

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

ESTABLISHED BY INSTRUMENT MADE BY THE MINISTER FOR JUSTICE
AND EQUALITY UNDER THE TRIBUNALS OF INQUIRY (EVIDENCE) ACT
1921, ON 17 FEBRUARY 2017, AS AMENDED ON 7 DECEMBER 2018

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

HELD IN DUBLIN CASTLE
ON TUESDAY, 3RD MARCH 2020 - DAY 146

146

GWEN MALONE STENOGRAPHY
SERVICES CERTIFY THE
FOLLOWING TO BE A
VERBATIM TRANSCRIPT OF
THEIR STENOGRAPHIC NOTES
IN THE ABOVE-NAMED
ACTION.

GWEN MALONE STENOGRAPHY
SERVICES

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1 THE HEARING RESUMED, AS FOLLOWS, ON TUESDAY, 3RD MARCH
2 2020:

3
4 CHAIRMAN: YES.

5
6 CHIEF SUPERINTENDENT PATRICK MURRAY CONTINUED TO BE
7 DIRECTLY-EXAMINED BY MR. MARRINAN, AS FOLLOWS:

8
9 1 Q. MR. MARRINAN: Good morning, chief superintendent?

10 A. Good morning.

11 2 Q. I think we come now to the 16th November, if you have
12 your statement there.

13 A. Yes.

14 3 Q. It's 2073 of the materials. We note on the 16th
15 November that you received a call from Mr. Joe Nugent,
16 asking if you had any objection to supply to the
17 Policing Authority, the document that we referred to,
18 the 338-page document?

19 A. Yes, Chairman.

20 4 Q. And you indicated that you had no objection to that?

21 A. I didn't.

22 5 Q. Perhaps we could just look at your note of this, it's a
23 little bit more detailed, at page 2835 of the
24 materials, please. You note:

25
26 "Received a call from Joe Nugent. He told me he was in
27 communication with Helen Hall of the Policing Authority
28 and that they wanted today to make decisions re
29 appointments for the meeting on the 23rd November and

1 particularly my appointment. He told me I had the
2 support of the organisation and he was working on the
3 issue with Ken Ruane, Head of Legal Affairs."

4
5 what did you take him to mean in relation to the 10:03
6 support of the organisation?

7 A. I suppose, I felt he was explaining to me that the
8 delay of the promotions, just based on allegations that
9 had manifested themselves in public, you know, wasn't
10 sufficient, that was the organisation's view, to just 10:03
11 stop it like that. And I felt he was conveying that to
12 me.

13 6 Q. "He asked me why I had any objection to he giving my
14 338-page document to the Policing Authority. I said no
15 problem and explained that this was just one of the 10:04
16 myriad of issues I was dealing with in Athlone. He
17 said he was aware of the appointment re the bullying
18 investigation."

19 A. Yes.

20 7 Q. So then if we move on, I think on Sunday, the 19th 10:04
21 November there was an RTÉ News at One radio programme
22 which had a feature regarding Assistant Commissioner
23 Finn's appointment to investigate Garda Keogh's
24 allegations against you?

25 A. That's correct, Chairman. It was the third month in a 10:04
26 row in which such media coverage had occurred.

27 8 Q. You've set out the media reports in relation to this.
28 They're at page 2840. We don't need it, Mr. Kavanagh,
29 on screen. But by way of reference you have included

1 those in the documents that you have given to the
2 Tribunal, isn't that right?

3 A. Yes, Chairman.

4 9 Q. If we then move on to 28th November 2017. You
5 highlighted your concerns to the Garda organisation. 10:05
6 what you say is, regarding what occurred, it was an
7 orchestrated effort to prevent my promotion by the
8 emergence of a complaint just then, which had
9 apparently been made by Garda Keogh in March of 2017
10 and which was being combined with media and political 10:05
11 campaign against you. How did you become aware of the
12 fact that Garda Keogh had made a complaint of bullying
13 and harassment in March of 2017?

14 A. Because on the 15th November, Assistant Commissioner
15 Fanning, on notifying me of the appointment of 10:06
16 Assistant Commissioner Finn, also included with that
17 the set of documents as an attachment to these.

18 10 Q. Yes.

19 A. And on that was a statement signed by Garda Keogh and
20 dated the 27th March and countersigned by Chief 10:06
21 Superintendent Scanlan.

22 11 Q. We might look at your statement, or your letter, which
23 is at page 2849 of the material. We might spend a
24 little time on this because it might indicate your
25 concerns at the time? 10:06

26 A. Yeah, it indicates my mindset just at the time.

27 12 Q. Yes. It is to the Commissioner, the Deputy
28 Commissioner of Policing and Security and the Chief
29 Administrative Officer. Who was Deputy Commissioner

1 Policing and Security at that time?

2 A. Deputy Commissioner Twomey.

3 13 Q. Twomey. It's dated the 28th November. You say:

4

5 "I refer to the above matter. I find myself in the 10:07

6 unprecedented situation of having to correspond

7 directly with the executive leadership team to outline

8 my concerns at what I believe are efforts being made to

9 tarnish my reputation and character in a way that will
10 affect my good name and career in An Garda Síochána. I 10:07

11 am led to understand that assistant commissioner roads

12 policing has been appointed by assistant commissioner

13 Eastern Region to investigate workplace relation

14 allegations by Garda Keogh against a number of senior

15 officers, including myself. I understand the 10:07

16 allegations were made on the 27th March and relate to a

17 period from March 2014 to September 2015."

18

19 You go on to say:

20

10:08

21 "I was transferred to Athlone on 9th March 2015 as

22 district officer. I discovered a myriad of serious

23 issues there, some ongoing, impacting on the delivery

24 of an effective policing service. The majority of

25 those issues did not relate to Garda Keogh." 10:08

26

27 If we scroll over to the next page:

28

29 "I engaged meaningfully with Garda Keogh through my

1 recognised managerial structural line, which included
2 assistant commissioner Eastern Region, for the short
3 period Garda Keogh was in the workplace during my
4 tenure, with a view to supporting him and dealing with
5 his work related issues. Indeed, I have been 10:08
6 complimented by my line managers, including assistant
7 commissioner Eastern Region, in relation to the manner
8 in which I dealt with Garda Keogh."

9
10 Then you go on to say: 10:09

11
12 "I attended a case conference with the CMO in relation
13 to Garda Keogh on 9th December 2015. Six days later my
14 name was mentioned in Dáil Éireann for the first time.
15 Since then, I believe I have evidence to suggest that I 10:09
16 have been subjected to a strategically managed smear
17 campaign, including media exposure, prior to Policing
18 Authority meetings, where my appointment to the rank of
19 chief superintendent was to be discussed.

20 10:09
21 At the outset I must set out my serious concerns in
22 relation to the initiation of this workplace relations
23 investigation."

24
25 You then point out in the next paragraph that in 10:09
26 November 2016 you were made aware of the civil
27 proceedings that had been instituted.

28 A. Yes.

29 14 Q. If we scroll down, in the next paragraph you refer to

1 your 338-page document.

2 A. Yes.

3 15 Q. which set out our defence. Then if we scroll down:

4

5 "I first heard of these latest workplace relations 10:10
6 allegations on Saturday, 11th November 2017, at 3:45pm,
7 when I received an e-mail from assistant commissioner
8 Eastern Region which postdated and referred me to
9 correspondence I only received two days later by post,
10 on 13th November 2017. On Wednesday, 15th November 10:10
11 2017 I received a further e-mail notifying me of the
12 appointment of assistant commissioner Roads Policing. "

13

14 That's the document that we referred to yesterday?

15 A. Yes. 10:10

16 16 Q. "What appears to be a hurried and contrived nature of
17 this appointment in terms of its close association with
18 what appears a planned and strategically managed media
19 campaign, is very concerning to me. "

20

21 Over the next page we have:

22

23 "I understand from the correspondence I received that
24 Garda Keogh made this workplace relations complaint in
25 March 2017. The time delay in notifying me is, I 10:11
26 believe, extraordinary. In the absence of any
27 explanation --"

28

29 And then in bold print you say:

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-- I must ask you now to outline to me the entire circumstances of the complaints making and the reasons for the delay involved."

10:11

You will appreciate that in hindsight you're at one in relation to this in relation to Garda Keogh's position --

A. Yes.

17 Q. -- in terms of the delay --

10:11

A. Yes.

18 Q. -- in relation to the investigation?

A. Yes.

19 Q. But you seem to be coming at it from a different angle, isn't that right?

10:11

A. I'm looking at it from the angle of it being introduced at a particular time following what I saw as a political and media campaign and that certain elements were introduced then further along. So in September I had RTÉ and the Dáil, in October I had RTÉ again and a letter from Mr. Barrett to the Policing Authority, I suppose suggesting a scenario in relation to this complaint. And then in November again more media with the introduction of the appointment of Assistant Commissioner Finn in relation to this. And I felt all those things were occurring in or about the time of Policing Authority meetings where my appointment was perhaps being considered.

