Q. MS. McGRATH: Okay. You say "I met Garda X this
3 afternoon.

4 CHAIRMAN: I don't think we need to read it. We have
5 been through a lot of these in huge detail. I mean, 10:24
6 it's clear what it says.

7 57 Q. MS. McGRATH: well, I think the language, Chairman, was
8 put to some other witnesses and they said they were
9 unable to express a view on it and I just would like to
10 get the -- 10:24

11 CHAIRMAN: I think it speaks for itself, to be honest.
12 She takes the view that he should be restored to full
13 pay. That's what she says.

14 58 Q. MS. McGRATH: well, can I ask you a very specific
15 question about the language, please, chief 10:24
16 superintendent. There, at the end of the first
17 paragraph, you say:

18
19 "It might be regarded as penalisation."
20 10:25

21 Do you see the reference to the word penalisation
22 there?

23 A. Yes.

24 59 Q. Now, this was put to Superintendent Murray on Day 126
25 of his evidence, at page 53, and was asked about what 10:25
26 you could have meant by using the word penalisation.
27 He said, and this is page 52 to 53 of that day, he said
28 he didn't know what context you meant it in. So can
29 you please tell us what context you meant the word

1 penalisation in?

2 CHAIRMAN: Sorry, does it matter what Superintendent
3 Murray thinks? I'm sorry.

4 MS. McGRATH: But, Chair, I just would like to clarify,
5 it is a live issue with that particular witness. If I 10:25
6 can just ask this witness.

7 CHAIRMAN: Okay.

8 60 Q. MS. McGRATH: Could you give me the context of what you
9 meant by penalisation?

10 A. Well, what I meant by penalisation was that, you know, 10:25
11 there could be the potential to put somebody at a
12 disadvantage by means of them making a protected
13 disclosure which had not been investigated and there
14 were issues with this person in respect of sickness and
15 also this person had told me that they didn't receive 10:26
16 pay for some -- their pay was stopped for two weeks and
17 then reduced. And based on the circumstances, the fact
18 that this person was attending the Chief Medical
19 Officer, was also in the process of a disclosure being
20 investigated and didn't feel that they could go back 10:26
21 into their particular workplace and was -- what the
22 person reported to me was that they were stressed. And
23 it was based on a culmination of factors that I felt,
24 given those particular circumstances, that An Garda
25 Síochána could potentially be accused of penalising 10:27
26 somebody. We had a policy and a desire that people
27 would be able to speak up in accordance with the code
28 of ethics. Well, certainly in terms of the principles.
29 When I say code of ethics, we certainly have that now,

1 but certainly the idea that people would certainly come
2 forward and speak up. That's where I was really coming
3 from.

4 61 Q. Okay. And can I ask you, at this stage you are the
5 acting protected disclosures manager for that unit 10:27
6 because Chief Superintendent McLoughlin is gone on
7 leave, isn't that right?

8 A. That's correct.

9 62 Q. So would you now have known about the other cases?
10 Would you have had any familiarity that, for example, 10:27
11 this also could have applied to Garda Keogh, or was
12 that in your mind at all?

13 A. Not in my mind at that time because we didn't have a
14 handover. It was relatively new, from what I can
15 recall, the establishment of the unit. So there was no 10:27
16 handover and there was no discussion. At that point
17 Chief Superintendent McLoughlin didn't ask me to do
18 anything in respect of protected disclosures. So I had
19 no files. Absolutely nothing.

20 63 Q. Okay. Now you do ask there in your e-mail on the last 10:28
21 paragraph, you look for a recommendation in relation to
22 the suitable process or categorisation, isn't that
23 right?

24 A. That is correct.

25 64 Q. Okay. Now, we do know that there were several other 10:28
26 e-mails the following day, on the 10th June. In
27 relation to one of them, Claire Egan, who I believe
28 works with Ms. Carr, would that be right?

29 A. That's right.

1 65 Q. She sent you on a document, at 14889, if we can just
2 have a look at it. So 14889, do you see that document:
3
4 "Management of absences from work due to protected
5 di scl osures. " 10:28
6
7 Do you see that?
8 A. Yes.
9 66 Q. For example, and again I am not going to open it, the
10 Chairman has seen it a number of times, the second 10:29
11 bullet refers to:
12
13 "Paid administrative leave must be approved by the
14 protected di scl osures manager having conducted ini tial
15 enqui ries or i nvesti gati on i n consul tati on wi th local 10:29
16 management. "
17
18 Do you see that one?
19 A. Yes.
20 67 Q. Now, it is a very detailed document there, and you 10:29
21 received that, didn't you?
22 A. I did, yes.
23 68 Q. Now, you have a look at it and you read it, and at 9690
24 we see your e-mail back to Ms. Carr. 9690. This is
25 10th June 2016 at 17:38. You say you have read the 10:29
26 attached, it's a very good document. You say:
27
28 "My only concern relates to having to consul t wi th
29 local management regarding pay. That may cause

1 problems particularly where local management and local
2 management practices may be the source of the complaint
3 relevant to the disclosure."
4

5 Can you just tell the Chairman a little bit about where 10:29
6 you were coming from there?

7 A. Well, because of the confidential nature of protected
8 disclosures, I felt that that was one element, that
9 would have been my thinking. And in addition to that,
10 if we were asking management to be involved in a 10:30
11 process around pay and a person being kept on the
12 payroll for administrative leave, I just didn't feel it
13 would be the appropriate way to go. That was simply my
14 thinking. And particularly if there was an issue in
15 respect of practices locally, I just felt something 10:30
16 like that would be best dealt with at headquarters
17 level. I am not sure of how the mechanics would have
18 worked out but it was my thought process at the time.

19 69 Q. Okay. Now that was your view on that particular
20 document. A couple of days later, if I can just ask, 10:30
21 two last e-mails please, chief superintendent, just to
22 look at. 14913 please. At the very bottom of the page
23 please. There's an e-mail on the 13th June, 13:08.
24 13th June, from Monica Carr to yourself. And again,
25 she is responding effectively to your e-mails and your 10:31
26 views on the issue, isn't that right?

27 A. That's correct.

28 70 Q. You go back up -- if Mr. Kavanagh -- you come back to
29 her, and this is the last e-mail I want to put to you,

1 you will be glad to see, on the 13th June that day, at
2 18:37. Can I just ask you about this, in the second
3 paragraph, you say you will pass the correspondence to
4 Chief Superintendent McLoughlin. Was he back shortly
5 after this period?

10:32

6 A. I can't say precisely when. From my recollection it
7 was a few weeks.

8 71 Q. Okay. You say:

9

10 "Can I enquire have DPERs got a written policy on
11 administrative leave and protected disclosures? Are
12 there any documents that can be read to see exactly
13 what processes are in place as they will need to be a
14 written process in AGS."

10:32

15

10:32

16 Now, did you get an answer to that?

17 A. I certainly got attachments with protected disclosure
18 policy from DPER and a draft protected disclosure
19 policy which was utilised in the Houses of the
20 Oireachtas.

10:32

21 72 Q. Is that a separate document to the one we saw from
22 Claire Egan?

23 A. Yes, it is. And I have those today.

24 73 Q. Okay. I don't believe we have seen that in disclosure,
25 but I will double-check it. Can you tell me then, so
26 there is a written policy on administrative leave in
27 the organisation, is that right, and protected
28 disclosures?

10:32

29 A. In the Garda Síochána, I'm not aware at the moment of

1 whether it has actually been validated and put in as an
2 actual policy, but certainly what was there was a
3 proposed approach, a proposed policy approach.

4 74 Q. And was that case specific, in the sense that it was
5 for protected disclosures and leave in the context of
6 the Gardaí? 10:33

7 A. Well, what I was provided with were some thoughts from
8 our HRPD section. I'm not aware if that was ever
9 brought into policy, but it was more at that stage a
10 particular discussion on how this might evolve. And 10:33
11 there was a question of needing to send it to the legal
12 section and to have their, I suppose, imprimatur or
13 their thoughts on it. And I'm not sure if that
14 happened, I can't give that exactly.

15 75 Q. We can clarify that, chief superintendent, that's no 10:33
16 problem. Now, do you feel that you had a contrary view
17 to Ms. Carr then as to how these issues should be dealt
18 with?

19 A. I felt that both of us were trying to do the right
20 thing. I had no doubt about that. I also very much 10:34
21 felt that Ms. Carr was coming from the perspective of
22 the regulations, which are set down. But that was just
23 a difference of opinion and thought to try to achieve
24 the right solution. Nothing more than that.

25 76 Q. And I think that, as you say, it was a number of weeks 10:34
26 while you were acting protected disclosures manager.
27 Did you brief yourself up on the Garda Keogh file
28 during that period then?

29 A. No, I never saw the Garda Keogh file.

1 77 Q. Okay. So I suppose, therefore, I just had a couple of
2 questions that were specific to Garda Keogh, for
3 example, in relation to his own sickness absence, his
4 change over to administrative leave. Would you be able
5 to assist in relation to any of that? 10:35

6 A. I wouldn't, no. I don't have any knowledge of that at
7 all. I was transferred. I was promoted and
8 transferred to the Garda College in August of 2016. I
9 didn't see it, any of that.

10 78 Q. That's fine. Okay. Thank you. Now, as you say, does 10:35
11 that represent -- what I have opened to you there, does
12 that represent a fair reflection then of your dealings
13 with the pay issues for persons in these circumstances,
14 protected disclosures and work related stress issues?

15 A. Well, this was just a fair reflection of the 10:35
16 preliminary action that I felt needed to be taken for a
17 two month basis in respect of this particular case.
18 But it needed further deliberation and further thought
19 around what that would look like and I don't know if
20 that has actually happened yet. I'm unaware of where 10:36
21 that is at or what kind of drafts or further drafts may
22 have happened.

23 79 Q. And just around that time in 2016, there's a reference 10:36
24 in these papers to a Garda X and a Garda Y, were there
25 other gardaí in this similar situation or are we really
26 just looking at two situations during that period?

27 A. At that time I didn't know, but I would -- now, I
28 suppose, in the role that I have at the moment, I am
29 aware that there are people making protected

1 disclosures, because the role that I have at the moment
2 is senior point of contact with GSOC, who also take
3 protected disclosures. So information is conveyed to
4 GSOC that is sought for the purposes of investigations.
5 So I am aware that there are other members of the Garda 10:36
6 Síochána making protected disclosures.

7 80 Q. But I think I am specifically asking you about the
8 summer of 2016?

9 A. Yes.

10 81 Q. How many people were on the books in this regard in 10:37
11 your office?

12 A. I had no idea because I had no handover. I had no
13 idea. So that was June, I was promoted in July and
14 transferred in August.

15 82 Q. Maybe it was just not being clear to me, but you say 10:37
16 you became the acting protected disclosures manager in
17 June while Chief Superintendent McLoughlin was absent.
18 What was your role in the unit immediately before that?

19 A. I'm not sure if the unit just comprised Chief
20 Superintendent McLoughlin, and I suspect it did at that 10:37
21 point, but I was not privy to anything else. So my
22 intention was that if matters were raised with me that
23 I would deal with them on a case-by-case basis. So if
24 I got a call about a matter, I would deal with it. But
25 I didn't take any proactive steps to seek files or 10:37
26 anything like that at that particular point, because I
27 had no knowledge. I did read up on what my role would
28 be, not what my role would be, but more specifically
29 the protected disclosures legislation. Other than that

1 I didn't take any further role in it, because it was
2 only a matter of weeks before, well, before Chief
3 Superintendent McLoughlin was back but also I was
4 transferred.

5 83 Q. Did you any report after your period as acting
6 protected disclosures manager? Any briefing for the
7 chief superintendent when you returned?

10:38

8 A. Other than the e-mails that Chief Superintendent
9 McLoughlin saw, I didn't make any particular report. I
10 did -- well, I had no note of it but it would have
11 been -- I had no note of it. But there were very
12 clearly e-mails there. I would have had a discussion
13 definitely, but I don't have a note of it and I can't
14 prove it, but I would have had a discussion with Chief
15 Superintendent McLoughlin around this issue and he
16 could clearly see what was happening on his return.

10:38

10:38

17 84 Q. Now, in the statement that you have provided to the
18 Tribunal, this statement deals exclusively with your
19 period in Internal Affairs, isn't that right, it's at
20 14265?

10:39

21 A. That's correct.

22 85 Q. Okay. As you say, you went into Internal Affairs on
23 8th February 2018; isn't that right?

24 A. That's correct.

25 86 Q. You had some involvement at this stage in relation to
26 the disciplinary investigation carried out by Assistant
27 Commissioner Anne Marie McMahon, isn't that right?

10:39

28 A. That's correct.

29 87 Q. Can you tell the Chairman first of all, in Internal

1 Affairs, what was your role at that period, 2018/2019?
2 A. Well my role was to manage the administration of
3 discipline and complaints in Internal Affairs at that
4 particular point and still is. And in respect of this
5 particular file, my role was to examine it, to look at 10:40
6 it, to see if there were any issues in the file that
7 needed to be highlighted for the attention of assistant
8 commissioner of Governance and Accountability and to
9 provide some recommendations.

10 88 Q. So Assistant Commissioner Sheehan was in charge of 10:40
11 Governance and Accountability, did you report to him,
12 is that how you saw it?

13 A. Yes, he is my direct line manager.

14 89 Q. Okay. We know that the investigation report from 10:40
15 Assistant Commissioner McMahon came in on 27th February
16 2019. You say it was forwarded to your office in
17 Internal Affairs, is that right?

18 A. That's correct.

19 90 Q. So are you the first point of contact when an 10:41
20 investigation report comes in to Governance and
21 Accountability?

22 A. Well, if it comes straight into Governance and
23 Accountability, it is then sent into my office and I
24 have staff there that work in the office. So being the
25 first point, yes, it would come into my office. 10:41

26 91 Q. And in your statement, you say:
27
28 "As is my normal practice, I reviewed the investigation
29 file to identify any potential issues and provide

1 guidance to assistant commissioner Governance and
2 Accountability."

3
4 Is that right?

5 A. That's correct. 10:41

6 92 Q. Okay. I think you did this in respect of this
7 investigation file, isn't that right?

8 A. That's correct.

9 93 Q. You did up a report of 30th April 2019. I think that
10 report is at page 14272, if we can just have a look at 10:41
11 that please. 14272. Now, you say there in the first
12 paragraph:

13
14 "Purpose: The purpose of this document is to provide a
15 report on the discipline investigation conducted in 10:42
16 relation to this matter and to forward the
17 recommendations of the investigating officer in order
18 that a decision can be made as to whether the facts
19 disclosed during the course of the discipline
20 investigation warrant the establishment of a board of 10:42
21 inquiry in relation to this matter."

22
23 Isn't that right?

24 A. That's correct, Chair.

25 94 Q. So you're making recommendations -- well sorry, are you 10:42
26 doing a summary? Are you doing advices? What exactly
27 are you doing when you are doing up this report? And
28 we will go through it now in a moment, but overall?

29 A. Well, it's a combination of a summary of the key

1 issues, the key matters highlighted.

2 95 Q. Key matters, okay. So you then go on in the next page
3 to outline the findings of the investigation officer,
4 isn't that right? 14273. Do you see that?

5 A. That's correct. 10:43

6 96 Q. Can I just ask you to look at the first one? It says:
7
8 "Allegation that Garda A frustrated the investigation
9 of a public order offence 14/9/2008. DPP directed
10 phone of Ms. B be seized. Alleged Garda A met with 10:43
11 Ms. B and her boyfriend to [sic] them dispose of the
12 phones.
13
14 The investigation found that the level of contact
15 between Garda A and Ms. B in a three-month period 10:43
16 between May and August 2010 was excessive and a cause
17 for concern. However, there is no evidence available
18 to the investigation which can definitively state Garda
19 A contacted Ms. B on 23rd June 2009."
20 10:43
21 Is that right?

