

TRIBUNAL OF INQUIRY INTO PROTECTED DISCLOSURES MADE UNDER
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MATTERS FOLLOWING RESOLUTIONS PASSED BY DÁIL ÉIREANN AND
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CHAIRMAN OF DIVISION (P): MR. JUSTICE SEAN RYAN,
FORMER PRESIDENT OF THE COURT OF APPEAL

HELD IN DUBLIN CASTLE
ON MONDAY, 2ND MARCH 2020 - DAY 145

145

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 MONDAY, 2ND MARCH
2 2020

3
4 CHAIRMAN: Very good. Yes.

5 MR. McGUI NNESS: Chairman, I believe we're in a 12:01
6 position to proceed.

7 CHAIRMAN: Thanks very much.

8 MR. McGUI NNESS: I would like to take the opportunity
9 to thank Mr. Mulcahy for his cooperation today.

10 CHAIRMAN: Yes. 12:01

11 MR. McGUI NNESS: Could we have Mr. McHugh, please.

12 CHAIRMAN: Thanks very much. Thanks, Mr. McHugh.

13
14 MR. LIAM McHUGH, HAVING BEEN SWORN, WAS

15 DIRECTLY-EXAMINED BY MR. McGUI NNESS, AS FOLLOWS: 12:01

16
17 THE WITNESS: Liam McHugh.

18 CHAIRMAN: Thanks very much. Sit down, Mr. McHugh.
19 Thank you very much.

20 1 Q. MR. McGUI NNESS: Good morning, Mr. McHugh. I will be 12:02
21 asking you some questions on behalf of the Tribunal and
22 then some parties may also want to ask you some
23 questions after that.

24 A. Okay.

25 2 Q. I am going to be referring you to a very few documents 12:02
26 and you will be able to see them on the screen or if
27 you wish to have a paper copy in your hand, you might
28 prefer to do that. But we will see when the time
29 arises.

1 A. Okay.

2 3 Q. Could you lean in towards the microphone as well, so
3 that we can hear you clearly. Mr. McHugh, I think you
4 live in and around the Athlone area, is that correct?

5 A. That's right, yes. 12:02

6 4 Q. We have heard some evidence from some guards that you
7 sell the Big Issue on the street or have done in the
8 past, is that right?

9 A. No.

10 5 Q. No, that's not right? 12:02

11 A. No. I sell the Republican newspaper.

12 6 Q. You sell the Republican newspaper, all right.

13 A. Yes.

14 7 Q. You are here today to try and help us with one
15 particular issue. And you've, I think, given a
16 statement to our Tribunal investigators already, isn't
17 that correct? 12:03

18 A. Yes.

19 8 Q. You did that voluntarily in your solicitor's office,
20 Mr. McLynn, isn't that correct? 12:03

21 A. Yes.

22 9 Q. Chairman, just for the record, Mr. McHugh's statement
23 is to be found in volume 57, at page 16258.

24 CHAIRMAN: Thank you.

25 10 Q. MR. McGUI NNESS: I am just going to ask you, 12:03
26 Mr. McHugh, firstly about your knowledge of some
27 particular gardaí in the Athlone area?

28 A. Yes.

29 11 Q. Do you know Garda Nicholas Keogh?

1 A. Garda Nicholas -- yes, I know him, yes.

2 12 Q. Yes.

3 A. But I haven't seen him for a long time.

4 13 Q. You haven't seen him for a long time?

5 A. No. 12:03

6 14 Q. All right. Could you just fill us in, help us in this
7 regard: How many times would you have met him over the
8 years or how well would you have known him?

9 A. I wouldn't say I'd know him that well. Just, I would
10 meet him and we'd have a conversation. 12:04

11 15 Q. Yes. Is this on the street?

12 A. Yes, yes.

13 16 Q. And about what sort of matters? were they just
14 general, friendly conversations?

15 A. Well, he was kind of into history a bit. 12:04

16 17 Q. Yes.

17 A. You know, and...

18 18 Q. We've seen from a record, that we will come to in a
19 minute, that he may have stopped you on one occasion,
20 have you any recollection of that? 12:04

21 A. Yes.

22 19 Q. Okay. All right. Perhaps we will come to that in a
23 moment. But were you on friendly terms with Garda
24 Keogh, could I ask you that question?

25 A. I'm on friendly terms with all the gardaí. 12:04

26 20 Q. Are you?

27 A. Yes.

28 21 Q. Okay. Do you know a Garda Lyons to see, Garda Aidan
29 Lyons, as he was at the time?

1 A. Just to see. I'd never really, we'll say, be talking
2 to him much.

3 22 Q. And do you know Garda Tom Higgins?
4 A. Yes.

5 23 Q. And do you know Sergeant Curley? 12:05
6 A. Yes.

7 24 Q. Out of those last three I have mentioned, how would you
8 rate how well you know them? Do you know any of them
9 better than the other?

10 A. I occasionally would meet Tom Higgins, you know, I'd be 12:05
11 often walking, my sister lives out in Kilty, and I
12 would often be talking to him, he'd say, how are ya,
13 Liam, and he would be out there in that garage there,
14 out around that area.

15 25 Q. So there is some sort of personal connection from that 12:05
16 point of view with Garda Higgins?

17 A. Yeah, he'd say how are you doing, yeah.

18 26 Q. I am going to ask you to look at a few different
19 records, which may help the Tribunal or perhaps it may
20 not in due course, but we will see. They have been 12:06
21 circulated. There's one, it's at page 16625 in volume
22 59. These are Garda records. You probably won't have
23 seen them before.

24 A. No.

25 27 Q. But this is an entry that they put on their system in 12:06
26 relation to you. It appears to relate to 21st December
27 2008, where you met a Garda Lucas and Garda Lyons. The
28 only thing I am interested in is, there is a mention
29 there of you having 2,500 in cash on you. Do you

1 recollect those guards stopping you and discovering
2 that you had that amount of cash on you?

3 A. No.

4 28 Q. No. Okay. There's another entry then, 16627, where
5 you're stopped by three guards there, apparently on 12:07
6 28th August 2009, Garda Lucas, Garda Ryan and somebody
7 who we are referring to as Garda A, where they appear
8 to have recorded that you were searched for whatever
9 reason, we're not going into at all, and you had 2,000
10 cash on you at the time, do you recollect that? 12:07

11 A. I remember being searched on occasion, I didn't know
12 how much money, we'll say that...

13 29 Q. Yes.

14 A. Yeah.

15 30 Q. There's another search, it's a bit further back than 12:07
16 that, 27th November 2006, you were searched by a ban
17 garda, apparently, Garda McGhee, it's on page 16629.
18 If we just look at the entry there. You may recall
19 this one because you seem to have had quite a degree of
20 money on you, and you had very good reason for having 12:08
21 it obviously. It says:
22

23 "Stopped and searched Liam McHugh. Had 15,000 cash in
24 his inside pocket in €50 notes. He said the money was
25 proceeds of the sale of his mother's house." 12:08
26

27 Do you recollect having that amount on you?

28 A. No, it wasn't my mother's house, it was my own house.

29 31 Q. Oh, it was your own house.

1 A. Yes. And I'd say the reason I had some of the money on
2 me, because a friend of mine died, from Athlone, and he
3 asked me to lend some money to pay for his wife's
4 funeral, and I did give it to him and I got it back
5 from him. 12:08

6 32 Q. All right.

7 A. Because I can remember on that occasion, because I
8 remember when he was giving me the money, he said,
9 Liam, I hope there's no [inaudible] money, he says, you
10 know, just said that to me, you know. No, I gave him 12:08
11 the money, you know, just lent him the money to pay for
12 the funeral.

13 33 Q. Yes.

14 A. And he said I hope that's not counterfeit money, Liam.
15 That's the way he said it to me. 12:08

16 34 Q. Yes.

17 A. I do remember that occasion. And the ban garda gave
18 out to me, Liam, she said, because you're going to get
19 killed here on the streets of Athlone if you don't stop
20 going on the way you are. 12:09

21 35 Q. All right.

22 A. She did give out to me on a few occasions.

23 36 Q. Was she worried because you did had the money?

24 A. Yes.

25 37 Q. Is that it? 12:09

26 A. Yes.

27 38 Q. All right. Page 16631, this relates to 4th August
28 2007, where Sergeant Curley appears to have stopped
29 you. There's no reference to money there. But do you

1 recall Sergeant Curley stopping you on any occasion?

2 A. Let's see now. I do not, no.

3 39 Q. You don't?

4 A. No.

5 40 Q. Okay. He apparently stopped you on another occasion. 12:09
6 Do you remember that?

7 A. Would there be two Sergeant Curleys, no?

8 41 Q. Are there?

9 A. I think so. There was I thought. One man is a big
10 man, about 6 foot 5, Sergeant Curley, that's what I 12:09
11 think his name is.

12 42 Q. Okay. There's a reference to Garda Keogh apparently
13 stopping you, if we look at page 16635. It records
14 there that he was with a Garda Sexton, he stopped you
15 at Thornbury Drive. After a preliminary search they 12:10
16 took you to the station for a proper search. It's
17 recorded there that you had €9,000 cash and enquiries
18 were carried out as a result of this and the money was
19 returned to you. Do you recall that occasion?

20 A. I can't say I do now, to be honest about it. 12:10

21 43 Q. All right. Did you know Garda Keogh at this point in
22 time? It seems to be in May 2008. He's apparently on
23 the beat, part of his duty, he was on the beat a lot?

24 A. I can't remember.

25 44 Q. Pardon? 12:10

26 A. I can't remember back that far, I cannot.

27 45 Q. Yes. Okay. But do you remember being taken to the
28 station and there being an issue about money and it
29 being checked out and it was all returned to you?

1 A. Something happened in willow Park on one occasion.
2 46 Q. You have a vague memory of it, do you?
3 A. Yeah. I was -- they were two guys, one of them had a
4 Dublin accent, the other fella, I don't know who he
5 was, but they were kind of arguing with me, kind of 12:11
6 stopping me, looking for a cigarette or... and the
7 garda came on a scene at a shop and told me they wanted
8 to talk to me, and they said they had to bring me into
9 the station for me own safety.
10 47 Q. Okay. Do you think they might have been afeared for 12:11
11 your safety at that stage?
12 A. I think so, yes.
13 48 Q. If we look at page 16637, we see an entry for 19th
14 October 2008, where apparently a Garda Mary Murphy has
15 an interaction with you and you had €5,000 cash in a 12:11
16 plastic bag, do you remember that occasion?
17 A. No.
18 49 Q. There's another date, 13th December 2008, when Garda
19 John Divilly -- it's at page 16639, and he is reporting
20 there that you had apparently 11,500 cash, that you 12:12
21 said you'd taken out of the bank over the last few
22 weeks and you had a bank receipt for it, actually.
23 A. Yes.
24 50 Q. Do you remember that?
25 A. I do not, honestly. 12:12
26 51 Q. You don't?
27 A. No.
28 52 Q. Okay. All right. We will pass on from that. There's
29 a Garda Suzanne Nolan, apparently recorded on 8th

1 February 2009, that you had four separate bags of money
2 totalling 7,380 and you made reference to having been
3 addicted to going to the bank to get the money, do you
4 recollect that?

5 A. No. 12:13

6 53 Q. Do you recollect a Garda Suzanne Nolan?

7 A. No.

8 54 Q. Just coming forward in time, to page 16645, it's a date
9 of 19th August 2010, it's summer time, where a Garda
10 Sexton apparently searched you and you had 1,300 in 12:13
11 cash on you. Do you recollect that?

12 A. No.

13 55 Q. Garda Sexton appears to have stopped you the next day,
14 on the 20th September, also. If we look at page 16647.
15 And you had €1,325 on you. Do you recollect being 12:14
16 taken to the station by Garda Sexton?

17 A. No, no.

18 56 Q. Okay. There's another search by Garda Sexton on 15th
19 October 2010, where you'd about 1,700 on you, do you
20 recollect that? 12:14

21 A. No.

22 57 Q. You may recall being asked by our investigators about a
23 particular meeting with Garda Lyons on 31st May 2014,
24 do you remember that?

25 A. In what year? 12:14

26 58 Q. 31st May 2014?

27 A. No, I cannot remember that.

28 59 Q. A report of Garda Lyons was brought to your attention.
29 Perhaps we will just look at the report, page 522 of

1 the papers, please. If you want to see the paper
2 version of it, it might be easier for you to read. We
3 could look at the details of it. This is a report from
4 Garda Lyons, it's going in to his detective sergeant.
5 And he says:

12:15

6
7 "With reference to the above, I wish to report that on
8 the 31st May at approximately 9:00pm I was approached
9 by Liam McHugh on Bastion Street, Athlone."

12:15

10
11 Do you recall doing that?

12 A. I don't actually. No.

13 60 Q. Okay. We've heard an account from Garda Lyons of how
14 that happened. It's on Day 128, commencing at the
15 bottom of page 11 onwards. We don't need to look at
16 it. But he said he was crossing over Bastion Street,
17 about to go onto Connolly Street at nine in the evening
18 and that you called him over across the street. You
19 know those two streets, I take it?

12:16

20 A. I do, yes.

12:16

21 61 Q. Is that an area where you would often be?

22 A. Yes.

23 62 Q. He said that you crossed over the street to talk to him
24 then on that occasion. Have you got a memory of doing
25 that?

12:16

26 A. No.

27 63 Q. He said that you brought up the general topic of
28 whistleblowers, do you remember doing that?

29 A. No.

1 64 Q. Do you know what a whistleblower is?
2 A. Yes.

3 65 Q. Did you know that there was a whistleblower in Athlone
4 Garda Station?
5 A. Yes, I had seen it in the papers. 12:17

6 66 Q. Yes. And who did you know -- did you know who that
7 was?
8 A. Not really, no.

9 67 Q. Well, what did you recall seeing in the papers?
10 A. That there was gardaí doing not right things and he was 12:17
11 investigating it -- or reporting it.

12 68 Q. Yes. And did you know that guard was Garda Keogh?
13 A. Not at the beginning, but I did -- because I met him on
14 one occasion.

15 69 Q. Yes. 12:17
16 A. And we were -- okay, he took a carton of cigarettes off
17 me that I had on me.

18 70 Q. Yes.
19 A. At the church.

20 71 Q. And when was that? 12:17
21 A. I don't know what year it was. I was giving them to an
22 old woman, she was coming from far away and she hadn't
23 got much money. He said I couldn't be doing that,
24 shouldn't be doing that.

25 72 Q. Yes. Did you have any talk with him about anything 12:18
26 else?
27 A. Not really, no. We were -- okay, I found some things
28 with a metal detector, and he said that he was involved
29 in that kind of thing when he was younger and I should

1 give it up to the museum, that it'd be nice for the
2 young people to see it. So I said I'd think about it
3 then.

4 73 Q. Yes.

5 A. Yeah. 12:18

6 74 Q. To go back to the report of Garda Lyons, just if we
7 have that back on the screen, page 522. You see, he is
8 reporting a conversation with you and that's why I am
9 asking but it, Mr. McHugh?

10 A. Yes. 12:18

11 75 Q. He seems to be quoting you here in the third line down,
12 in the following terms:

13

14 "The bald guard came over to me the other day and asked
15 if I could remember the time I was searched by three 12:19
16 guards and 800 was stolen from me and spent drinking in
17 the Castle Pub, the bookies and the casino. He said if
18 I wanted to make a complaint about it then he would
19 back me up."

20 12:19

21 Do you recall saying that to Garda Lyons?

22 A. I can't remember that, no, I cannot.

23 76 Q. Yes. But did you have money taken from you by guards?

24 A. From Athlone, yes.

25 77 Q. Pardon? 12:19

26 A. You mean gardaí from Athlone?

27 78 Q. Yes.

28 A. Yes, but they would always give it back to me.

29 79 Q. Yes.

1 A. And give out to me.

2 80 Q. Yes.

3 A. Tell me to go home from Athlone, and go home to your
4 own house, Liam, for your own personal safety.

5 81 Q. Well, this account seems to suggest that you were 12:19
6 saying if, it's right, that you had money taken from
7 you one time and it wasn't given back, it was sort of
8 misspent. Do you remember any discussion about that
9 with Garda Lyons?

10 A. No. 12:20

11 82 Q. He seems to be recording you as saying that you had
12 discussed this with Garda Keogh and that he was trying
13 to help you remember that time. Did you have any
14 discussion with Garda Keogh about money being taken
15 from you? 12:20

16 A. I cannot remember that.

17 83 Q. Right. But is that the --

18 A. I understood any time that there was money taken from
19 me, the gardaí -- to me, the gardaí were honest in
20 Athlone, they were. 12:21

21 84 Q. Yes.

22 A. Like when they bring me in for a search, like they
23 treat me well inside and...

24 85 Q. If we just look back at an entry at page 16649.

25 A. Yeah. 12:21

26 86 Q. This is a record relating to an interaction that you
27 had with Garda Sexton apparently, if it's correct?

28 A. Yes. Sorry, I wouldn't know Garda Sexton. I do not
29 know him. I never heard of his name until today.

1 87 Q. Yes. He is saying, he is saying in this report that he
2 was on the mobile patrol and that you were seen at St.
3 Mary's Square in Athlone and that they spoke with you
4 and that you stated you had a large amount of cash and
5 that you were afraid. We have blanked out the name 12:21
6 there, that somebody was going to rob him again and
7 that you were in possession of about €1,700 in notes?
8 A. I can't remember that, no.

9 88 Q. Did you ever remember complaining that someone had
10 robbed you to the police? 12:22
11 A. No.

12 89 Q. Were you in fear of being robbed by someone, anyone in
13 particular?
14 A. Not really.

15 90 Q. Just going back to Garda Lyons' report, at page 522. 12:22
16 It has to be rotated on the screen. Garda Lyons has
17 referred to you, apparently, on this account making
18 reference to a bald guard. Did you know a bald guard?
19 A. How do you mean a bald guard?

20 91 Q. A guard who was bald, with no hair? 12:23
21 A. I can't say -- I can't remember that now or not.

22 92 Q. You see, further down on this report he, Garda Lyons,
23 is saying that he asked you if you were referring to
24 Garda Nick Keogh and that you confirmed that you were.
25 Do you remember ever referring to somebody as a bald 12:23
26 guard?
27 A. I can never remember that. Maybe I could have said it,
28 but I can't remember now. I lost five friends now in
29 accidents from this time last year and my memory is not

1 my best. I cannot even see that writing there now, I
2 forgot to bring my glasses.

3 93 Q. CHAIRMAN: I'm sorry, would you say that again, I
4 misheard.

5 A. My sight is not the best. 12:24

6 94 Q. CHAIRMAN: Okay.

7 A. I forgot -- I left my glasses at home this morning,
8 because I was up at five o'clock.

9 95 Q. CHAIRMAN: Okay. You were up at five this morning,
10 right. 12:24

11 A. Yeah.

12 CHAIRMAN: Okay. Thanks.

13 96 Q. MR. MCGUINNESS: well, I am just going to read that
14 sentence to you again?
15 12:24

16 "The bald guard came over to me the other day and asked
17 if I could remember the time I was searched by three
18 guards and €800 was stolen from me and spent drinking
19 in the Castle Pub, the bookies and the casino. He said
20 if I wanted to make a complaint about it then he would 12:24
21 back me up."
22

23 You see, if that is right, it would seem that perhaps
24 you didn't know who the bald guard was and Garda Lyons
25 is saying in the report that he asked you was it Garda 12:24
26 Keogh you were talking about and you said it was. Did
27 you know Garda Keogh to be a bald guard?

28 A. Actually I didn't see him for a long time.

29 97 Q. Pardon.

1 A. I didn't see him for a long -- I don't know how many
2 years ago since I -- I'd hardly know him now if I saw
3 him.

4 98 Q. Yes. You see, Garda Lyons goes on to say that he asked
5 you if you were alleging that this had actually 12:25
6 happened and that you then said:
7
8 "No, not at all, I'm not going bringing trouble on
9 myself."
10 12:25
11 Do you remember saying that to Garda Lyons?
12 A. No.

13 99 Q. Okay. Is it possible that you did say it and JUST your
14 memory is poor now and you can't?

15 A. I cannot remember. 12:25

16 100 Q. Pardon?

17 A. I cannot remember that incident, no.

18 101 Q. You can't remember?

19 A. And I cannot remember any search, only one.

20 102 Q. Pardon? 12:25

21 A. I cannot remember none of them searches, only the one,
22 the one. That's the only one I can remember.

23 103 Q. Okay.

24 A. That particular day.

25 104 Q. Garda Lyons goes on to say in the report that: 12:25
26
27 "I asked him if he was referring to Garda Nick Keogh,
28 he confirmed that he was and he went on to say 'he told
29 me he was there himself when it happened and he would

1 back you up if I wanted to make a complaint'."