10:12

10:12

20 Q. You will appreciate that Garda Keogh's position in

1 relation to this is that there was a delay in the
2 investigation to facilitate your promotion so that
3 there could be a declaration that you had no issues to
4 be dealt with in An Garda Síochána?

5 A. I wouldn't agree with that. And when I studied the 10:13
6 documents from the Tribunal, you know, between the time
7 Garda Keogh made the complaint on the 27th March and
8 until he sent a letter to Garda Headquarters on the
9 21st September, I don't see any enquiries being made in
10 all the correspondence that's there even about me to 10:13
11 various bodies, I don't see any enquiries about this
12 particular complaint.

13 21 Q. Yes.

14 A. Or where it was in that period. Particularly from when
15 he learned I was on a promotion list again in July of 10:13
16 '17 until 21st September '17, while he wrote plenty of
17 letters, I just don't see any enquiries about where
18 that complaint was at that particular time.

19 22 Q. Yes. But if we come back to the delay that there was.

20 A. Yes. 10:13

21 23 Q. Garda Keogh had made his complaint of bullying and
22 harassment. So it doesn't appear that he was part of a
23 deliberate plan to delay it and then to, as it were,
24 reactivate it around the time that the Policing
25 Authority were considering your application? 10:14

26 A. Yeah. I don't see any evidence of that, but again, I
27 suppose my mindset at the time was that, you know,
28 things were being introduced at certain periods which
29 seemed to have maximum impact on decisions that the

1 Policing Authority were making. I felt that people
2 were adopting, I suppose, a position against me, based
3 on what was in the media and the Dáil.

4 24 Q. Yes.

5 A. And I was being painted as some type of monster, when I 10:14
6 had never had an opportunity to address some of those
7 issues.

8 25 Q. Yes. And one can understand that, but I suppose
9 because you're both coming at this from a different
10 angle, as it were, on the one hand he says there's some 10:14
11 sort of conspiracy behind this to delay the
12 investigation of his complaint, and you're sort of
13 indicating at the same time that there is a delay and
14 that it's rather peculiar, to put it at its lowest --

15 A. Yes. 10:15

16 26 Q. -- that this matter comes to the fore in a hurried
17 fashion --

18 A. Yes.

19 27 Q. -- immediately before the Policing Authority are going
20 to consider your application? 10:15

21 A. Yes.

22 28 Q. Isn't that right?

23 A. Yeah. I suppose my mindset is influenced maybe by what
24 had occurred in 2016 as well. So that's the way I felt
25 at the time. 10:15

26 29 Q. Well, do you see this perhaps as being a coincidence,
27 as it were? I know that you have a view in relation to
28 Garda Keogh and his interaction with the Policing
29 Authority and the letter that he sent to the Policing

1 Authority concerning your promotion. But do you see
2 that as a coincidence, that An Garda Síochána, as it
3 were, begin to take action in relation to the bullying
4 and harassment complaint shortly before the Policing
5 Authority are going to consider your promotion? 10:16

6 A. I'm not a hundred percent sure of that.

7 30 Q. Yes.

8 A. I don't know when it came to Garda Headquarters to
9 allow, I suppose, what happened there occur in relation
10 to it. But there seemed to have been no one appointed 10:16
11 until the 15th November, for whatever reason.

12 31 Q. That doesn't appear to have been Garda Keogh's fault,
13 isn't that right?

14 A. No, no, absolutely, no, no.

15 32 Q. We will go back then to the letter, if we could scroll 10:16
16 down.

17 33 Q. CHAIRMAN: Sorry, can you just remind me, because I
18 don't have it and I don't have my chronology, can you
19 just remind me what happened on 21st September '17.

20 A. The 24th? 10:16

21 34 Q. CHAIRMAN: The 21st. Sorry, as I understand it, you
22 said nothing happened between the 27th March?

23 A. Sorry, yeah.

24 35 Q. CHAIRMAN: When Garda Keogh made his statement, as we
25 know, to Chief Superintendent Scanlan, and you drew 10:16
26 attention to the fact that nothing had happened between
27 then and the 21st September. Did I mistake the 21st?

28 A. No.

29 36 Q. CHAIRMAN: What happened, what is the significance of

1 the 21st. Just remind me. I should know.

2 A. It's at 6886 and it's a letter from Garda Keogh's
3 solicitor to several -- quite a few people in relation
4 to me.

5 37 Q. CHAIRMAN: To whom was that letter? Was that the one 10:17
6 to the Chairman of the Oireachtas Committee, Caoimhghín
7 Ó Caoláin and others, is that the one?

8 A. The Minister, the Commissioner, the Policing Authority.

9 38 Q. CHAIRMAN: Thanks, no, no, that's the one I want. I
10 just hadn't got that in my mind? 10:17

11 A. The Justice Committee, Mr. Barrett and --

12 CHAIRMAN: Thanks very much.

13 39 Q. MR. MARRINAN: We can just go back to the letter. You
14 refer to media reports there.
15 10:18

16 "Outline An Garda Síochána's plans to carry out a
17 scoping exercise in relation to this matter. I must
18 ask if that scoping exercise was carried out and what
19 the result was. I believe fair procedures and natural
20 and constitutional justice would entail such an 10:18
21 exercise take place so that chapter 5.2 of the policy
22 document, Working Together to Create a Positive Working
23 Environment, under which such complaints are dealt
24 with, can be considered in my pre-investigation
25 examination now to take place. For I say not to do so 10:18
26 gives a credibility to the complaint outside the terms
27 of chapter 5.2."
28
29 Can you just explain what you meant by that?

1 A. I had learned in the media that there was some, I
2 suppose, fractured brow between different elements in
3 the Garda Síochána at a high level as to whether a
4 scoping exercise should be carried out or not.

5 40 Q. Yes. 10:19

6 A. I felt that, you know, without that scoping exercise it
7 gave a credence or a credibility to the complaint,
8 outside of that chapter there, which outlines what is
9 not bullying in the policy document.

10 41 Q. Did you merely learn this from media reports or were 10:19
11 you aware of meetings in Garda Headquarters?

12 A. I learned them from media reports but I subsequently
13 became aware of them then.

14 42 Q. But at the time you learned from the media?

15 A. Yeah, I was learning quite a lot of things from media. 10:19

16 43 Q. Then you go on to say:

17

18 "I must ask why I was given no opportunity to consider
19 mediation as outlined at chapter 8.4 of the policy.

20

10:19

21 I must ask what other complaints Garda Keogh has made
22 in relation to these matters apart from the civil claim
23 referred to and what other processes are in being. Has
24 professional independent legal advice been sought to
25 ascertain if this process can proceed considering its 10:20
26 inextricable link to other avenues Garda Keogh may be
27 engaged in."

28

29 what did you mean?

1 A. Civil action mostly, yeah.

2 44 Q. "I must ask for a full disclosure of all relevant
3 documents relating to this matter, to include all
4 documents and letters referred to in media reports."

5 A. Yes. 10:20

6 45 Q. What were you referring to there?

7 A. The meetings that I learned about in the media in
8 October of 2017.

9 46 Q. Then you go on:

10 10:20

11 "I must ask how this, what I say is a contrived and
12 hurried appointment, can continue, considering the
13 complete lack of confidentiality displayed by the
14 complainant."

15 10:20

16 That is a reference to Garda Keogh.

17 A. Yes.

18 47 Q. "And others."

19 A. Yes.

20 48 Q. "As evidenced in the media reports attached." 10:20

21 A. Yes.

22 49 Q. "The policy document under which it is proposed these
23 allegations are dealt with, regards confidentiality as
24 sacrosanct."

25 A. Yes. 10:21

26 50 Q. Is that right?

27 A. Yes.

28 51 Q. And then you go on to point out that you have:
29

1 "...an unblemished 35 years of service in An Garda
2 Síochána and have never before in any of the roles I
3 have held had such a complaint made against me. I am
4 mindful of the fact that allegations of this nature are
5 serious and are having very direct implications for my 10:21
6 career in An Garda Síochána. I seek immediate
7 clarification on the issues raised and confirmation as
8 to whether informed, professional legal advice was
9 sought prior to pursuing these allegations in the
10 manner chosen." 10:21

11
12 It's quite a strong letter that you have written to the
13 Commissioner.

14 A. Yes. As I said, I felt I was in an unprecedented
15 situation insofar as I was concerned, having to write, 10:21
16 it's unusual and I never had to do it before in my
17 service, to write in that fashion.

18 52 Q. Did you believe that you were being treated at that
19 time unfairly by the organisation as well?

20 A. I suppose I felt that I was going to be scapegoated 10:22
21 because of the position that may have been adopted by
22 people who were making decisions about me because of
23 what was in the media and the Dáil. And I felt that I
24 was going to be scapegoated to allow placation of, I
25 suppose, all of that noise that was occurring with 10:22
26 politicians in Garda Keogh's favour.

27 53 Q. Yes.