22 A. That's correct.

23 97 Q. Now, could I ask Mr. Kavanagh to open up the report on
24 this, 11893 probably. If you could actually just go
25 back, Mr. Kavanagh, and just keep going please just to 10:44
26 the start of that. It may be a few pages earlier.
27 Sorry, if you just bear with me, please, Chairman. If
28 you keep going, Mr. Kavanagh. Sorry about the delay,
29 chief superintendent?

1 A. No problem.

2 98 Q. Do you see there the:

3

4 "Allegation that Garda A frustrated the investigation
5 of a public order offence 14/9/2008. DPP directed 10:45
6 phone much Ms. B to be seized. Alleged Garda A met
7 with Ms. B and her boyfriend to dispose of the phones."

8

9 Now, I just want to ask you about this, that's the one
10 you opened on your report. But if Mr. Kavanagh now can 10:45
11 go back to 11893, which is near the end, the
12 conclusions on the findings on this. 11893, if I have
13 the right page. The allegation is very specific in
14 that:

15

16 "Garda A frustrated the prosecution of the incidents 10:46
17 which occurred in [blank]."

18

19 It continues in that regard. Next bullet point, next
20 page. I suppose this is a long winded way of going 10:46
21 about saying that:

22

23 "There is no doubt that the level of contact between A
24 and B in the three month period between May and August
25 was excessive and it caused great concern. However,
26 there is no evidence available to this investigation
27 which can definitively state that Garda A contacted
28 Ms. B on 23rd June 2009."

29

1 That is where you stop in your report, isn't that
2 right?

3 A. That's correct.

4 99 Q. Okay. Then if we look at the next two bullet points.
5 This is where Assistant Commissioner McMahon recommends 10:46
6 the establishment of a board of inquiry and having
7 outlined the basis as to why she thinks there is
8 substance to the allegation of what she calls a
9 potential serious breach. Now you don't reflect that
10 in your report and I suppose I just wanted to ask you 10:47
11 about that?

12 A. Yes, that is correct, it isn't in the report. And I
13 will say that the report could have been enhanced by an
14 additional, further down, an additional sentence in
15 respect of that particular matter. I have to just get 10:47
16 the page.

17 100 Q. The page we had opened was 14273 of your report?

18 A. Yes.

19 101 Q. We will bring it back up if you like there?

20 A. Yes. That is correct. And under the recommendations 10:47
21 in my own report, on page 9, it certainly would have
22 been enhanced with that additional sentence in respect
23 of Assistant Commissioner McMahon's recommendation for
24 a board of inquiry. One of nine of the incidents was
25 recommended that it would go to a board of inquiry and 10:48
26 it certainly would have been enhanced with that
27 additional sentence in it.

28 102 Q. Well, I think you said -- when I asked you what the
29 purpose of your report was, you said it was to

1 highlight key factors from the investigation. Was this
2 not a key factor?

3 A. It was a key factor. If I could explain that. I have
4 a team of people that work on preparing these reports
5 for me and we usually have a discussion and I would 10:48
6 query and question, you know, certain matters that
7 should be added in. On this particular occasion, that
8 particular sentence isn't in the file.

9 103 Q. Do you think that's a serious omission which undermines
10 the report in any respect? 10:48

11 A. Well, I don't think it undermines the report. What I
12 will say is that at that particular point, supervisory
13 level weren't there in Internal Affairs and I was
14 dealing with a member of garda rank who dealt with it,
15 and I didn't have the supervisory level to go through 10:49
16 this, because at the time they were transferred out. I
17 have a report to substantiate that matter. So what I
18 am saying, and I am not making an excuse for it, it
19 certainly would have enhanced the report to have that
20 particular sentence in, in the overall document. 10:49

21 104 Q. Okay. Now, if we stay with your report, you go through
22 each of the allegations and you're summarising them, is
23 that right? This is to assist Assistant Commissioner
24 Sheehan, is it?

25 A. It is. 10:49

26 105 Q. Okay.

27 A. Yes.

28 106 Q. So at page 14277, you outline, if you can please go
29 down there, Mr. Kavanagh, procedural issues there. You

1 say:
2
3 "Notwithstanding that there is little or no evidence
4 found by the discipline investigation team, on
5 examination of the investigation file at this office it 10:50
6 has been discovered that there are a number of
7 potential issues which may be challenged in relation to
8 the conduct of the investigation and adherence to the
9 Garda Síochána (Discipline) Regulations 2007 as
10 amended." 10:50
11
12 And you outline:
13
14 "The potential impediments to bringing this matter to a
15 conclusion are as follows..." 10:50
16
17 And you mention delay, isn't that right?
18 A. That's correct.
19 107 Q. One of the criticisms Garda Keogh has of this
20 investigation is the period of time it took, I think 10:50
21 you would be aware of that, isn't that right?
22 A. That's correct.
23 108 Q. Okay. You point out a procedural problem with the
24 replacement of the investigating officer?
25 A. Yes. 10:50
26 109 Q. I think in summary, is that whether it was to be a
27 continuation of the investigation or a fresh
28 investigation, is that right?
29 A. That's correct. We had a judgment on it, it's in the

1 documentation, which actually came in after the
2 investigation had commenced and it's the Broughall
3 Doyle Waldron judgment. We had to change a lot of our
4 practices after that particular judgment. So this
5 report came in and there was an issue with continuity
6 of investigation team. 10:51

7 110 Q. I think it was the case, and it's referenced in
8 Assistant Commissioner Sheehan's statement, that in
9 fact Internal Affairs effectively spotted this issue at
10 the time and it was advised, by Matt Nyland I think at 10:51
11 the time, Chief Superintendent Nyland, that it was not
12 to be a fresh appointment. Do you remember that?

13 A. That's in respect of the appointment. And I suppose
14 what I was focusing on there was the issue around the
15 different investigators and the new teams. But, yes, 10:51
16 that's correct, and I think it was raised at the
17 Tribunal, that the appointment issue --

18 111 Q. It was spotted by Internal Affairs?

19 A. It was spotted and probably wasn't a fatal issue in
20 respect of this particular file. But it was just 10:52
21 another issue to be highlighted, primarily for the
22 attention of Assistant Commissioner Sheehan to be aware
23 of.

24 112 Q. Okay. I think the language he used in his statement
25 was contrary to the advices of Internal Affairs, it was 10:52
26 that fresh forms were used, would you accept that?

27 A. Well, certainly Internal Affairs did make a number of
28 enquiries to follow up, I wasn't there at the time, it
29 was Chief Superintendent Matt Nyland and, as is his

1 breach of discipline could be formulated is that Garda
2 A failed to disclose original statements to the defence
3 in the case involving suspect 2, which is a matter more
4 appropriately dealt with by way of Regulation 10 of the
5 Garda Síochána (Discipline) Regulations 2007. "

10:54

6
7 So did you consider a Reg 14 or you were satisfied that
8 it was of a level of Regulation 10, was it?

9 A. The difficulty in our regulations is, once an
10 assessment is made at early stage as to whether or not
11 it's a serious breach or a less serious breach, that is
12 made at the appointment stage. If somebody discovers
13 when they are going through an investigation at the
14 serious level, they cannot go back from what we call
15 Regulation 23 to Regulation 14, which is a less serious
16 breach. But there is nothing in the regulations in
17 respect of -- nothing to prevent a Regulation 10 being
18 given once an investigation is undertaken in respect of
19 a serious breach of the regulations. And what
20 Regulation 10 offers is an opportunity for local
21 management to give a warning about the type of
22 behaviour or the practice that would be unacceptable.
23 That was the only option that was open, because in
24 Regulation 10 it clearly states, notwithstanding
25 anything in the regulations, that a supervisor can give
26 a Regulation 10. But that wasn't what Assistant
27 Commissioner McMahon was asked to adjudicate on or to
28 make recommendations on. Her role was to consider
29 whether or not the matter would be brought before a

10:54

10:54

10:55

10:55

1 board of inquiry.

2 117 Q. I think we have heard evidence that you can't go up --
3 sorry, you could go up but you couldn't go down?

4 A. You can't go down from a 23 to 14.

5 118 Q. Okay. 10:55

6 A. But if you read Regulation 10, it clearly states that
7 notwithstanding anything in these regulations, that you
8 can give a Regulation 10. But you cannot, for example,
9 come down from a 14 to a Regulation 10. That's very
10 clear. 10:56

11 119 Q. Okay.

12 A. You can't -- but you can -- it's silent on the matter
13 of utilising a Regulation 10. Which gives the
14 opportunity for a warning to be given that the type of
15 behaviour discovered is unacceptable. It would be put 10:56
16 on somebody's file for three years locally.

17 120 Q. Okay. You go on to say:

18

19 "The lack of corroborative evidence available together
20 with the procedural issues highlighted would render any 10:56
21 progress of this matter to a board of inquiry easily
22 challengeable and difficult to defend, were the matters
23 to be brought under judicial review to the High Court.
24 Therefore, I am of the opinion that the facts disclosed
25 in this case do not warrant the establishment of a 10:56
26 board of inquiry."

27

28 And you then say, on the next page, you agree with the
29 recommendation that a peer review is undertaken, isn't

1 that right?

2 A. That's correct.

3 121 Q. Okay. So you're just expressing an opinion, but the
4 decision is made by Assistant Commissioner Sheehan. I
5 think he said that in his evidence, isn't that right? 10:56

6 A. Ultimately it is Assistant Commissioner Sheehan's
7 decision entirely.

8 122 Q. You say, though -- can I just ask you about the
9 suspension issue on the next page, particularly the
10 last paragraph of your document. It's on the next 10:57
11 page, Mr. Kavanagh, please, and it's the last
12 paragraph. This is what you are telling Assistant
13 Commissioner Sheehan. You said:
14

15 "Should you decide that the establishment of a board of 10:57
16 inquiry is not warranted in this case, the grounds upon
17 which Garda A is suspended will no longer exist, in
18 which case the suspension of Garda A should be lifted
19 with immediate effect in relation to this matter."
20

21 Isn't that right? 10:57

22 A. That's correct.

23 123 Q. You sign it on 30th April 2019, isn't that right?

24 A. That's correct.

25 124 Q. Now, I think it is the case that the suspension was 10:57
26 lifted that day and I think he was suspended on another
27 matters on that day?

28 A. That's correct.

29 125 Q. So Assistant Commissioner Sheehan, do you remember what

1 time of the day he gets your report up to him on the
2 30th April?

3 A. I don't, unfortunately I don't recall.

4 126 Q. But in any event it seems to be immediate. He takes up
5 the report and we also have the new suspension order on 10:58
6 that same date, isn't that right?

7 A. Well usually it is immediate where there is a
8 requirement to lift a suspension on somebody. We try
9 not to keep somebody suspended longer than they are
10 required. It's just to ensure fair procedures. 10:58

11 127 Q. Okay. In any event, it represents there was an
12 agreement with your recommendation that a board of
13 inquiry was not required in this case?

14 A. That's correct.

15 128 Q. On that particular day? 10:58

16 A. That's correct.

17 129 Q. Okay. Thank you, chief superintendent. Could you
18 answer any questions please?

19

20 END OF EXAMINATION 10:58

21

22 CHAIRMAN: Thanks very much.

23 MS. MULLIGAN: Chairman, I have no questions.

24 CHAIRMAN: Thanks very much. Anybody else? Very good.

25 MR. DIGNAM: I just have a few questions. 10:58

26 CHAIRMAN: Okay, thanks.

27

28

29

1 CHIEF SUPERINTENDENT MARGARET NUGENT WAS EXAMINED BY
2 MR. DIGNAM, AS FOLLOWS:

3
4 130 Q. MR. DIGNAM: Chief superintendent Nugent, I just want
5 to ask you about questions that Ms. McGrath essentially 10:58
6 started with, you took responsibility -- the question
7 of whether you were given responsibility for protected
8 disclosures in May, June and whether that was notified
9 to you and you explained to Ms. McGrath that you didn't
10 receive any communication in May 2016 that you were to 10:59
11 take responsibility, but that you were told
12 face-to-face which Commissioner O'Sullivan in June that
13 she wanted you to take responsibility for a particular
14 protected disclosure, is that right?

15 A. That's correct. 10:59

16 131 Q. You know that Chief Superintendent McLoughlin gave
17 evidence two days ago, and he said, at page 120 --
18 sorry Chief Superintendent Walsh, I should have said.
19 This is Day 135, page 120, line 372. A diary entry was
20 put to him and his attention was drawn to it. If you 11:00
21 see there, if you go down a little bit to the next
22 entry, the 20th May, so this is two days after you have
23 requested the report but before you had received it.
24 You have a diary entry here, you say:

25
26 "Put together files on Keogh and most recent lady (if
27 appropriate)."
28

29 And then over the page:

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"But it says: Appointed superintendent Margaret Nugent to keep track of all welfare issues for PDs; do you remember that?"

11:00

Chief Superintendent Walsh answers:

"Yes. Again, that would most likely a direction from the commissioner to put something together on all of the people who had made reports. And Superintendent Nugent, who is now a chief superintendent, obviously she had asked that I would send them to Margaret to look after them."

11:00

She there refers to Commissioner O'Sullivan. Question:

11:00

"And was she appointed and did that happen?"

And Chief Superintendent Walsh said:

"I believe it did, yes."

11:00

Now, you're quite clear in your evidence that you didn't receive any communication or notification in May to that effect, is that right?

11:01

A. That's correct, Chairman.

132 Q. But that you were asked by the Commissioner in June --
CHAIRMAN: We have been over this exact thing in detail, Mr. Dignam. There is no need to do it again.

1 Even I can remember exactly what it was.

2 MR. DIGNAM: There is one point I want to bring out,
3 Chairman.

4 CHAIRMAN: The chief superintendent corrected the
5 suggestion that maybe she didn't remember it, she said, 11:01
6 no, it's not that I didn't remember it, it didn't
7 happen.

8 MR. DIGNAM: Yes.

9 CHAIRMAN: So why don't you get to the point you want
10 to ask, Mr. Dignam, take us out of our misery. 11:01

11 133 Q. MR. DIGNAM: without disclosing the identity of the
12 protected disclosure, but was that a male or a female
13 guard?

14 CHAIRMAN: The person that --

15 MR. DIGNAM: The Commissioner -- 11:01

16 CHAIRMAN: Does this matter?

17 MR. DIGNAM: well, it does matter in the sense --

18 CHAIRMAN: It was somebody different than Garda Keogh.
19 we do know this.

20 MR. DIGNAM: It was, Chairman, but you will recall from 11:01
21 Chief Superintendent Walsh's evidence that the two
22 gardaí he referred was Garda Keogh and a lady, is how
23 he described it in his diary entry.

24 CHAIRMAN: Okay. well, if you think it's relevant,
25 Mr. Dignam, okay. 11:02

26 A. It was a female.

27 134 Q. MR. DIGNAM: Thank you. Now, in relation then to your
28 report, which Ms. McGrath just opened to you, can we
29 take it that you knew that Assistant Commissioner

1 Sheehan would be reading the entire file?

2 A. Yes.

3 135 Q. And I think you said, just in response to one the final
4 questions there, that the decision is that of the
5 Assistant Commissioner Sheehan, not your decision? 11:02

6 A. That's correct.

7 136 Q. I am not sure whether you were here during Assistant
8 Commissioner Sheehan's evidence or whether you've read
9 the transcript of his evidence?

10 A. I was. 11:02

11 137 Q. You'll recall that Assistant Commissioner Sheehan said
12 on a number of occasions that he makes his decision
13 based on reading the file in the round and taking all
14 matters into consideration?

15 A. That's correct. 11:03

16 138 Q. Yes. So can we take it from that, that your report to
17 Assistant Commissioner Sheehan is simply a guidance or
18 an assistance to him in making this decision?