2

3 Do you remember saying that to Garda Lyons?

4 A. No.

5 105 Q. Okay. Have you any memory of any conversation with 12:26

6 Garda Keogh, where he said he would back you up if you

7 wanted to make a complaint?

8 A. I have not, no.

9 106 Q. Did you ever discuss making a complaint with any member

10 of the Guards? 12:26

11 A. No. I don't think so, no.

12 107 Q. Have you any memory of ever being asked to make a

13 statement about this meeting?

14 A. I have, yes.

15 108 Q. Yes. 12:26

16 A. Only one occasion.

17 109 Q. When was that?

18 A. I don't know. I do not know what year it was.

19 110 Q. Yes.

20 A. A garda pulled up to talk to me. 12:26

21 111 Q. And who was that?

22 A. He pulled up outside a butchers, I think it was, and

23 said he wanted to talk to me.

24 112 Q. Yes. Can you recollect who that guard was?

25 A. I think his name was Tom Higgins. 12:27

26 113 Q. Did he say what he wanted to talk to you about?

27 A. He wanted my phone number, for further reference, he

28 says.

29 114 Q. Yes. Well, did he want to talk to you, did he say he

1 wanted you to talk to him?

2 A. well, he wanted my phone number and I couldn't think of
3 it. But I had it on the phone, at the back of the
4 phone, I gave it to him.

5 115 Q. Okay. And did he ask you to make a statement about the 12:27
6 matter?

7 A. I am not rightly sure, I can't say yes or no. I think
8 he said he'd be getting back to me on it or something
9 now, he'd be talking to somebody or...

10 116 Q. well, is it possible that he told you what he wanted to 12:28
11 talk to you about?

12 A. I don't think I can remember that now, I cannot
13 remember that.

14 117 Q. Okay. Did you ask him? I mean, would you give out
15 your phone number without knowing what they wanted to 12:28
16 talk to you about?

17 A. well, I gave my phone out to two people to make phone
18 calls because they had no credit.

19 118 Q. Okay.

20 A. Yeah. 12:28

21 119 Q. But you gave him your phone number, is that what your
22 recollection is?

23 A. Yes.

24 120 Q. You had it written on the back of your phone, is that
25 right? 12:28

26 A. Yes.

27 121 Q. Before doing that, were you not concerned to know why
28 he wanted it?

29 A. I didn't really pass much remarks on it.

1 122 Q. Okay. Did he tell you why he wanted it?
2 A. Well, he said there was a bit of talk going on about
3 something and he'd be seeing someone about it or
4 something like that, he says. He just drove off and I
5 didn't see him after that for a long time. 12:29

6 123 Q. Garda Keogh has made his diaries available to us and
7 there's a reference to you that I just want to ask you
8 about. Perhaps if we just look at page 13260. The top
9 of the page has an entry for the 9th June and Garda
10 Keogh records there that: 12:30
11
12 "Liam McHugh to be approached to take a statement."
13
14 And then Tuesday, the 10th June, there's an entry:
15 12:30
16 "22:35 call from F Greene. Informed him about LMCH
17 complaint. He told me LMCH approached him to say he is
18 under pressure to make a complaint against a guard re
19 theft of 4,500. Didn't know about my complaint."
20 12:30
21 Then there is "suspicion" there written down. Did you
22 know Garda Greene?
23 A. Garda Greene.
24 124 Q. Garda Fergal Greene?
25 A. Yes. 12:30
26 125 Q. Did you approach him? Did you approach Garda Greene at
27 any stage?
28 A. I can't remember that.
29 126 Q. This isn't Garda Greene's note, it's Garda Keogh's note

1 of what Garda Greene -- what he says Garda Greene told
2 him. But it seems to relate to you approaching --
3 MR. MULCAHY: Sorry, Chairman. I am actually a bit
4 lost on the diary, could I ask my Friend to go through
5 that again? 12:31
6 CHAIRMAN: Can you see it on your screen?
7 MR. MULCAHY: I can, yeah. Just the actual lines that
8 he is referring to.
9 MR. MCGUINNESS: Yes. It's there under --
10 CHAIRMAN: Mr. Mulcahy, if you go to Tuesday, 22.35, 12:31
11 call from.
12 MR. MULCAHY: Yes.
13 CHAIRMAN: Are you okay?
14 MR. MULCAHY: I am there, thank you, yes.
15 CHAIRMAN: Okay, that's it. 12:31
16 127 Q. MR. MCGUINNESS: It starts RD, that's rest day:
17
18 "22: 35 call from F. Greene. Informed him about LMch
19 complaint. He told me LMch approached him to say he is
20 under pressure to make a complaint against a garda re 12:31
21 theft of €4,500. Didn't know about my complaint."
22
23 Then there is "suspect". Just going back to Garda
24 Greene, do you know a Garda Fergal Greene?
25 A. Yes. 12:32
26 128 Q. Did you approach him and tell him that you were under
27 pressure about anything?
28 A. I cannot remember that. Sure, why would I be under
29 pressure? I don't understand that now, you see.

1 129 Q. Well, that's why I am asking you if you can throw any
2 light on this issue. Was there ever a theft of 4,500
3 that you complained to anyone about?

4 A. No.

5 130 Q. Did anyone ever ask you to make a statement about it, 12:32
6 whether it happened or not?

7 A. I can't remember that, no. I don't think so.

8 131 Q. You can't remember that?

9 A. No.

10 132 Q. Okay. Would you answer any questions anyone else may 12:33
11 have?

12

13 END OF EXAMINATION

14

15 CHAIRMAN: Thanks very much. Well, Mr. Kelly? Yes, 12:33
16 Ms. Mulligan.

17

18 MR. LIAM MCHUGH WAS CROSS-EXAMINED BY MS. MULLIGAN, AS
19 FOLLOWS:

20

21 133 Q. MS. MULLIGAN: Good afternoon, Mr. McHugh. I'm here in 12:33
22 the corner. Just in relation to this issue, is it
23 something that you would regularly do, would you
24 regularly accuse any member of the public of any crime
25 and report it to An Garda Síochána, is that something
26 that you would regularly do?

27 A. I don't think I ever done that in all my life, I never
28 done that.

29 134 Q. Okay. So to your memory you have never done that?

1 A. No.

2 135 Q. And in relation to the allegation then that we are
3 dealing with today, would it be something that you
4 would expect to remember, it being such an unusual
5 occurrence for you, to go and report a crime -- 12:33

6 A. Well, I'll just say, okay, one week ago in Athlone some
7 guy takes up takes up a big knife to me and he told me
8 that he was going to stab me with the knife. I said to
9 him, I am going to make a complaint about you, and I
10 didn't, and I'm sorry that I didn't, but I should have 12:34
11 had because he might hurt somebody.

12 136 Q. So that's the --

13 A. Yes, but if he does approached me again, I will make a
14 complaint.

15 137 Q. Okay. So that's the extent to which you wouldn't 12:34
16 necessarily approach the guards in relation to a
17 proposed crime, is it?

18 A. Yes.

19 138 Q. That's your evidence to the Chairman?

20 A. Sorry, there may have been one occasion where there was 12:34
21 a person being attacked outside Brown's Pub and I did
22 ring the gardaí. Three guys was attacking this man, on
23 a Sunday morning about nine o'clock, but that's a long
24 time ago.

25 139 Q. Okay. 12:34

26 A. And gardaí came and brought them away.

27 140 Q. Okay. Can I ask you a slightly different question
28 then?

29 A. Yes.

1 141 Q. In confinement to yourself, so just in relation to
2 yourself, if you were involved or around a crime as
3 opposed to you being a witness to a crime, it wouldn't
4 be a regular scenario where you would speak to the
5 guards about that, would that be right? 12:34

6 A. That's right, yes.

7 142 Q. And you wouldn't necessarily report it?

8 A. Well, no, but if I seen someone doing something wrong
9 to someone, I wouldn't like it.

10 143 Q. Okay. 12:35

11 A. Say if it was an old person or anything like that.

12 144 Q. Are you aware that it's a criminal offence to make a
13 complaint, a false complaint to An Garda Síochána?

14 A. Yes.

15 145 Q. You would be aware of that? 12:35

16 A. Yes.

17 146 Q. So if you believe somebody was -- the allegation in
18 relation to Garda Keogh is that he, in fact, was
19 coaching you to make a false complaint. would you
20 remember that if it happened or would it be fair to say 12:35
21 that you would remember it because it appears to be
22 something --

23 A. You mean Garda Keogh for me to make a complaint.

24 147 Q. Yes.

25 A. No, no. 12:35

26 148 Q. You wouldn't do that?

27 A. No.

28 149 Q. So would it be fair to say you would remember if that
29 happened?

1 A. I cannot answer that now.

2 150 Q. Okay. Can I ask you a slightly different question then
3 in relation to it. If you accept that it's an unusual
4 event for something like that to occur and you accept
5 that you wouldn't like to be involved in a false 12:35
6 complaint, is it more likely than not that you would
7 remember somebody asking you to make that kind of a
8 complaint?

9 A. If they had asked me, I'd say I probably would remember
10 it. 12:36

11 151 Q. Very good. And if you reported that, wouldn't it be
12 fair to say that you probably would remember it as
13 well?

14 A. Yes. Well I thought -- my dealings with Nick Keogh, I
15 thought he was -- to be honest and truthful, I thought 12:36
16 he was honest and fair dealing.

17 152 Q. No further questions.

18

19 END OF EXAMINATION

20 12:36

21 CHAIRMAN: Thanks very much. Now, Mr. O'Higgins or
22 Mr. McGuinness?

23

24 MR. LIAM MCHUGH WAS CROSS-EXAMINED BY MR. MÍCHEÁL
25 O'HIGGINS, AS FOLLOWS: 12:36

26

27 153 Q. MR. MÍCHEÁL O'HIGGINS: Thank you, Chairman.
28 Mr. McHugh, Micheál O'Higgins is my name and I am going
29 to ask you some questions on behalf of the Commissioner

1 of the Gardaí.

2 A. Yes.

3 154 Q. And some senior guards, all right?

4 A. Yes.

5 155 Q. In the statement in your interview with the Tribunal 12:36
6 investigators, you mentioned I think that you wouldn't
7 be able to pick out Garda Aidan Lyons in a line up?

8 A. No, not really.

9 156 Q. But you do know him, don't you?

10 A. Em, didn't see him for a long time. 12:37

11 157 Q. My understanding of matters is that he has been
12 stationed in Athlone for a long number of years, you're
13 aware of that?

14 A. Yes.

15 158 Q. And you yourself -- 12:37

16 A. But I never really had any dealings with him like or
17 much or anything for a long time.

18 159 Q. You've had no dealings with him?

19 A. Very little. I mean, I don't think he ever kind of
20 approached me too much or anything or... 12:37

21 160 Q. Right. But would you know people that had dealings
22 with him, such that you'd know him or about him?

23 A. Not really.

24 161 Q. Am I correct, you have -- sometimes it's your habit to
25 go over and approach a guard? So you'd be in that 12:38
26 sense known by gardaí in Athlone?

27 A. Well, I might meet a guard in a pub with their wife and
28 ask if they're having a drink, and they might say, yes,
29 Liam. Or I might meet a gardaí in a bookies or maybe

1 on the street some evening.

2 162 Q. You would be aware, were you, that Garda Lyons was the
3 subject of a serious assault back in 2007, you knew
4 that, did you?

5 A. Yes, yes, I did. 12:38

6 163 Q. Would the reason you know it, the fact that the person
7 who was convicted of that was the brother of somebody
8 who is close to you?

9 A. At that time, yes, but then we went our own ways.

10 164 Q. Right. So I am suggesting to you that it's 12:38
11 inconceivable that you didn't know of the parties
12 involved in that assault, in particular Garda Lyons,
13 you knew him?

14 A. Yeah, but I had nothing to do with that or I wasn't
15 there when it happened or anything. 12:38

16 165 Q. I want to be clear, I am not for a moment suggesting
17 you had anything to do with that?

18 A. Yes.

19 166 Q. Another man was convicted of that?

20 A. Yes. 12:39

21 167 Q. Please take it that I am not suggesting that?

22 A. I don't think -- that man that was convicted, I don't
23 think he meant to do what was done, he thought there
24 was travellers coming to the house because they were
25 fighting with these people. 12:39

26 168 Q. CHAIRMAN: Mr. McHugh, counsel is asking you a simple
27 question.

28 A. Yes.

29 169 Q. CHAIRMAN: Do you know Garda Lyons? Yes or no.

1 A. Yes.

2 170 Q. CHAIRMAN: How could you not know him, given the
3 information that you've just told us.

4 A. But that's a long time ago, 2007. That's 13 years.

5 171 Q. CHAIRMAN: Mr. McHugh, question? 12:39

6 A. Yes.

7 172 Q. CHAIRMAN: Why is it so hard for you to give a straight
8 answer? He asked you did you know Garda Lyons, now
9 Sergeant Lyons?

10 A. Okay. 12:39

11 173 Q. CHAIRMAN: He asked you that a while ago. And you have
12 prevaricated and gone around the houses. It's a simple
13 question. So the answer now is yes?

14 A. Yes.

15 174 Q. CHAIRMAN: Is that correct? 12:39

16 A. Yes. But if I seen 20 more gardaí with him I'd find it
17 hard to pick him out.

18 175 Q. CHAIRMAN: We're not concerned about 20 more gardaí?

19 A. Yes.

20 176 Q. CHAIRMAN: We're not concerned about anything else? 12:40

21 A. I know that.

22 177 Q. CHAIRMAN: We're talking about Garda Aidan Lyons and
23 the answer is, yes, I know him?

24 A. Yes.

25 CHAIRMAN: Okay, thank you. 12:40

26 178 Q. MR. MÍCHEÁL O' HIGGINS: Then, following on from that,
27 my question is: would I be correct in picking up from
28 your earlier evidence and certainly from your interview
29 with the Tribunal investigators, that for your own

1 reasons you weren't prepared to accept that you did in
2 fact know Garda Lyons and you knew him very clearly?
3 A. I didn't know him very clearly. I did not know him
4 very clearly, because I never had any dealings with him
5 or I don't think -- in other words, he never gave me 12:40
6 any bother or trouble, he didn't. He seemed to be a
7 genuine man.

8 179 Q. I think you have told Mr. McGuinness in answer to his
9 questions --

10 A. Yes. 12:40

11 180 Q. -- you did know garda Tom Higgins?
12 A. Yes, I know Tom Higgins.

13 181 Q. Right.
14 A. I'd know Tom Higgins anywhere. But for me to take out
15 Garda Lyons now in a room, I'd find it hard enough. 12:41

16 182 Q. Right. Did Garda Tom Higgins, and this is a question.
17 A. Yes.

18 183 Q. Did Garda Tom Higgins speak to you before or since the
19 time when you say he sought your telephone number?
20 A. I don't think I had -- after I gave him the telephone 12:41
21 number, I don't think I made much talk with him after
22 that, or any conversation with him, much. I don't
23 think I did.

24 184 Q. Yes. You see there's -- just so that -- I don't want
25 you to be blind sided by this, there's something of a 12:41
26 difference between Inspector Curley, who gave the job
27 to Garda Tom Higgins of going to talk --
28 CHAIRMAN: I think you are just better to ask a simple
29 question, if I may respectfully suggest it, rather than

1 inviting inferences and discussions and conclusions, a
2 simple question would be much better.

3 MR. MÍCHEÁL O' HIGGINS: May it please you, Judge.

4 185 Q. CHAIRMAN: what did Garda Higgins say to you?
5 A. Garda Tom Higgins. 12:42

6 186 Q. CHAIRMAN: what was the exchange about the telephone?
7 A. He said that there was something happening and he
8 wanted my phone number.

9 187 Q. CHAIRMAN: There was something happening.
10 A. There could be something coming up. 12:42

11 188 Q. CHAIRMAN: There was something coming up?
12 A. Yes.

13 189 Q. CHAIRMAN: what does that mean, there was something
14 coming up?
15 A. Something coming up, maybe that I was searched on one 12:42
16 occasion or an allegation, or something, there was some
17 talk going on and he wanted my number and he'd get back
18 to me on it.

19 190 Q. CHAIRMAN: Just tell me that again. I don't want to
20 say it again because I may suggest something? 12:42
21 A. There's something going on he says.

22 191 Q. CHAIRMAN: No, there was more.
23 A. Yes.

24 192 Q. CHAIRMAN: After that?
25 A. Yeah. 12:42

26 193 Q. CHAIRMAN: I know what you said, but I don't want to
27 repeat it because I want to be sure that you are saying
28 it yourself?
29 A. Yeah.

1 194 Q. CHAIRMAN: Something about what?
2 A. Allegations about maybe money being taken from me or
3 something. Sure I was only talking to him for about
4 three or four minutes and he was gone.
5 195 Q. CHAIRMAN: Yes. 12:43
6 A. And it could have been a year later I seen him again.
7 196 Q. CHAIRMAN: Yes. Tell me more, please.
8 A. And I gave him my phone number.
9 197 Q. CHAIRMAN: He said there was something coming up about
10 what? 12:43
11 A. It could be maybe a whistleblower or something.
12 198 Q. CHAIRMAN: I'm trying to understand, Mr. McHugh.
13 A. Yeah.
14 199 Q. CHAIRMAN: I know that you're here to help us.
15 A. Yeah. 12:43
16 200 Q. CHAIRMAN: I don't want to put words into your mouth.
17 A. Yes.
18 201 Q. CHAIRMAN: And I don't want to engage in riddles.
19 A. Yes.
20 202 Q. CHAIRMAN: Or game playing. 12:43
21 A. Yes.
22 203 Q. CHAIRMAN: Garda Higgins came and spoke to you?
23 A. Yes.
24 204 Q. CHAIRMAN: Please tell me the conversation that took
25 place. 12:43
26 A. Yeah. I think he pulled up in his car.
27 205 Q. CHAIRMAN: As you remember it.
28 A. Yes. He pulled up in his car, as far as I can
29 remember, and he asked me -- we got talking and he

1 said, how are you, Liam, and I said, how are you, Tom,
2 and he says that he could do with getting my phone
3 number. And I said I don't know have I got my number,
4 nor can I think of it. So I it had in my back of my
5 phone, took out my phone from my pocket like that, and 12:44
6 I gave him my number. Am I in more trouble or what's
7 wrong now, Tom, or what's happening. And he said that
8 there could be something coming up that more senior
9 gardaí want to talk to you about and want to contact
10 you on this number. 12:44

11 206 Q. CHAIRMAN: If I go back on the transcript, I will find
12 more information about this conversation?

13 A. Yeah.

14 207 Q. CHAIRMAN: Something coming up about what?

15 A. I don't really know. But he might have said that time 12:44
16 there could be something coming up that I was involved
17 in or something.

18 208 Q. CHAIRMAN: I have a feeling that if I keep pushing,
19 something more will come out. But I think I will leave
20 it to counsel. I am understanding, at least I think I 12:45
21 am understanding. Be my guest, Mr. O'Higgins.

22 MR. MÍCHEÁL O' HIGGINS: Thank you, Chairman.

23 209 Q. You gave out your telephone number, you say?

24 A. Yes.

25 210 Q. I am suggesting to you, you would be unlikely to give 12:45
26 out your telephone number without first finding out
27 what he was looking for, do you understand me? So did
28 you make efforts to find out what he was looking for?

29 A. I didn't really.

1 211 Q. would that not have been the natural thing to do before
2 you go giving him your number?

3 A. It would, but I can't think back on it now, you see,
4 with all the things that's happened.

5 212 Q. Did he ask you would you be willing to provide a 12:46
6 statement?

7 A. I can't remember that now really, I can't.

8 213 Q. You see, the man who gave him the job of going to talk
9 to you, Inspector Curley, says that when Garda Higgins
10 came back to him to report on his interaction actually 12:46
11 with you, that he told Inspector Curley that he met
12 with you and you informed Garda Higgins that you would
13 not consent to provide a witness statement at the time
14 but that you undertook to think about it and you might
15 provide one in the future? 12:46

16 A. Yeah.

17 214 Q. Is it possible that that's what you said?

18 A. It's a possibility but I can't say yes or -- whether
19 it's right or wrong, to be honest about it.

20 215 Q. All right. So it's possible that's what you told Garda 12:46
21 Higgins?

22 A. Yeah. Possibility.

23 216 Q. All right. As well, just from your point of view, to
24 be aware, Garda Keogh has given evidence of his
25 dealings with you, all right? 12:47

26 A. Yeah.

27 217 Q. Can I just ask you to -- I want to give you an
28 opportunity to comment on this one way or the other.
29 The first reference is Day 100, page 75, Mr. Kavanagh.

1 we might have that for a moment. Day 100, page 73.