28 A. That's how it felt.

29 54 Q. You see, part of the suggestion that is made is that

1 Garda Keogh's allegation of bullying and harassment was
2 being deliberately withheld from the Policing Authority
3 to facilitate your promotion. You understand that to
4 be the position?

5 A. Yes. 10:22

6 55 Q. I think that you had indicated to the Policing
7 Authority that you would make available your 338-page
8 letter or report that you had prepared for the civil
9 proceedings, isn't that right?

10 A. I did. And that was in December, when the Policing 10:23
11 Authority first made contact with me about the matter.

12 56 Q. Yes.

13 A. But I would have been willing to do that back in
14 October when I engaged with the Policing Authority, to
15 tell them that I felt maybe my character was being 10:23
16 assassinated. I never had any problem offering that
17 document to them if it would overcome the impasse.

18 57 Q. Did you receive a reply to this letter that you sent?

19 A. I got an acknowledgment indicating that Mr. Nugent was
20 dealing with the issues. 10:23

21 58 Q. But no written reply?

22 A. Other than to say that.

23 59 Q. Other than an acknowledgment?

24 A. But I had been engaging with Mr. Nugent then.

25 60 Q. Yes. If we go forward then to 22nd December 2017. If 10:23
26 we could have notes of your conversation with Ms. Helen
27 Hall of the Policing Authority. It's page 2885 of the
28 material. Can you just tell us about this conversation
29 as you recall it with Ms. Hall of the Policing

1 Authority?

2 A. Yeah. I suppose --

3 61 Q. Would you like me to read your note for you?

4 A. Yes, okay.

5 62 Q. Would that be better? 10:24

6 A. Yeah.

7 63 Q. It may shorten matters.

8 A. Yeah, it will.

9 64 Q. You note there that you received a call from Helen Hall
10 and how long it lasted. Ms. Hall began by telling you 10:24
11 that the Policing Authority considered your appointment
12 at their meeting on 18th December 2017, but decided
13 they didn't have enough information from An Garda
14 Síochána on the issues regarding a bullying and
15 harassment complaint made against you. She said that 10:25
16 they had not obtained sufficient information from the
17 Garda Síochána despite seeking same repeatedly. Were
18 you concerned about that at the time?

19 A. I was. I didn't realise that there had been a problem
20 on the Garda side supplying information. I was of the 10:25
21 understanding that information was being supplied as it
22 was required and I felt that was -- I didn't know where
23 I stood then. Again, that increased my suspicion.

24 65 Q. You went on to ask her who she was dealing with in An
25 Garda Síochána. She said that they should be dealing 10:25
26 with the Commissioner but he was compromised. You had
27 been already advised of that --

28 A. Yes.

29 66 Q. -- by Mr. Nugent?

1 A. I had.

2 67 Q. Is that right?

3 A. I had.

4 68 Q. In some way as a result of his involvement in an
5 investigation he carried out. So they were dealing 10:25
6 with the CAO, Joe Nugent. She said:
7
8 "The Policing Authority are writing to him again today,
9 the 22nd December, expressing their deep frustration
10 and annoyance and looking for the information again 10:26
11 before their January meeting."
12
13 You then note:
14
15 "I asked her if the Policing Authority were aware of 10:26
16 the media campaign around this issue each month before
17 the PA meetings in September, October, November and
18 December. She said they were trying to get through the
19 noise around this but only had weak information from
20 the Guards, which involved a summary of the complaint." 10:26
21
22 I think at that stage you offered Ms. Hall the 338-page
23 document to overcome what you saw as an impasse --
24 A. Yes.

25 69 Q. -- between her and Mr. Nugent, is that right? 10:26

26 A. Yes.

27 70 Q. So this was another occasion on which you had been
28 passed over?

29 A. Yes.

1 71 Q. If we could just then go forward to page 2888. Arising
2 out of that conversation you were sent an e-mail from
3 Ms. Helen Hall?

4 A. Yes.

5 72 Q. And we see there it's dated the 22nd December, at 10:27
6 14:05. The second paragraph:

7
8 "The Authority has been seeking information from the
9 Garda Síochána since October in respect of the
10 outstanding complaint against you in relation to 10:27
11 bullying and harassment."

12
13 well, that sets it out very clearly in relation to the
14 issue.

15 A. Yes. 10:27

16 73 Q. And the issue is that they have information that there
17 was a bullying and harassment complaint and they had
18 been apparently trying to ascertain what it relates to.

19 A. Yes.

20 74 Q. 10:27

21 "The Authority noted that notwithstanding repeated
22 requests to the Garda Síochána it did not have full
23 information regarding this complaint and was not
24 therefore in a position to make a decision regarding
25 clearance in accordance with regulation 12. 10:28

26
27 Subsequent to that meeting, on the 18th December we
28 have received some further details from the Garda
29 Síochána of the complaint against you and I have today

1 written requesting an update in advance of the
2 Authority's next meeting in January regarding what
3 progress has been made in relation to the investigation
4 of that complaint. We have expressed a view that in
5 the interests of fairness to you and the complainant, 10:28
6 it is important that this matter be dealt with as
7 expeditiously as possible in accordance with the Garda
8 Síochána bullying and harassment policy."
9

10 So they're setting out their position and I suppose you 10:28
11 wouldn't disagree with that, the fault didn't appear to
12 lie with them.

13 A. That's what they said, yes.

14 75 Q. And they seem to have been pursuing the matter for some
15 considerable period of time. I think that then, on 10:29
16 18th January of 2018 you had a meeting with Assistant
17 Commissioner Finn.

18 A. Yes.

19 76 Q. I will return to that when we are dealing with the
20 notes that you've disclosed. 10:29

21 A. Yes.

22 77 Q. Because that relates to the bullying and harassment
23 issue.

24 A. Yes.

25 78 Q. I think finally, on 29th January 2018 you received an 10:29
26 e-mail from Helen Hall of the Policing Authority,
27 informing you that the Authority had met in special
28 session on Friday, 26th January 2018, to consider your
29 promotion and that she went into detail, describing how

1 she had photocopied the report that you had given her
2 on 22nd January 2017 for each of the nine members of
3 the Authority and that allowed them to peruse the
4 supporting documentation. She said that following
5 that, the Authority was happy to promote you and 10:30
6 backdate the promotion to 26th October 2017. I think
7 at page 2898 you have a note?

8 A. Yes.

9 79 Q. Again you have the time that the call lasted. You note
10 there: 10:31

11
12 "I again remonstrated a bit with the entire affair and
13 expressed dissatisfaction re having to engage a
14 solicitor. She said I will get paperwork the next day
15 and I did at 11:44am and same replied to accepting 10:31
16 promotion."

17
18 At that time had you engaged a solicitor yourself?

19 A. I did on the 1st November, the day after I was passed
20 over for the first time. I got very concerned and I 10:31
21 engaged a solicitor from that point on, privately.

22 80 Q. The following day, Acting Commissioner Ó Cualáin
23 informed you that in line with the call that you
24 referred to yesterday --

25 A. Yes. 10:32

26 81 Q. -- of the 14th September, that you were being still
27 transferred to the Garda college as director of
28 training as and from 8th February 2018, following on
29 from your promotion. You have a note of that

1 conversation and that's at page 2900. We don't need it
2 on the screen, Mr. Kavanagh.

3
4 The next event that you note of consequence is on 6th
5 February 2016. Clare Daly TD referred to your 10:32
6 promotion in what you describe as a negative way in
7 Dáil Éireann, again citing allegations Garda Keogh was
8 making against you, isn't that right?

9 A. Yes.

10 82 Q. If we can just have page 2910 up on the screen. And if 10:32
11 we scroll down there, we can see the contribution from
12 Deputy Clare Daly, where she says:

13
14 "The Minister can dress it up in any way he likes but
15 it has been established that there has been Garda 10:33
16 involvement in the drugs trade in Athlone. It is a
17 fact that no action has been taken against those
18 responsible. It is a fact that the person who made the
19 allegations is out sick and his senior manager has
20 recently been promoted despite being at the centre of 10:33
21 allegations of bullying and harassment. Those
22 allegations have not been investigated. We have a
23 mechanism which is not fit for purpose."

24
25 So again, you're being drawn into debate in Dáil 10:33
26 Éireann.

27 A. I am. I suppose the Policing Authority advised me that
28 I should expect such a backlash, you know, from
29 politicians and the media, when they advised me of my

1 promotion on the 29th.

2 83 Q. Now, that largely was the end of matters as far as you
3 were concerned in relation to your promotion, isn't
4 that right?

5 A. Yes. 10:34

6 84 Q. Now, I've omitted a huge number of documents that you
7 provided to the Tribunal, but do you think that's a
8 fair reflection of your position --

9 A. Yes.

10 85 Q. -- in relation to it? 10:34

11 A. Yes.

12 86 Q. I don't think I have left out anything.

13 A. No, absolutely not.

14 87 Q. Are you happy with that?