19 A. That's correct.

20 139 Q. Then just in relation to the interactions that 11:03
21 Ms. McGrath put to you, by e-mail, in relation to the
22 processes in respect of K for people who made protected
23 disclosures. Chief Superintendent Murray's evidence
24 was put to you in relation to that he didn't know the
25 context in which you had written certain things in the 11:03
26 e-mails. I think the Chair will have heard his
27 evidence, but can you confirm that Chief Superintendent
28 Murray wasn't involved in those discussions or any
29 shape or form?

1 A. No, I can absolutely confirm that Chief Superintendent
2 Murray had no involvement in respect of this issue
3 concerning Garda X. It didn't concern the division of
4 Westmeath, nor did it concern the district of Athlone.

5 140 Q. During the course of those exchanges, I think on page 11:04
6 14193, you had asked whether the Department of Public
7 Expenditure and Reform had any policy, any written
8 policies in relation to this. Was that directed
9 towards getting some guidance in relation to how the
10 public service in general deals with issues of pay and 11:04
11 protected disclosures?

12 A. That's essentially what it was. To help us, to guide
13 us in having a policy that would be consistent with the
14 general public service.

15 141 Q. I know you are gone from the area now, but as far as -- 11:04
16 you don't know whether there is a policy or a formal
17 process in place in relation to these issues, either
18 the broader public service or within An Garda Síochána?

19 A. I don't know. I have certainly heard of the concept of
20 administrative leave and I am not sure if that is 11:05
21 utilised or not in the case of protected disclosures.

22 142 Q. And then just on page 14889, we might just have a look
23 at that, this is an e-mail from Ms. Claire Egan to
24 Ms. Monica Carr. This is an e-mail that you're not
25 copied in on. But you will see from that e-mail that 11:05
26 there is a reference to draft wording for a proposed
27 process below?

28 A. Yes. And I was provided with that particular draft
29 wording.

1 143 Q. Yes. Then just finally, to go back to your memo or
2 report to Assistant Commissioner Sheehan, Ms. McGrath
3 opened a paragraph on page 14280, the second last
4 paragraph on the page, just towards the bottom,
5 Mr. Kavanagh, under the heading of recommendations, 11:06
6 beginning with the lack of corroborative evidence.
7 That was opened to you by Ms. McGrath. Does that
8 capture your thinking?

9 A. Well, what captures my thinking, it's the lack of
10 corroborative available evidence in respect of this 11:06
11 case to assist in determining on the balance of
12 probabilities whether or not this particular case
13 should go before a board of inquiry, based on the fact
14 that -- I suppose it's not documented, but based on the
15 fact that there -- I mean, there was anecdotal 11:06
16 evidence, there was a person who retracted her
17 statement and there was also hearsay evidence. So it
18 was based on that particular culmination of matters.

19 144 Q. CHAIRMAN: Can I make this point: This is the document
20 that you submitted to Assistant Commissioner Sheehan? 11:07

21 A. Yes, Judge.

22 CHAIRMAN: It speaks for itself.

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

24 CHAIRMAN: There is little point in engaging in
25 exegetical analysis at this point. I can read it, 11:07
26 everybody can read it. That's what it says. Whatever
27 it says it says. You're not saying, oh gosh, there is
28 a mistake there that I explained to Assistant
29 Commissioner Sheehan. Mr. Dignam, it says what it

1 says.
2 MR. DIGNAM: Yes, thank you.
3 CHAIRMAN: That's the document that went through.
4 That's the document we are dealing with. What at this
5 stage she thinks she means by corroborative or whatever 11:07
6 it was, that's is what it says.
7 MR. DIGNAM: Thanks, Chairman.
8 CHAIRMAN: I mean that's the situation.
9 A. That's correct, Chairman.
10 145 Q. CHAIRMAN: You wrote it. There it is. Okay, thank you 11:07
11 very much?
12 A. That's it.
13
14 END OF EXAMINATION
15 11:07
16 CHAIRMAN: Thank you very much. You're finished now.
17 MS. McGRATH: Nothing arising. Thanks, chief
18 superintendent.
19
20 THE WITNESS THEN WITHDREW 11:08
21
22 MR. McGUINNESS: The next witness, Chairman, is
23 Mr. Alan Mulligan.
24 CHAIRMAN: Thank you.
25 MS. MULLIGAN: Chairman, my apologies. 11:08
26 CHAIRMAN: Sorry.
27 MS. MULLIGAN: I am not very good with this mike,
28 apologies, Chairman. Just in relation to this next
29 witness, there is one question that I have outstanding

1 for the Tribunal. I wonder if you would rise for five
2 minutes, it will hopefully shorten matters. I don't
3 anticipate it will take very long but it is before the
4 witness takes the stand.

5 CHAIRMAN: Mr. Mulligan, will you just give us a moment 11:08
6 or two. That's not a problem.

7 MS. MULLIGAN: Apologies, Chairman.

8 CHAIRMAN: So if you need a minute, keep in touch with
9 Mr. McGuinness and I will rise for a moment. It makes
10 me a few minutes to get there, then you can give me a 11:08
11 ring and let me know. Thanks very much.

12

13 THE HEARING ADJOURNED BRIEFLY AND RESUMED, AS FOLLOWS:

14

15 CHAIRMAN: Thanks, Mr. Mulligan. 11:22

16

17 MR. ALAN MULLIGAN, HAVING BEEN SWORN, WAS
18 DI RECTLY-EXAMINED BY MR. MCGUINNESS, AS FOLLOWS:

19

20 THE WITNESS: Alan Mulligan, acting executive director 11:22
21 of HRPD.

22 CHAIRMAN: Thanks very much. Sit down, Mr. Mulligan.

23 THE WITNESS: Thank you.

24 MR. MCGUINNESS: Chairman, Mr. Mulligan's statement is
25 to be found at volume 13 of the Tribunal papers, at 11:22
26 page 3829.

27 CHAIRMAN: Thank you very much.

28 146 Q. MR. MCGUINNESS: Mr. Mulligan, good morning.
29 A. Good morning.

1 147 Q. You're currently acting executive director?
2 A. I am, yeah.

3 148 Q. Prior to you occupying that, I think that was
4 Mr. Barrett's position?
5 A. Mr. Barrett's position, yeah, I took over as acting on 11:23
6 1st November 2018.

7 149 Q. Therefore, prior to that, what was your role?
8 A. I was originally -- I was the director of civilian HR
9 from 2006, when the Garda Commissioner became the
10 appropriate authority for civilian staff. Before that 11:23
11 they were staff of Department of Justice, and then we
12 integrated our HR services and I was the director there
13 at Athlumney House company house over all the
14 administrative side of HR etcetera. In 2015 then I
15 came in to set up a strategic HR section. I was asked 11:23
16 by Mr. Barrett to do that. And as part of that remit,
17 Kathleen Hassett was to report to me, and at that stage
18 Kathleen was the person that was over bullying and
19 harassment and, indeed, Garda recruitment area. So I
20 was kind of on the strategic side and that side and 11:23
21 that was my role prior to 1st November 2018.

22 150 Q. Yes. Just in terms of your relationship with the sort
23 of attested uniformed guards of whatever variety, was
24 it all civilian staff under you?
25 A. Yes. When I was in Athlumney House, I think there was 11:24
26 one sworn member, one Garda staff under me, all the
27 rest were civilian staff. And when I went up to
28 headquarters originally it was all civilian staff, yes.
29 Sorry, there was one Garda staff member.

1 151 Q. Above you, the line up from your role at that time?
2 A. When I started first my reporting line was to the
3 assistant commissioner of HRPD. It was a sworn member
4 over it. It was civilianised then in 2014, and
5 Mr. John Barrett got the job, and my reporting line was 11:24
6 to Mr. John Barrett.

7 152 Q. Yes. And he would report then to the chief
8 administrative officer, Mr. Nugent?
9 A. Correct.

10 153 Q. Now, just to exclude your involvement in matters. In 11:24
11 2014 or 2015 you had no role in relation to the issue
12 of suspending any member of the force, is that right?
13 A. No. My role might have been, okay, on civilian
14 discipline side and I would be involved in that, but I
15 had no role whatsoever, no. 11:25

16 154 Q. You outline in your statement that you were aware of
17 the protected disclosure made by Garda Keogh through
18 the press and publicity given to the utterances in the
19 Dáil?
20 A. Yes, yes. Particularly the one -- as senior management 11:25
21 we get copies, we get clippings of press reports every
22 morning.

23 155 Q. Yes.
24 A. So through that I would have been vaguely aware of it.
25 I wasn't involved in it. But I would have been aware 11:25
26 of it, yes.

27 156 Q. Yes. But insofar as the issue of protected disclosures
28 are concerned at that point in time, in 2014, you had
29 no responsibility for the management?

1 A. No.

2 157 Q. Or investigation of protected disclosures?

3 A. No. Prior to the Protected Disclosures Act coming in,
4 we had a whistleblower charter.

5 158 Q. Yes. 11:26

6 A. I was one of the confidential recipients for that.
7 There was about ten of us. But I never received any
8 disclosure under that from a Garda member. I think I
9 received two from civilian members in that period of
10 time. 11:26

11 159 Q. Yes. And then after the 2014 Act came in, did you have
12 any responsibilities in that regard?

13 A. No. I was appointed as one of the -- two protected
14 disclosures managers along with Chief Superintendent
15 McLoughlin in May/June 2016. 11:26

16 160 Q. Yes. Is that how your involvement with Garda Keogh
17 came about in substance?

18 A. Yeah. My first involvement with Garda Keogh came about
19 in relation to restoring him to pay. There was a
20 meeting held there, which I think Chief Superintendent 11:26
21 McLoughlin went through, with John Barrett. I was
22 called to it in my role was PD manager, because at the
23 time there was kind of a decision to be made, not just
24 in relation to Garda Keogh, but in relation to the
25 whole penalisation issue. Just very briefly, prior to 11:27
26 that if you were out on work related stress, say,
27 certified on that, we'll say, for bullying and
28 harassment, the illness was treated as ordinary illness
29 until the investigation into your claim was finished.

1 It would have found -- if it was upheld, the bullying
2 case was upheld, you would then be issued with an
3 11.37, injury on duty, that has been mentioned.

4 161 Q. Yes.
5 A. But it would be treated as ordinary illness until such 11:27
6 time as that investigation concluded.

7 162 Q. Yes.
8 A. We had a situation, however, when the PDS came in, and
9 both myself and Chief Superintendent McLoughlin would
10 have been new to it, we had a concern: Were we 11:27
11 penalising people like Garda Keogh who made a PD to
12 GSOC by applying the regulations, the sick leave
13 regulations?

14 163 Q. Yes.
15 A. So that was my first involvement in relation to Garda 11:27
16 Keogh, that particular meeting.

17 164 Q. Yes. Well, we will come to that in some detail in a
18 moment. You do draw attention to the fact that
19 correspondence went out under your name in 2015?

20 A. Yes. 11:28

21 165 Q. Back to Chief Superintendent wheatley in Mullingar?
22 A. Yes.

23 166 Q. That's correspondence on the 7th May?
24 A. Yes.

25 167 Q. Which we have seen. That was in response to her 11:28
26 reporting up the line Superintendent Murray's report of
27 2nd April of 2015?

28 A. Right.

29 168 Q. Isn't that correct?

1 A. Yes.

2 169 Q. Now, that report that went in under your name, it's at
3 page 6144 onwards?

4 A. Right.

5 170 Q. We probably don't need to see it? 11:28

6 A. Okay.

7 171 Q. Unless you wish to?

8 A. No.

9 172 Q. That related to the work related stress issue that was
10 reported up, isn't that right? We see it there. The 11:28
11 first line there says:
12
13 "It is noted the above mentioned member's absence from
14 20th April 2015 was stress related."

15 A. Yes. 11:28

16 173 Q. The trigger, that's the trigger then for what was
17 required to be done at that point in time, isn't that
18 right?

19 A. Correct.

20 174 Q. "You should now interview this member in order to 11:29
21 establish the source of the member's stress and if it
22 is suggested as being work related, a full
23 investigation should be carried out.
24
25 This branch requires a full report, referral form and 11:29
26 medical certificates in accordance with Code 11.34
27 relating to the above named member's absence.
28
29 Please ensure that the member is advised of the welfare

1 service and any support that is deemed necessary."

2

3

That is signed by Maria Broderick.

4

A. Correct.

5

175 Q. We have received evidence from the Tribunal that 11:29

6

obviously Superintendent Murray sent a further report

7

up, which included the referral form, it included

8

updated medical certificates from the doctor, which did

9

specify work related stress. Did you have any

10

involvement in processing that at any stage? 11:29

11

A. No. I didn't, no. And can you see that, that letter

12

that went out there, that would be a standard letter

13

that would be issued by the sick leave section. It was

14

signed for me by Maria Broderick, who I think was an

15

executive officer there at the time. They would then 11:30

16

process that. But if somebody reports absence due to

17

work related stress, that would be standard, that we

18

would ask for an investigation to be done.

19

176 Q. Yes. There was a request for a referral to the CMO and 11:30

20

then a request for an expedited appointment and the CMO

21

ultimately saw Garda Keogh?

22

A. Yes.

23

177 Q. You weren't at that case conference in 2015 or 2016?

24

A. No, not that I recollect. Absolutely no.

25

178 Q. Would you have received the minutes or the report of 11:30

26

the case conference or of the CMO's appraisal of Garda

27

Keogh?

28

A. Not unless the section wanted some input from me. I

29

mean, it would be pretty standard. We would have maybe

1 up to 700 people out sick at any particular day. So
2 it's a busy section. That would be pretty standard.
3 So unless there was guidance or whatever sought from
4 me, I wouldn't be brought into that, no.

5 179 Q. Yes. 11:31

6 A. Having said that, I have attended case conferences in
7 relation to other issues, on request.

8 180 Q. Yes. All right. Going onto the events of 2016, did
9 you have any dealings with Chief Superintendent
10 McLoughlin concerning the classification of Garda Keogh 11:31
11 on the SAMS system in June of 2016?

12 A. I don't -- I know I did at some stage but I can't
13 remember was it June 2016. I do know that there was an
14 issue in relation to how it was being classified and I
15 do remember that at a meeting, a case conference 11:31
16 meeting later on, but I think it was later than that,
17 one of the jobs I got out of it was to follow up on
18 that. But the classification and the certs entry would
19 be done at district level, it wouldn't have been done
20 in Navan. 11:32

21 181 Q. Yes. But the staff would have access to the SAMS
22 system?

23 A. They would, yeah.

24 182 Q. All right. In any event, you did attend a meeting with
25 Chief Superintendent McLoughlin and Mr. Barrett? 11:32

26 A. Correct.

27 183 Q. I think you have no note of that yourself?

28 A. No.

29 184 Q. Could I ask you to look at a document in volume 35,

1 10043. Just stop there. This refers to a meeting with
2 Claire Egan and yourself and Chief Superintendent
3 McLoughlin. That's not the meeting that you're
4 referring to in your statement, is it?

5 A. No. That was a meeting with Mr. John Barrett and Chief 11:33
6 Superintendent McLoughlin, where the decision was made
7 to restore Garda Keogh to the payroll.

8 185 Q. Yes. Mr. Barrett isn't mentioned there, but was there
9 a separate meeting with just those three, Claire Egan,
10 yourself and Chief Superintendent McLoughlin? 11:33

11 A. I can't remember actually having a physical meeting. I
12 do know after the meeting we had with Mr. Barrett an
13 the instruction went to Claire from Chief
14 Superintendent McLoughlin, because I was cc'd in that,
15 to restore Garda Keogh to the payroll. I do remember 11:33
16 that. But I don't actually remember the physical
17 meeting on the 27th with Chief Superintendent
18 McLoughlin and -- I am not saying it didn't take place,
19 I simply don't remember it.