2 CHAIRMAN: Carry on, Mr. O'Higgins, tell us what he
3 said.

4 MR. MÍCHEÁL O' HIGGINS: So this is what Garda Keogh
5 said --

12:47

6 CHAIRMAN: We don't need to have it in front of us but
7 tell us what he said.

8 MR. MÍCHEÁL O' HIGGINS: He said the following. The
9 date is not clear but he said the following:

10

12:48

11 "Here I am outside the station talking to McHugh."

12

13 Line 10.

14

15 "He gave over to me, you see, which obviously was
16 interesting. He was asking me what was going on, that
17 there was guards up to him to try and get a statement
18 about me."

12:48

19

20 So that's what Garda Keogh said, that you told him and
21 the only evidence there has been is Garda
22 Higgins looking for something.

12:48

23 CHAIRMAN: Ask him the question. Sorry, Mr. O'Higgins,
24 keep it simple.

25 218 Q. MR. MÍCHEÁL O' HIGGINS: Did you tell Garda Keogh, as
26 Garda Keogh claims, that there was guards up to you to
27 try and get a statement?

12:48

28 CHAIRMAN: Out of you.

29 219 Q. MR. MÍCHEÁL O' HIGGINS: Out of you about Garda Keogh?

1 A. I cannot remember that.

2 220 Q. All right. You see, he came back to it in
3 cross-examination. We might have Day 106, please, page
4 7?

5 CHAIRMAN: What did he say there, Mr. O'Higgins, carry 12:49
6 on.

7 MR. MÍCHEÁL O' HIGGINS: He said the following:
8
9 "I do bump into Mr. McHugh on the street."
10
11 It's line 8, page 7. 12:49
12
13 "I mean, obviously as I have said, I was trying to find
14 out in the station what's all this about. But
15 Mr. McHugh, when he came over to me, he's mentioning 12:49
16 something about the guards looking to take a statement
17 from him and I obviously -- obviously I ask what, do
18 you know what it's about. But he doesn't appear to
19 know what it's about either."
20
21 So Garda Keogh says that you said to him the guards are 12:49
22 looking to take a statement from you. Did you say to
23 Garda Keogh the guard was looking to take a statement.

24 A. I cannot say whether I did or I didn't, I cannot
25 remember. 12:49

26 221 Q. Thanks very much.

27
28 END OF EXAMINATION
29

1 CHAIRMAN: Very good. Anybody else? Yes.

2 MS. O'ROURKE: Yes, Chairman, I have a few short
3 questions.

4 CHAIRMAN: Yes.

5 12:50

6 MR. LIAM MCHUGH WAS CROSS-EXAMINED BY MS. O'ROURKE, AS
7 FOLLOWS:

8

9 222 Q. MS. O'ROURKE: Mr. McHugh, my name is Peggy O'Rourke
10 and I appear for Garda Aidan Lyons, as he then was. I 12:50
11 just want to ask you a few questions, I don't really
12 have to ask you very many questions I think.

13 A. Okay.

14 223 Q. But Garda Lyons is now Sergeant Lyons, and just for
15 your information, he left Athlone in 2016. so he 12:50
16 hasn't been in Athlone for --

17 A. I didn't know that.

18 224 Q. I just want to bring you back to 31st May 2014, when
19 Garda Keogh met with you on Bastion Street in Athlone.
20 I wonder, I am just going to ask Mr. Kavanagh to pull 12:50
21 up a document, document 522. And it's something,
22 Mr. McHugh, we have already looked at today. But I
23 think in your evidence --

24 A. Sorry.

25 225 Q. CHAIRMAN: If you have any difficulty with this. 12:50
26 A. Yeah.

27 226 Q. CHAIRMAN: Because of not having your glasses, just let
28 me know?

29 A. Yeah.

1 227 Q. CHAIRMAN: we'll make it clear to you. Do you
2 understand me? So don't be straining about trying to
3 look at it. Ms. O'Rourke, this is the statement, the
4 report that Garda Lyons, as he then was, made about the
5 conversation that he says took place between him and 12:51
6 Mr. McHugh. Do you understand?
7 A. Yes.
8 228 Q. CHAIRMAN: This is a note.
9 A. Yes.
10 229 Q. CHAIRMAN: That Garda Lyons made about what he says was 12:51
11 the conversation that you say you don't remember.
12 A. Yes.
13 230 Q. MS. O'ROURKE: And just, yes, Mr. McHugh. I understand
14 from your evidence that you indicated that over the
15 last year you've had a number of bereavements and you 12:51
16 say your memory is not --
17 A. Yeah, I had five, five accidents.
18 231 Q. And you say that your memory --
19 A. I found one of them myself, one of the persons that
20 died. 12:51
21 232 Q. CHAIRMAN: Okay.
22 A. He was putting up a Christmas tree.
23 CHAIRMAN: Is that what you are saying, you've had a
24 tough time? Okay.
25 233 Q. MS. O'ROURKE: And I think you have confirmed to 12:52
26 Mr. O'Higgins that you know Garda Lyons?
27 A. I didn't see him for a long time.
28 CHAIRMAN: We're over that one, don't worry about that
29 one, Ms. O'Rourke.

1 234 Q. MS. O'ROURKE: And I am not proposing to go over that
2 again. What I would like to do is to bring you briefly
3 through this statement. Garda Lyons says that on the
4 31st May 2014, which was a Saturday of a Bank Holiday
5 weekend, Mr. McHugh. 12:52

6 A. Yeah.

7 235 Q. He was approached by you in Bastion Street. You are a
8 chatty man, is that correct, Mr. McHugh?

9 A. Yes.

10 236 Q. And you chat with the guards? 12:52

11 A. Everybody.

12 237 Q. And you approach the guards, is that correct?

13 A. Well, some people says that I'm a squealer for the
14 guards.

15 238 Q. Do they? 12:52

16 A. They all call me a squealer for the guards. But I'm
17 not. I have no reason to tell the guards anything.

18 239 Q. So it wouldn't be unusual for you, Mr. McHugh, to
19 approach a guard, is that correct?

20 A. Well, I will tell you the reason so, I have respect for 12:53
21 the gardaí. Today is the anniversary of the Miami
22 Showband, they were shot dead by the UVF, and only for
23 the gardaí and the army and the border, there would be
24 a lot of Catholics murdered up here. That's the way it
25 is. 12:53

26 240 Q. Yes, Mr. McHugh.

27 CHAIRMAN: We will still be on track now. We are going
28 nicely, Mr. McHugh, we will just stay on track here,
29 keep our eye on the ball here. Thanks very much.

1 Okay, Ms. O'Rourke.

2 241 Q. MS. O'ROURKE: It would be ordinary enough for you to
3 approach a member of the guards, I think you agree with
4 that, Mr. McHugh.

5 A. Yes. 12:53

6 242 Q. He said that you brought up the general topic of
7 whistleblowers and you had a general conversation for a
8 few minutes with him?

9 A. Yeah.

10 243 Q. And that wouldn't be unusual for you, Mr. McHugh, isn't 12:53
11 that correct?

12 A. I cannot remember that now, you see. Honest to God, I
13 cannot remember it.

14 CHAIRMAN: Okay.

15 244 Q. MS. O'ROURKE: I think what you told the Tribunal when 12:53
16 you met with their representatives a few weeks ago in
17 Athlone?

18 A. Yes.

19 245 Q. In Mr. McLynn's offices?

20 A. Yeah. 12:53

21 246 Q. What you told them is, and it's at page 6 of your
22 statement but we don't need it, I don't think,
23 Mr. McHugh, you said you don't really remember the
24 conversation, maybe it did take place or maybe it
25 didn't, is that correct? 12:54

26 A. It could have taken place and it mightn't have taken
27 place.

28 247 Q. You just can't remember at this stage?

29 A. No.

1 248 Q. And you see, Mr. McHugh, when this conversation took
2 place, Garda Lyons reported the conversation, this is
3 the report we are looking at?
4 A. Yes.

5 249 Q. So he remembers the conversation very clearly. He has 12:54
6 given his evidence in respect of that conversation?
7 A. Yes.

8 250 Q. And he reported it to Detective Sergeant Curley?
9 A. Yes.

10 251 Q. Yes. So you accept that if Garda Lyons recalls the 12:54
11 conversation, then the conversation took place?
12 A. I do not know that, you see, I cannot remember.

13 252 Q. You can't remember?
14 A. No.

15 253 Q. But equally, Garda Lyons is very clear in his memory. 12:54
16 Do you understand that?
17 A. Well, you see, I'm not clear on my memory of that.
18 Honest to God, I'm not.

19 254 Q. Yes. You just can't recall one way or the other?
20 A. No. 12:54

21 255 Q. Yes. And he says --
22 A. I think, sorry, I think there is -- there was another
23 guard in Athlone that looked like Garda Lyons. I think
24 he was -- I can't think of his name now. But the two
25 of them kind of looked like. I think he may be retired 12:55
26 now, he might be. But I will get you to his name. I
27 think he lives over in Fardrum or somewhere.

28 256 Q. Okay. Well, we will go back to Garda Lyons meeting
29 with you on 31st May 2014?

1 A. Yes.

2 257 Q. He says that in the conversation you told him that the
3 bald guard came over to you the other day. And I think
4 in your evidence to the Tribunal, you did say that
5 could you have said the bald guard, isn't that correct? 12:55

6 A. Yeah, but...

7 258 Q. You could, it wouldn't be unusual for you to describe
8 somebody who was bald as bald, is that right?

9 A. Well, I suppose, I met Garda Keogh I suppose more times
10 than any other guard. I met him a few times in the pub 12:55
11 as well, you know, and I don't drink alcohol at all,
12 but he might be with a few more garda off duty.

13 259 Q. And Garda Keogh is a bald guard?

14 A. I didn't see him for a very long time, I don't know.

15 260 Q. When you saw him in 2014? 12:56

16 A. That's a long time ago.

17 261 Q. Yes.

18 A. I lost my mother and father and two brothers since,
19 five uncles and six aunts and everything like that,
20 so... 12:56

21 262 Q. Okay. Well, maybe we will just quickly go through this
22 element of the report. He said what you said is:
23
24 "The bald guard came over to me the other day and asked
25 if I could remember the time I was searched by three 12:56
26 guards and €800 was stolen from me and spent drinking
27 in the Castle."
28
29 which I think is a pub?

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"... the bookies and the casino. He said if I wanted to make a complaint about it, then he would back me up."

So that's what Garda Lyons -- that's what you reported to Garda Lyons on the 31st May. Garda Lyons then asked you if you were alleging that the incident actually happened, that is whether or not somebody, three guards searched you and took €800 from you. And he says your answer was:

"No, not at all. I'm not going bringing trouble on myself."

And again, I think you were asked by the Tribunal's representatives in Athlone, when they met you in Mr. McLynn's, as to whether or not they asked you whether this incident happened, that is whether any guards searched you and you replied, and this is at page 9 ever your statement.

A. Yes.

263 Q. "I cannot say it did and I cannot say it didn't, to be honest."

A. Yeah.

264 Q. So you can't say one way or the other?

A. No.

265 Q. Okay. Then Garda Lyons says that he asked you if you were referring to Garda Nick Keogh and you confirmed

1 that you were and then you said:

2

3 "He told me he was there himself when it happened and
4 he would back me up if I wanted to make a complaint."

5

12:57

6 Now, I understand from your evidence to the Tribunal
7 that you can't recall one way or the other --

8 A. No.

9 266 Q. -- if you had this conversation with Garda Lyons?

10 A. No.

12:58

11 267 Q. But I can tell you, Mr. McHugh, that Garda Lyons is
12 crystal clear in the conversation that he had with you
13 and he recorded that in the report to Detective
14 Sergeant Curley.

15 MR. KELLY: Chairman, I just wonder that that last
16 question might be classified as a submission or
17 comment, it's hardly for this witness.

12:58

18 CHAIRMAN: Absolutely. That is exactly what it is,
19 Mr. Kelly. It's suggesting that because Garda Lyons
20 remembers it well and he doesn't, it's inviting him to
21 comment, well then it must have happened. And it
22 doesn't matter even if agreed or didn't agree, because
23 it doesn't make it any better. If he says he didn't
24 remember, then his evidence is he didn't remember. So
25 that's where we go. He doesn't confirm it. So you're
26 reading my mind, Mr. Kelly, but trust me, yes, that is
27 a fact. I mean, I know the point you're making, you
28 can make a submission, Ms. O'Rourke, that A is much
29 more reliable because he took a note of it, he went

12:58

12:59

1 straight and did it and so on, and the other party to
2 the conversation says, I haven't a clue, I don't
3 remember.
4 MS. O'ROURKE: Thank you.
5 CHAIRMAN: I don't remember anything, but then, 12:59
6 anything could have happened or couldn't have happened,
7 so that doesn't get us anywhere.
8 MS. O'ROURKE: Thank you, Chairperson.
9 CHAIRMAN: Even if the witness said, you know, on
10 balance, Ms. O'Rourke, I think you're right about that, 12:59
11 if Sergeant Lyons is sure about it and I'm not, it
12 seems to follow that it must have happened. Even if he
13 said that, Mr. Kelly can say it's not his business,
14 he's not an expert witness giving an opinion.
15 MS. O'ROURKE: Thank you. 12:59
16 CHAIRMAN: Ms. O'Rourke, I am sorry, forgive me,
17 forgive for this irritable display of the knowledge of
18 the law of evidence, I'm sorry. Have you any more
19 questions.
20 MS. O'ROURKE: I have no further questions. 13:00
21
22 END OF EXAMINATION
23
24 CHAIRMAN: Thank you very much. Now, does anybody else
25 want to ask any questions? 13:00
26 MR. O'CONNOR: Yes.
27 CHAIRMAN: Certainly, thanks very much.
28
29

1 MR. LIAM McHUGH WAS CROSS-EXAMINED BY MR. POWER, AS
2 FOLLOWS:

3
4 MR. POWER: Good morning, Mr. McHugh.

5 A. Morning. 13:00

6 268 Q. You see me down here. I represent Garda Tom Higgins?

7 A. Yes.

8 269 Q. Do you recall on I think it was the 3rd February you
9 went into your solicitor's office and you were asked
10 questions by the investigators for the Tribunal, you 13:00
11 remember that, do you?

12 A. That was about a month ago, yes.

13 270 Q. Yes. And you were happy with the statement you made,
14 is that right?

15 A. I suppose, yes. 13:00

16 271 Q. You were happy that you said everything accurately in
17 that statement?

18 A. Yes.

19 272 Q. If we can have page 16268. I think the investigators
20 told you what Garda Thomas Higgins had said at the 13:00
21 Tribunal and read it out to you. I am conscious that
22 you don't have your glasses. I think it's actually on
23 the next page.

24 A. Yeah.

25 273 Q. You were read out what he had said. 13:01

26
27 "Question: In relation to your interaction with Liam
28 McHugh at that time, can you tell us exactly what you
29 said to him."

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This is what Garda Tom Higgins says now:

"I advised him that there was an incident that he may need to be spoken to about, that there was other members that may need to talk to him. I didn't have any conversation regarding it. I did not want to be involved in this incident because I was aware that this had to do with colleagues of mine in Athlone and I didn't feel it appropriate and I didn't feel comfortable in discussing the matter with Liam McHugh
Question: Did Liam McHugh appear to understand that there was some incident."

13:01

13:01

Again this is Garda Tom Higgins saying this:

13:01

"Answer: He didn't, he didn't mention the incident. All I said to me -- he gave me his phone number, he had no problem giving me his phone number."

13:01

And you were asked by the investigators to comment whether this was true or not, what Garda Tom Higgins had said and you said to the investigators:

"I am happy enough to say that is accurate, yes."

13:02

Do you still stand by that?

A. Yes.

274 Q. Yes. I think on the next page of your statement you're

1 told what Garda Curley's version of events is. And you
2 know that Garda Curley is saying that Garda Higgins
3 asked you did you want to take a statement and you were
4 asked about that and whether you thought that was
5 accurate and you said: 13:02
6
7 "No, I don't recollect having a conversation about
8 making a statement."
9
10 Does that remain the case, you're still saying that? 13:02
11 A. Yes.
12 275 Q. So you were asked for your phone number, you gave your
13 phone number and you don't remember being asked by
14 Garda Tom Higgins whether you would give a statement or
15 not? 13:02
16 A. No, I don't remember.
17 276 Q. Being asked for a statement?
18 A. No.
19 277 Q. CHAIRMAN: what was going to happen after with the
20 phone number. 13:03
21 A. Sorry?
22 278 Q. CHAIRMAN: what was going to happen? Somebody was
23 going to ring you?
24 A. Yeah.
25 279 Q. CHAIRMAN: Did somebody ring you? 13:03
26 A. Sure there's always people ringing.
27 280 Q. CHAIRMAN: Always people ringing you, I suppose fair
28 enough.
29 A. Yeah, okay.

1 MR. POWER: Thank you very much.

2

3

END OF EXAMINATION

4

5

CHAIRMAN: Thanks very much. Anybody else any
questions? Mr. Mulcahy, have you anything to wrap up
with. Very good. Mr. McGuinness?

13:03

6

7

8

MR. MCGUINNESS: Nothing further, Chairman.

9

10

CHAIRMAN: Thank you very much for your help,
Mr. McHugh, you're free to go now and you don't have to
come back to us at all. Thank you very much indeed.

13:03

11

12

13

THE WITNESS THEN WITHDREW

14

15

CHAIRMAN: Very good. So, two o'clock. Thanks very
much. Just as to tomorrow, I have a problem that I
will have to leave somewhat earlier, maybe 3:30, so
maybe, Mr. McGuinness, you would consider maybe
starting a bit earlier or shortening lunchtime or
something like that. But I just have to leave a bit
earlier, maybe 3:30, okay.

13:03

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18

19

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21

22

MR. MCGUINNESS: Yes, Chairman.

23

CHAIRMAN: Thanks very much.

24

25

THE HEARING THEN ADJOURNED FOR LUNCH AND RESUMED AS

13:04

26

FOLLOWS:

27

28

MR. MCGUINNESS: Chairman, the first witness this
afternoon is Chief Superintendent Scanlan.

29

1 CHAIRMAN: Thanks very much. Good afternoon, chief
2 superintendent. Thank you very much.

3

4 CHIEF SUPERINTENDENT JOHN SCANLON, HAVING BEEN SWORN,
5 WAS DIRECTLY-EXAMINED BY MR. MCGUINNESS, AS FOLLOWS:

14:03

6

7 THE WITNESS: Chief Superintendent John Scanlon.

8 CHAIRMAN: Thanks very much.

9 281 Q. MR. MCGUINNESS: Chief superintendent, we're concerned
10 with the events primarily of late 2016 and into early
11 2017, when you were tasked by Assistant Commissioner
12 Fanning with a particular task, isn't that correct?

14:04

13 A. That's correct.

14 282 Q. Where were you stationed at that time?

15 A. I was the chief superintendent in charge of the
16 Laois-Offaly Garda division in the Eastern Region,
17 which was under the remit of Assistant Commissioner
18 Fanning.

14:04

19 283 Q. You had no involvement, I take it, in Assistant
20 Commissioner Ó Cualáin's investigation and did you know
21 that had been ongoing for some time?

14:04

22 A. I was aware of an investigation, Judge, yes. I had no
23 involvement in the investigation directly, no.

24 284 Q. Yes. And had you any dealings with Garda Keogh over
25 the course of your career at any time?

14:04

26 A. Yes, Judge. I was the chief superintendent in Granard
27 and during that period Garda Keogh was a guard in that
28 district, Judge, yes.

29 285 Q. Was that when he was serving in Ballymagarvey

1 sub-district?

2 A. That's correct, Judge. I was his superintendent at
3 that time.

4 286 Q. Yes. I think you received correspondence from the
5 assistant commissioner of the Eastern Region? 14:05

6 A. Yes, Chairman.

7 287 Q. On 23rd December 2016?

8 A. Yes, Chairman.

9 288 Q. If we perhaps just look at page 3855. I should have
10 said, Chairman, that the chief superintendent's 14:05
11 statement is to be found in our papers at page 3852?
12 CHAIRMAN: Thanks very much.

13 A. Yes, Chairman.

14 289 Q. MR. McGUI NNESS: But the letter speaks for itself.

15 A. Yes, Chairman. 14:05

16 290 Q. You presumably were aware of the bullying policy
17 referred to in the second paragraph?

18 A. Yes, I'm aware of that policy, yes.

19 291 Q. And you were instructed as set out in the letter?

20 A. Yes, Judge. I was instructed to take a statement from 14:05
21 Garda Keogh. As is set out in that report at point A,
22 Garda Keogh's complaint came within the policy for
23 resolution and the current grade to be appointed for as
24 investigator. Essentially, I was essentially tasked
25 with just taking a statement and I was to have no 14:06
26 involvement in the subsequent investigation. It was to
27 enable Assistant Commissioner Fanning to do two things.
28 One, decide if the policy was engaged; and two, at what
29 grade or rank it would be appropriate to investigate

1 it.