15 A. I am. 10:34

16 88 Q. During the whole process of your application for
17 promotion back in 2016 and then going through to your
18 ultimate promotion in 2018, do you believe that you had
19 done anything improper in relation to any of your
20 representations that you made to the Policing Authority 10:35
21 or to any TDs or otherwise?

22 A. No. I tried to be very careful in everything I did.
23 In 2016 I was working with a group of eight people
24 under the auspices of the representative association.
25 That turned into five then after November of '16. And 10:35
26 in 2017 I was working on my own with my solicitor with
27 the Policing Authority, from when they passed over me
28 in October.

29 89 Q. You have disclosed notes to the Tribunal and I don't

1 intend to open all of them, but it shows fairly
2 extensive correspondence or, sorry, meetings that you
3 had with various TDs?

4 A. Yes.

5 90 Q. Can you explain the circumstances in which you
6 approached members of Dáil Éireann in relation to your
7 promotion?

10:36

8 A. So, I suppose the 18 people who were promoted, and I
9 was one of those, or listed for promotion in '16, were
10 of the understanding that we were all going to be
11 promoted clear in line with, I suppose, documents that
12 had circulated in the organisation indicating that
13 there were vacancies for 18 people, in line with the
14 modernisation and renewal programme and a governance
15 document that was introduced. When ten people were
16 promoted, we couldn't find out any information then
17 right throughout the summer. We got a date of
18 September and I do see that Garda Keogh got some
19 information in September as well himself that there was
20 going to be some appointments at cabinet. And I see in
21 August where there was some interaction between the
22 department and the Attorney General in relation to me
23 and promotion. I didn't know any of that. But in
24 October, one of the eight people who hadn't been
25 promoted made contact with the other seven and we met
26 as a result of that communication then with our
27 representative association and decided on a course of
28 action to try and find out what was happening and,
29 number two, could we possibly get promoted before the

10:36

10:36

10:37

10:37

1 end of the year and before the list was to extinguish.
2 And could some transitional arrangements be made in our
3 case, as was similar in legislation or regulations
4 which allowed for that to happen at the ranks of garda
5 sergeant and sergeant to inspector.

10:37

6 91 Q. If we could just have page 16653 on the screen. This
7 is the Garda Code. I just want to ask you in relation
8 to chapter 10.1 and 10.23. We can go through to page
9 1668. If we scroll down to the bottom of that page to
10 10.23. It says:

10:38

11
12 "Attempts at using influence.
13 Members are forbidden to communicate either directly or
14 through some other person with any public body,
15 department, public official or other person with the
16 object of influence or modifying a decision regarding
17 discipline, promotion or transfer of themselves or any
18 member of the service. Where, with this purpose in
19 mind, a relative or friend of a member communicates
20 directly with the Commissioner or any officer of the
21 service, or indirectly through the medium of any public
22 body or organisation, or public official or private
23 individual, it will in all cases be presumed that such
24 body or individual has so acted with the cognisance of
25 the member in whose interests the representation is
26 made."

10:38

10:39

10:39

27
28 In terms of your representations that you were making
29 at the time to the various TDs, did you regard that as

1 infringing at all on that regulation?

2 A. No.

3 92 Q. Would you just explain why?

4 A. Because, I suppose, when we met first the

5 representative body wrote to the Commissioner and met 10:39

6 with the Commissioner at the time, and, you know,

7 insofar as I was concerned explained what we were going

8 to do. She appeared to have no information, although

9 wanted us promoted and had requested that to happen.

10 She was, as I led to believe, not -- or, you know, she 10:40

11 wasn't getting any answer on that and it was just being

12 kind of left in abeyance. And I suppose one of the --

13 I will just come to it here. I suppose a short note I

14 have of that first meeting that we had indicates what

15 we agreed to do under the auspices of the association. 10:40

16 They had met the Commissioner and we had a list of

17 things that we would do there. And my understanding

18 was that the association were keeping the Commissioner

19 informed. In addition to that then, one of our group

20 had just been the general secretary of the association 10:40

21 a short time before that and was well familiar with the

22 processes that we had to use to make sure we did things

23 right but at the same time put our best foot forward.

24 93 Q. CHAIRMAN: Sorry, the association is the association

25 of -- 10:41

26 A. Garda superintendents at that time.

27 94 Q. CHAIRMAN: Of superintendents?

28 A. Yes.

29 95 Q. CHAIRMAN: Because you weren't yet a chief.

1 A. No, we were all superintendents.

2 CHAIRMAN: I just wanted to check that.

3 96 Q. MR. MARRINAN: In some of the disclosed notes that we
4 have, additional notes that we have, and perhaps it's
5 proper to refer to this interaction because it perhaps 10:41
6 indicates your frame of mind during the course of your
7 interactions with various TDs. If we have 16214 up on
8 the screen. This is 19th June 2017. You say that you
9 got a call from Boxer Moran re how you got on in
10 interviews. Then you told him how you had got on. 10:41
11 This is somebody that had you been making
12 representations to in relation to the problem that
13 arose that you've described, isn't that right?

14 A. I met him with one of my group, yeah, back in 2016.
15 But he was a local politician to Athlone and I suppose 10:42
16 he first became aware of the situation as a result of
17 the Minister announcing in the Dáil that she was
18 concerned about policing in Athlone, on 6th October
19 2016. I was summoned by local politicians to an in
20 camera meeting to discuss that. 10:42

21 97 Q. Yes.

22 A. I went there with my two inspectors, Detective Sergeant
23 Martin, Sergeant Haran, Sergeant Monaghan, who all have
24 been here. And we made a presentation to the local
25 councillors, two TDs and senator, who were there as a 10:42
26 result of their concern and the Minister's concern. We
27 made a presentation in relation to how policing was
28 going in Athlone, what we were doing, what we intended
29 to do, the changes in governance I had introduced and

1 how all the different areas of crime, including drugs,
2 subversion, community engagement were to be addressed.
3 And they were all very happy with that presentation.
4 And I was anxious to find out what the concerns were
5 around policing and they couldn't get answers for me on 10:43
6 that. And that's where the interaction started at that
7 point in time. And one of my colleagues, and I met him
8 following our meeting with the representative
9 association, to explain our position around promotion.
10 98 Q. If we go back to the note, because having advised him 10:43
11 you got on well in the interviews, he indicated that he
12 was meeting the Minister the following day and you have
13 recorded here:
14
15 "I told him not to say anything as canvassing 10:43
16 disallows."
17 A. Yes.
18 99 Q. "He said he understood."
19
20 That was your position. 10:44
21 A. I didn't want anything done at that point. It was in
22 2016 those representations were made and he brought it
23 up in June of 2017. I had sat my final interview on
24 the 15th June and I certainly didn't want any
25 interference because I had, I felt, got on quite well 10:44
26 at both interviews.
27 100 Q. Is there anything more that you would like to say in
28 relation to the promotions issue, issue 20?
29 A. No.

1 101 Q. So we then just turn to the notes that you have now
2 provided to the Tribunal. Your statement dealing with
3 this is at page 16195 of the material. I don't intend
4 to go through --
5 A. Okay. 10:44

6 102 Q. -- your statement in relation to this, but it appears
7 that you had a number of different files under which
8 you had filed notes, isn't that right?
9 A. Yes. I had. I am very annoyed with myself for
10 allowing the situation to develop, that I didn't do 10:45
11 this properly. I am disappointed with myself that I
12 didn't put more time and effort into doing all this.

13 103 Q. You may have considered not disclosing certain material
14 because it was irrelevant at the time that you were
15 making disclosure. 10:45
16 A. Yes.

17 104 Q. But has since become relevant in some shape or form, is
18 that correct?
19 A. Yes, and I didn't revisit that relevance assessment
20 that I did back in March of '19, unfortunately. I put 10:45
21 too much energy into studying the volumes of documents
22 I was getting rather than keeping my mind on what --
23 CHAIRMAN: Okay.

24 105 Q. MR. MARRINAN: we will just then perhaps go through the
25 notes, briefly. If we have 16210 up on the screen. 10:45
26 Yes, if we scroll down there to 11th June 2016. This
27 is:
28
29 "Called Deputy Commissioner Ó Cualáin at home with a

1 small thank you gift. Discussed issues re assistant
2 commissioners, whistleblowers, Commissioner's plans.
3 Said all list to be promoted together."
4

5 what was that about? First of all, what was the gift 10:46
6 for?

7 A. So, I was at a wedding in the area where he lives in
8 Galway on that day, and I had been notified of my
9 promotion on the 25th May. Deputy Commissioner
10 Ó Cualáin and two other people were on board, and I 10:46
11 decided to take the opportunity of my being in that
12 area to call to him and express my gratitude to the
13 board, through him, for, I suppose, their faith in
14 selecting me for promotion. It's something that I have
15 done before and I did it again in 2017, when I was 10:47
16 promoted to chief superintendent, both to the Policing
17 Authority and to the garda member of the board.

18 106 Q. As it turns out, it was a bit premature?

19 A. It was. And -- well, yeah.

20 107 Q. Then if we scroll down, well there is a reference 10:47
21 there, there was some discussion in relation to
22 whistleblowers, what was that about?