20 186 Q. Yes. 11:33

21 A. But I do know that, as I said, there was an e-mail
22 sent. I know then that Ms. Egan then sent an e-mail
23 back to myself and Chief Superintendent McLoughlin
24 confirming that Garda Keogh had been returned to the
25 payroll. 11:34

26 187 Q. Perhaps we will just go back to your statement at page
27 3831. You say there:

28

29 "In late September 2016, I recall a meeting with Chief

1 Superintendent McLoughlin and executive director
2 Mr. Barrett. I cannot recall the exact date of this
3 meeting as I have not retained a note or record of the
4 meeting. Both Chief Superintendent McLoughlin and I
5 had recently been appointed as protected disclosure 11:34
6 managers for An Garda Síochána in May 2016."
7

8 If we just go down then, where you describe -- a little
9 bit further. You see where it starts then:

10 11:34
11 "From this meeting I understood that Garda Keogh
12 required financial assistance. However, his absence
13 and pay status was governed under the sick pay
14 regulations. I had previously written to the
15 department of public expenditure for advice and 11:34
16 clarification in respect of this type of situation,
17 which was identical to that of Garda Keogh. Having
18 discussed the matter and circumstances of Garda Keogh
19 at length with Chief Superintendent McLoughlin and
20 Mr. Barrett, it was determined that in the interest of 11:35
21 Garda Keogh's wellbeing and health and in order to
22 provide him with support, it was decided as a
23 collective that Garda Keogh should be restored to the
24 payroll."

25 11:35
26 Now, in terms of what that meant, did that mean
27 restoring him to full basic pay?

28 A. Yeah, it meant putting him to his basic pay, less the
29 allowances.

1 188 Q. Yes.

2 A. Because the allowances, there's a -- if somebody gets
3 an 11.37, that's injury on duty.

4 189 Q. Yes.

5 A. There is a formula worked out by the national cert 11:35
6 service office where they get compensated for
7 allowances, loss of allowances. And it's done by them
8 down in Killarney. But we only do that, as I said, and
9 I gave you the example of the bullying and harassment,
10 if somebody has an 11.37, that it has been -- after an 11:35
11 investigation it has been decided that it is an injury
12 on duty. In this case that hadn't been done. I think
13 GSOC at the time, I think that's where the PD was made.
14 The bullying and harassment case, at that stage we
15 hadn't got a bullying and harassment in my section from 11:36
16 him. So I suppose we looked at, it was mentioned
17 there, we looked at kind of the administrative pay in
18 the meantime for people in similar circumstances.

19 190 Q. Yes.

20 A. I wrote to the department, to DPERs, to put it in 11:36
21 context. They were the policy holders initially for
22 protected disclosures in the public services and
23 they're also the policy owners for the sick leave
24 regulations in the public service. So we wrote to
25 them, basically asking -- raising our concerns as 11:36
26 protected disclosures managers, that we wouldn't be in
27 a position where we would penalise somebody by applying
28 the regulations of the sick leave if they made a
29 protected disclosure. My recollection of the letter

1 that came back was basically DPERs said it was a matter
2 for us, the Commissioner was the accounting officer.

3
4 So we had a discussion around it then and our solution
5 that we came to was, after Tony explained the 11:37
6 situation, that we would restore Garda Keogh to the
7 payroll. We couldn't do the allowances at the time
8 because there wasn't an 11.37, it hadn't been decided
9 that it was an injury on duty. That's where the
10 administration -- looking at it administratively, 11:37
11 that's where that came back.

12
13 And just to answer the question, because it was
14 mentioned earlier, that never became a policy. That
15 was a draft. And the reason for that was that later 11:37
16 legal advice we got is that you were not penalising
17 somebody who makes a protected disclosure by applying
18 the regulations of sick leave. If you are applying it
19 with them, it should work with anybody else.

20 191 Q. Yes. So just in terms of separating out the different 11:37
21 strands, you never received certification under 11.37
22 from Chief Superintendent Wheatley or any other chief
23 in the division and certified as an injury on duty.

24 A. No, no.

25 192 Q. Is it your understanding that there was never an 11:38
26 investigation into the work related stress claim as
27 such?

28 A. Well, we wrote, as you know --

29 193 Q. Yes.

1 A. You showed that letter there. I can't recollect
2 whether that was followed up. Eventually, as you know
3 yourself, there was a bullying and harassment and other
4 investigations.

5 194 Q. Yes. 11:38

6 A. Yes.

7 195 Q. In terms of the e-mail that's referred to at the bottom
8 of the page there, could we just look at page 3441?
9 This is from Chief McLoughlin. The reference there on
10 the fourth line down to full pay, was that intended and 11:38
11 agreed by you all that that meant basic pay?

12 A. Yes.

13 196 Q. At that point in time and is it the case now that where
14 an arrangement such as this is put in, that it doesn't
15 carry with it allowances? 11:39

16 A. That's correct. Previous to that there wasn't this
17 arrangement. Previous to that, basically in relation
18 to sick leave, it was either ordinary sick leave, where
19 the regulations were applied. But I suppose the
20 guards, due to the nature of the work they do, have a 11:39
21 thing called an injury on duty.

22 197 Q. Yes.

23 A. It's pretty unique in the public sector, and it means
24 that as long as you are out injured, once it's in the
25 course of your duty, you are not penalised financially. 11:39
26 So you get your full pay and you get what's called a
27 premium payment, which is a formula worked out based on
28 if there is any loss of allowances.

29 198 Q. Yes. I am going to ask you to look at a series of

1 documents, which all relate to the basis upon which
2 Garda Keogh was paid, and to ask you to comment on
3 them. On Day 103, I was asking him in his
4 direct-evidence about this issue. And he said on page
5 42 that he was on basic pay. He said:

11:40

6
7 "You see sometimes work related stress where, we'll
8 say, full pay, to give allowances, where you get all
9 your allowances, I don't get those, I am on what is
10 called, I think it's termed just basic pay standard,
11 it's fine, like, is what I am saying, I am not giving
12 out."

11:40

13
14 But that was his understanding.

15 A. And Garda Keogh would be correct. If he had been
16 awarded an 11.37, there would be people who would have
17 gone out on stress related, who after an investigation,
18 either it was signed off by the chief and the medical
19 officer -- that's the other thing too, the chief
20 superintendent would sign off on it, and it also goes
21 to the CMO, the Chief Medical Officer, or in the case
22 of somebody taking a think like a bullying and
23 harassment, as I said.

11:40

11:41

24 199 Q. Yes.

25 A. The policy was, if that was upheld they would be
26 awarded with 11.37.

11:41

27 200 Q. Yes. Just in terms of the process, if there's a claim
28 of work related stress and it's investigated locally in
29 the division or district, the results of that would

1 normally go to the CMO?

2 A. The CMO as well. It goes to -- yeah, it's two pronged,
3 it's the CMO and it's is the local, yeah.

4 201 Q. And then the CMO would have that information.

5 A. Yes. 11:41

6 202 Q. And would have his own criteria perhaps for looking at
7 the issue of work related stress.

8 A. Yes. Yeah.

9 203 Q. Okay.

10 A. Work related stress initially, just again to put it in 11:41
11 its context, usually, when it came in first, was
12 physical injuries.

13 204 Q. Yes.

14 A. So if I broke my leg and I was attacked and my leg was
15 broke or something, the doctor would simply confirm, 11:41
16 yes, it's a broken leg, which is absolutely in relation
17 to the report on the fact that somebody was assaulted,
18 and the chief would do an investigation just confirming
19 that, yes, Garda so and so was on duty on the day, did
20 report the attack. So that's where it came from, 11:42
21 Chairman.

22 205 Q. Yes. In terms of the working out of it through the
23 Garda system, we know that Garda Keogh is entered on
24 SAMS as having gone out as being absent from work from
25 26th December 2015 onwards? 11:42

26 A. Yes.

27 206 Q. And that's the last standing entry on SAMS?

28 A. Yes.

29 207 Q. But he is required to submit certificates regularly?

1 A. Yes.

2 208 Q. As the basis of his pay being continued to be
3 certified.

4 A. Yes.

5 209 Q. Can I ask you to look at a number of documents in 11:42
6 volume 35? Firstly, commencing at 9933. Just looking
7 at this. Now, these are documents for different
8 periods of time as a result of Garda Keogh having
9 submitted medical certificates?

10 A. Yes. 11:43

11 210 Q. In accordance with Code 11. But this is headed "injury
12 on duty" at the top. If we just go down there, this is
13 for the beginning of the first month of 2017 and it
14 says it's:

15 11:43

16 "As per the Public Service Management (Sick Leave)
17 Regulations."

18

19 Then it is authorised by -- you're probably very
20 familiar with the signatures there, are you, is that 11:43
21 Harrison?

22 A. Oh, I don't know, I can't read it.

23 211 Q. In any event, that appears perhaps to be wrong insofar
24 as it relates to the service management regulations and
25 wrong in terms of the injury on duties, is that right? 11:44

26 A. I mean, as I said before, there was ordinary illness or
27 there was injury on duty, and they were the forms that
28 were used. This was one of the unique situations, as I
29 said at the time when we brought this system in. And

1 obviously the same that is form used for injury on duty
2 is used for that. It's a standard form.

3 212 Q. Perhaps we will just look at a few of the other ones
4 because they do differ?

5 A. Okay. 11:44

6 213 Q. Perhaps we will look at them all. If we go to 9965.
7 That's another injury on duty one there. And again,
8 that refers to the regulations. Then if we go to 9970.
9 Just down the bottom there. That's a report from the
10 chief up in relation to full pay for that month. Then 11:44
11 we go to 9973. Again, that's a grant of sick leave
12 with full pay, if we just go down the page. Then if we
13 go to page 10022. Again that's a reference to full
14 pay. 10028, again that's full pay. Is it your
15 understanding that the reference to full pay is basic 11:45
16 pay?

17 A. Yes.

18 214 Q. Then if we look at 10053. This is a slightly different
19 heading now, it has got "occupational injury" here.
20 It's again a reference to the sick leave regulations. 11:46
21 If we go on to 10059. "Occupational injury" is struck
22 out there and there is a reference here, where the sick
23 leave regulations are struck out. If we go two pages
24 on to 10061, two pages on. There is a reference to
25 full pay there. 10072, there's no mention of 11:46
26 occupational injury or injury on duty there. And the
27 basis of it is:

28

29 "As per chief superintendent HRPD and executive

1 director HRPD on 27/9."

2

3

That seems to reflect, on that one, the agreement reached on 27/9?

4

5 A. Yeah.

11:47

6

215 Q. If we look at the next page then, that refers to full pay. And then finally, if we go to 10080. Again, that relates to full pay for that period in September.

7

8

There are more there, but they seem to be slightly confused in terms of their certification. But is it your evidence that he was intended to be put back on full basic pay and that he is not entitled to allowances on the basis of there being no 11.37?

9

10

11:48

11

12

13

14 A. Yeah. As things stand today, there is no 11.37. I

15

think the important thing, that form, the DB22 or whatever, the most important thing in that as far as

11:48

16

17

I'd be concerned as the executive director of HRPD, is that Garda Keogh is paid. I wouldn't get his -- I do know there was a change, injury on duty and then

18

19

occupational duty etcetera. But that form is to make

20

11:48

21

sure -- it's an authorisation for payment to happen and I see that that's consistent.

22

23

216 Q. Yes. Turning away from that then, I think in your position as a protected disclosures manager, did you receive correspondence from chief McLoughlin on 1st November 2106? Could we look at 3469?

24

25

11:49

26

27

A. I think that was wearing my other hat, counsel, that was the bullying and harassment.

28

29

217 Q. Yes.

1 A. Yeah.

2 218 Q. This was I think the first notification to you
3 following on from Garda Keogh's handwritten
4 correspondence, that he confirmed it was his intention
5 to make a formal complaint? 11:49

6 A. Yes. I think the issue before that was, I think Garda
7 Keogh had made a protected disclosure to GSOC and I
8 think, as far as I know, and I stand to be corrected on
9 this, that there might have been an issue under
10 bullying and harassment and it was only then, I think 11:49
11 maybe after Garda Keogh had spoken to them, to GSOC,
12 that he decided to formally make a bullying and
13 harassment case, yeah.

14 219 Q. Chief Superintendent McLoughlin had made an enquiry
15 himself with GSOC, who told him that bullying and 11:49
16 harassment was solely a matter for the Garda Síochána?

17 A. That's correct, yes.

18 220 Q. And Garda Keogh then confirmed his position --

19 A. He did.

20 221 Q. -- in the handwritten letter here. It's noted there 11:50
21 that he recommends that this formal complaint be
22 investigated fully. So what was your function then in
23 relation to that?

24 A. A person in charge of the bullying and harassment
25 section, administrative, Ms. Kathleen Hassett reported 11:50
26 to me.

27 222 Q. Yes. And did you forward that on to her?

28 A. Yes, I did. Ms. Hassett followed up on it then,
29 obviously to get documentation which she got from Chief

1 Superintendent McLoughlin's office. She read that then
2 and it didn't satisfy the requirements of our bullying
3 and harassment policy, she asked me to have a look at
4 the documentation that Garda Keogh had supplied. And
5 there was a lot of other stuff in it besides maybe 11:50
6 bullying and harassment. So Kathleen drafted a letter,
7 which went through me for executive director John
8 Barrett, to write to Garda Keogh to layout how to make
9 a formal bullying and harassment complaint.

10 223 Q. Yes. Chief Superintendent McLoughlin has given 11:51
11 evidence of receiving an harassment index earlier in
12 June and then a large volume of documents that had been
13 sent to him in the post by Garda Keogh?

14 A. Yes.

15 224 Q. I think they were sent to Ms. Hassett? 11:51
16 A. Yes.

17 225 Q. And then they were drawn to the attention of
18 Mr. Barrett, who formally then wrote to Garda Keogh?

19 A. Yes.

20 226 Q. On the 11th November? 11:51
21 A. Yes.

22 227 Q. In relation to the policy?
23 A. Yes.

24 228 Q. And what had to be put in a complaint, isn't that
25 right? 11:51
26 A. That's correct.

27 229 Q. That's the document at 9849, I think. I am not sure we
28 have seen it, we probably have seen it, but just to be
29 clear. This is the letter you're referring to?

1 A. Yes. Definitely. That bit there:
2
3 "Details of the person or people against whom the
4 complaint is made; full details of the alleged act or
5 acts constituting the behaviour complained of..." 11:52
6
7 That's very, very important obviously, because the
8 other side, people who are being accused of bullying, I
9 mean they are entitled to see what allegations are
10 being made against them. So you have to be very clear. 11:52
11 230 Q. Yes. You forwarded that on to Chief McLoughlin?
12 A. Yes.
13 231 Q. After you received a copy of it?
14 A. Yes.
15 232 Q. I think you learned then that he had spoken to Garda 11:52
16 Keogh on the 25th and that there was a concern
17 expressed by Garda Keogh about making the complaint
18 through his divisional officer, isn't that right?
19 A. There was, yeah. Initially we had -- and we said it in
20 the letter, in John Barrett's letter to Garda Keogh, we 11:52
21 advised him that it wouldn't be Chief Superintendent
22 McLoughlin that would be investigating it, reminding
23 him of the policy, that he should make it through his
24 divisional officer. But after that Chief
25 Superintendent McLoughlin advised me that there could 11:52
26 be a conflict there. So the decision was made then
27 that he could do it through either myself or Chief
28 Superintendent McLoughlin.
29 233 Q. Yes. I think you phoned Mr. Cullen, Garda Keogh's

1 solicitor?

2 A. Yeah.

3 234 Q. To explain that and make the offer. I think you
4 offered to travel down to --

5 A. Yes.

11:53

6 235 Q. -- assist him in making the complaint?

7 A. Yes.

8 236 Q. Or talking to him about it. I think that was declined
9 and he informed you that Garda Keogh was working on his
10 bullying and harassment complaint?

11:53

11 A. Yeah.

12 237 Q. You made it clear, I think, that it could be submitted
13 either directly to you or to Chief Superintendent
14 McLoughlin, isn't that right?