2 CHAIRMAN: Depending on who was involved.

3 A. Depending on who was complained of.

4 292 Q. CHAIRMAN: Involved who was complained about?

5 A. Yes, Chairman. 14:06

6 CHAIRMAN: Okay.

7 293 Q. MR. McGUINESS: It, I think, became clear to you

8 fairly shortly afterwards that Garda Keogh had an issue

9 concerning perceived possible conflict of interest?

10 A. Yes. 14:06

11 294 Q. Regarding yourself, is that right?

12 A. Yeah. So on the first instance, Judge, I got this

13 appointed on the 23rd December, I didn't feel it

14 prudent to go to somebody on Christmas Eve.

15 295 Q. CHAIRMAN: Yes. 14:06

16 A. So in early January I made contacted with -- I

17 discovered he had a liaison person for contact purposes

18 and I contacted Garda Keogh in respect of this on the

19 19th January with a view to arranging a meeting with

20 him. And I set out to Garda Keogh my reason for 14:07

21 contacting him. And he expressed a view and the

22 opinion that he believed that in the first instance

23 that he thought another chief superintendent was

24 investigating it, Chief Superintendent Roche, and he

25 also suggested to me that I was possibly a conflicted 14:07

26 officer in the case as I had served as his

27 superintendent. Having regard to the fact, Judge, that

28 I didn't know what his complaint was going to be, where

29 it was to begin and where it was to end and having

1 regard to the fact that I was previously his chief
2 superintendent, I deemed it prudent to send it back
3 saying, say Garda Keogh is not happy with me being the
4 person appointed to take this statement, and I returned
5 it with a report. 14:07

6 296 Q. Yes. We have seen documentation which suggests that
7 Mr. Barrett had on the 21st December nominated Chief
8 Superintendent Roche to take the statement.

9 A. No.

10 297 Q. Had you been aware of that? 14:07

11 A. I think what had happened was, that Mr. Barrett had
12 suggested to Assistant Commissioner Fanning to appoint
13 Chief Superintendent Roche as the investigator.

14 298 Q. Yes.

15 A. Assistant Commissioner Fanning, having received that 14:08
16 report, I am suggesting -- said that that may not be
17 appropriate, that he needed first and foremost before
18 he did an appointment to see whether the policy in the
19 first instance was engaged and in the second instance
20 what rank was appropriate. But it is my understanding 14:08
21 that somebody must have communicated with Garda Keogh
22 to suggest that Chief Superintendent Roche had been
23 appointed to investigate this through Mr. Barrett's
24 office. I have no -- I am only surmising this, Judge.

25 299 Q. CHAIRMAN: I understand. But you didn't know about it 14:08
26 at the time?

27 A. I didn't know until I contacted Garda Keogh. He tells
28 me --

29 300 Q. CHAIRMAN: You later put the pieces together, you have

1 later put two and two together?

2 A. Yeah. And this is reasonable in all the circumstances.

3 CHAIRMAN: I understand.

4 301 Q. MR. MCGUINNESS: An issue that was also touched upon in
5 your phone conversation was Garda Keogh informing you 14:08
6 that he had supplied documentation in relation to his
7 complaint to Chief Superintendent McLoughlin in HRM?

8 A. Yeah.

9 302 Q. And that you would need the same before proceeding?

10 A. Yes, correct. And so, what jumps at me from that 14:09
11 conversation was, in the first instance he thought
12 Chief Superintendent Roche was to investigate it; in
13 the second instance, that I should have had
14 documentation that he had supplied to HRM; and in the
15 third instance, that he warned me, Judge, that this was 14:09
16 going to get dirty, that I had treated him well in the
17 past and that I shouldn't be involved in this. I think
18 he may have given that evidence earlier to this
19 Tribunal. Those are the three points that jumped out
20 at me, yes. 14:09

21 303 Q. Obviously it seems to have been a priority from the
22 Commissioner's office that a statement would be taken
23 as soon as possible. Were you aware of that?

24 A. Yes, Judge. I endeavoured, as I say, as quickly and as
25 reasonably possible to do that, yes. 14:09

26 304 Q. Yes. You reported back to the assistant commissioner.

27 A. I reported back to Assistant Commissioner Fanning on
28 the matter, yes.

29 305 Q. Perhaps we will just look at that letter. If we go to

1 3864.

2 A. Yes, I have that.

3 306 Q. That states what you've already described in your
4 evidence?

5 A. Yes. 14:10

6 307 Q. In relation to the material supplied to Chief
7 Superintendent McLoughlin, did you go in search of that
8 at that stage?

9 A. Yes, I did, I made a telephone conversation. In
10 addition to supplying this report, I communicated with 14:10
11 Chief Superintendent McLoughlin and he undertook to
12 supply me, I can't exactly remember the exact
13 choreography but I got my hands on that material, which
14 was essentially the exhibits attaching to the
15 statements that were subsequently taken, that material. 14:10

16 308 Q. Yes. Chief Superintendent McLoughlin has given
17 evidence of having received an index of harassment in
18 June of 2016, but also subsequent, a large volume of
19 documentation that arrived by post?

20 A. Yeah, that's the documentation that I have, which 14:11
21 ultimately becomes the exhibits attaching to the
22 statement.

23 309 Q. Well, did you provide those then back to Garda Keogh,
24 is that correct?

25 A. No, well, I didn't. But Garda Keogh had a copy of them 14:11
26 when he attended to make his statement on the 2nd
27 March. I had my set, he his set, of the same
28 documentation.

29 310 Q. Yes.

1 A. So we commenced taking a statement from him on the 2nd
2 March. There is some issues occur in the meantime. I
3 have difficulty getting engagement from Garda Keogh to
4 come because he has an issue where he's preparing to
5 make a statement for the Tribunal and he uses -- that 14:11
6 is the reason why we don't get to meet until the 2nd
7 March. I have made a number of appointments with him.
8 On the 13th February I received a report then back from
9 the assistant commissioner via John Barrett, from John
10 Barrett, the executive director of Human Resources, 14:12
11 that I was to go to Garda Keogh and tell him that he
12 was simply to provide me with the statement, that they
13 didn't accept that I was conflicted on the matter.

14 311 Q. Yes.

15 A. On that, I arranged a meeting with Garda Keogh to 14:12
16 attend at Portlaoise Garda station with his solicitor
17 John Gerard Cullen, and that interview started,
18 commenced on the 2nd March at 10:00am in the morning.

19 312 Q. That gave rise to a five page typed script statement?

20 A. Well, no, it's a handwritten statement, Judge. It was 14:12
21 handwritten, I had a scribe with me and I had
22 subsequently committed to type.

23 313 Q. Right.

24 A. It commenced at 10:00am and at 3:00pm Garda Keogh
25 wasn't in a position to continue making the statement 14:12
26 and left the station on an understanding that he would
27 make himself available to complete his statement on the
28 7th March, or sorry -- yeah, on the 7th March, as he
29 was endeavouring to complete his submission to the

1 Tribunal. He was again contacted on the 13th March and
2 requested further time. On the 14th March he was again
3 contacted and offered Thursday, the 16th March by
4 myself. These are all on reports that you have copies
5 of. He was contacted on the 15th March and he declared 14:13
6 he was unavailable for that week as he had not finished
7 his submission to the Tribunal. It was agreed that he
8 was contacted again on Monday, the 20th March, with a
9 view to setting a date to completing his statement. I
10 reported on this on the 16th March and on the 20th 14:13
11 March he looked for further time. Sorry, I am using my
12 own statement here.

13 CHAIRMAN: Yes.

14 MR. MCGUINNESS: Yes.

15 A. He submitted his submission to the Tribunal. We agreed 14:13
16 he would be contacted on the 21st March to assess his
17 availability. It was agreed that I would meet with
18 Garda Nicholas Keogh on the 22nd March at 11:00am.
19 Garda Keogh cancelled this meeting on the 21st March,
20 as he a problem with his solicitor. He undertook to 14:13
21 attend Portlaoise station on the 27th March with a
22 prepared statement. I reported on this on the 22nd
23 March and on the 27th March Garda Keogh presented a
24 prepared statement to me and Detective Inspector Declan
25 had acted as the scribe in the original taking of the 14:14
26 original statement. And then when he presented this
27 statement, it was read over to him. He signed it and
28 he also presented a volume of appendices, which is in
29 line with the documentation presented by Chief

1 Superintendent McLoughlin, except that I noted that the
2 second page of the statement of [BLANK] was not
3 included in the documentation given to Garda Keogh, as
4 listed at Exhibit 7.

5
6 So I read the statement, went through it page-for-page,
7 line-for-line, and as the exhibits were, I turned them
8 over. But I was missing the second page of [BLANK]
9 statement.

10
11 Garda Keogh agreed that this could be added to the list
12 of exhibits. Garda Keogh was invited to sign the
13 incomplete statement of the 2nd March and he declined
14 to do so. I advised him that I was going to submit
15 that incomplete statement of the 2nd March as a record
16 of the meeting with the attached appendices. It was
17 read over to him. I signed it and it was witnessed by
18 Detective Inspector Dunne. Detective Inspector Dunne
19 was present at the taking of the statement on the 2nd
20 March and was the scribe who took it down.

21
22 On the 31st March I forwarded a copy of this statement
23 to assistant commissioner Eastern Region and I compiled
24 a report and compiled all documentation which I
25 forwarded on the 12th April 2017. The reason for the
26 delay there between that, it had to be typed and I
27 wanted to proofread the documentation against what I
28 was submitting.

1 During the course of my meeting with Garda Nicholas
2 Keogh, I advised him of the nature and purpose of my
3 interviews with him and that I would not be
4 investigating the matter. On the 2nd February '18 then
5 I made a subsequent statement to Assistant Commissioner 14:15
6 Finn about the taking of this statement.

7 314 Q. I just want to be clear what you submitted to Assistant
8 Commissioner Finn, or Assistant Commissioner Fanning.
9 Firstly, could you be shown page 6824, which is in
10 volume 23? 14:16

11 A. I have a document in front of me.

12 315 Q. I don't know, can you go to the top of the page there?

13 A. Yes.

14 316 Q. This is the typed written --

15 A. That's the statement of the 2nd March. 14:16

16 317 Q. CHAIRMAN: The incomplete statement.

17 A. Incomplete statement of the 2nd March.

18 318 Q. CHAIRMAN: Between ten and three.

19 A. Yes. And then the other statement of -- the statement
20 he makes on the -- I'm not sure whether I sent that one 14:16
21 or the other one, Judge, together, but they were all
22 compiled together and by 12th April everything was --

23 319 Q. MR. McGUI NNESS: This is what I want to tease out.

24 A. Yes.

25 320 Q. If you just bear with me. That statement goes from 14:16
26 page 6824, 6825, 6826, 6827 and finishes on page 6828.
27 If you care to look at the paper copy, it may be easier
28 for you to just see it there. We're looking then at
29 the screen, at the end of the typed version at page

1 6828. But are you satisfied that that is a copy of the
2 handwritten statement that yourself and Inspector Dunne
3 took on the 2nd March?
4 A. Yes. No, no, sorry, yeah, this is the statement of the
5 2nd March that he presents as -- 14:17
6 321 Q. CHAIRMAN: Taken down in writing by Inspector Dunne and
7 typed up, is that right?
8 A. Yes.
9 322 Q. MR. McGUI NNESS: If we go to page 6829 then, there's a
10 list of appendices? 14:17
11 A. Yes.
12 323 Q. That was part of the 2nd March statement?
13 A. Yes.
14 324 Q. Is that correct?
15 A. Yes. So that appendices finishes -- 14:17
16 325 Q. If we turn over to 6830?
17 A. Yes.
18 326 Q. If we go to the top there, that doesn't appear to be
19 part of it?
20 A. No. 14:18
21 CHAIRMAN: I can't see 6830, what is it?
22 A. I don't know what that is.
23 MR. McGUI NNESS: It's a blank page with a couple of
24 entries.
25 CHAIRMAN: "Go safe van". Okay. 14:18
26 327 Q. MR. McGUI NNESS: You wrote to the assistant
27 commissioner on the 2nd March?
28 A. Yes.
29 328 Q. Referring to making the statement?

1 A. Yes.

2 329 Q. If you look at page 3865?

3 A. Yes.

4 330 Q. One of the appendices to your own statement, it makes
5 no reference to forwarding that. So is it -- 14:18

6 A. I forwarded that on the 2nd March, that portion of it.

7 331 Q. Well that's what I am asking you, did you send that
8 forward on the 2nd March?

9 A. Yes.

10 332 Q. With that letter? 14:18

11 A. Yes. That's my understanding, yes. But in any event,
12 I'm not quite sure of whether the appendices were sent
13 because there was a difficulty of getting it on to --
14 scanning it on as a document. But I can assure you
15 that by the 12th April everything was sent. 14:19

16 333 Q. CHAIRMAN: Sorry, there is a tiny bit of confusion.
17 There is a tiny bit of confusion?

18 A. Yeah.

19 334 Q. CHAIRMAN: Mr. McGuinness is querying the different
20 stages? 14:19

21 A. Yes.

22 335 Q. CHAIRMAN: We know that on the 27th March a full
23 statement was presented to you?

24 A. Yes.

25 336 Q. CHAIRMAN: Signed and so on? 14:19

26 A. Yes.

27 337 Q. CHAIRMAN: Plus exhibits?

28 A. Yes.

29 338 Q. CHAIRMAN: That you checked through?

1 A. Yes.

2 339 Q. CHAIRMAN: And you say everything, whatever about
3 dates, everything was submitted by the 12th April?
4 A. Yes. On the 12th April, yeah. Under cover of the 12th
5 April. 14:19

6 340 Q. CHAIRMAN: I understand. Now can we work backwards a
7 tiny bit?
8 A. Yes.

9 341 Q. CHAIRMAN: Because Mr. McGuinness is trying to say, as
10 far as you know, do you know what I mean? 14:19
11 A. Yes.

12 342 Q. CHAIRMAN: As far as you know.
13 A. Yes.

14 343 Q. CHAIRMAN: If you stop fiddling with those, you will be
15 able to understand me a bit better? 14:20
16 A. My apologies.

17 344 Q. CHAIRMAN: No, no, no, I can understand, you're trying
18 to be helpful. What he is doing is to try to say -- --
19 please don't think I'm being critical, I'm not. On the
20 2nd March you had a certain amount of statement in 14:20
21 handwritten form?
22 A. Yes.

23 345 Q. CHAIRMAN: It had to be typed?
24 A. Yes.

25 346 Q. CHAIRMAN: So did you send it, do you think you sent 14:20
26 that statement, and if you didn't or you don't know,
27 that's no problem, with your letter of the 2nd March?
28 A. I just need to check -- if I might check the
29 documentation.

1 347 Q. CHAIRMAN: Do you understand? Flick through anything.
2 No problem, chief superintendent. It's just on my
3 understanding that's where Mr. McGuinness is at the
4 moment?

5 348 Q. MR. MCGUINNESS: Yes. It would seem likely that you 14:20
6 were expecting he would sign that statement of the 2nd.
7 CHAIRMAN: Just give him a second, Mr. McGuinness.
8 A. Yeah. No, he declined to sign it.

9 349 Q. MR. MCGUINNESS: But he declined to sign it on the
10 27th? 14:21
11 A. Yes.

12 350 Q. So as of the 2nd you had a statement that was in the
13 course of being taken?
14 A. Yes.

15 351 Q. which hadn't been -- 14:21
16 A. And I sent that on the 2nd, yes. Now I'm clear on it.

17 352 Q. CHAIRMAN: Okay.
18 A. And then on the 22nd I got the typed -- I got the
19 prepared statement and I told him at that meeting that
20 in addition to his statement I was also going to 14:21
21 forward the previous statement that we had not finished
22 taking and by the 12th April I sent the whole lot,
23 including exhibits.
24 CHAIRMAN: Okay.

25 353 Q. MR. MCGUINNESS: well, you reported to Assistant 14:21
26 Commissioner Fanning on the 16th March?
27 A. Yes.

28 354 Q. If we look at that letter please, 3866. You're simply
29 reporting the issues in relation to him not being

1 available on those dates?

2 A. Yes.

3 355 Q. Isn't that correct?

4 A. I didn't send anything on that date.

5 356 Q. So you sent nothing on that date, is that correct? 14:22

6 A. Yeah, that's right. Because I actually say:

7

8 "Statement when completed will be forwarded

9 immediately."

10 357 Q. You updated the assistant commissioner again on the 14:22

11 20th?

12 A. Yes.

13 358 Q. If we look at page 6816?

14 A. Because, as you can see, on the previous report I say

15 it was agreed I would contact him again on the 20th 14:22

16 March and, sorry, the next report then is --

17 359 Q. I'm asking you to look at this one dated the 20th?

18 A. Yes.

19 360 Q. So you're reporting that as of that date?

20 A. Yeah. 14:22

21 361 Q. When he was meant to --

22 A. Yes.

23 362 Q. He was contacted again?

24 A. Yeah. And this was about completing the original

25 statement. 14:22

26 363 Q. Yes.

27 A. There was no suggestion of a prepared statement being

28 submitted at this stage.

29 364 Q. Yes. You sent a report in on the 31st March?

1 A. Yes.

2 365 Q. If we look at that, that is at page 3868. To be clear,
3 what report did you send in on that date? What
4 statement did you send in?

5 A. I sent the original, I would imagine, of -- I'm just 14:23
6 trying to see. I need to go to my statement. It's my
7 understanding I would have sent the prepared statement
8 on that date.

9 366 Q. Okay. Well, can I ask you to look at page 303 to 319?
10 It's in volume 2 of our book. Perhaps if you are 14:24
11 handed the paper book, volume 2.

12 A. Yes.

13 367 Q. Is that the statement?

14 A. That's the statement I believe I followed it on that
15 day. But in any event -- 14:24

16 368 Q. Just bear with me.

17 A. Yeah.

18 369 Q. Perhaps you will identify this. This is a statement in
19 our book which runs from page 303 onwards?

20 A. Yes. 14:24

21 370 Q. To 319. It's signed at the bottom of 319?

22 A. Yeah, the 27th March.

23 371 Q. The 27th March?

24 A. Yes.

25 372 Q. And that's your signature, is that right? 14:24

26 A. That's my signature, that's Nicholas Keogh's signature
27 that and that's Detective Inspector Dunne's signature,
28 yeah.

29 373 Q. Then if we go to 320 and 321, there's two pages of

1 appendices?

2 A. Correct.

3 374 Q. Did you send in those two pages as well or did you send
4 in those two and all the appendices?

5 A. I'm not certain whether it was on that date or whether 14:25
6 it was on the 12th of April I sent all the rest of the
7 documentation, but by the 12th April I had everything
8 sent in. I'm not certain on what date I sent
9 everything, Judge. I was just a bit concerned when
10 there had been an error in the exhibits, that I wanted 14:25
11 to go back through it again to make sure that I had all
12 the exhibits in line with what was being said in the
13 prepared statement. I had gone through a reading over
14 of the statement to him. I was a bit concerned when I
15 was missing a page of the exhibit, so I went back to 14:26
16 double check to make sure I had everything. And that's
17 the reason why I put a kind of a health warning on my
18 first report saying that I would forward everything and
19 on the 12th April I forwarded everything.

20 375 Q. CHAIRMAN: Had you got the missing page at that stage? 14:26
21 A. Yes, Judge, that was agreed at the meeting with Garda
22 Keogh.

23 376 Q. CHAIRMAN: I follow, yes. He said, look, everyone
24 agreed or he agreed that there was a missing page and
25 he said he was going to supply it to you. 14:26
26 A. No, no, no, there and then, we had it there and then.
27 I said this looks like the second page of [BLANK]
28 statement, it's in line with that statement, it's a
29 number of crossed outlines which identified a suspect,

1 it seemed to identify a suspect and it was not included
2 with his prepared document. So I said, I have this, do
3 you agree that this is part of that statement? He
4 agreed it was, and I said, is it okay to supply this as
5 that. 14:26

6 377 Q. CHAIRMAN: You were now satisfied?
7 A. Yes.

8 378 Q. CHAIRMAN: That you had the original 2nd March script
9 and typed version?
10 A. Yes. 14:27

11 379 Q. CHAIRMAN: Number one. You told us about the
12 conversation --
13 A. No, I don't think it was typed at that stage, that's
14 why there was a delay then of sending it on.

15 380 Q. CHAIRMAN: Very good. So you had the original version 14:27
16 written by Inspector Dunne?
17 A. Yes.

18 381 Q. CHAIRMAN: Of the 2nd March.
19 A. Yes.

20 382 Q. CHAIRMAN: Ten o'clock to three o'clock. 14:27
21 A. Yes.