23 A. No, it wasn't that kind of a conversation. The deputy
24 commissioner didn't know I was calling. I had to
25 enquire exactly where his house was. And I didn't know 10:47
26 he was going to be there, so it was an unannounced
27 call. He was happy to receive me. He brought me in.
28 And I suppose, he gave me a pep talk on the
29 anticipation that I was going to be promoted and that's

1 what he felt, that all the list were to be promoted.
2 So he spoke about the assistant commissioners who had
3 just been notified of promotion as well, six of them.
4 And he was explaining to me that I would -- as a chief
5 superintendent I would be hugely supporting those new 10:48
6 assistant commissioners in their role in relation to
7 the modernisation and renewal programme and how I would
8 more than likely be appointed on several major change
9 projects as a business owner with a particular
10 assistant commissioner as a business sponsor and I 10:48
11 would have to support the introduction of those. He
12 discussed the organisation in terms of the
13 whistleblower issues and how all of that had affected
14 the organisation, but no one in particular, and how
15 that was going to manifest in the change programme then 10:48
16 into, I suppose, changes in relation to culture and
17 renewal in that area. And all the Commissioner's plans
18 then. And one of his comments, I remember, is that he
19 said to me, you know, we all have to pull on the green
20 jersey now. It was that kind of a pep talk. 10:49

21 108 Q. So then we see there on the 9th July:

22

23 "Call from J Moloney."

24

25 who is that? Is that Inspector Moloney? 10:49

26 A. No, he's a superintendent in Tullamore.

27 109 Q. A superintendent in Tullamore.

28

29 "K Keyes told him something saying that you were not

1 going to be promoted re a claim and am holding chief's
2 list up."

3 A. Yeah.

4 110 Q. What was that about?

5 A. I suppose that's some rumour that seemed to be going 10:49
6 around about me. It's referred to in the documents
7 here, when Garda Keogh gave my history to Ms. Daly, at
8 to page 13063, he included in it a note to indicate
9 that I had been disciplined in some way for falsely
10 claiming 31,000 and transferred. He appeared to get 10:50
11 that information from Garda Harrison, in his diary at
12 page 13340, on 3rd December '15. But that rumour then
13 started to circulate.

14 111 Q. You have:

15 10:50

16 "This is the smear campaign started by those in Athlone
17 when members were suspended. Had heard Garda Keogh
18 making enquiries re my time in Gort."

19 A. Yes.

20 112 Q. And then you mentioned somebody else there spent time 10:50
21 in Gort before.

22 A. My recorded suspicion is entirely wrong there.

23 113 Q. If we could then just move on to page 16211. We see
24 there is an entry there, the 11th November and the 15th
25 November and the 17th November, in relation to your 10:50
26 interactions with TDs. Then if we could scroll on to
27 16212. Again there are a number of interactions
28 members of the Dáil.

29 A. Yeah, that was all around the time before the list

1 expired in November and early December.

2 114 Q. We go on to page 16213, again your interaction with a
3 TD. Then there's an entry for 23rd March 2017:
4
5 "Spoke with AC Nolan and CS Scanlan re Garda Keogh's 10:52
6 statement. AC Fanning."
7
8 what's that entry?

9 A. I was at a social function in Portlaoise, the
10 retirement of a superintendent there, and I was talking 10:52
11 to Assistant Commissioner Nolan about his retirement
12 and obviously the matters he was handing over that he
13 was investigating in Athlone. Chief Superintendent
14 Scanlan joined the conversation and he merely said that
15 he hadn't managed to get a statement from Garda Keogh. 10:52
16 He had indicated to me on the 1st March that he was
17 meeting him the next day to take it. Assistant
18 Commissioner Fanning then joined the conversation and
19 it stopped and we broke up.

20 115 Q. Then if we go over to page 16215, we have an entry on 10:52
21 23rd January 2018:
22
23 "Lorraine meet D Ó Cualáin."
24
25 Is that Assistant Commissioner Finn? 10:53
26 A. "During the day", yeah.

27 116 Q. What was that about, do you know?
28 A. So I have my diary page here. I was in Blanchardstown,
29 where she was stationed then, on that morning,

1 discussing the prosecution of a Garda member that had
2 occurred in Athlone but who was stationed in
3 Blanchardstown. I met her very briefly and she said
4 that that day she was meeting both of those men.

5 117 Q. If we scroll down then to 14th February 2018, you 10:53
6 record that you met John Barrett between 1:20 and
7 3:00pm in his office?

8 A. Yes.

9 118 Q. "He spoke at length about himself and his previous 10:54
10 experiences."

11

12 Then there is a note here:

13

14 "He mentioned Assistant Commissioner O'Brien had
15 vouched for my bona fides to him." 10:54

16 A. Yes.

17 119 Q. What was that meeting about?

18 A. I had just taken up my position in the Garda college a
19 week beforehand and Mr. Barrett was my direct boss and
20 he asked to meet me about -- to introduce himself to me 10:54
21 and to discuss my role, I suppose, in the organisation,
22 under his command.

23 120 Q. Okay. So they're your diary entries. Then in a
24 separate folder, you have your college notes?

25 A. Yes. 10:55

26 121 Q. There's nothing of any significance there. And then
27 the bullying file, it's headed 16220 of the material.
28 If we would just then look at an entry for 11th January
29 2018. You will see there:

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"CS Meyers and inspector called to station and met and gave documents to DI Drea, Inspector Farrell, Sergeant Haran, Moylan, Monaghan, Martin and Guinan. I am also aware of an Inspector Baker."

10:55

I will just read the whole note and then you can explain to us the various aspects of it.

"I had no prior knowledge of them coming. He called to me in my office and said he was aware of my document and legal issues."

10:55

That's the 338-page.

A. Yes.

10:56

122 Q. "Said they hoped to deal with this quickly. Spoke of my promotion and praised people they met. Discussed the context of the complaint around problems in Athlone. Emphasised that M Finn was honest and ethical and would make sure everything was done right, so there was nothing to worry about. Spoke about extra pip on my shoulder. Felt I am being belittled in my workplace with the nature of the visit, its purpose and no courtesy call to me."

10:56

Just deal with that last line first of all.

A. Yes.

123 Q. What was the issue there for you?

A. That is reflecting my mindset at that time. I was

10:56

1 passed over for the second time for promotion on the
2 22nd December. Right throughout that Christmas period
3 I had that mindset, that people were against me and
4 that, I suppose, I was to be scapegoated, I felt,
5 because of the campaign that had been mounted against 10:56
6 me. And I felt, I suppose, when the group called or
7 the chief superintendent called, it was unannounced and
8 that that was having an affect on my leadership
9 credibility in the workplace. That's how I felt at the
10 time. So it wasn't a pleasant meeting for me with 10:57
11 them.

12 124 Q. Then the phrase before that "emphasised that Assistant
13 Commissioner Finn was honest and ethical and would make
14 sure everything was done right, so there was nothing to
15 worry about"? 10:57

16 A. Yes.

17 125 Q. Were you comfortable discussing these issues with Chief
18 Superintendent Meyers, who was going to be part of the
19 investigation team in relation to a complaint that had
20 been made by Garda Keogh? 10:57

21 A. Yeah, I had no difficulty with it. I maintained a
22 professional approach towards that, as I expected he
23 would as well.

24 126 Q. Then if we just go on then to the next page, 16222.
25 There is a note here, the 13th January, at 10:01: 10:58

26
27 "I text Assistant Commissioner Finn re his request for
28 a meeting. He replied at 12:57, asking if I was free
29 to talk. I rang him at 12:58 for 5.55 minutes."

1

2

Had you become in the habit of recording the precise times of telephone conversations and meetings? It seems to be a feature of your notes. Is that something you do in every instance?

10:59

6

A. No. It again reflects my mindset at the time. I suppose, these sets of notes were opened, the promotion notes and the bullying notes were opened on the advice of my solicitor. I felt that, as I said, there was going to be an adverse decision against me from the Policing Authority and I felt I was heading down a legal route to challenge that. And that reflects the precision I tried to have with the note then.

10:59

10

11

12

13

14

127 Q. "He said he spoke to Chief Superintendent Healy, who examined the entire situation re mirrored civil claim between January and August 2017. He said he now knows of the meticulous files and records and notes I have."

10:59

15

16

17

18

19

Did you discuss your notes and records with him during that, did you?