15 A. That's correct, yeah. I rang Mr. Cullen and for my
16 part anyway, I thought it was a very constructive
17 conversation. I offered that I would travel and,
18 indeed, Chief Superintendent McLoughlin as well,
19 because Garda Keogh wouldn't have known me, but he a
20 relationship with the chief superintendent. So we were
21 happy to go down and assist. And Mr. Cullen advised me
22 that Garda Keogh was aware of the policy and that he
23 was going to do up his complaint based on the Policy.
24 From my recollection.

11:53

11:53

25 238 Q. Yes. That was the phone call on the 25th November?

11:54

26 A. Correct.

27 239 Q. You record in your statement as informing Mr. Cullen
28 that on receipt of Garda Keogh's complaint an
29 investigating officer would be appointed.

1 A. That's correct.

2 240 Q. How quickly did you anticipate that that would occur?

3 A. As soon -- well, I was hoping fairly soon after my
4 conversation with Mr. Cullen. I was hoping that we
5 would get the complaint from Garda Keogh in the proper 11:54
6 format. And Kathleen Hassett then, we would have sent
7 it out to an appointing officer and the case would have
8 proceeded then.

9 241 Q. Yes. Now, it didn't happen for nearly a year
10 afterwards? 11:54

11 A. No, it didn't.

12 242 Q. I want to try and understand and help the Tribunal
13 understand how that happened. But on your part, on the
14 same day you wrote to the commissioner on the 25th
15 November, a letter outlining matters and a schedule of 11:54
16 contacts with Garda Keogh. Perhaps we will look at
17 that briefly, at page 9865. This is to Superintendent
18 Walsh in the Commissioner's office. You were sending
19 on the file. You're indicating the letter that was
20 sent out by Mr. Barrett there. If we just go down. 11:55
21 You're referring to the phone call that Chief
22 Superintendent McLoughlin had with Garda Keogh. And
23 then your phone call with Mr. Cullen, it sets out the
24 details of it there. And at the end of the first
25 paragraph you say: 11:55
26
27 "I promise that we will arrange for an investigating
28 officer to be appointed as soon as his complaint is
29 received."

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Then the final paragraph refers to a schedule of contacts in relation to Garda Keogh. If we just look at that, that goes over a number of pages. If we scroll down quickly through it here, these different notes. There's a list from the 7th May onwards, including all the welfare contacts there, up until October 2016. That was put together by Chief McLoughlin I think, is that correct?

11:56

A. That's correct, yeah, and Chief McLoughlin gave me a copy of that and I attached it for completeness.

11:56

243 Q. Yes.

A. Because there was concern at the time in the Commissioner's office, they were anxious that we move this on. Mr. Cullen I think had written a few times into the Commissioner. So that's why I attached that as well.

11:56

244 Q. Yes. Mr. Cullen had obviously told you in the phone call that Garda Keogh was working on a statement of complaint but I think you were next copied in on correspondence that came from Mr. Cullen on the 23rd November, where he raises other issues about inclusion of Garda Keogh's complaint in Mr. Justice O'Neill's scoping exercise, isn't that right?

11:56

A. Mm-hmm.

11:57

245 Q. Amongst other matters. And calling on the promotion of Superintendent Murray to be suspended?

A. Hm-hmm.

246 Q. We have seen that handwritten letter from Garda Keogh,

1 which refers to eight different issues, isn't that
2 correct, that he wanted addressed at that point in
3 time?
4 A. Yes.
5 247 Q. I think you weren't responsible for -- 11:57
6 A. No.
7 248 Q. -- dealing with those. But they required responses
8 from the Commissioner?
9 A. Yes.
10 249 Q. The Minister and the Policing Authority? 11:57
11 A. Yeah. It would have been sent to me on the basis of
12 the bullying and harassment side of it.
13 250 Q. Yes. I think you were copied into that letter and
14 process by a number of people who were the
15 stakeholders, as it were? 11:57
16 A. That's correct, yeah. And, as I said, bullying and
17 harassment would have been my side.
18 251 Q. Yes. I think you received correspondence from the
19 Commissioner's office which related to progressing this
20 issue of the investigation of the complaint speedily, 11:58
21 isn't that right, on the 16th December. If we look at
22 that letter?
23 A. Yes.
24 252 Q. I think it went to Mr. Barrett but I think it came down
25 to you as well? 11:58
26 A. It was sent down to me then, yes, it was.
27 253 Q. Page 3506. This was a recurring concern of the
28 Commissioner, isn't that right?
29

1 "Arrangements should be made to take a statement from
2 Garda Keogh as a matter of priority."

3 A. Yeah. Well, we still hadn't got statement in.

4 254 Q. Yes.

5 A. Since the November call, in the bullying and harassment 11:58
6 side of things.

7 255 Q. Yes.

8 A. The Commissioner's office were growing a little bit
9 impatient as well.

10 256 Q. Yes. Perhaps we will just look at a number of those 11:59
11 letters, just to progress matters. There was a further
12 -- I will come back to your involvement in sequence?

13 A. Okay.

14 257 Q. But just to look at the Commissioner's office at this
15 point in time. Page 9932. It's a letter of the 11th 11:59
16 January, and it refers there to Chief Scanlan, and the
17 last paragraph expresses concern at the rate of
18 progress in the matter.

19

20 "Please ensure the processing of Garda Keogh's 11:59
21 complaint is expedited."

22

23 That was a concern then repeated on the 26th January,
24 if we look at 9936. Again from the Commissioner's
25 office down to Mr. Barrett, reiterating concern, in the 12:00
26 second paragraph, at the rate of progress and then
27 querying whether a statement has been taken.

28

29 Then if we look at page 10008. This is in March, 30th

1 March:
2
3 "Please ensure that this matter is expedited and report
4 developments."
5 12:00
6 Just going back then to the sequence of events. I
7 think you became aware on the 20th December that
8 Mr. Barrett had nominated Chief Superintendent Roche to
9 take the statement. In fact Chief Superintendent
10 Scanlan was nominated by Assistant Commissioner 12:01
11 Fanning, isn't that correct?
12 A. That's correct, yeah. Executive director Barrett was
13 coordinating it, the issues in relation to Garda Keogh.
14 He was anxious that something be done. So Assistant
15 Commissioner Fanning, who was assistant commissioner 12:01
16 over that particular region, appointed Chief
17 Superintendent Scanlan to liaise with Garda Keogh with
18 a view to moving the matter on.
19 258 Q. Yes. I think that led to a difficulty, if I could just
20 call it that, in terms of Garda Keogh, when informed, 12:01
21 had a view and an issue was raised about a possible
22 conflict. And that led to quite some delay in terms of
23 advice being sought?
24 A. Yes.
25 259 Q. Views being expressed -- 12:01
26 A. Yes.
27 260 Q. -- by Mr. Barrett, by Assistant Commissioner Fanning
28 and eventually an appointment was made for Chief
29 Superintendent Scanlan to take the statement?

1 A. That's correct.

2 261 Q. Was it made clear that he wouldn't be investigating it?

3 A. Yes. I mean, it was fact-finding, I suppose, for want
4 of a better word, but it was mainly to assist Garda
5 Keogh to the point where we could actually get his 12:02
6 bullying and harassment statement and we could act on
7 it.

8 262 Q. Yes. I think the correspondence will make it clear
9 that no investigation could take place until a
10 statement had been provided? 12:02

11 A. Absolutely, because you have to know who is being
12 accused of the behaviour and what exactly are they
13 being accused of.

14 263 Q. The Commissioner's office was advised of that position,
15 just accelerating forward, as of 8th February 2017? 12:02

16 A. My understanding, from recollection and from the
17 documentation there, is that executive director Barrett
18 kept the Commissioner's office updated.

19 264 Q. Yes. Just moving on, it just so happened obviously
20 that the Disclosure Tribunal was established then in 12:03
21 February of 2017?

22 A. Yes.

23 265 Q. There was a call for statements. Garda Keogh had
24 commenced the interview process with Chief Scanlan as
25 of the 2nd March but wanted to adjourn the completion 12:03
26 of his statement until he had made his statement to the
27 Tribunal?

28 A. That's what was reported to HRPD counsel, yes.

29 266 Q. I think that was then resumed and Chief Superintendent

1 Scanlan completed taking statements from Garda Keogh?

2 A. Correct.

3 267 Q. As of 27th March 2017?

4 A. Correct.

5 268 Q. I think Assistant Commissioner Fanning sent an update 12:03
6 on the 5th April, if we look at page 6823, advising
7 that he had received one part of a two-part report from
8 Chief Superintendent Scanlan. He said there:
9

10 "I am examining it and from an early perusal of the 12:04
11 file it appears to be much wider than the bullying and
12 harassment matter.
13

14 I will revert on receipt of the next phase of the
15 report." 12:04

16 A. Correct.

17 269 Q. It would appear that Chief Superintendent Scanlan
18 forwarded the next portion of the report on the 12th
19 April to Assistant Commissioner Fanning. If we just
20 look at page 6824. That's the actual -- that's a 12:04
21 six-page statement, which is in fact unsigned, as I
22 understand it. But if we look at the report from Chief
23 Scanlan to Assistant Commissioner Fanning, and go to
24 page 10013, he says there:
25 12:05

26 "Reference on 2nd March 2017. Accompanied by his
27 solicitor, Garda Keogh attended Portlaoise Garda
28 station and commenced making a statement in respect of
29 matters pursuant to the bullying and harassment

1 policy. "

2
3 He then goes on in the second paragraph about the
4 adjournment. And then the taking of a statement on the
5 27th and then declining to sign the statement of the 12:05
6 2nd. But Chief Scanlan forwards that to the assistant
7 commissioner at that point in time.

8
9 Now, it would appear that Assistant Commissioner
10 Fanning sent these to Mr. Barrett on 21st April 2017. 12:06
11 If we look at page 10021. He says there:

12
13 "I am directed by assistant commissioner Eastern Region
14 to refer to previous correspondence from this office
15 dated 5th April 2017. 12:07

16
17 The office is now in receipt of a further report dated
18 12th April 2017 from chief superintendent Portlaoise
19 with enclosed document of Garda Keogh dated 2nd March
20 2017 and relevant appendices. 12:07

21
22 Assistant commissioner Eastern Region will give this
23 matter further consideration and report more fully in
24 due course. "

25
26 That appears to refer only to the undated, five-page
27 statement, is that correct?

28 A. That's correct, yeah.

29 270 Q. Did you receive a copy of that?

1 A. No -- yes. What we hadn't received at that day was the
2 actual bullying and harassment, that we eventually
3 received.

4 271 Q. Yes.

5 A. That wasn't received and I certainly didn't receive it 12:07
6 then, no. I think it was the unsigned, the six-page
7 one, yeah.

8 272 Q. Yes. So you didn't receive the statement of the 27th
9 March?

10 A. No. No. 12:07

11 273 Q. You say at page 3840 of your statement, in the third
12 paragraph down, if we just look at that. If we go up
13 slightly, Mr. Kavanagh. There is a paragraph there:
14

15 "Also on 21st March 2017, I received an e-mail with ten 12:08
16 separate attachments from the office of the executive
17 director in respect of Garda Keogh."
18

19 We haven't been able to trace that, I am wondering is
20 that -- 12:08

21 A. I have it traced, yeah, I actually looked it up in
22 preparation for here. The attachments, ten
23 attachments, none of which are the bullying and
24 harassment one. But I can certainly send on, if it is
25 useful Chair, I can send you on a copy of that and 12:08
26 attachments, if that's useful.

27 274 Q. I was wondering was that perhaps misdated in the typing
28 up of the statement. Should that read the 21st April?

29 A. Yes. Sorry, actually, yes, you're correct.

1 275 Q. Okay.

2 A. Yes, that should be the 21st April.

3 276 Q. You're confirming anyway on oath that it doesn't

4 include the 27th March bullying and harassment.

5 A. No. And I send a copy, I will arrange for a copy to be 12:09

6 sent later. The first we got it was on the 4th

7 October. When I say we, myself and Kathleen, that we

8 seen the bullying and harassment one. There's an

9 e-mail from that from Assistant Commissioner Fanning

10 and I know that he does refer that he delivered a copy 12:09

11 to the executive director of HRPD on that, it's in my

12 attachments. I can't confirm that one way or another

13 but I can confirm that we didn't get it until the 4th

14 October. And as I say, these attachments here, which I

15 will send a copy, do not contain the bullying and 12:09

16 harassment.

17 277 Q. Yes. It may be we have it in our disclosure and we

18 haven't located it because of the date issue?

19 A. Yes, and my apologies about that, that was an error of

20 mine. So I apologies for that and I will send it on. 12:10

21 278 Q. Yes. The next document of importance seems to be

22 Assistant Commissioner Fanning's letter of 24th May

23 2017. I think this is the hand-delivered letter that

24 you have just referred to. That's at 6876.

25 A. Yeah. 12:10

26 279 Q. If we just consider this. This is going to the

27 executive director, and does it come to you then?

28 A. It came to me then. Sorry, yes, it came to me from the

29 executive director.

1 280 Q. So in the second paragraph he is referring to
2 correspondence from this office dated the 21st April,
3 and that's the five-page unsigned statement?

4 A. I think so. As far as I know, yes.

5 281 Q. He says:

12:11

6
7 "On 16th May 2017, I also corresponded with Garda
8 Keogh, copy attached, to enquire if he had any further
9 material to offer and to respond to my office before
10 30th May 2017. Should Garda Keogh offer any further 12:11
11 material, I will revert to you.

12
13 On 22nd May 2017 I held a preliminary discussion with
14 Mr. Alan Mulligan HRPD where I set out a summary of the
15 facts regarding this matter. 12:11

16
17 Later that day, on the 22nd May, at lunchtime, Garda
18 Keogh contacted Inspector James McCarthy."

19
20 This is something we have heard of before. If we just 12:11
21 go on then.

22
23 "Garda Keogh also stated that he first raised these
24 issues as outlined in his statement to Chief
25 Superintendent Scanlan directly with Chief 12:11
26 Superintendent McLoughlin HRM in June 2016, some 12
27 months ago.

28
29 The second issue that he raised..."

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And he goes into that issue that we are not particularly concerned with. But if we turn over the page there. It's quite a poor copy. If we go and just read the third paragraph there:

12:12

"The issues set out in the statement witnessed by Chief Superintendent Scanlan and the additional list set out in the unsigned statement also handed to Chief Superintendent Scanlan by Garda Keogh are most serious. The allegations could in some circumstances merit a criminal investigation and the allegations include an allegation against a Garda Commissioner by a protected disclosure. I am of the firm view that the bullying policy is not wide enough to include any comprehensive investigation. You decide. The decision in the earlier days (McCabe) by HRM."

12:12

12:12

There is a footnote giving a link to that:

12:12

"I am reluctant to make any appointments in this matter as there may well be a conflict of interest in that I had prior involvement in a previous correspondence regarding Garda Nicholas Keogh and it may well be the perception of the parties that I would not be impartial. Garda Keogh corresponded with me on 15th April 2015, to which I issued a response on 24th April 2015."

12:13

1 That was a request for a meeting that Assistant
2 Commissioner Finn did not accede to; isn't that
3 correct?

4 A. Sorry, could you repeat that again?

5 282 Q. That was a request by Garda Keogh to meet Assistant 12:13
6 Commissioner Fanning, to which Assistant Commissioner
7 Fanning declined?

8 A. I am not sure about that, whether he did or not.

9 283 Q. If we go down then, we look at the reference to Chief
10 Superintendent Roche, where it says: 12:13
11
12 "I recommend a full investigation into these matters."
13
14 Now, he attaches five tabs there, as he sets out in the
15 course of the letter, but none of those tabs are the 12:13
16 actual bullying and harassment complaint, isn't that
17 correct?

18 A. Correct.

19 284 Q. There's no reference in that letter to including,
20 otherwise including the bullying and harassment 12:14
21 complaint; isn't that right?