22 383 Q. CHAIRMAN: Okay. Then you had the 27th March '17
23 document?
24 A. Yes.

25 384 Q. CHAIRMAN: Consisting essentially of two parts; the 14:27
26 statement that was signed at the end, plus a bundle of
27 exhibits?
28 A. Yes.

29 385 Q. CHAIRMAN: Okay. So now we have the three parts of

1 that?

2 A. Yes.

3 386 Q. CHAIRMAN: And you submitted all the three parts?

4 A. And I consolidated all that by the 12th April and I

5 forward it, Judge. 14:27

6 CHAIRMAN: Okay. Thank you.

7 387 Q. MR. McGUINESS: I just want to draw you're attention

8 to a letter from Assistant Commissioner Fanning to

9 Mr. Barrett, the executive director, dated 5th April

10 2017. That's at page 6823? 14:28

11 A. I can't see.

12 388 Q. If we just go down there. This is to Mr. Barrett.

13 This is obviously after your letter of the 31st March?

14 A. Yes.

15 389 Q. And he says: 14:28

16

17 "I refer to your minute of 22nd March 2017 and wish to

18 report the following by way of interim report.

19

20 Chief Superintendent Scanlan Portlaoise has sent me (1) 14:28

21 part of a two part report from Garda Keogh.

22

23 I am examining it and from an early perusal of the file

24 it appears to be much wider than a bullying and

25 harassment matter." 14:28

26 A. Yeah.

27 390 Q. What follows that, in the next six or so pages, is the

28 undated statement of the 2nd March?

29 A. Yes.

1 391 Q. So is it possible that you sent first the undated
2 statement of the 2nd March to Assistant Commissioner
3 Fanning on the 31st March?
4 A. Yes, that's possible, yes. But what I am certain of is
5 that between that and the 12th April I sent everything. 14:29
6 CHAIRMAN: Yes.
7 392 Q. MR. McGUI NNESS: Certainly your letter of the 12th
8 April then, 3869?
9 A. Yes.
10 393 Q. The first paragraph refers to the 2nd March meeting. 14:29
11 The second paragraph describes him not being in a
12 position to conclude the statement?
13 A. Yes.
14 394 Q. Presenting the prepared statement?
15 A. Yes. 14:29
16 395 Q. The volume was in line with appendices received?
17 A. Yes.
18 396 Q. Etcetera. Are you clear that you submitted everything
19 with that letter?
20 A. Yes, Judge, I am very clear on that. 14:30
21 397 Q. We have seen, in correspondence from Assistant
22 Commissioner Fanning, correspondence he had with the
23 Commissioner's office at a later date, that he said
24 only the five-page statement dated the 2nd March was
25 contained with that. Perhaps you would just look at 14:30
26 the paragraph where he says that. Page 6789. If we
27 just go down the page to the middle section, 1.2.
28 Assistant Commissioner Fanning is recording here the
29 sequence in the following terms:

1
2 "On 31st March 2017, I received correspondence from
3 divisional office at Portlaoise containing a copy of
4 the 17-page statement dated 27th March 2017, signed by
5 Garda Nicholas Keogh. Chief Superintendent Scanlan and 14:31
6 Detective Inspector Dunne Portlaoise. Chief
7 Superintendent Scanlan informed me that a more detailed
8 report will follow into the content of this statement."
9
10 Now, just stopping at that point, that is what you said 14:31
11 in the 31st March, that a more detailed report will
12 follow into the content.
13 A. Yeah. And that was the 12th April report. That was my
14 last involvement with it. So everything had gone from
15 me at that stage. I am satisfied about that. 14:31
16 398 Q. Yes.
17 A. Including the exhibits.
18 399 Q. Yes. But at no stage, as I understand it, were you
19 enquiring into the content of the statement, isn't that
20 right? 14:31
21 A. I made no enquiry or investigation. No, I was just
22 merely forwarding all the material that I had.
23 400 Q. Yes.
24 A. And I'm satisfied that by the 12th April I had no
25 further correspondence on the matter. 14:32
26 401 Q. Yes. The question I was asking you a couple of minutes
27 ago related to the last paragraph there:
28
29 "I received further correspondence from Chief

1 Superintendent Scanlan dated 12th April 2017, tab C10,
2 which contained a five-page statement dated 2nd March
3 2017, unsigned. "

4 A. Yeah and it's either the chicken or the egg, Judge; I'm
5 not certain which I sent on the first lot of 14:32
6 correspondence after my last meeting with Garda Keogh.
7 But I am certain that by the 12th April I had all
8 documentation gone off my desk gone to Assistant
9 Commissioner Fanning.

10 402 Q. CHAIRMAN: And just, if you don't mind me tediously 14:32
11 repeating, that consisted of, number one, the statement
12 of the 2nd March.

13 A. Yes.

14 403 Q. CHAIRMAN: Number two, the statement, 17 pages, if that
15 is what it was? 14:32

16 A. Yes.

17 404 Q. CHAIRMAN: That was given to you by Garda Keogh and
18 Mr. Cullen. And number three, all the exhibits?

19 A. Yes.

20 405 Q. CHAIRMAN: with the missing page now reconciled? 14:33
21 A. Yes.

22 406 Q. CHAIRMAN: All of those three items went?

23 A. Yes.

24 407 Q. CHAIRMAN: Okay, thank you. And that was the end of
25 your involvement? 14:33

26 A. That was my involvement with Garda Keogh in this
27 matter, yes.

28 CHAIRMAN: Thank you.

29 408 Q. MR. McGUINESS: Just to be clear, would they have been

1 hand-delivered or sent by post or e-mail?

2 A. I can't recall exactly how it's sent, Judge. I think
3 they probably may have been couriered because of the
4 volume.

5 409 Q. Did you have any further involvement in what happened 14:33
6 with the complaint at any stage other than making a
7 statement to the assistant commissioner about it in
8 2019?

9 A. Well, I had to respond to this statement of Garda
10 Keogh, Judge, in which he makes some reference, an 14:33
11 extraneous reference to Commissioner O'Sullivan at the
12 time in a further addendum to the statement that I
13 took. It was to do with me commenting on a local paper
14 about my confidence in Commissioner O'Sullivan, which
15 was appropriate at the time, and I hold those views to 14:34
16 this day.

17 410 Q. I think you subsequently became aware of a phone call
18 that was made in other circumstances that doesn't
19 relate to the issues in the Tribunal?

20 A. Judge, insofar as it doesn't relate, Judge, Garda Keogh 14:34
21 made contact with Portlaoise Garda station, I believe
22 he was drunk on the night. He suggested he was having
23 difficulty making contact with his welfare officer and
24 he suggested he was going to come to Portlaoise Garda
25 station and break my jaw. For what reason, I do not 14:34
26 know, Judge. I had dealt with Garda Keogh in this
27 matter professionally and fairly. I could understand
28 no reason why he had this view of me and I simply
29 reported on that matter, Judge. He also threatened

1 another garda who was on duty on the night, Judge, over
2 the phone.

3 411 Q. I think the other statement that you mentioned a minute
4 ago, Garda Keogh's addendum to his original statement
5 on the 27th March, is that the statement to be found at 14:35
6 page 322, if we look at volume 2 again?

7 A. Yes, Judge. It's in the last part of it, Judge.

8 CHAIRMAN: Yes.

9 412 Q. MR. McGUI NNESS: And you were refuting the suggestions
10 made there in relation to you in that paragraph? 14:35

11 A. If I could see that paragraph again.

12 413 Q. Well, there's a reference here --

13 A. Yeah, what I say, Judge, is that --

14 CHAIRMAN: I can't see it.

15 A. -- he refers to an article where I say I described 14:35
16 Nóirín O'Sullivan as probably one of the finest police
17 person I have ever had the privilege to work with. I
18 held that view then. I hold it now, Judge. I don't
19 know why that would have any basis or cause of upset to
20 any member, Judge. She was the Commissioner at the 14:35
21 time. She was my Commissioner at the time, Judge, and
22 it had no context to do with this man. This was to do
23 with -- I had been asked by a local journalist to
24 comment on her at the time.

25 414 Q. MR. McGUI NNESS: There's a reference to you by name: 14:36
26
27 "I wish to note that CS John Scanlan sent a copy of my
28 statement to any person other than through the correct
29 channels? How did the complaint get lost? When was

1 the complaint redi scovered?"

2 A. I never lost the complaint, Judge.

3 415 Q. Certainly when it left your hands, you had delivered
4 everything to Assistant Commissioner Fanning?

5 A. Yes, Judge. 14:36

6 416 Q. And nobody else, is that right?

7 A. Nobody else. well to his office, Judge.

8 CHAIRMAN: Yes.

9 MR. McGUI NNESS: Thank you.

10 14:36

11 END OF EXAMINATION

12

13 CHAIRMAN: Now, you're finished, Mr. McGuinness?

14 MR. McGUI NNESS: Yes.

15 CHAIRMAN: Now. Thanks very much. 14:36

16

17 CHIEF SUPERINTENDENT JOHN SCANLON WAS CROSS-EXAMINED BY
18 MR. O' BRIEN, AS FOLLOWS:

19

20 417 Q. MR. O' BRIEN: Good afternoon, chief superintendent. I 14:36
21 wonder could you just clarify for me please, what is an
22 FSI conference.

23 A. It was a Friendly Science Ireland conference.

24 418 Q. I wonder could we have volume 57, page 16249, please?

25 A. Yes. 14:37

26 419 Q. You've dealt with some of the queries I was going to
27 deal with, with Mr. McGuinness, just in relation to the
28 complaint. But can I ask you about this note, please,
29 chief superintendent? This is a note that was made by

1 Superintendent Murray?

2 A. Yes.

3 420 Q. It is his note, I accept that, but I just want to see
4 if you can recollect anything in relation to the
5 content of the note? 14:37

6 A. If you wish I can deal with it.

7 421 Q. Well, sorry, if I can ask you a question first of all?

8 A. Yes.

9 422 Q. This is a note, it's dated 1st March 2017. It says
10 that Superintendent Murray was approached by yourself 14:37
11 at that conference, an FSI conference, do you recollect
12 that?

13 A. Yes, Judge.

14 423 Q. Do you recollect having a conversation with
15 Superintendent Murray? 14:37

16 A. Yes.

17 424 Q. Was it in relation to Garda Keogh?

18 A. Yes. It was just to advise him, Judge, and this is the
19 context: Superintendent Murray was Garda Keogh's
20 superintendent at the time, and I simply advised him, 14:38
21 now he may have been under a misapprehension that I was
22 actually investigating the matter, but I said, look, I
23 have to take a statement from Garda Keogh, he was his
24 superintendent, in relation to bullying and harassment.
25 And I said -- he assumed I was investigating it. He 14:38
26 had some difficulty with that, because he said this is
27 already in the civil process. I said, not dealing with
28 that. And he introduced me to Chief Superintendent
29 Healy, who was present, he said, I have already given

1 him 440 pages. I stopped the conversation again. I
2 said, look, I am not investigating this, I am just
3 advising you that I have been required to take a
4 statement under the Policy. That was the context of
5 it.

14:38

6 425 Q. Can I ask you just in relation to that. So this
7 conversation took place on 1st March 2017?

8 A. Yes.

9 426 Q. And you didn't meet Garda Keogh until the 2nd March,
10 isn't that right?

14:38

11 A. Yes, I told him I was taking a statement from him.
12 That's right, yeah.

13 427 Q. Do you know how Superintendent Murray became concerned
14 or aware or queried whether you were investigating this
15 complaint?

14:39

16 A. On the basis, Judge, that the matter was before -- it
17 seems that Superintendent Murray was civilly sued in
18 this as well. And he said, well, what's that about,
19 I'm already being civilly sued. I said, look, I'm not
20 investigating this, this will probably be an AC. I am
21 just advising you as his superintendent that I have
22 been tasked with taking a statement. That's all.

14:39

23 428 Q. Can I just clarify, do you recollect did Superintendent
24 Murray approach you or did you approach him? Because
25 he seems to attribute you -- he seems to confirm that
26 you approached him at the conference?

14:39

27 A. I don't know, Judge. But it might have been just as
28 simple courtesy to the man. He was the man's
29 superintendent. I told him I was going to be taking a

1 statement from Garda Keogh, so as that, you know --
2 this man -- Garda Keogh is still a serving member and
3 Superintendent Murray at that time was his
4 superintendent, Judge. So that was all, that was the
5 only reason for it.

14:39

6 429 Q. I see. He says further down in the note, as you can
7 see:

8
9 "To see if he wanted to make a complaint under the
10 bullying policy against CS Curran and I."

14:40

11
12 But it was clear to you that he was going to make a
13 complaint?

14 A. Look, Judge, this is not my note and I can't comment on
15 it.

14:40

16 430 Q. I accept that.

17 A. I have given you my context for it and that's it.

18 431 Q. What I am trying to establish, chief superintendent, is
19 that Superintendent Murray attributes these remarks to
20 you and I am just giving you an opportunity to comment
21 upon it?

14:40

22 A. I have commented on it.

23 432 Q. Okay. He goes on to say " -- as he was writing
24 gibberish to HRPD about us."

25
26 Did you say that Superintendent Murray?

14:40

27 A. No, Judge, that language isn't mine. I don't use that
28 word gibberish, Judge, I've never used it. Just, what
29 it appeared, the rationale for me being asked to take

1 the statement was, it wasn't clear who Garda Keogh was
2 complaining about, what he was complaining about and
3 that was the purpose of me taking the statement. So I
4 don't know, these are Chief Superintendent Murray's
5 notes, they're not mine.

14:41

6 433 Q. And he goes on to say that you had sent Garda Deegan to
7 get correspondence before you met with Garda Keogh on
8 the following day, the 2nd March?

9 A. That's somebody from my office, Judge, who went to HR,
10 Judge, to collect the documents that we talk about and
11 Chief Superintendent McLoughlin -- I suspect that
12 that's what that is. But I think, Judge, just to be
13 clear on this, I think Superintendent Murray got the
14 wrong end of the stick with me initially, he thought I
15 might have been investigating him. I was just merely
16 as a courtesy informing him that I was asked to take a
17 statement under the bullying and harassment policy from
18 this man. He brought me into the company of Chief
19 Superintendent Healy. I stopped the conversation then
20 because it really wasn't something that -- the only
21 purpose of me talking -- telling him, was just as a
22 courtesy to him to tell him that I was taking the
23 statement. That's it.

14:41

14:41

14:41

24 434 Q. Did you think that was appropriate in the
25 circumstances?

14:42

26 A. I think he was his superintendent, I didn't have -- he
27 was his superintendent, that's -- I do think it's
28 appropriate, yes. We don't operate in a vacuum.

29 435 Q. I see. And he goes on to say:

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"I explained what I had done for CS Healy and I invited him to read it if he wished."

Did he give you any invitation to read a document he prepared for Chief Superintendent Healy? 14:42

A. No, Judge. He did, he invited me to read a document, Judge, but I stopped the conversation. It wasn't necessary for me to do this. Because I wasn't going to be investigating anything. I was just, as a courtesy to the man, as Garda Keogh's superintendent, I told him I was taking statement under the Policy from him. That's it. 14:42

436 Q. He says he brought yourself and chief superintendent -- 14:42

"I brought CS Healy and him together."

A. Yes. Chief Superintendent Healy is the representative of the Chief Superintendents Association, Judge. I didn't engage in the conversation further. We were all there together, Judge, it was a tea break at a conference. 14:42

437 Q. Just so I understand it, you were together at the conference?

A. Yes, we were all together. It's a tea break at a conference, yes. 14:43

438 Q. And he brought CS Healy over?

A. Yes.

439 Q. In which you didn't engage in any further conversation?

A. No, I didn't. It wasn't necessary.

1 440 Q. Finally, he goes on to say that whether the internal
2 process could be engaged upon in circumstances where
3 there was civil proceedings in the background, do you
4 recall any --

5 A. No, I don't. I do recall him saying that this was 14:43
6 already a civil matter. He seemed to believe -- he
7 seemed -- from my interaction, I think his first
8 impression was that I was going to be investigating
9 him. I stopped that in its tracks, I said, no, it
10 won't be me. He said he couldn't understand it because 14:43
11 this is already a civil matter, what's going on here
12 now, is this another thing, more or less. That's my
13 memory of it now, Judge, it's a long time ago.

14 441 Q. Just finally for completeness sake, I mean
15 Superintendent Murray says at the end of the note that 14:43
16 you said it was a good question and that you would pose
17 it?

18 A. No, I didn't pose any questions, Judge.

19 442 Q. I see. Can you assist us at all, chief superintendent,
20 as to the delay, as to what happened to Garda Keogh's 14:44
21 complaint between the month of March -- sorry, from
22 31st March 2017 until 15th November 2017, when
23 Assistant Commissioner Finn was appointed?

24 A. After the 12th April, Judge, I had no involvement in
25 it. I know nothing more about it. And the next time I 14:44
26 became involved in this matter was when Assistant
27 Commissioner Finn sought to interview me. I had no
28 dealings with the matter after that.

29 443 Q. Insofar as you've said to the Chairman about an

1 incident of a phone call to the Garda station.

2 A. Yes.

3 444 Q. You will accept, won't you, that that incident has been
4 fully resolved within An Garda Síochána at this point?

5 A. Yes, Judge. I would have concerns about how it was 14:44
6 resolved, but it was resolved, Judge, yes.

7 445 Q. But it has been resolved, chief superintendent, is that
8 correct?

9 A. The matter has been concluded, Judge, yes. I wouldn't
10 be happy with how it was concluded but it was 14:45
11 concluded.

12 MR. O'BRIEN: I have no further questions.

13 CHAIRMAN: But it's not something that we're concerned
14 with in this inquiry, if I understand it.

15 A. Well, Judge, I have no reason to understand -- 14:45

16 CHAIRMAN: That's what I understood.

17 A. Well, Judge, I have no reason to understand --

18 446 Q. CHAIRMAN: I'm not trying to shut up anybody. Let me
19 put it this way: If there is any suggestion that it
20 has to do with the inquiry, then we will in due course 14:45
21 consider it. So there's nothing --

22 A. Well, Judge, there's no reason for me -- I have no
23 other involvement with Garda Keogh, except the taking
24 of this statement.

25 447 Q. CHAIRMAN: Yes. 14:45

26 A. So whatever view he took of me has to be related to
27 this inquiry, Judge.

28 448 Q. CHAIRMAN: I follow.

29 A. And, Judge, I don't know of any other organisation,

1 Judge, where a person can threaten to physically
2 assault people and find ourselves in the situation that
3 I find myself in, just trying to do my job and other
4 members here trying to do their jobs and we have been
5 threatened with physical assault, my staff have been 14:46
6 abused, having to go to houses -- I subsequent to that
7 threat, Judge, out of concern for Garda Keogh, made
8 contact with that said welfare officer on the same
9 night to make sure that he was looked after and
10 contacted. So, Judge, it has something to do with it. 14:46

11 449 Q. CHAIRMAN: I understand.

12 A. But I don't know, Judge, where we are in my
13 organisation today, if I am in a situation where it is
14 appropriate for a serving guard or for any person in
15 any organisation to threaten to physically assault 14:46
16 anybody. That's my position on it, Judge.

17 450 Q. CHAIRMAN: And as you see it, get away with it?

18 A. Yes, Judge.

19 451 Q. CHAIRMAN: Okay.

20 A. Management of this organisation, Judge, is going to be 14:46
21 extremely difficult if this is the position we are
22 going to find ourselves in.

23 452 Q. CHAIRMAN: well, I mean, if you say, look, I'm angry
24 about that, I'm upset about it.

25 A. well, anger isn't the word, Judge, I am concerned. 14:46

26 453 Q. CHAIRMAN: Okay, concerned about it. I take that on
27 board. All right. To the extent that anybody says
28 that's material in any issue, I will be happy to
29 consider that.

1 A. Yes, Judge.

2 454 Q. CHAIRMAN: So I am not ruling it out or ruling it in.

3 But I am understanding your position on it. Anyway.

4 A. All I have ever did was try and help this man.

5 455 Q. CHAIRMAN: Sorry?

14:47

6 A. All I ever did was try and help him.

7 CHAIRMAN: I understand.

8

9 END OF EXAMINATION

10

14:47

11 CHAIRMAN: Now, Mr. O'Higgins or Mr. McGuinness.

12 MR. DONAL MCGUINNESS: Yes, Chairman.

13 CHAIRMAN: Yes, Mr. McGuinness.

14

15 CHIEF SUPERINTENDENT JOHN SCANLON WAS THEN EXAMINED BY

16 MR. DONAL MCGUINNESS, AS FOLLOWS:

17

18 456 Q. MR. DONAL MCGUINNESS: Chief superintendent, just in
19 relation to the chronology of events where you first
20 discussed matters with Garda Keogh. You have gone
21 through your statement with Mr. McGuinness earlier, but
22 if I am correct, on 19th January 2017 you contacted
23 Garda Keogh?