11:00

20

21

A. Well, I've two notes of this conversation, I have another one, I suppose, a shorter note at page 12380.

22

23

128 Q. Yes.

24

A. Which was made closer to the time of the phone call, on the afternoon of the phone call. And the second note is part of the notes in the bullying file that I was keeping. I suppose it's --

11:00

25

26

27

28

129 Q. Perhaps if we have 12380 up on the screen.

29

A. I took that note down on a single piece of paper.

1 130 Q. This was taken at the time?
2 A. Close enough after the time, yeah.
3 131 Q. "He spoke of Chief Superintendent Healy and now knew my
4 records etcetera."
5 A. Yes. 11:00
6 132 Q. Complimented you on your records, is that right?
7 A. Yeah. He had spoken to Chief Superintendent Healy.
8 That was something that I had been urging him to do
9 from when I first contacted him on the 22nd December.
10 133 Q. "Spoke of what I did and now being punished." 11:01
11
12 Is that you saying that?
13 A. That's me saying that. He wouldn't have known that.
14 134 Q. "Spoke of team Irish reception." 11:01
15
16 what's is that?
17 A. That should be T Meyers, it's a misprint.
18 135 Q. All right.
19 A. T Meyers reception.
20 136 Q. "I explained the other people, problems, work closely, 11:01
21 Lorraine dealing with issues in a careful way. The
22 calibre of the people involved. Their frustration and
23 annoyance and confidentiality."
24
25 So you then have a note here: 11:01
26
27 "Confirm three involved."
28 A. Yes.
29 137 Q. They're yourself and the other two --

1 A. Yes.

2 138 Q. -- against whom complaint was being made.

3

4 "Said Keogh and solicitor looking for money."

5 A. Yes. 11:02

6 139 Q. Who was it who introduced that?

7 A. Well, I think both of us said it. He said it and I

8 said it. The conversation was about the civil claim.

9 I suppose I was linking that closely with the bullying

10 allegations, because they were inextricably linked. 11:02

11 Who said it first, I'm not sure. But I definitely had

12 that view, because I was being sued personally and he

13 had spoken to Chief Superintendent Healy and he was

14 fully aware of the information he had gathered or he

15 had given me that impression, and he said it. 11:02

16 140 Q. Just scroll down there.

17

18 "Chief Superintendent Healy report 17th July 2018."

19 A. So that's a little scribble I have on the page to

20 myself after writing the note. 11:03

21 141 Q. All right. "Says he knows of no bullying allegation."

22 A. Yes.

23 142 Q. "What did Fanning write up as he knew?"

24 A. Yes.

25 143 Q. What's that about? 11:03

26 A. So I had been given a copy of Chief Superintendent

27 Healy's report in relation to the information he had

28 gathered for the state claims agency and the Garda

29 legal section. And in it he said he knew of no

1 bullying allegation and he submitted that report in
2 around I think July of '17.

3 144 Q. Could you scroll down then --
4 A. And I wondered, you know, if something was in place
5 then, why hadn't it appeared there. And I was 11:03
6 suspicious of that.

7 145 Q. The rest of the note there, is this a note to yourself
8 effectively that you have written?
9 A. That note, while it's typed on that page, that's on a
10 separate page. 11:03

11 146 Q. Yes.
12 A. And that note was made for a meeting with my solicitor
13 on the 16th --

14 147 Q. All right. We don't need to look at that then?
15 CHAIRMAN: We can forget that. 11:04
16 A. Yes.

17 148 Q. CHAIRMAN: As far as you're concerned.
18 A. That's on a separate page.

19 149 Q. CHAIRMAN: Somebody else might want to ask about it.
20 But you say it's not relevant to this encounter. 11:04
21 A. No. So it's on a separate page. Meeting my solicitor
22 on the 16th January.

23 150 Q. CHAIRMAN: On the 16th of?
24 A. January.
25 CHAIRMAN: Okay. 11:04

26 151 Q. MR. MARRINAN: If we go back now to page 16222. So
27 that's the short note, as it were?
28 A. Yes.

29 152 Q. And this is a more detailed note?

1 A. This is, yeah, I suppose, to put into the bullying
2 file.

3 153 Q. When did you make the more detailed note?
4 A. I'd say on the morning of the 16th, before I met my
5 solicitor. 11:04

6 154 Q. So three days later?
7 A. Yes.

8 155 Q. Did you use your original note that you made to assist
9 you?
10 A. Yeah, I had it in the same file. It's in the same 11:04
11 file.

12 156 Q. Do you think that the note reflects a fair --
13 A. No, it doesn't.

14 157 Q. Pardon?
15 A. I have to admit, it doesn't. It's, I suppose, 11:05
16 transposed with my view, with my suspicions, with my
17 mindset and imbued with my perspective in a very
18 defensive way.

19 158 Q. Well, it's prepared for your solicitor?
20 A. Yeah. 11:05

21 159 Q. Apparently at the time?
22 A. Yeah.

23 160 Q. Assuming that you are going to ensure that potentially
24 it could be used in litigation or in a defence to
25 litigation and, indeed, a bullying and harassment case. 11:05
26 I would assume that you would make sure that it was as
27 accurate as possible?

28 A. Well, I suppose it reflects my defensive mindset at the
29 time. It's not as accurate as the shorter note, which

1 is more precise and accurate.

2 161 Q. All right.

3 A. I imbued it and that's just what happened.

4 162 Q. If we then take up where we had left off.

5 11:05

6 "He said he now knows of the meticulous files and

7 records and notes I have. He said he knew now of the

8 corrections I made in Athlone and was now being

9 punished for doing so."

10 11:06

11 Do you see there?

12 A. Yeah.

13 163 Q. You're attributing this comment to Assistant

14 Commissioner Finn?

15 A. Yes. 11:06

16 164 Q. And it's a suggestion -- well, it's not a suggestion,

17 this is an assertion that he had said to you that in

18 his view at the time that you had introduced changes in

19 Athlone and that you were being punished for doing so?

20 A. Well, I told him about how I felt I was being punished, 11:06

21 so again, I suppose, I reflected it wrongly in the

22 language I used and had a defensive mindset in writing

23 it.

24 165 Q. Well, you see, I mean, if you could put yourself in

25 Garda Keogh's situation reading this, it might suggest 11:06

26 that he is talking to you as -- he's the investigator,

27 isn't that right?

28 A. Yeah. At the time, yeah.

29 166 Q. And he is talking to you in circumstances where he is

1 about to commence an investigation. It's not as though
2 he has completed an investigation?

3 A. Yes.

4 167 Q. He is the investigator and he is talking to you in
5 relation to complaints against you? 11:07

6 A. Yes.

7 168 Q. And you have him recorded here as saying that he knew
8 of the corrections that you had made in Athlone and
9 that you were now being punished for doing so. And
10 that's in the context of an allegation of bullying and 11:07
11 harassment?

12 A. Yes.

13 169 Q. It then goes on to say:
14
15 "He spoke of CS Meyers' reception from people accused 11:07
16 he spoke to and his view of the ethical calibre of the
17 people accused."

18 A. Yes, that is Tom Meyers' view.

19 170 Q. Yes.

20 A. As expressed to me on the 11th January. 11:07

21 171 Q. "I explained the situation in Athlone, how CS Wheatley
22 and I worked closely to make corrections with fairness
23 to everyone in a careful way, being aware of the
24 sensitivities involved. I told him of the calibre of
25 the other people accused and their frustration and 11:08
26 annoyance at this contrived situation."

27 A. Yes.

28 172 Q. Did you think that was an appropriate thing to say to
29 the investigator?

1 A. Yeah. I was expressing my frustration and annoyance.
2 I had expressed it, I suppose, to the executive in the
3 organisation on the 28th November and, I suppose, I
4 wasn't -- you know, I was in the mindset there where I
5 felt that I was being targeted myself, I didn't know 11:08
6 who was behind that, and it appeared to be all managed
7 in the way that was going to destroy my career and
8 reputation.

9 173 Q. "He said he understood. He confirmed that Chief
10 Superintendent Curran, Wheatley and I were the ones 11:09
11 Garda Keogh says he is accusing primarily."
12

13 Then you go on to record:
14

15 "Assistant Commissioner Finn offered a view that Garda 11:09
16 Keogh and his solicitor were only looking for money in
17 a civil claim."
18 A. No, that's my view, yeah.

19 174 Q. Pardon?
20 A. It's my view. And I was attributing it to him after we 11:09
21 had the discussion about that and I suppose, I felt
22 that he was agreeing with it in the empathetic way that
23 he had, I suppose, listened to me in that call.

24 175 Q. Chief superintendent, a moment ago you said that this
25 had been said by both you and -- 11:09
26 A. It was said by both of us. But, like, I suppose when
27 you read that, it's as if he offered it entirely
28 unannounced, as it were, and it wasn't like that.

29 176 Q. So what was it? I mean, was it you saying, look,

1 they're only after you for money?

2 A. And he agreeing.

3 177 Q. And he agreed with you?

4 A. Yeah.

5 178 Q. And you've recorded it as Assistant Commissioner Finn 11:10
6 offered a view?

7 A. Yeah.

8 179 Q. That's an entirely different situation.

9 A. Yeah, I was being sued at the time, and, look, you
10 know, it reflects my mindset, I suppose, and the 11:10
11 uncertainty in my mind at the time about what was
12 happening. But the first note, I suppose, is the more
13 accurate version of what occurred.

14 180 Q. Well, we know that Assistant Commissioner Finn has
15 denied that he said that, do you understand that? 11:10

16 A. That he said it at all?

17 181 Q. Yes.