22 A. That's correct. I think the letter says that the
23 assistant commissioner thought, after speaking to Garda
24 Keogh, or after getting a report from Chief
25 Superintendent Scanlan, should I say, that this was 12:14
26 bigger than bullying and harassment. And certainly the
27 meeting that I had with him, we'd a short meeting
28 before it, he outlined those, basically what he
29 outlined in the letter to me. My recommendation was

1 that he put it down and write to the executive director
2 if he is concerns about it, because it still looked
3 like we were going to be able to start a bullying and
4 harassment investigation.

5 285 Q. It seemed that you had been assigned a responsibility 12:14
6 by Mr. Barrett arising from a letter from the chief
7 administrative officer to him, to convene a case
8 meeting; isn't that correct?

9 A. That's correct.

10 286 Q. Perhaps we will just look at that, at 9962. This is 12:15
11 coming from the Commissioner's office. It says in the
12 middle paragraph:

13
14 "The Commissioner has asked that you convene a case
15 conference in this matter in order to ensure that this 12:15
16 complaint is managed and pursued appropriately."

17
18 That is directed at the chief administrative officer.
19 And if we go to 9961, the previous page, that's
20 forwarded on by him to Mr. Barrett, isn't that correct? 12:15

21 A. That's correct.

22 287 Q. Then that's forwarded on, if we go to 9960, the next
23 page up, by Mr. Barrett to you. So that's the
24 Commissioner's original correspondence from the 9th
25 February comes to you then some time after the 13th or 12:16
26 on the 13th February?

27 A. That's correct.

28 288 Q. I think you were responding to the assistant
29 commissioner on the 17th May that you would be

1 available to meet on 22nd May of 2017, isn't that
2 correct?

3 A. Say that again, sorry, counsel.

4 289 Q. You responded to the assistant commissioner, who
5 e-mailed you on the 17th, suggesting a meeting on the 12:16
6 22nd May?

7 A. Yes.

8 290 Q. Saying that you would be available to meet?

9 A. Yes, correct.

10 291 Q. You met the assistant commissioner on the 22nd May? 12:16
11 A. Correct.

12 292 Q. He refers in his letter of the 24th May to a summary of
13 facts explained to you on the 24th May?

14 A. Correct, yeah.

15 293 Q. In your meeting on the 22nd May? 12:17
16 A. Basically what is in the letter he roughly discussed
17 with me, mentioned to me.

18 294 Q. Yes. Did he give you a copy of the bullying and
19 harassment complaint made by Garda Keogh?

20 A. No. 12:17

21 295 Q. The signed statement, on the 27th?

22 A. No. Not that I can recollect, no. Certainly not the
23 bullying and harassment one, no.

24 296 Q. The letter of the 24th had recommended a full
25 investigation regarding the issues. I think you 12:17
26 e-mailed Chief Superintendent McLoughlin looking for a
27 meeting with him in relation to Garda Keogh's
28 complaint, on the 22nd June?

29 A. Yeah. I think from memory there, the executive

1 director Barrett I think was out for a short period of
2 time and rather than delay it, I think I was trying to
3 move it on. It was coming into the summer period and
4 Chief Superintendent McLoughlin I think was on leave at
5 that stage and I just think I sent a communication that 12:18
6 when he got back from leave he would contact me about
7 it.

8 297 Q. Yes. The assistant commissioner was sending reminders
9 to Mr. Barrett in relation to his letter of the 24th?
10 A. That's correct. 12:18

11 298 Q. He sent those on the 16th June, the 17th August, the
12 1st September and the 22nd September, isn't that
13 correct?
14 A. That's correct.

15 299 Q. What was your understanding of the purpose of those 12:18
16 letters, was it to get Mr. Barrett --
17 A. It was to get the case conference. Because this --
18 Assistant Commissioner Fanning felt that this was
19 bigger than bullying and harassment. You seen the
20 letter yourself there, where he mentioned there could 12:19
21 be criminal issues and other issues on it. He was
22 anxious to get a case conference with the different
23 people in it, including our legal people, to decide how
24 to proceed. He said himself in his letter he wasn't in
25 a position in relation to the bullying and harassment 12:19
26 to appoint somebody to investigate it.

27 300 Q. Yes. I think did you become aware of correspondence
28 from the Commissioner's office in August, with a letter
29 from Garda Keogh undated, complaining that his

1 complaint hadn't been processed?

2 A. I did say that later, yes, I did. I can't exactly when
3 I seen it but I do recollect it then, yes.

4 301 Q. I think you requested a case conference which, due to
5 absences of a variety of personnel, didn't take place 12:20
6 until the 3rd October?

7 A. Yes. It was proving very, very difficult to have that
8 case conference that Assistant Commissioner Fanning
9 wanted, because different people were on leave and I
10 think one person might have been on sick leave. It was 12:20
11 during the summer period. And yes, I was very anxious
12 that we have a case conference as quick as we could.

13 302 Q. I think you sent an e-mail to Ms. Carr in relation to
14 Garda Keogh's pay. Were you querying whether he was in
15 receipt of sick pay? 12:20

16 A. Yes, to confirm that he was still getting it, from
17 recollection.

18 303 Q. You say in your statement that she advised that Garda
19 Keogh was but that further certification was required?

20 A. Yes. 12:20

21 304 Q. What did you mean by that?

22 A. I think there was a concern -- well, to stay on pay if
23 you are sick leave, you must send in your medical
24 certs. You absolutely have to send that in. I think
25 at one period of time there might have been a delay. 12:21

26 305 Q. Simply an absence of some of the regular certificates
27 not coming in; is that right?

28 A. Yes. If somebody stops sending in certificates,
29 regardless whether it's an 11.37 or something else,

1 over a period of time, they are removed from the
2 payroll.

3 306 Q. The conference took place on the 3rd October and there
4 appear to have been differing views as to what was to
5 occur. What's your recollection of the decision? 12:21

6 A. Yes. I mean, there was, I suppose, different options.
7 There was the reference to the Byrne/McGinn, where you
8 could have different investigations, you could separate
9 the investigations or the issues and investigate them
10 separately. There was some views that maybe somebody, 12:21
11 an assistant commissioner or somebody should be
12 appointed to do the whole investigation, everything
13 included in it. So there were differing views, yeah.

14 307 Q. What was the conclusion of the meeting? The assistant
15 commissioner who was going to be appointed, were they 12:22
16 going to look into the bullying and harassment on its
17 own or all matters?

18 A. My understanding from it, my memory at the time was
19 that it was decided that it would be separated. The
20 exact timing of that, was it at the meeting itself or 12:22
21 after it, it might have been after that meeting. And
22 that executive director Barrett would appoint an
23 assistant commissioner to look at the issues outside
24 the bullying and harassment and that we would then
25 proceed at last with the bullying and harassment 12:22
26 separately. That's my understanding of the decision
27 that was taken, the actions that were taken after that
28 meeting.

29 308 Q. At the top of your statement at page 3843, you record

1 it as if it was a decision that an assistant
2 commissioner, and only one, should be appointed to
3 investigate all matters. Do you see there on the fifth
4 line? starting on the third line.

5 A. The third line. Yes, that could have been the initial 12:23
6 decision made but certainly that changed fairly soon
7 after.

8 309 Q. That changed?

9 A. Yes.

10 310 Q. Did that change at the second conference or before? 12:23
11 A. It may have been, I can't absolutely remember. That
12 part of it was being led by John Barrett at the time.
13 So I'm not going to guess. I don't know.

14 311 Q. Yes. You had been tasked there to check Garda Keogh's
15 sick leave and to manually check the sick certificates. 12:23
16 what was the purpose of doing that?

17 A. Garda Keogh had a concern that his sick leave was
18 recorded incorrectly. I think it was down as flu virus
19 or whatever, and his certs stated stress related
20 absence, work related stress. So, as I said, the 12:23
21 certification happens at district level, it doesn't
22 company in Athlumney House for the HRPD. So I
23 contacted, I think it was Monica herself, after that to
24 ask them would they have a look at it. My
25 understanding is, they contacted the district and the 12:24
26 correction was made. Now there is no -- just to be
27 clear on it there, in relation to our classification of
28 sick leave, we don't have in the drop down menu, work
29 related stress. Our CMO states that it's not actually

1 an illness, it can cause an illness, but it's not
2 actually an illness. So I think it was put in under
3 mental health. And usually we would do that. I don't
4 know why it was recorded as flu originally, I just
5 don't know.

12:24

6 312 Q. That's the only purpose of that check then, is that
7 right?

8 A. That's my understanding of it, yeah, that it was that
9 issue that had been raised at the time.

10 313 Q. The day after the meeting, you were copied on an e-mail
11 from Assistant Commissioner Finn on the 4th. Could we
12 look at that?

12:24

13 A. Yes.

14 314 Q. At page 10104. That's from his office, it's sent to
15 yourself and Mr. Barrett. And there's a Garda Keogh
16 PDF there. It says:

12:25

17
18 "I am directed by assistant commissioner Eastern Region
19 to refer to meeting of yesterday's date and to forward
20 copy statement witnessed by Garda Keogh on 27th March
21 2017 and hand delivered to HRM on 24th May 2017 per
22 file from Assistant Commissioner Fanning dated the 24th
23 May. Please."

12:25

24
25 A. I think that didn't come -- did you say Assistant
26 Commissioner Finn, that would have been Assistant
27 Commissioner Fanning, just to be clear.

12:25

28 315 Q. I beg your pardon, Assistant Commissioner Fanning.

29 A. Yes, that was the e-mail I referred to earlier, yes.

1 316 Q. In terms of the issue of anything being hand-delivered
2 on the 24th May, we have seen the correspondence from
3 Assistant Commissioner Fanning with the five tabs, none
4 of which are the statement of bullying complaint?

5 A. Yes. 12:26

6 317 Q. Was this the first time -- firstly, did this PDF
7 contain the bullying complaint?

8 A. I am assuming it did, yes, I am not a hundred percent
9 sure. I could check that, but I'm assuming it did,
10 yes. 12:26

11 318 Q. You said earlier that it was on the 4th, that was the
12 first time you got that?

13 A. Yes, that was the first time. So that's why I assuming
14 the PDF had that, yeah. That was the first time I
15 remember seeing it. 12:26

16 319 Q. There's some handwriting on that, it may not be yours,
17 it may be Ms. Hassett?

18 A. Sorry, it's not mine.

19 320 Q. Yes. 12:26

21 "Case conference held. J Barrett to appoint AC to
22 investigate. Issues raised by Garda Keogh broader than
23 bullying and harassment."

24
25 That's Ms. Hassett note, is it? 12:26

26 A. That looks like, yes, KH, yes, that's Ms. Hassett's
27 note I'd say..

28 321 Q. Contemporaneously with this, in October, I think you
29 received correspondence from the assistant commissioner

1 for Governance and Accountability in respect of the
2 clearance of candidates for appointment to the rank of
3 chief superintendent?

4 A. That's correct.

5 322 Q. I think you got a letter by e-mail on the 17th, it's in 12:27
6 volume 44, page 12479. This comes from Assistant
7 Commissioner Corcoran. He has obviously learned of
8 complaints that were made and it's referring to your
9 report there of the 17th. Can you recollect what that
10 was? 12:28

11 A. Yeah, that was just a letter. I was contacted first to
12 ask was there any outstanding investigations from my
13 office in relation to a superintendent, and I replied
14 that there was, under the bullying and harassment, and
15 he just came back then looking for more details. 12:28
16 That's my recollection of it anyway.

17 323 Q. Yes.

18 A. It wouldn't have been actually a report, it would have
19 been a one pager from me, the original one.

20 324 Q. It related to Superintendent Murray obviously? 12:28

21 A. Yes.

22 325 Q. It seems to be a very clear request for details of the
23 date, any recommendations received, the substance of
24 the allegations made and sort of all details really
25 there? 12:28

26 A. That's correct.

27 326 Q. If we go up to the top of that page to look at that
28 date. That's from the Commissioner's office then?

29 A. Yes.

1 327 Q. Is that right?

2 A. Correct. No, sorry, Assistant Commissioner Corcoran.

3 328 Q. Corcoran?

4 A. Yeah. Commissioner GA.

5 329 Q. You sent a six-page report in response to that, I 12:29
6 think?

7 A. Yes. I asked Kathleen to prepare it, so we had
8 everything on it. Kathleen prepared that report and I
9 sent it on then, which I think basically included
10 everything we had from the B & H side, the bullying and 12:29
11 harassment side.

12 330 Q. Yes. That was on the 19th?

13 A. Yeah.

14 331 Q. If we look at page 12496, it provides details there of 12:29
15 Chief Superintendent McLoughlin's correspondence. It
16 refers in the second paragraph to the further material
17 received from him. It sets out the sequence of events
18 then. If we go down the page. It details much of what
19 you have covered in evidence so far, is that correct?

20 A. Yes, it does. 12:30

21 332 Q. In slightly more detail.

22 A. It's a chronology of it.

23 333 Q. More detail perhaps?

24 A. Yeah.

25 334 Q. If we just stop there. Just go back up. Stop there 12:30
26 now. Then it takes up the sequence of events here from
27 the 5th April, the two letters or reports sent by
28 Assistant Commissioner Fanning on the 5th April and the
29 21st April. If you go down onto the next page. And it

1 says there at the top:
2
3 "On the 22nd May, Mr. Barrett met assistant
4 commissioner Eastern Region, who advised that his
5 report was being prepared." 12:30
6
7 Is that Assistant Commissioner Fanning's report?
8 A. Yes, assistant commissioner Eastern Region is Assistant
9 Commissioner Fanning.
10 335 Q. Yes. You have written this, obviously, but you're 12:31
11 reporting there that it was Assistant Commissioner
12 Fanning who advised that his report was being prepared?
13 A. Yes, that's correct.
14 336 Q. You set out then the concerns that Assistant 12:31
15 Commissioner Fanning had arising from correspondence of
16 the 23rd. Are they the concerns that were also
17 included in his letter of the 24th?
18 A. Yes, I think so, yeah.
19 337 Q. If we go down then. You refer to the case conference 12:31
20 then. You set out the main issues complained of there
21 by Garda Keogh. If we just scroll down through those.
22 We don't have to read them.
23 A. Yes, we have them at this stage. So just for
24 thoroughness we did a list.
25 338 Q. Yes. 12:31
26 A. So it would go over to the Commissioner's office, to
27 the Assistant Commissioner Corcoran.
28 339 Q. Yes. They're set out there.
29 A. Yeah. I think it was 18 grounds that Garda Keogh had,

1 so we sent that out.

2 340 Q. So the Commissioner had full knowledge of the
3 complaints that Garda Keogh raised within the context
4 of the bullying and harassment claim?

5 A. Yeah. We sent it to Assistant Commissioner Corcoran, 12:32
6 so I presume he liaised after that. But that was our
7 piece.

8 341 Q. You refer in your statement to the conference of the
9 23rd. I am not going to ask you any more detail about
10 that, other than that it seems clear that the mood of 12:32
11 the meeting was to separate out the strands and have
12 the bullying and harassment investigated?

13 A. Yeah. Following on from the other one, that's correct,
14 actually, yes, you're right, counsel, yeah. And to
15 move with the bullying and harassment case. 12:32

16 342 Q. You do make reference in your statement to Mr. Barrett
17 signing correspondence appointing Assistant
18 Commissioner McPartlin, but that didn't happen then, is
19 that right?

20 A. My understanding is it didn't after happen, no. At the 12:33
21 time, from one of the meetings there, executive
22 director Barrett stated that he was going to appoint
23 Assistant Commissioner McPartlin, but I am not a
24 hundred percent sure but I don't think he did, and I
25 think subsequent events show that. 12:33

26 343 Q. Yes. You refer on page 3845, in your statement, in the
27 following perms, to something done by Mr. Barrett, you
28 said:
29

1 "I am aware of an e-mail sent by the executive director
2 HRPD to the assistant commissioner Eastern Region dated
3 8th November 2017, in which he expressed his concerns
4 in relation to the implementation of the bullying and
5 harassment policy and requested a meeting in respect of 12:33
6 all aspects of the complaint."
7

8 If we just scroll down there. Do you see that?

9 A. Which one? Where is it? Sorry, yeah.

10 344 Q. Can you say what Mr. Barrett was intending there? Did 12:34
11 he discuss that with you?