14:47

24 A. That's correct.

25 457 Q. And on that occasion you indicated that he wanted
26 certain documents that he had sent to HRM; is that
27 right?

14:47

28 A. Yes, Judge.

29 458 Q. Consequent on that, on the 20th January 2017 you went

1 to get those documents; is that correct?

2 A. Well, I caused them to be got, Judge, Garda Deegan I
3 think collected them from my office, collected them
4 from HRM, Judge, in a sealed envelope.

5 459 Q. In evidence just now you mentioned that when it came to 14:48
6 time when Garda Keogh was actually making his
7 statement, which was on the first occasion 2nd March
8 2017?

9 A. Yes.

10 460 Q. Did I understand you correctly to say that he had the 14:48
11 HRM materials himself at that time?

12 A. Yes, Judge, he had the material with him, yes.

13 461 Q. And did you also have the material?

14 A. Yes, he actually probably had a better copy than I had,
15 Judge, or the photocopies. Yeah, as I progressed 14:48
16 through the statement, Judge, they became exhibits
17 attaching to the statement and they subsequently in all
18 statements became the exhibits attaching to the
19 statements, Judge, yes.

20 462 Q. Thank you. Now, if I can just fast forward, without 14:48
21 wanting to add any additional confusion to the issues
22 that were canvassed already, if we could have page 6789
23 back, please. This is the document that Mr. McGuinness
24 was referring to. If you could just scroll down,
25 please, to the piece that Mr. McGuinness referred to. 14:48
26 Yes, it's under section 1.2.

27 A. Yes.

28 463 Q. On the last sentence there:
29

1 "Chief Superintendent Scanlan informed me that 'a more
2 detailed report will follow into the context of this
3 statement'."

4 A. Yes.

5 464 Q. I just wanted to refer to this because Mr. McGuinness 14:49
6 slightly misquoted that sentence to the transcript, and
7 he said it was "into the content of this statement".
8 Can you assist us any further in relation to the
9 context or content?

10 A. It was the context of the statement. I didn't deal 14:49
11 with the content because that would be inappropriate,
12 for me to comment on the content. It was just the
13 context of how I put the statement and how I come to
14 end with two statements, one, the incomplete -- that's
15 not fully completed; and the second one then, which is 14:49
16 prepared statement, so as it would be clearly
17 understood how we end up with two documents purporting
18 to be his statement, so in case there was any
19 confusion.

20 465 Q. Thank you. Could I just ask you to look at a document 14:49
21 that you will not have seen before, it's at page 6597,
22 please.

23 A. Yes.

24 466 Q. If you could scroll down please, Mr. Kavanagh. And 14:50
25 just centre that there. Just there, please. This
26 document is a letter from AC Fanning to the
27 Commissioner of An Garda Síochána. This letter was
28 opened by Mr. Murphy last week, Chairman?
29 CHAIRMAN: Yes.

1 467 Q. MR. DONAL MCGUINNESS: This is the piece of that
2 particular letter where he records what happened in
3 relation to your statement?
4 A. Yes.

5 468 Q. So in this letter, you will note that he said: 14:50
6
7 "The statement of Garda Keogh dated 27th March 2017 was
8 received in my office by way of correspondence dated
9 31st March 2017. "
10 14:50
11 He refers to tab C1.
12
13 "From Chief Superintendent Scanlan, Portlaoise."
14
15 Then he has a second bullet point: 14:51
16
17 "As outlined above, the statement witnessed by Garda
18 Keogh on 27th March 2017 was hand-delivered to HRM on
19 24th May 2017 per file from Assistant Commissioner
20 Fanning dated 24th May 2017." 14:51
21 A. Yes.

22 469 Q. So that would seem to suggest that your action of the
23 31st March sending on the statement?
24 A. Yes.

25 470 Q. And you have already given evidence about sending on 14:51
26 the additional material of the 12th April.
27 A. Yes.

28 471 Q. And that then was progressed by sending it on to HRM on
29 24th May 2017?

1 A. Yes, Judge.

2 472 Q. Are you aware of any suggestion that the statement that
3 you took was lost, lost in transit or lost by you or
4 lost by anyone?

5 A. I think from reading the transcript, Judge, I have 14:51
6 lived this Tribunal since the beginning, Judge, I have
7 read every transcript and in that, Judge, I have read
8 that Garda Keogh might have thought that I had lost his
9 statement.

10 473 Q. CHAIRMAN: He thought somebody lost it. 14:51

11 A. Well, I didn't, Judge, and it's quite clear from my
12 evidence.

13 474 Q. CHAIRMAN: You say you were finished by 12th April
14 2017.

15 A. Yes. 14:52

16 475 Q. CHAIRMAN: With three documents.

17 A. Yes.

18 476 Q. CHAIRMAN: The three materials that we have mentioned,
19 or at least I have divided it into three?

20 A. Yes, Judge. And all those documents were supplied, 14:52
21 Judge.

22 477 Q. CHAIRMAN: And that was the end of your involvement?

23 A. Yes.

24 478 Q. CHAIRMAN: What happened to it afterwards?

25 A. Yes. 14:52

26 479 Q. CHAIRMAN: Whether anybody lost it or didn't lose it,
27 don't look at you, because you know nothing about it?

28 A. Yes, Judge.

29 480 Q. CHAIRMAN: I don't mean that to be rude, but that's the

1 reality of it?

2 A. And, Judge, if I had a responsibility to this, Judge,
3 you can see, Judge, that I was very careful and
4 chronological in reporting on every aspect of this as
5 it unfolded, Judge, up to the last date that I had it 14:52
6 in my hand, Judge.

7 481 Q. CHAIRMAN: But whatever happened.

8 A. It didn't happen on my watch.

9 482 Q. CHAIRMAN: After the 12th April.

10 A. Yes. 14:52

11 483 Q. CHAIRMAN: It was not a matter for you?

12 A. No, Judge.

13 CHAIRMAN: Okay.

14 A. Thank you, Judge.

15 484 Q. MR. DONAL MCGUINNESS: In relation to your first 14:52
16 contact with Garda Keogh, that was on 19th January
17 2017?

18 A. Yes.

19 485 Q. I think you've already mentioned on that occasion that
20 he suggested that you may be conflicted; is that the 14:52
21 case?

22 A. Yes.

23 486 Q. Did he point out to you the reason why on that occasion
24 he thought you were conflicted?

25 A. The only reason he suggested to me on that day, Judge, 14:53
26 was he suggested that I had been his previous
27 superintendent. In fact, he was more than
28 complimentary of me and suggested that you'd be better
29 off if you weren't involved in this, this is going to

1 get dirty. So, Judge, he probably forewarned me of
2 where we were going, that ultimately culminating in him
3 threatening to assault me.

4 487 Q. If I can just ask you to look at page 322, please?
5 A. Yes, Judge. 14:53

6 488 Q. This document is headed:
7
8 "Addendum added on 30th November 2017 to my statement
9 delivered on 27th March 2017."
10 14:53

11 A. Yes.

12 489 Q. So that would suggest it's an addendum to the bullying
13 and harassment statement, isn't that correct?
14 A. Yes.

15 490 Q. If we just go down to the second paragraph there. I 14:53
16 might read it out. This is Garda Keogh's statement,
17 which is an addendum to the statement that he made with
18 you.

19 A. Yes.

20 491 Q. Do you understand that? You might not have seen this 14:54
21 before?
22 A. I have seen it in disclosure.

23 492 Q. Except that Mr. McGuinness referred to it briefly.
24 A. Yes.

25 493 Q. And he states: 14:54
26
27 "On the 2nd March I met Chief Superintendent John
28 Scanlan in Portlaoise for the purpose of making a
29 statement. It became evident that I should make a

1 written statement. I gave such a written statement to
2 Chief Superintendent Scanlan on the 27th March. I
3 heard nothing further about the processing of my
4 complaint at such time. I didn't realise that the
5 complaint had gone missing until I found out that 14:54
6 Superintendent Pat Murray (who had come to Athlone from
7 Donal Ó Cualáin's Western Region) was on a promotion
8 list."

9
10 Then if we just skip down to the next section, where 14:54
11 your name is mentioned, it's only a few lines down:
12

13 "Chief Superintendent Scanlan was interviewed for the
14 Laois Nationalists newspaper, where he said he was
15 standing by Commissioner Nóirín O'Sullivan, a person 14:54
16 implicated in my bullying and harassment complaint
17 received by Chief Superintendent Scanlan. Chief
18 Superintendent Scanlan described Noi rín O' Sullivan as
19 probably one of the finest police people I've ever had
20 the privilege to work with. I wish to know did CS John 14:54
21 Scanlon send a copy of my statement to any person other
22 than through the correct channels, i.e. by post, e-mail
23 fax or by personal delivery? How did the complaint get
24 lost? When was the complaint being discovered? Why
25 were there two meetings?" 14:55
26

27 And so on

28 A. Yes.

29 494 Q. I just want to bring that to your attention and then I

1 want to refer to Day 100, please, page 145. Sorry, Day
2 100. If we could scroll down to line 9, please. Just
3 back up a little bit, please, Mr. Kavanagh. Now, this
4 is Garda Keogh's evidence to the Tribunal. He states:

5
6 "I see that Superintendent Murray is in contact with
7 Chief Superintendent Scanlan from the Laois-Offaly
8 division in relation to my car tax, not through my own
9 chief. He veers off to the chief of the Laois-Offaly
10 division in relation to my car tax."

14:56

14:56

11
12 Then if you go down to the bottom of that page, please,
13 line 29:

14
15 "Yeah, that, you see I don't -- he's in contact with
16 Chief Superintendent Scanlan in relation to the car
17 tax. This is back in 2015."

14:56

18
19 Then he goes on to say further down:

20
21 "Well, I don't know what was said, but it's only in the
22 notes it caught my eye. But, you know, again, why
23 would a superintendent from one division contact a
24 chief superintendent from another division about
25 whether a guard, not that he had no tax, but just had
26 it in a different tax bracket category. That is a
27 really kind of a minor thing."

14:57

28
29 And then the Chairman picked up, at page 147, that that

1 was peculiar. But if I can just ask you to look at
2 page 2185, please, of the materials, yes.

3 A. Yes.

4 495 Q. 2185, please. Now, this appears to be the note that
5 Garda Keogh was referring to in that excerpt that I've 14:57
6 just mentioned. And you see the second line down, this
7 is a note of Chief Superintendent Murray or
8 Superintendent Murray, as he was at this time?

9 A. Yes.

10 496 Q. "Phoned Chief Superintendent Scanlan re complaint." 14:58

11 A. Yes.

12 497 Q. But immediately above that there is a reference to:
13
14 "Received e-mail from tax office re Garda Keogh's jeep
15 and tax." 14:58

16 A. Yes.

17 498 Q. Garda Keogh made the assumption that those issues were
18 connected. Now, that you are here in the witness box,
19 could you indicate to the Tribunal whether they were in
20 fact connected? 14:58

21 A. Judge, they're not connected. I had a conversation
22 with the chief superintendent, then Superintendent
23 Murray, about a separate complaint matter I was
24 investigating in Athlone at that time. They're not
25 connected matters, Judge. I never discussed Garda 14:58
26 Keogh's tax with him or any element of the detail of
27 that complaint. Judge, I reject that. But, Judge, I
28 have already read that in the transcript and it's
29 unbelievable, Judge, to be honest.

1 499 Q. And if I could just ask you to go to Day 101 please of
2 the transcripts and go to page 24, please. And we are
3 starting at line 4:

4
5 "And interestingly, that's the same date there's a 14:59
6 series of text messages between him to Chief
7 Superintendent Scanlan to Noirín O'Sullivan and back
8 from Noirín O'Sullivan to Chief Superintendent Scanlan
9 to Pat Murray. I have seen the contacts, it doesn't
10 say what was in the text messages, of course, but on 14:59
11 that particular day."

12
13 And then he goes on further down to say at line 17:

14
15 "Forgive me for thinking that it was..." 15:00

16
17 Sorry, this is Garda Keogh, by the way.

18
19 "Forgive me for thinking that it was quite possible
20 that they could have been texting in relation to me. 15:00

21 Q. That's obviously speculation on your part.

22 A. Unfortunately, I can't get to read the text
23 messages."

24
25 Then if you go over the page, at the top of the page: 15:00

26
27 "It just shows that there was text messages sent,
28 received on two, three -- between Superintendent
29 Murray, Chief Superintendent Scanlan and then Chief

1 Superintendent Scanlan to Commissioner O'Sullivan and
2 the very came back to Commissioner O'Sullivan. "

3
4 So, Garda Keogh is obviously suggesting there that
5 there is a line of communication between you, 15:00
6 Superintendent Murray and Commissioner O'Sullivan, have
7 you anything to say in relation to that

8 CHAIRMAN: About him.

9 500 Q. MR. DONAL MCGUINNESS: About him.

10 A. Judge, I never had that communication. That is an 15:00
11 outrageous allegation, Judge. And, Judge, I have read
12 this transcript, Judge, I also, prior to this, Judge,
13 waded through disclosure, volumes of it, Judge. This
14 is the first -- this just arose in evidence, Judge, it
15 was never previously disclosed, nor did Garda Keogh in 15:01
16 suggesting I had a conflict of interest, mention it at
17 that point as being a reason for a conflict. He had
18 loads of opportunities, Judge, at that juncture to
19 suggest to me that I was a conflicted person. The only
20 reason he put to me that I was conflicted was that I 15:01
21 was previously his superintendent. And, Judge, I don't
22 know where or how this man comes to that conclusion,
23 but it is not true and never happened. And, Judge,
24 this is difficult to deal with, because it didn't
25 happen, Judge. It's a serious assertion, that I would 15:01
26 be involved in doing him down and be used as a conduit
27 from the Garda Commissioner for that purpose, Judge.
28 That's what he is suggesting here and it didn't happen,
29 Judge.

1 CHAIRMAN: what's the date of these contacts that's
2 suggested?
3 MR. DONAL McGUI NNESS: He is referencing, I believe,
4 the very same contact in March 2015, Chairman. That's
5 my understanding anyway. 15:02
6 CHAIRMAN: Say that again, Mr. Marrinan.
7 MR. MARRINAN: 3rd April 2015.
8 CHAIRMAN: April. Sorry, April 2015.
9 MR. DONAL McGUI NNESS: April 2015.
10 A. Judge, I have never seen evidence in any disclosure, 15:02
11 Judge, and I've had to wade through all that
12 disclosure, Judge, of any of that.
13 501 Q. CHAIRMAN: Yes. I understand. Is that the conduit
14 that Garda Keogh was trying to suggest about the call
15 from Commissioner O'Sullivan? 15:02
16 A. That's what I believe it was.
17 CHAIRMAN: Is that right, Mr. Kelly?
18 MR. KELLY: Yes.
19 CHAIRMAN: Okay.
20 MR. KELLY: Chairman, I think that's right. 15:02
21 CHAIRMAN: Yes, I think that's right.
22 MR. KELLY: what they did in respect of that.
23 CHAIRMAN: Garda Keogh abandoned -- sorry-- well,
24 abandoned the suggestion that the Commissioner had
25 phoned Superintendent Murray to say to back off from 15:02
26 Garda Keogh, but then he endeavoured to make a
27 different complaint, which was that it came about in
28 another way indirectly. So I think the chief
29 superintendent is entitled to comment on that.

1 A. Never happened, Judge.

2 502 Q. CHAIRMAN: First he said the Commissioner phoned
3 Superintendent Murray to say, back off Garda Keogh.
4 That's nothing to do with you?

5 A. No, Judge. 15:03

6 503 Q. CHAIRMAN: He withdrew that allegation. But he sought
7 to bring it in in a different way, which I excluded as
8 being irrelevant and not the case that he had
9 previously made and you say that never happened in any
10 event? 15:03

11 A. Yes, Judge. It's nowhere to be found in disclosure to
12 me prior to this Tribunal.

13 504 Q. CHAIRMAN: No, I understand that. As I say, you won't
14 find it in disclosure. I think it's only fair to you
15 that you should know that there was an attempt made to 15:04
16 reroute the suggestion, and it's fair that you should
17 have an opportunity of saying that there's nothing in
18 the suggestion.

19 A. Yes, Judge.

20 505 Q. CHAIRMAN: I understand, you don't have to express 15:04
21 outrage, but I understand it's all right, I am not
22 criticising you for doing so. But I think it's only
23 fair that you should be aware that that conduit, that
24 connection was in fact suggested?

25 A. I agree, Judge. And I mean, I have to express outrage, 15:04
26 Judge, I mean we all have reputations, Judge.

27 506 Q. CHAIRMAN: No, I am not criticising you. You can
28 express as much outrage as you like, I'm not
29 criticising you for it. I am only thinking that it was

1 fair that you should be aware of that alternative
2 position, if I understand. I may be wrong about this,
3 but that's my understanding?

4 A. The only reason I'm upset, Judge, I have not been shown
5 any evidence of this. This is just said. 15:04

6 507 Q. CHAIRMAN: Yes.

7 A. I mean, Judge, I have a reputation.

8 508 Q. CHAIRMAN: Yes.

9 A. I have a family.

10 509 Q. CHAIRMAN: Yes. 15:04

11 A. We all have reputations. And my colleagues are sitting
12 here through allegations after allegation, Judge, I
13 would like to see the evidence, if there was evidence,
14 but there wasn't any evidence.

15 510 Q. CHAIRMAN: Yes. Well, that can be a matter of 15:05
16 submissions afterwards.

17 A. Yes, Judge.

18 511 Q. CHAIRMAN: I don't get involved at this point in
19 expressing views on one part of the case or the other,
20 but I did think it was legitimate and proper that you 15:05
21 should be aware of that particular item?

22 A. Thank you, Judge.

23 CHAIRMAN: Okay.

24 MR. DONAL MCGUINNESS: I am nearly finished, Chairman.

25 CHAIRMAN: Okay. 15:05

26 512 Q. MR. DONAL MCGUINNESS: In relation to -- what I have
27 done or sought to have done is chart the progress of
28 Garda Keogh's attitude from the very first day you met
29 in January, or you talked to him in January 2017, to

1 where we are today. But in order to complete that
2 picture I am going to refer back to the 999 call that
3 you've mentioned already?

4 A. Yes, Judge.

5 513 Q. I would just like the record to be complete in relation 15:05
6 to that, please. If we could go to page 7212, please?
7 CHAIRMAN: To where?
8 MR. DONAL MCGUINNESS: To page 7212.
9 CHAIRMAN: Thank you.

10 A. Yes. 15:06

11 514 Q. MR. DONAL MCGUINNESS: Halfway through that page, I
12 will just start, the caller, and this is Garda Keogh:
13
14 "I couldn't give an AF what line I am ringing, can you
15 just not put in contact with her. 15:06
16
17 Call taker: I will give you the phone number."
18
19 This guard is looking for the welfare officer.
20 15:06
21 "As I am sure you are well aware, I am trying to do
22 that for you but I am asking you why are you ringing
23 the emergency line, do you want guards to call out to
24 the house to you.
25 15:06
26 Caller: The answer is because I will go over to
27 Portlaoise and break Scanlan's nose, that's why."
28
29 Do you see that?

1 A. Yes.

2 515 Q. I think you mentioned the job, is that correct?

3 A. That was in the correspondence to me, Judge, I didn't

4 go near this because I felt it was safer not to.

5 516 Q. CHAIRMAN: Nose, for jaw read nose? 15:06

6 A. Nose.

7 517 Q. CHAIRMAN: Okay.

8 A. All right, we'll take it as a nose, Judge.

9 518 Q. MR. DONAL McGUINNESS: Then just over at page 7213,

10 there is a reference about getting the Gardaí there. 15:07

11 And the caller says:

12

13 "If them eeffers came near my house, I would burst their

14 noses. I don't want them."

15 A. Yes. 15:07

16 519 Q. Then he calls the 999 call taker the most awkward lady

17 that I have ever met in my life. And I think there is

18 some suggestions about what he might do to her? If we

19 could just go to page 7216, please.

20 A. Judge, this is a young guard on a communications 15:07

21 telephone receiving this call from Garda Keogh.

22 520 Q. If we go to 7216. Then if we go to the caller there in

23 the middle of the page, this is another call, there

24 were a series of calls on that night; isn't that

25 correct? 15:07

26 A. Yes.

27 521 Q. He says there:

28

29 "Yes, TuIl amore. Nick Keogh is my name. Listen, the

1 likes of that scumbag Scanlan would hate me but Fanning
2 would think I'm all right. So I'm kind of half there,
3 you know."
4

5 So, I suppose that charts a line of contact between you 15:08
6 and Garda Keogh and where it eventually ends up. Did
7 you do anything in the time that you have been involved
8 with Garda Keogh to bring about such a reaction?