18 A. Well, as far as I'm concerned, it was said, yeah, by
19 both him and me.

20 182 Q. Well, I suppose if you are looking at it from his 11:10
21 perspective, he says it would have been something
22 entirely wrong to say and inappropriate in the
23 circumstances?

24 A. Well, I don't know about that, because like, Assistant
25 Commissioner Finn is a professional person, he has a 11:11
26 very good representation in the organisation. I would
27 like to think of myself as professional. And I'd say
28 both of us were fully aware that all of these matters
29 were going to be dealt with in that bullying and

1 harassment policy. That was going to be subject to a
2 review by someone else, outside of him, quite possibly.
3 In addition to that, there was the civil claim which
4 was going to be examined by the High Court. There was
5 -- I suppose, the Policing Authority were involved as 11:11
6 an oversight body, a regulatory oversight body in this.
7 And then this Tribunal was there, up and running, with
8 term of reference (b), a live issue. And so, I mean,
9 for anyone to suggest that there was a mindset between
10 either of us that something was to be readied up, 11:11
11 that's absolutely not the case. I welcomed any
12 investigation that was there, if I could participate in
13 it fully. I have no difficulty with that. And I
14 wouldn't want anything hidden. And there was no need
15 to do that, because I had fully addressed all of these 11:12
16 issues in the document I had produced a year earlier.
17 183 Q. You see, the implication in this, it could be argued
18 that it showed a mindset in Assistant Commissioner
19 Finn, in that he had already prejudged the issue, do
20 you understand? 11:12
21 A. Well, I suppose, Assistant Commissioner Finn will have
22 to address that, but there's no --
23 184 Q. He has addressed it?
24 A. Yes.
25 185 Q. And he has denied that he said this. He said not only 11:12
26 that, but he acknowledged himself that this would be
27 unprofessional and totally inappropriate to say in
28 circumstances where he was about to commence an
29 investigation. And I am sure that you as a chief

1 superintendent, that you would regard it as
2 inappropriate if you had said that to somebody else who
3 you were about to investigate and, as it were, cast
4 some sort of aspersion on the complainant. Do you
5 understand? 11:13

6 A. I do, but my frustration, I suppose, came out in my
7 conversations with Assistant Commissioner Finn from the
8 couple of conversations I had with him on, I think it
9 was the 22nd December, where he seemed to be unaware of
10 any of the linked issues here, which I found 11:13
11 astonishing, and I sent him an e-mail to that effect
12 after the telephone call. On the 11th January then I
13 think I spoke with him again and he was telling me
14 about the advice he had got, legal advice that it could
15 go ahead. But I didn't feel he fully comprehended what 11:13
16 the legal impediment I had was and in that conversation
17 then on the 13th, it was all about the civil claim. It
18 was all about how, I suppose, I felt that I was being
19 hampered in a way from being able to put my best foot
20 forward in his investigation, while I wanted to do that 11:13
21 and I wanted it, you know, done properly, not quickly,
22 but I wanted to put my best foot forward with my big
23 document and I felt I couldn't do that.

24 186 Q. It was a very short call, it was just almost six
25 minutes? 11:14

26 A. Yes.

27 187 Q. So there couldn't have been that much discussed.

28 A. There was, yeah. There was.

29 188 Q. I mean, there is this conflict in evidence between what

1 you have recorded and what you say in relation to this
2 and Assistant Commissioner Finn. Do you think that in
3 some way that perhaps you defended yourself and had
4 gone on the offensive to some extent by writing the
5 letter that you wrote to the Commissioner and to the 11:14
6 assistant commissioner. We opened that earlier on.
7 It's a very robust defence. One perhaps could
8 understand in the circumstances you found yourself,
9 being mentioned in Dáil Éireann repeatedly, and in
10 circumstances where twice you had been passed over by 11:15
11 the Policing Authority, even though you knew you were
12 eligible to be promoted. Do you think that you perhaps
13 overreacted to things that were said to you and perhaps
14 attached too much significance to throwaway comments?

15 A. I may have. I may have. But I did feel isolated at 11:15
16 the time and, as I said to you, I probably felt that I
17 was going to be scapegoated because of the racket that
18 had been created about me. And it had started in
19 December '15, I suppose, when the corruption
20 accusations or allegations were made against me in Dáil 11:15
21 Éireann. No complaint that I know was ever made or no
22 one ever approached me about it. So I felt I was going
23 to be scapegoated.

24 189 Q. We just might go on to the rest of the note on that
25 page. This isn't a note of the conversation? 11:16

26 A. No.

27 190 Q. This is an aide memoire?

28 A. This is me writing my own thoughts, I suppose.

29 191 Q. It may perhaps give some insight into the way you were

1 thinking at the time. You say:
2
3 "It now appears this bullying investigation is being
4 driven by the Policing Authority and their desire to
5 have something tangible to help their decision re me as 11:16
6 I have written legal letters to them."
7 A. Yes.
8 192 Q. That perhaps displays some sort of paranoia at that
9 time on your part. I mean, it now appears that the
10 bullying investigation is being driven by the Policing 11:16
11 Authority?
12 A. Yes, and that's the way I felt. And I suppose, when I
13 taugt about any communications I had with them, their
14 first indication to me was there was something in the
15 public domain stopping it. And then I was led to 11:16
16 believe that it was the civil action that they needed
17 some information about. But when the bullying and
18 harassment investigation became public knowledge in
19 November, they grabbed onto that and they forgot about
20 the public domain then. 11:17
21 193 Q. Well, you see, the suggestion is that the investigation
22 is being driven by the Policing Authority?
23 A. Absolutely.
24 194 Q. Prior to this, and we went through it earlier on in
25 your evidence, they had made it very clear that what 11:17
26 was holding it up was the clearance process in An Garda
27 Síochána, and that they had been looking for this
28 bullying and harassment issue since the previous
29 October. You agreed with me that the fault didn't lie

1 in relation to this with Garda Keogh, it didn't lie
2 with the Policing Authority, but it lay with
3 headquarters. We went through that earlier on.

4 A. Yes.

5 195 Q. But here you're suggesting in your own note -- is this 11:17
6 the way you were thinking at the time?

7 A. Well, I suppose, I was looking -- trying to look at the
8 totality of it, where meetings were had in Garda
9 Headquarters and as a result of that this bullying
10 investigation happened, there was no scoping occurred. 11:18
11 The Policing Authority then had just grabbed onto that
12 and they were now using it as the only obstacle, when
13 there were elements in the public domain prior to that.
14 And I felt that -- like, my call with Ms. Hall on the
15 22nd December, she had indicated that she felt this 11:18
16 should be done at speed and that she didn't seem to
17 understand the links to other people and with other
18 people. And she felt that I could be isolated in some
19 way out of what was occurring and that this just could
20 be conducted against me at speed to satisfy their need 11:18
21 to have it bottomed out before making a decision. And
22 that is reflected in what I have written down there.

23 196 Q. You go on:

24
25 "This is the converse of what John Barrett is alleged 11:19
26 to have written to them re the investigation suppressed
27 for me. Now this investigation is being driven for
28 them and procedures being overlooked for everyone
29 accused."

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And then you go on:

"In reading CS Healy's report of 27th July 2017, he says he looked for all files and knows of no bullying allegation. Yet AC Fanning was aware of same from March 2017 and had tasked CS Healy with his investigation but didn't tell him of such complaint of the March complaint. I find that suspicious. I also find it suspicious that Garda Keogh has much more exhibits attached to the documents AC Fanning gave me in November '17."

11:19
11:19

Just again, is that your mindset at the time?

A. That's me reflecting my own thoughts there prior to going to my solicitor.

11:19

197 Q. Okay. So then if we could just go to your meeting with Assistant Commissioner Finn on the 18th January. That meeting, where did that take place?

A. That meeting took place at my home.

11:20

198 Q. It was a four-hour meeting.

A. Yes.

199 Q. You have a note of that, it's at page 2896 of the material. It's a short note.

11:21

"Met Assistant Commissioner Finn 11:00am to 3:15pm and went over all documents I have. He indicated Policing Authority needed assurance and that seeing my documents and the information he was willing to provide that. He

1 gave me Garda Keogh's complaint, had it already from
2 Assistant Commissioner Fanning."

3
4 If we can just go to the next page, 2897. This is a
5 fuller note:

11:21

6
7 "Met AC Finn at my home. We went through his
8 complaints and my 338-page document and discussed all.
9 I explained my concerns re providing it in
10 circumstances where Garda Keogh will get it and my
11 responsibilities in that regard to my co-defendants,
12 the organisation and myself and confidentiality. I
13 showed him a letter to Ken Ruane in that regard. He
14 agreed with same. I gave him a copy of a letter I had
15 sent to top three."

11:22

11:22

16
17 So what else was discussed during the four-hour
18 meeting?