12 A. No, he didn't. I think it was more in relation to just
13 getting the investigation moving.

14 345 Q. Okay.

15 A. I'm assuming that, anyway. 12:34

16 346 Q. Okay. You next deal with the request by Assistant
17 Commissioner Fanning to Mr. Barrett to get him to
18 nominate the assistant commissioner. Had you been
19 aware of any of Assistant Commissioner Fanning's
20 actions in the interim, that he had written to all of 12:34
21 the officers the subject-matter of the bullying, he had
22 written and had a letter hand-delivered to Garda Keogh
23 on the 9th November?

24 A. No. No, I don't recollect that at all, no.

25 347 Q. In any event, Mr. Barrett nominated Assistant 12:35
26 Commissioner Finn?

27 A. Correct, yes.

28 348 Q. I think you were kept broadly up-to-date then about
29 what was happening vis-à-vis Assistant Commissioner

1 Finn's attempts to meet Garda Keogh and get in contact
2 with him and the issue of recording digitally any
3 meetings?

4 A. Yes.

5 349 Q. That took some time? 12:35

6 A. Yes.

7 350 Q. Between December and January, isn't that correct?

8 A. That's correct.

9 351 Q. And there was legal advice sought and give in respect
10 of that; is that correct? 12:35

11 A. Yes. I would have had no direct communication now with
12 Assistant Commissioner Finn over it. He might have
13 spoken to Kathleen Hassett in relation to advice on it.
14 Because that's our role in it, is to monitor and advise
15 both sides in relation to it. 12:36

16 352 Q. Yes. I think there was correspondence with Assistant
17 Commissioner Finn over the period of early 2018 to get
18 updates and to try and expedite matters?

19 A. Correct.

20 353 Q. He explained what he was doing at the process at 12:36
21 different stages, isn't that correct?

22 A. That's correct, yeah, from memory, yeah.

23 354 Q. For example, if we look at a couple of letters. 10572,
24 Assistant Commissioner Fanning is pursuing Assistant
25 Commissioner Finn in relation to progress there. If we 12:37
26 go on to 10574. Again, that gives an overview of the
27 pressure that was being put on Assistant Commissioner
28 Finn to try and expedite matters?

29 A. Correct, and that was sent to executive director

1 Barrett, yeah. He was kept updated by Assistant
2 Commissioner Fanning.

3 355 Q. Assistant Commissioner Fanning, yes. Again, if we just
4 look at 10577. This is to Assistant Commissioner
5 Fanning, I think, isn't that correct? 12:38

6 A. Yes.

7 356 Q. If we just go down. Perhaps I should focus on the last
8 paragraph of the previous page, because it just puts
9 some things in perspective there. It says:

10 12:38

11 "Given that a considerable period of time has elapsed
12 since the relevant parties informed Assistant
13 Commissioner Finn of their intention to seek legal
14 advice, it is reasonable that the investigation should
15 now be finalised. To expedite this, I recommend that 12:38

16 Assistant Commissioner Finn again communicate with the
17 parties concerned and give them a specific timeframe,
18 for example, two weeks to respond to the allegations
19 relating to them. If no response is received from the
20 parties within that --" 12:38

21
22 And if we continue on then, Mr. Kavanagh,

23
24 " -- timeframe they should be informed that the
25 assistant commissioner will finalise his 12:38
26 investigation. "

27
28 It refers to the policy there where it relates to
29 non-cooperation. There was pressure being put on

1 Assistant Commissioner Finn to put pressure on people
2 who hadn't responded to respond, isn't that effectively
3 it?

4 A. Correct.

5 357 Q. I think you were kept up-to-date generally, although 12:39
6 you had no particular responsibility for the
7 investigation itself, isn't that correct?

8 A. We had no active part in any investigation, no. We
9 would have got copies, say, would have been sent down
10 for the file, down to Kathleen, that letter from John 12:39
11 Barrett, for example, to the assistant commissioner.
12 That would have been our part really.

13 358 Q. You would be aware procedurally and sequentially of the
14 events that were happening?

15 A. Yes. 12:39

16 359 Q. The furnishing of the report?

17 A. Yes.

18 360 Q. What happened the appeal to Assistant Commissioner
19 O'Brien?

20 A. Yes. 12:39

21 361 Q. But you didn't have any part in the process?

22 A. No. The only piece there, we would have recommended
23 that Assistant Commissioner O'Brien be given the
24 report, because at that stage Assistant Commissioner
25 Fanning was indisposed. 12:40

26 362 Q. Yes.

27 A. And the report was finished. So that's kind of the
28 only, I suppose, proactive from that point of view,
29 just to get it moving, yeah.

1 363 Q. Thank you. would you answer any questions anyone else
2 might have.

3

4 END OF EXAMINATION

5

12:40

6 CHAIRMAN: Now. Yes, Ms. Mulligan.

7

8 MR. ALAN MULLIGAN WAS CROSS-EXAMINED BY MS. MULLIGAN,
9 AS FOLLOWS:

10

12:40

11 364 Q. MS. MULLIGAN: Good afternoon, Mr. Mulligan, I just
12 have some questions on behalf of Garda Keogh. Could I
13 just ask you to clarify, what is the difference between
14 your role and Ms. Monica Carr's in terms of the overall
15 An Garda Síochána roles? It's just not entirely clear 12:40
16 to me.

17 A. Monica Carr took over from me, took over Athlumney
18 House from me. So she would have taken over the
19 administration of, say, sick leave, for example, back
20 in 2015. So she took that over then and I moved up to 12:40
21 headquarters and would have been then over HR strategy.
22 So that's is really I suppose.

23 365 Q. So her role is directly related to sick leave and yours
24 is broader, is that right?

25 A. Yes. Obviously, I am acting executive director, but 12:41
26 going back there, yeah, my role in strategy, just to be
27 clear, from 2015 on would have been HR strategy, to set
28 up the new section and do the strategic side. And, as
29 I said, I inherited bullying and harassment and Garda

1 recruitment.

2 366 Q. Okay. You have given your evidence in relation to
3 this, but the documentation from April and May of 2015
4 that has your name on it is not actually something that
5 you did yourself, isn't that right, it's done on your 12:41
6 behalf?

7 A. It's done my behalf, yeah.

8 367 Q. On the basis of your role, is that right?

9 A. On the basis of my role, yes.

10 368 Q. Again just to be clear, your evidence is that that's 12:41
11 pro forma material once somebody cites work related
12 stress; is that right?

13 A. Say that again, sorry?

14 369 Q. Once a member cites work related stress, the next
15 request is for an investigation? 12:41

16 A. Correct.

17 370 Q. Is that right? Can we just then on that basis go to
18 have a look at those documents, which is at page 3721.
19 This is the first document and I just want to clarify
20 one or two things in relation to it. This is the first 12:42
21 time that Superintendent Murray sends up in relation to
22 Garda Keogh. It relates to a meeting on 26th March
23 2015. Have you had sight of that document?

24 A. I don't remember seeing it, sorry. I don't remember
25 seeing it, no. 12:42

26 371 Q. Okay. I will try and keep my questions as broad as I
27 can?

28 A. I don't remember seeing it, no.

29 372 Q. Okay. I will try and keep my questions general then,

1 if I can?

2 A. Yeah.

3 373 Q. This is the first time the issue of a sick report goes
4 up to Chief Superintendent Wheatley. And at page 3754,
5 is the second document that goes up to Chief

12:43

6 Superintendent Wheatley, and that's dated 19th July
7 2015. So, they both relate to the same meeting on the
8 26th March 2015. It appears from what we have seen in
9 the Tribunal that Garda Keogh was only interviewed once
10 in relation to this issue of work related stress. And

12:43

11 I just wanted to ask you, it's clear that that wasn't
12 picked up by anyone on your section. Is that because
13 normally the issue of work related stress would be
14 considered to be a localised issue and you deal with
15 the systems but not necessarily the content, would that
16 be correct?

12:43

17 A. Usually if work related stress is reported to us we
18 would ask for a report on it. We would get back to the
19 area and get a report. But, yes, it's dealt with by
20 management, local management.

12:43

21 374 Q. Yes. So in other words, one of the issues that has
22 arisen is these two different pieces of correspondence
23 appear to relate to only one meeting. It wouldn't be
24 something you would expect your side of the house, for
25 want of a better word, to have picked up on, is that
26 fair?

12:44

27 A. I think that's -- yes.

28 375 Q. Okay. And just on that basis, can I go to page 3254.
29 And again, this is just a document, 3253 to 3254 is an

1 e-mail from Ms. Claire Egan. I just wanted to ask, if
2 we go to the end, so 3253 to 3254. Thank you,
3 Mr. Kavanagh. The very last paragraph says:

4
5 "This branch is not in receipt of nor aware of any 12:44
6 application for the sickness absence to be treated as
7 anything other than ordinary illness as recorded.
8 Accordingly, under the provisions of the public service
9 sick management sick leave regulations the member's
10 accumulated sick leave is in excess of a four year 12:45
11 period."

12
13 So in other words, unless we get the application we
14 don't treat it any differently,

15 A. Correct. 12:45

16 376 Q. Just so that I am clear, that application would
17 ordinarily come from local management, am I right about
18 that? You don't go and ask someone do they want to be
19 classified --

20 A. No, as I said earlier, the cause of sick leave or 12:45
21 whatever is recorded locally.

22 377 Q. Okay. If we can also then go to volume 58. This is
23 just in relation to the procedure. It's page 16286,
24 Mr. Kavanagh, please. Mr. Mulligan, if are you not
25 familiar with this document, that's fine. I just want 12:45
26 to clarify are you familiar with this document?

27 A. I'm not actually, no.

28 378 Q. No, okay. So any questions that I have about it, it's
29 not something that you know about one way or the other?

1 A. Yes.

2 379 Q. Is that fair?

3 A. Yes.

4 380 Q. Then on that same basis, if I could see page 16290,
5 please, Mr. Kavanagh. Thank you. Is that a document 12:46
6 that you would know anything about?

7 A. No. I think that's a standard document from the Sick
8 Section.

9 381 Q. Okay.

10 A. But yeah, I mean, I wouldn't have had a hands on it, 12:46
11 so, no.

12 382 Q. No. Okay. If I could also see page 16292. It appears
13 -- just as an explanation, these two documents appear
14 to have come from -- the aforementioned documents
15 appear to have come from the CMO. The document is 12:46
16 entitled work related stress management standard
17 guidance. It's just it doesn't appear that the
18 document at page 16286 is in fact the work related
19 stress management standards guidance document. I think
20 it might be easier if you could see volume 57, because 12:47
21 I think you might need to hop over and back between the
22 two pages.

23 A. Yeah.

24 383 Q. Just to clarify.

25 A. Yes. 12:47

26 384 Q. I just want to make sure they are the same document.
27 If you can't help me, that's fine, but I just want to
28 be sure?

29 A. Yeah.

1 385 Q. 16286. Do you have the hard copy of that?
2 A. I have the hard copy here in front me. That's the one
3 you showed me earlier.
4 386 Q. Yes.
5 A. Yes. 12:48
6 387 Q. If you also open page 16292. Again, this is material
7 just recently provided to us by the Chief Medical
8 Officer. It refers to a document titled "work related
9 stress management standards guidance". Now, the
10 document at 16286 says: 12:48
11
12 "The sick management standard remains for a risk
13 assessment in work related stress."
14
15 I just wanted to know, that appears to me that they are 12:48
16 in fact different documents and I just wanted to
17 identify if you can clarify that to me?
18 A. Unfortunately I can't. I don't know.
19 388 Q. Okay, you don't know.
20 A. Being honest with you, I just don't know. 12:48
21 389 Q. Okay. Then I presume the same position, unknown for
22 the document at 16290?
23 A. Yes, I don't know.
24 390 Q. You just don't know. That's fine.
25 A. I can clarify it, if that's any use to you, later, but 12:48
26 I don't know.
27 391 Q. I appreciate that. Just going back then to the start
28 of the work related stress investigation. One of the
29 issues that arises is whether or not there was in fact

1 a preliminary investigation. It doesn't appear that
2 anyone from HR looked beyond what was provided to them
3 by local management. There is no criticism made in
4 that regard. But if I could ask you to have -- and you
5 may not be in a position to comment on it, to go to 12:49
6 volume 58, page 16223. These are recently disclosed
7 materials from Superintendent Murray. They appear to
8 be from a diary. It appears that his note into work
9 related issues in relation to Garda Keogh in March of
10 2015, the same date as was provided for the sick 12:50
11 report, on the 2nd April, his note is:
12
13 "March '15 alcohol sickness."
14
15 Were you aware of that? Was that what Superintendent 12:50
16 Murray was reporting at that time?
17 A. No.
18 392 Q. No. Very good. This is again a general question. One
19 of the issues that has arisen recently is the idea that
20 an individual member can request to be classified as 12:50
21 injured on duty and that application can be made
22 directly. Now, I reviewed the 2010 regulation and I
23 couldn't see a direct explanation of that. Are you
24 familiar with that ability?
25 A. Sorry, this is directly to their local chief 12:51
26 superintendent, is it?
27 393 Q. That's not entirely clear to me. I think it might be
28 directly to HR?
29 A. Yeah. My understanding is, for most 11.37s the

1 application is made directly to your chief, and the
2 chief obviously and the Chief Medical Officer can get
3 involved in it. There can be cases, however, were a
4 chief for some reason states they can't make a decision
5 on it and it can be sent to HRPD on that basis. It 12:51
6 wouldn't happen that often, to be honest with you. And
7 in a lot of cases, if I was dealing with it myself,
8 because I am not down in the division, in a lot of
9 cases I wouldn't know the person, I would usually send
10 it back and look for some clarity or further work done. 12:51

11 394 Q. Very good. I am obliged. No further questions.

12

13 END OF EXAMINATION

14

15 CHAIRMAN: Thanks very much. 12:51

16 MR. MURPHY: May it please you, Chairman.

17 CHAIRMAN: Yes.

18

19 MR. ALAN MULLIGAN WAS THEN EXAMINED BY MR. MURPHY, AS

20 FOLLOWS: 12:51

21

22 395 Q. MR. MURPHY: Just very briefly, in relation to the
23 document you've just been shown, and if we could be
24 shown document 16223. I think it's the one that was on
25 the screen a moment ago? 12:52

26 A. Oh, yes, sorry.

27 396 Q. Can you confirm you have never seen this document
28 before?

29 A. Never seen it before.

1 397 Q. I think in fact it's is not a report, it's in the form
2 of a note or a diary; is that right?
3 A. I have never seen it before, I don't know, counsel.
4 398 Q. It is not addressed to you.
5 A. No, I have never seen it before. 12:52
6 399 Q. Thank you. Just moving back please to the beginning of
7 your evidence, I think the position is that you have
8 given us your experienced assessment of what is
9 required for injury on duty. Can I ask you to confirm
10 that even in the 11.37 process that the CMO's 12:52
11 involvement is essential?
12 A. Absolutely.
13 400 Q. Also I think in the course of your evidence about this
14 case, Garda Keogh's case, you said that the case was
15 regarded by you as fairly unique at the time when it 12:52
16 came to making decisions about pay?
17 A. Yes. There were a small number of cases, similar
18 cases, yes.
19 401 Q. Yes. That was based on your collective assessment of
20 the unusual feature and in particular the protected 12:52
21 disclosure element?
22 A. Absolutely.
23 402 Q. Third, I think the position is that you said in 2016
24 you and your colleagues were uncertain in relation to
25 whether any removal of pay could amount to 12:53
26 penalisation?
27 A. Correct.
28 403 Q. Can you confirm that the Chair the advice you received
29 since is that it does not involve penalisation?