9 A. No, Judge. I didn't meet him after the 31st -- after
10 that meeting in March. And at the meeting, the first 15:08
11 meeting on the 2nd March, Judge, he was highly
12 complimentary of me and told me I had always been
13 decent to him as a superintendent. So, Judge, I have
14 no reference except my involvement in this complaint
15 and him forewarning me that this was going to get dirty 15:08
16 and this is what I am looking at now. Judge, the
17 reference to a jaw comes out of an e-mail, Judge, that
18 was sent to me. I didn't go near the transcript or the
19 recording. I stepped back from it, reported on it and
20 asked that it be investigated. 15:08

21 CHAIRMAN: Okay.

22 522 Q. MR. DONAL MCGUINNESS: Just in the context of a
23 disciplined organisation like An Garda Síochána, do you
24 think it's appropriate that a matter such as this and
25 comments such as this would be investigated to the 15:09
26 fullest extent?

27 A. Yes, Judge. I would hope that it would be, Judge, yes.
28 MR. DONAL MCGUINNESS: Thank you.

29

1 END OF EXAMINATION

2
3 CHAIRMAN: Questions? Questions come there none. Very
4 good. Thanks very much. Mr. McGuinness?

5 MR. MCGUINNESS: Nothing further. 15:09

6 CHAIRMAN: Nothing further. Thank you very much, chief
7 superintendent, you're free to go now. You can stay if
8 you like but you're free to go.

9 THE WITNESS: Thank you for facilitating me, Judge.
10 I'm out of turn here. Thank you very much. 15:09

11 CHAIRMAN: No problem, thank you very much.

12
13 THE WITNESS THEN WITHDREW

14
15 MR. MARRINAN: Chairman, the next witness is Chief 15:09
16 Superintendent Pat Murray, please.

17 CHAIRMAN: Thank you very much. Thanks very much.
18 You're returning, chief superintendent, so you are
19 already sworn.

20 THE WITNESS: Yes, Chairman. 15:09

21 CHAIRMAN: We will just proceed and move on, thank you
22 very much.

23
24 CHIEF SUPERINTENDENT PATRICK MURRAY, HAVING BEEN
25 ALREADY SWORN, WAS DIRECTLY-EXAMINED BY MR. MARRINAN, 15:09
26 AS FOLLOWS:

27
28 523 Q. MR. MARRINAN: The chief superintendent's statement is
29 at page 2038. We will take up from where we left off,

1 at page 26 of your statement, chief superintendent.
2 Now, I think in the first instance you applied for
3 promotion to the rank of --
4 CHAIRMAN: Sorry, this is issue 20?
5 MR. MARRINAN: Issue 20. 15:10
6 CHAIRMAN: Promotion of Superintendent Murray to chief
7 superintendent. Okay, thank you very much.
8 524 Q. MR. MARRINAN: 18th January 2016 you applied for
9 promotion?
10 CHAIRMAN: Have you got your papers in order? 15:10
11 THE WITNESS: Yes, Chairman.
12 CHAIRMAN: Take a moment to composure self and get your
13 notes in order. If you have a problem, just mention
14 that you have a problem okay. Okay. So you're
15 starting off with January -- 15:10
16 525 Q. MR. MARRINAN: 18th January 2016.
17 A. Yes.
18 526 Q. You applied for promotion to the rank of chief
19 superintendent?
20 A. Yes. 15:10
21 527 Q. In a competition that had been advertised on the 23rd
22 December 2015, isn't that right?
23 A. That's correct, Chairman.
24 528 Q. Now, on the following day, 19th January 2016, you note
25 that you had a conversation with Garda Fergal Greene 15:11
26 when he called to your office in Athlone and informed
27 you that he had had a long conversation with Garda
28 Keogh. You make a note of that, it's at page 2528?
29 A. Yes, Chairman.

1 529 Q. We don't need to open the note because we already had
2 reference to it. But this is a note of a conversation
3 with Garda Greene, where he tells you that Garda Keogh
4 had told him that he was trying to dig up dirt on you,
5 isn't that right? 15:11

6 A. Yes, Chairman.

7 530 Q. And that was with a view to having Deputies Wallace and
8 Daly mention it in Dáil Éireann to damage your
9 character and reputation, isn't that right?

10 A. Yes, as it was explained to me, Chairman. 15:11

11 531 Q. I think Garda Greene indicated to you at that time that
12 Garda Keogh said that he hadn't found anything on you
13 but would keep trying?

14 A. Yes.

15 532 Q. And that you requested Garda Greene to communicate with 15:12
16 Garda Keogh and say that you were not his enemy but you
17 were concerned for his welfare, isn't that right?

18 A. Yes, Chairman.

19 533 Q. Now, the next thing of note is that you became aware of
20 a letter dated 16th May 2016 from Garda Keogh to the 15:12
21 Minister for Justice, isn't that right?

22 A. Yes. In March, February/March of 2019 I became aware
23 of that letter.

24 534 Q. Yes. You have highlighted that, that's at 298 of the
25 material. If we just briefly have that up on the 15:12
26 screen. If we look there, it's addressed to Minister
27 Fitzgerald. On page 2982 there are complaints in
28 relation to the Ó Cualáin investigation. If we scroll
29 over to page 299, we see at the second paragraph down:

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"On the 22nd October I was informed by Superintendent Pat Murray that I was being confined to permanent desk duties at the public office due to going intermittently sick with work related stress. However, Superintendent Murray informed me that I was under no stress. Despite my medical certificates stating work related stress, Superintendent Murray had me recorded as sick with flu."

15:13

15:13

You already address that issue in relation to the recording, but that was a matter at that time that you thought or you think that may be relevant. On 20th May 2016 Garda Greene again called to your office and your note of this conversation is at page 2530.

15:14

A. Yes.

535 Q. Going into 2533. It largely concerns another chief superintendent or a superintendent who is going for promotion to assistant commissioner and how it was annoying him, his dealings with the Chief Medical Officer and that he wanted to bring down the Commissioner and then Deputy Commissioner Ó Cualáin and that he was engaging with Transparency Ireland through retired Garda John Wilson and the media in relation to the way whistleblowers were treated. And then we had some reference to allegations that had been made not by Garda Keogh but elsewhere against a sergeant.

15:14

15:15

Then, four days later, on 24th May 2016, you got a

1 report from Inspector Minnock. Your note in relation
2 to this is at page 2536 of the materials. scroll up.
3 Inspector Minnock called to Garda Keogh --
4 CHAIRMAN: I think you're referring to 2536, is that
5 right? 15:15
6 MR. MARRINAN: 2536, yes.
7 CHAIRMAN: That's not the one we have. we will get it
8 now.
9 536 Q. MR. MARRINAN: "Inspector Minnock called to Garda
10 Keogh. Found him very drunk and drinking from a can of 15:16
11 cider. Talked about bringing down the Commissioner,
12 Ó Cualáin and me."
13
14 Is that right?
15 A. Yes. 15:16
16 537 Q. Now, I think on Wednesday, 25th May 2016, you received
17 notification that you were successful in the promotion
18 competition to chief superintendent and you had been
19 placed at number 14 on a list of 18 people selected for
20 promotion to that rank? 15:16
21 A. I did.
22 538 Q. If we have page 2538 up on the screen?
23 A. I sat the interview on the 4th May and the result came
24 out then on the 25th.
25 539 Q. who was on the interview board? 15:16
26 A. Deputy Commissioner Ó Cualáin and two other people, one
27 of which was the Chair and both of those were appointed
28 by the Department of Justice to the interview board.
29 540 Q. So the letter there we see in the first paragraph, it

1 says:

2

3 "I am pleased to inform you that the selection board
4 have placed you at number 14 on a panel of
5 superintendents regarded as being suitable for 15:17
6 recommendation to the Government for appointment to
7 posts of chief superintendent rank."

8

9 And that's from Ms. Valerie Little, Chairperson. This
10 is before the establishment of the role of the Policing 15:17
11 Authority in relation to promotions, isn't that right?

12 A. That's correct, Chairman. This is the last interview
13 competition that was held in this fashion.

14 541 Q. CHAIRMAN: Before the Policing Authority took over the
15 thing? 15:17

16 A. Yes.

17 542 Q. CHAIRMAN: And there was a deadline here, there was a
18 guillotine?

19 A. There was.

20 543 Q. CHAIRMAN: The 31st December, isn't that right? 15:17

21 A. Yes.

22 544 Q. MR. MARRINAN: I think the next thing you note is that
23 on the 14th June Garda Keogh wrote to the Minister for
24 Justice. If we could have page 148 up on the screen.
25 If we just turn over to page 149. we see there, three 15:18
26 lines down:

27

28 "Superintendent Pat Murray arrived in Athlone as
29 district officer in March 2015. He continued a

1 campaign of harassment and bullying against me, which
2 actually started before I even met the man, when he had
3 just arrived to Athlone and immediately went to the
4 motor tax office in an effort to obtain nonexistent
5 declarations in relation to my private car. I was 15:18
6 eventually forced out with work related stress
7 certified sick leave since 26th December 2015, having
8 worked for 20 months under difficult circumstances
9 during the Garda investigation, 18 of those months
10 mostly on the same shift as the garda subject to my 15:19
11 complaint. "

12
13 There is a complaint then in the fourth paragraph down
14 in relation to cancellation of leave.

15 A. Yes. 15:19

16 545 Q. And then if we scroll over to page 150. If we look at
17 the second paragraph, five lines down:

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

26
27 As far as you were aware, was there any investigation
28 in relation to bullying and harassment at that time?

29 A. I certainly didn't know of any at the time, Chairman.

1 546 Q. I think this is the first time that Garda Keogh made a
2 complaint in relation to your promotion prospects,
3 isn't that right?

4 A. That's right. The notification had become knowledge
5 within the organisation, had issued to all the 15:20
6 candidates on the 25th May and this letter was written
7 then on the 14th June. The competition was similar to
8 all the competitions that I had been involved in, in
9 promotions I'd got up to that point. It was a
10 competency based interview, where one member of the 15:20
11 interview board was a member of An Garda Síochána and
12 the other two were civilian appointees by the
13 department and one had to, I suppose, demonstrate over
14 seven competencies in that particular competition. I
15 think there were some 80 people applied and a list of 15:20
16 18 were produced then.

17 547 Q. Now, you have also become aware and wish to highlight a
18 letter dated 2nd September 2016, sent by Garda Keogh to
19 the Minister for Justice. That's at page 345 of the
20 material? 15:21

21 A. Yes, Chairman.

22 548 Q. It's a handwritten letter and this is more focused
23 insofar as it applies to you:

24
25 "I am writing in relation to the promotion of 15:21
26 Superintendent Pat Murray, Athlone. I understand that
27 promotion is awaiting to be signed off by cabinet.

28
29 I have written to you before about harassment that I

1 became subject of since making a protected disclosure.
2 I am currently out sick due to work related stress. "

3
4 And then he says how much he is being paid.

5
6 "And the fact An Garda Síochána is recommending this
7 man for promotion is incredible in itself. I have
8 enclosed previous letters and documents that back up
9 harassment. The Garda Commissioner has same.

10
11 I feel obliged to inform you that you may have been
12 misled by the Garda Commissioner in relation to
13 misconduct in Athlone. "

14
15 Again, at this stage there was no investigation in fact
16 in relation to any allegations of bullying and
17 harassment that you were aware of, is that right?

18 A. No, I wasn't aware of anything, Chairman.

19 549 Q. Now, I think that on 5th October 2016, you viewed an
20 Oireachtas report session "Season 1, Episode 53, of
21 2016" from 3.15 minutes to 7.02 minutes, when Ms. Daly
22 spoke in Dáil Éireann about you, because she referred
23 to the person who was selected at number 14, isn't that
24 right?

25 A. Yes.

26 550 Q. She didn't actually name you?

27 A. No, she didn't name me.

28 551 Q. But referred to the fact that you were the person
29 selected on number 14 on the promotion list, who she

1 said was targeting Garda Keogh because he was a
2 whistleblower. Now, if we could just look at your note
3 then, you expand on that over your statement. And then
4 she spoke also about Garda Keogh and alleged five
5 different discipline investigations were initiated 15:23
6 against him and his sick certs were changed. She said
7 the superintendent who stood over that is on a
8 promotion list. And then you have in brackets "me".
9 A. Yes.
10 552 Q. Can you recall whether she actually identified number 15:24
11 14 in the list?
12 A. Yes.
13 553 Q. She did?
14 A. Yes, she did.
15 554 Q. But that number 14, were you identifiable? 15:24
16 A. Yes, within the organisation, because the list had
17 been, I suppose, circulated within the organisation
18 from 1 to 18 in some type of a circular or bulletin at
19 that time. I think the personnel bulletin was issued
20 following the competition to the successful candidates. 15:24
21 And that would have been normal at that time, that's
22 the way information was communicated. It has changed
23 since under the Policing Authority rules. It's now a
24 private situation between the candidate and the
25 Policing Authority and it's not generally advertised. 15:24
26 555 Q. CHAIRMAN: The order of merit isn't actually published,
27 in other words?
28 A. It's not published by the Policing Authority, no.
29 CHAIRMAN: Okay.

1 556 Q. MR. MARRINAN: Then on 10th October 2016, you have a
2 note at page 2560 of Garda Greene calling to your
3 office and informing you that he was approached by
4 Garda Keogh and other whistleblowers to go with him and
5 was asked to speak to John McGuinness TD but he had 15:25
6 refused. Now, Garda Keogh is disputing the content of
7 that conversation with Garda Greene. That's not
8 entirely -- it's not a matter for you. He says that he
9 had no contacts at all with John McGuinness TD. But
10 this is what you were informed of at the time by Garda 15:25
11 Greene; is that right?

12 A. Yes.

13 557 Q. I think on 2nd November 2016 you received a letter from
14 the personal injuries board indicating that Garda Keogh
15 had been authorised to bring civil proceedings by the 15:26
16 board, is that right?

17 A. That's correct, and it didn't contain any information
18 other than that. So I didn't know what aspect of
19 complaints were actually being brought before.

20 558 Q. I think you forwarded the correspondence to the Head of 15:26
21 Legal Affairs, is that right?

22 A. I did, Chairman.

23 559 Q. I think on 20th December 2016, you have another note at
24 2591, and the note reads:

25
26 "Call from Chief Superintendent Tony McLoughlin." 15:26

27
28 Is it?

29 A. Yes, he was in charge of HRM at the time.

1 560 Q. "-- to say promotion list dead. Government brought in
2 new regulations."

3 A. Yes.

4 561 Q. Now, I think that you, on behalf of yourself and other
5 superintendents who had been on the promotion list,
6 made certain representations to a number of TDs in
7 relation to that, isn't that right?

15:27

8 A. We did. I suppose initially everyone was of the view
9 that the full 18 on the list were going to be promoted.
10 But on the 13th July 2016 only ten were promoted and
11 that left eight of us in a position where we weren't
12 sure what was happening. In November I think we met
13 together with our representative association and we
14 tried to find out then I suppose what was happening in
15 our case, as we were aware of the impending move
16 towards new regulations and we wanted to see what our
17 position was. And we ended up making representations.

15:27

15:27

18 562 Q. Yes, chief superintendent, we might return to that
19 briefly when I come to deal with your disclosure of
20 notes that there was some confusion over and that we
21 just have to go through, but we will deal with these
22 issues in the first instance. I think on 24th January
23 2017 Deputy Mick Wallace, referring to you, spoke in
24 Dáil Éireann about the superintendent on the promotion
25 list who had harassed Garda Keogh. You have referred
26 the Tribunal there to a news report dated 24th January
27 2017, it's at page 2593. We don't need it on the
28 screen, Mr. Kavanagh. But that's the reference to it.
29 Did Deputy Wallace refer to you by name?

15:28

15:28

1 A. No.

2 563 Q. No, right. On 2nd February 2017 you supplied a
3 comprehensive report to Chief Superintendent Fergus
4 Healy, who was tasked with gathering information in
5 relation to Garda Keogh's civil proceedings? 15:29

6 A. That's correct.

7 564 Q. Is this the document that stretches to I think 338
8 pages or so, is that right?

9 A. That's correct. He approached me in early January,
10 having been appointed to gather the information in 15:29
11 relation to the civil proceedings that were initiated.
12 I put together that file, not knowing what the actual
13 complaints were, I was devoid of information. I think
14 the only thing that wasn't contained in it, eventually
15 when I did become aware of the complaints in May of 15:29
16 '17, the only thing was the phone call I was alleged to
17 have made to -- or Commissioner O'Sullivan was alleged
18 to have made to me. That was the only thing I think
19 that was missing.

20 565 Q. Legal privilege has been claimed in relation to that 15:30
21 document. So we won't go into it. But you were
22 unaware of what complaints Garda Keogh was making at
23 that juncture, is that right?

24 A. That's correct.

25 566 Q. So you included everything? 15:30

26 A. I did.

27 567 Q. And all your dealings with Garda Keogh?

28 A. Absolutely.

29 568 Q. From the beginning up to the present time?

1 A. Absolutely.

2 569 Q. Is that right?

3 A. And any dealings I had with him up to that point in
4 January of '17.

5 570 Q. Now, I think on 13th February 2017, if we could have 15:30
6 page 2606 up on the screen please, this is a note of a
7 conversation with Sergeant Haran. You note:
8
9 "Sergeant Haran reported in the presence of Inspector
10 Farrell that he received a call from Garda Keogh, who 15:31
11 said they were bringing down the Commissioner and she
12 would be gone before end of the week and they had more
13 stuff to bring out and her computer would let her down.
14 Said that he wasn't drinking."
15 15:31

16 And that's recorded on the file, is that right?

17 A. Correct, Chairman.

18 571 Q. I think that Sergeant Haran indicated to you that he
19 wasn't comfortable with the call and that he cut it
20 short? 15:31

21 A. Yes.

22 572 Q. Then, on 14th February 2017, at 5:40pm, while listening
23 to Live Five programme on RTÉ Radio 1, you heard Deputy
24 Wallace ask a question in Dáil Éireann as to why the
25 superintendent who bullied Garda Keogh was placed on a 15:31
26 promotion list to chief superintendent. There was
27 further coverage then of Mr. Wallace's utterances in
28 the Irish mail on 15th February 2017.

29 A. Yes, Chairman.

1 573 Q. You attach a copy of that, which is at 2609 of the
2 material. Just so we can have a flavour of what is
3 being said at that time, if we can scroll down.
4 Further, Mr. Kavanagh, please. You will see there on
5 the right-hand side, on the far right, below the 15:32
6 picture of Superintendent Taylor, we see there:
7
8 "There have been no such intense probes in his career
9 before that. Mick Wallace said he also asked why the
10 superintendent whom Mr. Keogh..." 15:33
11
12 CHAIRMAN: This is really beginning "meanwhile".
13 MR. MARRINAN: No, it's on the far right. If we just
14 scroll up a little bit there. No, there is another
15 paragraph across. This is the far right. 15:33
16 CHAIRMAN: "Meanwhile, further extraordinary
17 allegations by a whistleblower that gardaí were
18 involved in the heroin trade."
19
20 Blah-blah-blah. 15:33
21 MR. MARRINAN: Yes. Again has a reference to Garda
22 Keogh's complaints and his superintendent being
23 placed on the promotions list. -
24 CHAIRMAN: Five internal investigations that same year,
25 and so on. 15:33
26 574 Q. MR. MARRINAN: Again, at this juncture were you aware
27 of any internal investigation into you?
28 A. No. No, Chairman.
29 575 Q. You also not on 30th March 2017, Deputy Wallace

1 questioned the Garda Commissioner during a meeting of
2 the Dáil Justice Committee about your promotion, to
3 enquire into aspects of the controversy relating to the
4 application of penalty points in persons convicted of
5 NCT road traffic offences. I think that Deputy Wallace 15:34
6 indicated in public that you were the subject-matter of
7 a protected disclosure, is that right?

8 A. Yes. And I had never been aware of it, or had never
9 been aware since, other than when I saw it in the
10 documents from the Tribunal. 15:34

11 576 Q. Now, on 28th March 2017 you submitted an application
12 form for promotion to the rank of chief superintendent
13 to the Policing Authority, after they had advertised
14 the competition on 9th March of 2017?

15 A. That's correct, Chairman. 15:35

16 577 Q. On 19th May 2017 you were informed by the Policing
17 Authority that you had been selected to progress to the
18 final interview stage of the promotion competition. I
19 think that interview took place at the Policing
20 Authority office on 15th June 2017. The interview 15:35
21 board comprised of Mr. Billy Hawks, Chairperson, former
22 Data Protection Commissioner; Ms. Anne Tynan, formerly
23 the Department of Social Protection; Mr. Tim Hanley,
24 former Detective Chief Superintendent of PSNI; and
25 Mr. John Twomey, Deputy Commissioner of An Garda 15:36
26 Síochána, along with Ms. Josephine Feehily, who is
27 Chairperson of the Policing Authority?