1 A. From numerous sources, yes, I can confirm that.

2 404 Q. That's effectively the way you proceed there?

3 A. Yes, that is the way we handle it now, it's treated as
4 ordinary illness unless an investigation shows
5 otherwise. 12:53

6 405 Q. Can I ask you to be shown document 9865, please? I
7 think it's a document to reflect the fact that you had
8 a conversation with Mr. Cullen and offered to assist
9 Garda Keogh in relation to the preparation of his
10 statement? 12:53

11 A. Correct.

12 406 Q. You indicate that you offered to travel down to meet
13 him, if needs be?

14 A. Correct.

15 407 Q. Was that an unusual offer for you to make? 12:53

16 A. Yes, it was.

17 408 Q. And was that offer accepted?

18 A. No. We had a positive conversation but Mr. Cullen told
19 me that Garda Keogh had a copy of the policy and that
20 he was working on it. But he did thank me for the 12:54
21 offer, in fairness.

22 409 Q. Moving forward then please to document 6823, at the
23 bottom of the page, please. This is a letter of the
24 5th April 2017. This is the document you have referred
25 to earlier, in which Assistant Commissioner Fanning 12:54
26 says that from an early perusal of the file it appears
27 to be much wider than a bullying and harassment matter.
28 Do you see that?

29 A. Correct.

1 410 Q. When was it he spoke to you first and indicated that
2 view of his?
3 A. That's I think when he requested to have a meeting with
4 me.
5 411 Q. Yes. 12:54
6 A. And he discussed it with me then. I don't remember
7 Assistant Commissioner Fanning discussing it with me
8 beforehand, but I could be corrected on that. No, I
9 think it was at the meeting that he requested to see me
10 in my office. 12:54
11 412 Q. Yes. I think then in the course of the year 2017, you
12 have indicated that there was effectively on the 22nd
13 May the meeting with Assistant Commissioner Fanning?
14 A. That's correct.
15 413 Q. I think you've told us that on that date that you 12:55
16 didn't get the documentation in relation to bullying
17 and harassment from him?
18 A. No.
19 414 Q. What difference, if any, would it have made if you had
20 got it? 12:55
21 A. To be honest with you, none, because at the end of the
22 day, basically Assistant Commissioner Fanning was
23 saying that he couldn't proceed with the bullying and
24 harassment because he thought it was much wider. So to
25 be honest, it wouldn't have made a massive difference, 12:55
26 you know. It's as simple that.
27 415 Q. I see. So his view was that nothing could happen until
28 further consideration was made?
29 A. Yes, and he outlined what his concerns were and I told

1 him to put that in writing, I suggested that he put
2 that in writing to the executive director, which he
3 did.

4 416 Q. Yes. Then I think as a result of that the conferences
5 were held in October that you've mentioned? 12:55

6 A. That's correct.

7 417 Q. Yes. And very full discussion took place about those
8 issues?

9 A. Very full, yeah.

10 418 Q. And in terms of those conferences, at those 12:55
11 conferences, or in the course of your conversations,
12 did Assistant Commissioner Fanning tell you that
13 Inspector McCarthy had visited Garda Keogh in 2017 at
14 least five times?

15 A. I don't recollect that. 12:56

16 419 Q. I see.

17 A. Again I stand to be corrected, but I certainly don't
18 recollect it.

19 420 Q. In terms of the -- you yourself, in the course of your
20 statement, when you get to page 3847, I wonder if that 12:56
21 can go up please on the screen, I think you indicate
22 that you're aware advise was provided by Mr. Ken Ruane
23 in correspondence dated 23rd January 2018 in respect of
24 a query raised by Assistant Commissioner Finn initially
25 in correspondence dated the 21st November, is that 12:56
26 right?

27 A. That's correct.

28 421 Q. I wonder if you could be please shown document 6946,
29 please. This is a letter from Assistant Commissioner

1 Fanning of 21st December 2017. I think this hasn't
2 been addressed by you thus far. But it is addressed to
3 the Commissioner at Garda headquarters?

4 A. Yes.

5 422 Q. Now, can I just turn your attention, please, to page 12:57
6 6958? For the sake of completeness, could I ask you to
7 be shown please 6956, sorry. Just under the heading:
8
9 "Section 2 correspondence from Mr. John Gerard Cullen
10 dated 5th December, addressed to Assistant Commissioner 12:57
11 Finn."
12

13 In terms of the heading over the next page, please,
14 6957, it addresses issues in relation to how Garda
15 Keogh's complaints are being dealt with procedurally, 12:58
16 the number of meetings that had taken place and Garda
17 Keogh's sickness and absence from work. Could you
18 please turn forward, registrar, to 6958. So just to be
19 clear, by this stage the second conference had taken
20 place, isn't that right? 12:58

21 A. Yes.

22 423 Q. By this stage the decision had been taken to, as you
23 said, split the bullying and harassment away from other
24 matters?

25 A. That's is my understanding, that the executive director 12:58
26 Barrett had decided that at that stage, yes.

27 424 Q. And that was a collective decision taken at that time?

28 A. Yes, that's my understanding.

29 425 Q. And then in the course of this letter, can I just draw

1 your attention to the last three lines. At this point
2 and Assistant Commissioner Fanning says:
3
4 "I would ask that the matters contained in this report
5 be considered by you in accordance with section 41 of 12:59
6 the Garda Síochána Act 2005."
7
8 Do you see that?
9 A. I do see it, yes.
10 426 Q. I think that's a mechanism for reporting matters to the 12:59
11 Minister?
12 A. It is.
13 CHAIRMAN: For reporting?
14 427 Q. MR. MURPHY: Reporting matters directly to the Minister
15 for Justice. 12:59
16 A. Serious matters, yeah.
17 CHAIRMAN: Oh, yes, yes.
18 428 Q. MR. MURPHY: So effectively that's a serious request,
19 saying these were serious matters I am bring to your
20 attention, that you must bring to the attention of the 12:59
21 Minister.
22 A. Very serious, yeah.
23 429 Q. And that's after the second --
24 A. It's is provided for in the Garda Síochána Act, yeah.
25 430 Q. Were you aware of that communication? 12:59
26 A. No.
27 431 Q. Finally, can I just ask you in terms of your overall
28 assessment, and you deal with this at the end of your
29 statement, in all of your dealings with this file and

1 this paperwork, did you at any stage witness anything
2 which amounted to the targeting or discrediting of
3 Garda Keogh?

4 A. No, I didn't.

5 MR. MURPHY: Thank you.

12:59

6
7 END OF EXAMINATION

8
9 MR. CARROLL: Chairman, a couple of questions on behalf
10 of Superintendent McBrien.

13:00

11 CHAIRMAN: Yes, Mr. Carroll, yes, of course.

12
13 MR. ALAN MULLIGAN WAS CROSS-EXAMINED BY MR. CARROLL, AS
14 FOLLOWS:

15
16 432 Q. MR. CARROLL: Mr. Mulligan, I have just a couple of
17 questions to try and clarify an issue that has arisen
18 that concerns my client. If document 16328 could be
19 got up, that would be a good point to start at. This
20 is a letter this was sent from -- if we can just go
21 down to it, at the bottom you'll see -- you mightn't
22 have seen this, it's Deputy Commissioner Twomey, on 8th
23 May 2019. This was actually sent to all five people on
24 the top, Chief Superintendent Curran, Chief
25 Superintendent Wheatley, Chief Superintendent Murray,
26 my client Superintendent McBrien and Inspector Farrell.
27 This letter informs them at that point in time that an
28 independent person, who was ultimately Mr. de Bruir,
29 was to be appointed to review and audit the case at

13:00

13:00

13:00

1 that point. You follow that?

2 A. Yes.

3 433 Q. I don't know if you were here yesterday but Deputy
4 Commissioner Twomey was asked about how come at this
5 point in time Superintendent McBrien and Inspector 13:01
6 Farrell were being added in effectively as people,
7 persons that this appeal and review by Mr. de Bruir
8 related to. And in relation to that, yesterday I,
9 think it's at page 115 of the transcript --

10 434 Q. CHAIRMAN: Could I just stop you for one tiny second. 13:01
11 Do you know anything about this?

12 A. A little bit only.

13 CHAIRMAN: Good. Thank you very much. That is fine.

14 435 Q. MR. CARROLL: I am going to try and do it in short
15 form. In evidence yesterday the deputy commissioner 13:01
16 indicated as to them, Superintendent McBrien and
17 Inspector Farrell, that he had then correspondence from
18 the executive director of HR in relation to that and
19 that's why he contained them in his correspondence. So
20 that was his position in relation to it. 13:02
21

22 If we could turn then to an earlier letter from
23 yourself, it's at 13121. You will see, I don't know if
24 you can see that letter, it's addressed to the deputy
25 commissioner and it's signed by yourself, dated 2nd 13:02
26 April 2019, at the end. It's effectively a letter in
27 relation to the appointing of an independent person and
28 so forth. If we just look at the first paragraph of
29 that letter. It says:

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"Please be advised that Garda Keogh invoked the harassment, sexual harassment and bullying policy in relation to his complaints against Chief Superintendents Curley, Murray and Wheatley and Superintendent McBrien and Inspector Farrell. The investigation of Garda Keogh's complaints was carried out by the Assistant Commissioner Finn, Southeastern Region, who was appointed by Assistant Commissioner Fanning Eastern Region. The investigation file was provided to Assistant Commissioner Fanning on 20th December 2018."

13:03

13:03

I suppose my question to you is: How did that end up in that letter at that point, when we know from Assistant Commissioner Finn, particularly following his report in December, following his interview and meeting with Garda Keogh, that there was no complaints in relation to Superintendent McBrien, there was no complaints in relation to Inspector Farrell, there was no findings by Assistant Commissioner Finn in relation to anything because they weren't actually the subject of complaints. And yet on this letter it would appear they're part and parcel of the appeal process that's going to be undertaken by an independent -- Mr. de Bruir in the end. Do you understand? Do you know how that came about?

13:03

13:03

13:04

A. I mean, from my recollection of it there, some of the accusations over the 18 there, Superintendent McBrien

1 and Inspector Farrell was commented on by Assistant
2 Commissioner Finn. That's just my recollection of it,
3 I would have to read that again.

4 436 Q. Sorry, repeat that?
5 A. Sorry, that's the letter to -- yeah. The initial 13:04
6 bullying and harassment case was taken -- sorry it
7 was -- Chief Superintendent Curran, Superintendent
8 Murray and Chief Superintendent Wheatley.

9 437 Q. Yes.
10 A. I think during the course of the investigation some of 13:04
11 the issues that were raised by Garda Keogh might have
12 had implications for Superintendent McBrien and
13 Inspector Farrell. That's my assumption. I would have
14 to read the file again. And comment would have been
15 made by Assistant Commissioner Finn. We would have no 13:05
16 other reason to include it.

17 438 Q. Well that's what I am wondering, because Assistant
18 Commissioner Finn has given evidence to the Tribunal,
19 and you can go back and look at his report if you wish
20 to, that there was no -- in fact, Assistant 13:05
21 Commissioner Finn wrote to both Superintendent McBrien
22 saying they were not under investigation at all. We
23 can get that. That's at --

24 MR. MURPHY: Chairman, I hesitate to interrupt, but I
25 wonder is this a question for this witness or is it a 13:05
26 question for Assistant Commissioner Finn and/or Deputy
27 Commissioner Twomey.

28 CHAIRMAN: With respect, Mr. Carroll, it's not a
29 question for anybody. Any wrong letters written to --

1 what have they got to do? what's the brief here? was
2 Garda Keogh targeted or discredited. Not was Inspector
3 Farrell, not was Superintendent McBrien. I'm not
4 stupid, I understand what it is. It doesn't matter
5 what Mr. Mulligan thinks about it. If he said, I think 13:06
6 they were -- just suppose he said, I'll tell you, I
7 think they were in the frame because I formed the view
8 that they had questions to answer, just suppose --
9 forgive me.

10 A. It's okay, Chairman. 13:06

11 439 Q. CHAIRMAN: I am just taking wild example. Just suppose
12 the witness said that, what possible difference would
13 it make? Equally, if he said I abase myself, I accept
14 this was an inappropriate letter, I'm sorry for
15 upsetting Superintendent McBrien. Just suppose he said 13:06
16 that, or suppose he said, I'm not sorry for upsetting
17 her, it doesn't make the slightest bit of difference.
18 I'm sorry, I'm forgetting myself. It doesn't make the
19 slightest bit of difference. Mr. Carroll trust me.
20 Trust me Mr. Carroll and Ms. O'Rourke, trust me. Look, 13:06
21 I have understood those points. So I understand
22 counsel is there, if I were there I would be inclined
23 to try to put another nail in it myself. I have been
24 there over a long time. So I completely understand.
25 If you see a nail, you'd want to hit it. I understand 13:07
26 that. Don't think it's a criticism. It's just that
27 it's the end of two weeks and my mask of pleasantness
28 slips and the true nature of my irritability and old
29 age shows up. Thanks very much.

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END OF EXAMINATION

CHAIRMAN: I take it, Mr. McGuinness, you don't have any further questions.

13:07

MR. MCGUINNESS: I do.

CHAIRMAN: You do. Very good.

MR. MCGUINNESS: Thank you. I have three further questions.

CHAIRMAN: And Ms. O'Rourke, the same, a shorter form, okay. Thank you. Yes, Mr. McGuinness.

13:07

MR. ALAN MULLIGAN WAS RE-EXAMINED BY MR. MCGUINNESS, AS FOLLOWS:

13:07

A.

MR. MCGUINNESS: Mr. Mulligan, in relation to the complaint of Garda Keogh signed on the 27th March, you never got that until October?

A. That's my memory, yes.

13:07

440 Q. In the period between the beginning of April and the beginning of October, did you ever hear Mr. Barrett discussing the complaint or the details of the complaint or what was in it?

A. No, I didn't.

13:08

441 Q. Assistant Commissioner Finn's correspondence to him of the 24th May and the several reminders relating to awaiting his decision, was it your understanding that Mr. Barrett was being required to make a decision on

1 the scope of what was to be investigated?
2 A. I think it was on the scope of what Assistant
3 Commissioner Fanning set out in his letter, you know
4 that letter of May.
5 442 Q. Yes. 13:08
6 A. After his meeting with me. That would be my
7 understanding of it.
8 443 Q. Yes, all right. Have you any reason to believe that
9 Garda Keogh's statement of complaint was lost or
10 mislaid within headquarters? 13:08
11 A. I have no reason to believe that. I don't know, is
12 the -- no, I have no reason to believe it was.
13 444 Q. Okay. Thank you.
14
15 END OF EXAMINATION 13:09
16
17 CHAIRMAN: Thanks very much. Thanks very much.
18 THE WITNESS: Thank you very much, Chair.
19 CHAIRMAN: You're free to go now. Thank you very much.
20 And forgive my out burst everybody. 13:09
21
22 THE WITNESS THEN WITHDREW
23
24 CHAIRMAN: Thank you very much.
25 MR. McGUI NNESS: Chairman, we have completed the 13:09
26 witnesses scheduled for the week.
27 CHAIRMAN: Yes.
28 MR. McGUI NNESS: It's intended next to sit on the 2nd
29 March, the Monday of that week, for the week.

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CHAIRMAN: we will schedule in due course -- we will notify the parties of appropriate witnesses, is that right?

MR. MCGUINNESS: we may be sitting at 10:00am to deal with a preliminary issue.

13:09

CHAIRMAN: Oh right. We are anticipating a preliminary issue on Monday in regard to one witness.

MR. MCGUINNESS: Yes. And if so, if that proceeds, we will be sitting in private.

CHAIRMAN: very good. Thank you very much. So it's anticipated that there will be an issue at ten o'clock which will be heard in private and then we will proceed at 10:30 or as soon as we are free. Thank you very much.

13:09

THE HEARING THEN ADJOURNED UNTIL MONDAY, 2ND MARCH AT 10:00AM (PRIVATE SITTING)

13:10

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