28 A. Yes. Chairman, there were three stages to the
29 competition, there was preselections, followed by a

1 first round of interviews and followed by a final
2 interview.

3 578 Q. CHAIRMAN: That'd be common enough.

4 A. Yes.

5 579 Q. CHAIRMAN: A whittling down on the papers? 15:36

6 A. Yes.

7 580 Q. CHAIRMAN: And two interviews?

8 A. Yes. And I think 79 people applied for that
9 competition.

10 CHAIRMAN: I see. 15:36

11 581 Q. MR. MARRINAN: Then if we could have page 2639 up on
12 the screen, please. This is an e-mail from Mr. Liam
13 Hallinan to yourself, dated 30th June 2017?

14

15 "I refer to your candidacy for the rank of chief 15:37
16 superintendent in the Garda Síochána. I am pleased to
17 inform you that following the completion of the
18 selection process you have been placed on the panel of
19 candidates established by the Policing Authority based
20 on the order of merit determined by the selection 15:37
21 board."

22

23 We see there:

24

25 "Place on panel..." 15:37

26

27 And that's number 7, is that right?

28 A. That's correct, Chairman.

29 582 Q. I think the named list of candidates appeared in the

1 media on the 7th July, is that right?

2 A. It did.

3 583 Q. That listed you as candidate number 7?

4 A. It did.

5 584 Q. That was in an article in the Irish Examiner on 7th 15:37
6 July 2017?

7 A. That's correct, Chairman.

8 585 Q. That's at page 13699. We don't need to have that up on
9 the screen. If we could then go forward to 4th
10 September 2017. If we could have page 2646 up on the 15:38
11 screen, please. If we just scroll over to page 2647,
12 there is a more detailed note there. This is a
13 conversation you had with Garda Greene, who spoke to
14 you in the principles of Inspector Minnock. And the
15 thrust of the conversation is that he told you that 15:38
16 Garda Keogh was no longer going after you as his
17 searches for information to unearth scandal about you
18 had proved fruitless.

19 A. Yes.

20 586 Q. And Garda Greene indicated that Garda Keogh was now 15:38
21 going after former Commissioner Ó Cualáin, isn't that
22 right?

23 A. Yes.

24 587 Q. If we could then have page 2654 up on the screen,
25 please. This is a note that you took on 27th September 15:39
26 2017, this was the Justice Dáil Committee meeting and
27 was being chaired by Ms. Josephine Feehily?

28 A. Yes.

29 588 Q. You note in your statement, at 9:50am Deputy Daly made

1 reference to me you in asking Ms. Feehily if she had
2 received correspondence from a solicitor about you and
3 if Garda management were deliberately pulling the wool
4 over her eyes in relation to your promotion?

5 A. That's correct, Chairman.

15:40

6 589 Q. Was this the first occasion that you became aware of
7 the fact that Garda Keogh was concerned about your
8 promotion as it was progressing through the Policing
9 Authority?

10 A. I suppose it would have been three days earlier, when I
11 heard an article on my promotion and Garda Keogh on RTÉ
12 Radio 1 News at One programme on Sunday, the 24th
13 September.

15:40

14 590 Q. Then if we could go forward to 6th October 2017. If we
15 could have page 2656 up on the screen. This is an
16 e-mail from you to Mr. Hallinan, isn't that right?

15:41

17 A. Yes, Chairman.

18 591 Q. The subject-matter: Chief superintendent competition
19 2017. You say:

20
21 "I refer to the above named competition, in which my
22 candidate number was number 7. On the 30th June I was
23 informed that I was selected at number 7 on a panel of
24 superintendents deemed suitable for promotion to chief
25 superintendent in An Garda Síochána.

15:41

26
27 As I am presently aware that a sufficient number of
28 vacancies have arisen at chief superintendent rank to
29 allow for my appointment and I would appreciate if

1 someone might make contact with me to discuss the
2 matter."

3

4 And you give your telephone number.

5 A. Yes.

15:42

6 592 Q. If we just go on to the next page, 2657. This is an
7 e-mail from Mr. Hallinan to you. Scroll down. He
8 says:

9

10 "The Policing Authority is aware of positions to be
11 filled at chief superintendent level and the clearance
12 processes required in advance of making appointments
13 are currently being undertaken. We will be in contact
14 with you in due course."

15:42

15

15:42

16 Then if we go over to page 2658, you responded on the
17 9th October. In the second paragraph, you point out:

18

19 "In the open, transparent, accountable and ethical
20 manner in which I conduct myself both professionally
21 and personally, I feel it necessary to relay my concern
22 in relation to my suspicion at efforts being made by
23 third parties to influence the clearance process in an
24 attempted character assassination of me with the
25 authority."

15:42

15:43

26

27 what did you mean by that and what were you referring
28 to?

29 A. So, I suppose, I learned on the 24th September, while

1 listening to the RTÉ programme, that my promotion was
2 being debated in public and there were complaints about
3 it. It was followed on three days later then by what
4 happened at the Justice Dáil Committee that you've
5 referred to. I was aware, I suppose, numbers 1 to 6 15:43
6 had been promoted and the position for number 7
7 occurred on the 20th September with the retirement of a
8 chief superintendent. And Policing Authority had
9 advertised the fact that at their meeting on the 28th
10 September they were making appointments of senior 15:43
11 Gardaí to the rank of chief superintendent. When that
12 didn't happen, coupled with what had happened on the
13 24th and 27th September, I knew there was a problem.
14 593 Q. Mr. Hallinan responded to you, it's at page 2659. If
15 you scroll down please, Mr. Kavanagh. If we just look 15:44
16 there. It's in response to your earlier e-mail. If we
17 look at paragraph 3:
18
19 "As advised to candidates, the authority's clearance
20 process requires it to make such enquiries as the 15:44
21 authority considers necessary to satisfy itself in
22 accordance with regulation 12 of the regulations
23 regarding appointments by the Authority."
24
25 If you scroll over the page to 2660. 15:44
26
27 "1. Requiring the candidate to complete a clearance
28 form in advance of final interview.
29

1 2. Requesting the Garda Commissioner to complete a
2 declarati on as to the sui tabi lity of the candi date as
3 regards heal th and character or otherwise and to
4 provi de detai ls of any previ ous or outstandi ng
5 di sci pl i nary acti ons or convi cti ons. 15:45

6
7 3. Requesti ng GSOC to provi de detai ls of any
8 outstandi ng di sci pl i nary acti ons or convi cti ons.

9
10 4. In certai n ci rcumstances where there are speci fi c 15:45
11 al legati ons i n the publ ic domai n about a candi date, the
12 authori ty wi ll seek further clari fi cation i n relati on
13 to whether there are any addi ti onal matters that the
14 Authori ty shoul d be aware of i n advance of making an
15 appoi ntment, i ncl udi ng whether any further 15:45
16 i nvesti gati on or process i s bei ng contem pl ated. "

17
18 And then i n the last para graph he says:

19
20 "I assure you that the Authori ty i s fully commi tted to 15:46
21 a fai r process, as set out i n our statement of
22 practi ce, and to deali ng wi th these matters as
23 expedi ti ousl y as possi bl e. "

24
25 were you concerned about any of those bullet points 15:46
26 that are listed there?

27 A. I suppose the way the clearance and the vetting process
28 worked was that prior to my final interview I completed
29 a consent form, which allowed me to answer three

1 questions about my health, whether I had any discipline
2 sanctions imposed on me or whether there were
3 outstanding discipline investigations, and the same
4 with the criminal situation, whether I was ever
5 convicted criminally or had any criminal investigations 15:46
6 outstanding. And that then was to be checked with GSOC
7 and the Guards if I was successful and being appointed.
8 And I suppose when I saw the public domain then I
9 became concerned, because I hadn't seen that anywhere
10 as part of the competition. 15:47

11 594 Q. Yes.

12 A. And I felt that, I suppose, I was being tried in the
13 media and by what was in the public domain, decisions
14 were being made about me in relation to what had
15 appeared there and I had no input into it or no voice. 15:47

16 595 Q. At this point were you aware of any bullying and
17 harassment allegations being made against you?

18 A. No. Well -- no, certainly not, other than what was
19 said in the media on the 24th September.

20 596 Q. Yes. 15:47

21 A. And what was said in the Dáil committee, that perhaps
22 someone had pulled the wool over the Policing
23 Authority's eyes in relation to hiding complaints made
24 against me.

25 597 Q. But, of course, you had been named as a co-defendant in 15:47
26 civil proceedings?

27 A. I had.

28 598 Q. Did you think that that was something that you ought to
29 have drawn the board's attention to or not?

1 A. I thought about that carefully and I got advice about
2 it and I answered the questions that were asked in it.

3 599 Q. Yes.

4 A. I suppose at that stage I had supplied documents for
5 that and it was being dealt with by the legal section 15:48
6 in An Garda Síochána.

7 600 Q. Yes.

8 A. I didn't think it was relevant to, I suppose, the
9 candidate information that I had to provide anywhere.
10 But I would have no difficulty in discussing it or 15:48
11 making people aware of it because, as I said, I had,
12 you know, put together a document which covered, as it
13 turned out, all the allegations made against me.

14 601 Q. And then I think you received a call from Mr. Hallinan,
15 which you've noted at page 2668 of the materials. 15:48

16 A. Yes. That call indicated -- Mr. Hallinan indicated to
17 me that the Policing Authority had decided to pass over
18 me in the order of merit and promote the person at
19 number 8 on the list. But he wasn't in a position to
20 tell me why. 15:49

21 602 Q. I think if we scroll over to page 2669, this is a
22 fuller note that you made of it. We will just go
23 through it briefly, not the entirety of it, but you
24 note the time of the call and then you say?
25 15:49

26 "He informed me that a person after me was being
27 promoted and I was being passed over because of issues
28 which may be resolved at the next authority meeting."
29

1 Did he say what those issues were?

2 A. No.

3 603 Q. "Mr. Hallinan refused to inform me what those issues
4 were and simply said he couldn't discuss them. I
5 continued to insist he tell me as what had just 15:49
6 happened had an adverse impact on my character,
7 reputation and career."
8

9 Did you feel that at the time?

10 A. I did. I felt it was very damaging to me, because a 15:50
11 couple of days before that, on the 29th October, my
12 promotion had again been discussed on the News at One
13 radio programme on RTÉ that Sunday. On that programme
14 it had been indicated that the then head of HR,
15 Mr. Barrett, had written to the Policing Authority 15:50
16 about me.

17 604 Q. I think that you obviously continued to press him,
18 because he continued -- you note that he continued to
19 repeat that he couldn't tell you or anything else. But
20 he did say that your place had not been taken and only 15:50
21 one position had been filled after repeated questioning
22 by you. And then he couldn't tell you who had been
23 promoted?

24 A. Yes.

25 605 Q. Just explain that to me. What does he mean your 15:50
26 position hadn't been taken? If had you been passed
27 over, surely it had been?

28 A. Well, there were two vacancies, but they were only
29 going to appoint to one, so it still left the vacancy

1 there, as it were.
2 606 Q. Yes. If we could just go over to page 2670. You note
3 a text message that you sent to then Acting
4 Commissioner Ó Cualáin. In quotation marks:

5
6 "Commi ssi oner, I wonder if you could take a call as I
7 am looking for some advice in relation to a very
8 strange call I got from the Policing Authority telling
9 me they were passing me over but refusing to say why.
10 I am somewhat perplexed by the whole thing and I
11 believe I have no problem dealing with any issue if
12 only I knew what it was."

13
14 You went directly to the Commissioner in relation to
15 this. Can you just say why?

16 A. Yes. Because on the 14th September the Commissioner
17 had telephoned me to indicate that he expected I would
18 be promoted on the 28th at the Policing Authority
19 meeting and that he was transferring me to the Garda
20 college.

21 607 Q. Yes.
22 A. So, when I was then passed over, I text him because he
23 had phoned me and he was aware of it and I felt he
24 might know something, because I couldn't get any
25 information and I felt I suppose a bit in despair.

26 608 Q. You then go on to note at 17:05 that you received a
27 call, I don't know why it has been redacted, but it was
28 Mr. Nugent?

29 A. That's correct, he phoned me, yes.

1 609 Q. He said that the Commissioner had asked him to contact
2 you as he might be compromised. He said he and the
3 Commissioner were concerned that unsubstantiated
4 allegations could block your appointment. He said he
5 suspected he would have more information from the 15:53
6 Policing Authority either tonight or the next day and
7 would have a better sense of understanding of issues.
8 He said he would get back to you to tonight or the
9 following day and would contact you in relation to the
10 matter? 15:53

11 A. Yes.

12 610 Q. So it was clear that the acting commissioner was
13 indicating that there may be a conflict of interest?

14 A. Yes.

15 611 Q. And he wouldn't have any dealings with you? 15:53

16 A. Yes.

17 612 Q. Is that right?

18 A. That's correct.

19 613 Q. Therefore, Mr. Nugent was going to deal with you
20 directly? 15:54

21 A. Was to deal with me, yeah. I had a series of contacts
22 with Mr. Nugent then.

23 614 Q. He seems to have been expressing an awareness that some
24 unsubstantiated allegations, as you've recorded there,
25 might block your appointment? 15:54

26 A. Yes.

27 615 Q. Did you discuss that further with him?

28 A. No.

29 616 Q. As to what they might be?

1 A. No, no, I assumed he meant what had been in the media,
2 that's all I knew then and I didn't know what
3 interactions may have gone on between An Garda Síochána
4 and the Policing Authority, I wasn't aware of that.

5 617 Q. You then note, if we scroll down, that you explained 15:54
6 the situation in Athlone that you came to and that you
7 felt you were being penalised for doing your job. You
8 note that he didn't say anything substantial. Will you
9 just go on and deal with the rest of the conversation
10 as far as you can recall, as prompted by your note? 15:55

11 A. Yes. Well, I suppose I wanted to tell him about the
12 document that I had furnished already to the
13 organisation back in February of '17. I felt that I
14 was confident that I had fully dealt with every issue
15 that had been raised in the media. I suppose in May of 15:55
16 '17 I had learned, when I got the statement of claim in
17 relation to civil proceedings, what exactly were the
18 complaints against me and I was confident that the
19 document I had provided had dealt with them as far as
20 from my perspective. And I asked, you know, if that 15:55
21 report had gone to the Policing Authority or if it
22 could be made available to them, so as they could
23 address any issues that they had that were in the
24 public domain, which seemed to be something of concern
25 to them. You know, I suppose I was anxious to make him 15:56
26 aware that in my dealings in Athlone I had, you know, I
27 suppose as far as I was concerned, acted within the
28 policies of An Garda Síochána in the full sight by my
29 line management and the Commissioner -- or Chief

1 Superintendent wheatley was fully aware of how I
2 managed Athlone.

3 618 Q. Now, I think on the 31st October you received a call
4 from Mr. Hallinan?

5 A. Yes. And that led on that to that then interaction 15:56
6 with Mr. Nugent.

7 619 Q. Yes.

8 A. Later that evening.

9 620 Q. Now, I think if we could have page 2673 up on the
10 screen, please. This is a response from Mr. Hallinan 15:57
11 to you, to an earlier e-mail?

12 A. Yes.

13 621 Q. He says, we will see there in the second paragraph:
14
15 "I advised that your clearance was not complete. As a 15:57
16 matter of professional courtesy I wanted to make you
17 aware that a candidate had been appointed at the rank
18 of chief superintendent at the Authority meeting on
19 26th October 2017. As I had previously stated in my
20 e-mail to you dated 12th October 2017, it is not always 15:57
21 possible to have all clearance concluded in advance of
22 an Authority meeting as there are a number of reasons
23 why the clearance process might take longer in some
24 instances."
25 15:58

26 So he is clearly identifying there, there's an issue in
27 relation to the clearance process, isn't that right?

28 A. Yes.

29 622 Q. "I advised you that this person being promoted did not

1 affect the consideration of your appointment because,
2 as you are aware, there is more than one vacancy at the
3 rank. I did advise that the matter may be considered
4 at the November meeting of the Authority if the
5 clearance process in relation to your candidacy is
6 complete at that time. 15:58

7
8 For the sake of clarity, I wish to confirm that the
9 Authority did not make a decision to decline to appoint
10 you. Indeed, no decision was made as the clearance 15:58
11 process is ongoing. The Authority requested further
12 clarification in relation to whether there are any
13 additional matters that the Authority should be aware
14 of in advance of making an appointment, as the
15 Authority is obliged to satisfy itself in accordance 15:59
16 with regulation 12 regarding appointments.

17
18 I pointed out in our phone conversation that, because
19 there is more than one vacancy, you have not been
20 bypassed. Neither was any information made public. 15:59
21 The Authority has never disclosed details of a panel of
22 candidates in relation to this competition or any
23 candidate's position on a panel to any party other than
24 the candidate him/herself. "

25
26 Is that the position as you believe it to be so? 15:59

27 A. Oh absolutely, yes. Yes.

28 623 Q. "I would again reiterate that the Authority has not
29 made any adverse decision in your case. It is in the

1 process of making such enquiries as are necessary to
2 satisfy itself in accordance with the statutory
3 obligation. Mindful of your position and the
4 uncertainty and possible distress that this delay may
5 be causing you, the Authority has sought to keep you 16:00
6 informed of the delay whilst the clearance process is
7 ongoing. "

8
9 You had been advised by the authority that the
10 clearance process was primarily a matter for An Garda 16:00
11 Síochána and also to a lesser extent for GSOC.

12 A. Yes.

13 624 Q. Isn't that right?

14 A. Yes.

15 625 Q. So at this point in time did you believe that there was 16:00
16 a problem in relation to the clearance process within
17 An Garda Síochána?

18 A. In fact, I had made an enquiry to find out fully, I
19 suppose, clearance had been submitted to the Authority
20 from An Garda Síochána in relation to me. 16:00

21 626 Q. Was that with Mr. Nugent?

22 A. No, Chief Superintendent Nyland.

23 627 Q. Yes. When did you do that?

24 A. Some time in October, prior to being passed over.
25 After I sent those string of e-mails there, I suppose, 16:01
26 advising the Policing Authority that I felt my
27 character was being assassinated in public.

28 628 Q. Yes. Then, on the 16th November, if we could have page
29 2835 up on the screen, you note that you received a

1 call from Mr. Nugent. Will you just tell us in your
2 own words what that was about?

3 A. Yes. He phoned me, he said he was in communication
4 with the Policing Authority and they were going to make
5 decisions in relation to appointments at their monthly 16:02
6 meeting on the 23rd November, my appointment included
7 in that. He told me that I had the support of the
8 organisation and that he was working on the issue with
9 the Head of Legal Affairs. He asked if I had any
10 objection to giving the document that I mentioned, the 16:02
11 338-page document, to the Policing Authority. I said I
12 didn't.

13 629 Q. You also note, at the end there:
14
15 "He said he was aware of the appointment re bullying 16:02
16 investigation."

17 A. Yes. So the day before I had been informed that
18 Assistant Commissioner Finn had been appointed to carry
19 out a bullying investigation on the 15th November.

20 630 Q. That was by way of an e-mail from Assistant 16:02
21 Commissioner Fanning?

22 A. That's correct.

23 631 Q. Is that right?

24 A. Yeah.

25 632 Q. And that's to be found at page 2831 of the material. 16:03
26 If you just scroll down. That is dated 15th November
27 2017?

28 CHAIRMAN: Have you much more to go, Mr. Marrinan?
29 Could we finish your examination this afternoon or how

1 long is it going to be?
2 MR. MCGUINNESS: I will be another half, maybe another
3 hour.
4 CHAIRMAN: That's fine. We will leave it then. If it
5 is comfortable and convenient, well and good, and it's 16:03
6 only going to take a few minutes. If it's going to
7 take a bit longer, not a problem, no criticism implied
8 or intended. So we will leave it until tomorrow.
9 Gentlemen, I said I wanted to leave early tomorrow.
10 MR. MCGUINNESS: Chairman, I was going to suggest if we 16:03
11 started at 10:00am.
12 CHAIRMAN: Yes.
13 MR. MCGUINNESS: And sat until 12:30 and then sat from
14 1:30 to 3:30.
15 CHAIRMAN: If that convenient with everybody? 16:04
16 Everybody can live with that? That'll be very
17 convenient and that will suit me very well. Thanks
18 very much. I appreciate the cooperation. Thank you
19 very much.
20
21 THE HEARING THEN ADJOURNED UNTIL TUESDAY, 3RD MARCH
22 2020 AT 10:00AM
23
24
25
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27
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29

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