19 A. So, I went through the myriad of files that I had. And
20 I suppose from when I was speaking to Ms. Hall, it
21 became clear to me that there were a number of issues
22 that the Policing Authority had or weren't aware of and
23 I felt they needed to be made aware of them in relation
24 to my promotion. She didn't seem to be aware of the
25 legal impediment that I felt I had in cooperating fully
26 and putting my best forward in the bullying
27 investigation while civil proceedings were extant. She
28 didn't seem to be aware that the delay in relation to
29 the bullying complaint not coming to the fore until

11:22

11:22

1 November was not down to me and she seemed to be of a
2 view, maybe based on Mr. Barrett's letter, that I was
3 some way involved in that. And I wanted to, I suppose,
4 have that information communicated to the Policing
5 Authority through the organisation. I felt that she 11:23
6 didn't understand that the civil complaint and the
7 bullying and harassment complaint were broadly aligned
8 and mirrored. And, as I said to you, she seemed to
9 think that it could be isolated and I could be just
10 taken out and dealt with quickly. You know, she didn't 11:23
11 seem to understand it would take longer than 28 days,
12 which is what is set out in the policy. And then I
13 felt that, you know, I would have liked to have
14 provided evidence through the organisation that I
15 actually had this 338-page document and it was actually 11:24
16 a tangible, real thing. And my conversation, you know,
17 after I had spoken to Ms. Hall on the 22nd December, I
18 telephoned -- I sent her e-mail to Mr. Nugent, who
19 telephoned me and I also spoke to Assistant
20 Commissioner Finn. And I wanted to get that 11:24
21 information provided to the Policing Authority through
22 Mr. Nugent and the organisation by way of Assistant
23 Commissioner Finn. Not in connection with the bullying
24 investigation but in connection with my promotion.

25 200 Q. Did you go through the document page-by-page during the 11:24
26 four hours?

27 A. No. He sat there and I -- no not page-by-page. I went
28 through the various issues, and I have set it out here
29 in a note I have at page 12313, what I went through

1 with him.

2 201 Q. If we just have that up on the screen, please. 12313.

3

4 "Garda Keogh file."

5 A. Yes. 11:25

6 202 Q. "Notes and original exhibits file re trailer."

7 A. Yes.

8 203 Q. "Ms. B allegations in Tullamore."

9 A. Yes, there were particular issues that files existed

10 for in a big box that I had. I went through them, 11:25

11 yeah.

12 204 Q. "Civil file. Volume 1 and 2. Supreme Court case.

13 Civil allegations. Assistant Commissioner Fanning

14 praising you constantly."

15 A. Yes. 11:25

16 205 Q. "Assistant Commissioner Fanning interactions."

17 A. Yes.

18 206 Q. Then:

19

20 "Garda Keogh, Garda A, Greene, section 49 and 11:25

21 intelligence, journalist, politicians creating chaos."

22

23 Then you go through them.

24

25 "Bullying file." 11:26

26

27 Is that right?

28 A. Yes.

29 207 Q. Then your letter to the Commissioner.

1 A. Yeah, which I gave him before he left.

2 208 Q. Then the media since September and your promotion and
3 then you went through the promotion file?

4 A. Yeah.

5 209 Q. Then if we scroll down. The Garda A file. Then 11:26
6 there's leaking to the media.

7 A. That's in a separate file again, yeah. And I had
8 reported that to the organisation.

9 210 Q. If we just scroll down. So we then have -- is this a
10 continuation? 11:27

11 A. No, this is something is I prepared prior to the
12 meeting with Commissioner Finn.

13 211 Q. These are the matters that you wanted to discuss, is
14 that right?

15 A. Yeah, as reflected then in the note that we did 11:27
16 discuss, go through.

17 212 Q. I suppose Assistant Commissioner Finn was the chief
18 investigating officer in relation to a complaint of
19 bullying and harassment. This wasn't a formal
20 interview with you, isn't that right? 11:27

21 A. No.

22 213 Q. No notes were kept by him?

23 A. Yeah. I did.

24 214 Q. But you have some notes?

25 A. Yeah. 11:27

26 215 Q. Which of course couldn't cover the four-hour period?

27 A. It took quite some time for me to talk through that.

28 216 Q. But they're headings --

29 A. Yeah.

1 217 Q. -- in relation to the various files that you discussed.
2 In hindsight, do you think that it may have been
3 inappropriate to have gone into this level of detail
4 with Assistant Commissioner Finn in an unrecorded
5 situation?

11:28

6 A. No, because I suppose Mr. Nugent had indicated to me
7 that he was talking to Assistant Commissioner Finn.
8 And my interpretation was that Assistant Commissioner
9 Finn was providing the information and assurances and
10 views to Mr. Nugent, so as that the Policing Authority
11 could be properly informed in a credible way through
12 the organisation that -- you know, those things I
13 mentioned there.

11:28

14 218 Q. I suppose, chief superintendent, I mean, I suppose a
15 complaint could be made by Garda Keogh that, for
16 instance, if you were to discover that Assistant
17 Commissioner Finn had sat down and visited Garda Keogh
18 in his home and spent four hours discussing his
19 allegations against you and none of it was recorded,
20 you might be quite either suspicious of that or angry
21 about it. Can you understand that perception, that
22 there may be a sort of --

11:28

23 A. Yeah, but I think it's a sinister perception that's
24 being made but there wasn't a sinister motive on my
25 part or, indeed, I'd say his. This wasn't about Garda
26 Keogh's complaints, this was about my promotion and
27 having what I felt were the impediments and assurances
28 the Policing Authority needed delivered to them in a
29 proper fashion. And I didn't -- like Assistant

11:29

11:29

1 Commissioner Finn's investigation I knew I would have
2 to deal with further on down the line. I had a problem
3 with it. It was put aside. The meeting wasn't really
4 about that, other than he gave me Garda Keogh's
5 complaint, which I already had from Assistant 11:29
6 Commissioner Fanning. But apart from that, that was
7 left aside. And this focus of this meeting was, I
8 suppose, my promotion insofar as I was concerned.

9 219 Q. Okay. Then if we could just move on to 16225 of the
10 material. This is a note of a conversation with Chief 11:30
11 Superintendent Wheatley, the 27th October. It records:
12

13 "Call from Chief Superintendent Wheatley, who said she
14 had it from the highest authority that the issue is
15 with me and COR the PA received and issues they raised. 11:30
16 They asked that the highest authority in Garda would
17 back me and same done at highest level after thorough
18 examination of the issues. She said that they are
19 happy they have it over the line and it should be
20 imminent. " 11:30
21

22 That relates to your promotion, is that right?

23 A. That's right. I suppose that was prior to my being
24 passed over, and she got that information and she
25 relayed it on to me. 11:31

26 220 Q. "She said all at top extremely annoyed I am being
27 treated in this fashion, when everyone knows I did
28 nothing wrong. "
29

1 was that the sentiment that you were getting at the
2 time?

3 A. Yes. I got that from Mr. Nugent as well, that I was
4 being supported by the organisation. But I remember
5 saying to him that doesn't appear to be reflected in 11:31
6 decisions that the Policing Authority are making about
7 me.

8 221 Q. Then if we have 16231 up on the screen. This is a note
9 that you made on the 2nd November. Then if we just
10 scroll down, please, Mr. Kavanagh. Scroll down 11:32
11 further. You just see there:

12
13 "From talking to him and Joe Nugent and hearing from
14 Lorraine Wheatley what Tony McLoughlin says about John
15 Barrett accepting being wrong, I am getting the 11:32
16 impression that An Garda Síochána in a way to out
17 manoeuvre Mr. Barrett and the Policing Authority are
18 stalling on plying details to help because they don't
19 believe the Policing Authority are entitled to the
20 civil claim or bullying claim as it's outside the 11:32
21 criteria for the competition and they are saying those
22 are the issues for the Guards and the State Claims
23 Agency and not the Policing Authority."

24
25 That was a view that was held at the time, is that 11:32
26 right?

27 A. That's the impression I was getting, yeah, and that
28 there was some -- I was being caught in the middle of,
29 I suppose, a lack of information because of different

1 reasons. And I suppose that was reflected to me then
2 by Ms. Hall on the 22nd December, when she said she was
3 frustrated that she was getting information from the
4 Guards. So obviously it wasn't being given, even
5 though it was there. 11:33

6 222 Q. You go on to note:
7
8 "He said he hoped it would work out but would take a
9 few days."
10 A. Yes. 11:33

11 223 Q. You note that you were:
12
13 "...getting the impression that the Policing Authority
14 feel the Guards are delaying by not giving documents,
15 so I am caught in the middle in a power game. It 11:33
16 appears this could be sorted out by dialogue and the
17 Policing Authority to read the documents, but the
18 relationship and level of communication is so poor
19 that's not muted now."
20 11:33

21 "Mooted now", I think that should be.
22 A. Yes.

23 224 Q. And that was a view that you held?
24 A. Yeah, that was my thought process in relation to any
25 information that I had. And I suppose it's reflected 11:34
26 when Ms. Hall phoned me on the 22nd December and she
27 expressed that she wasn't getting the information. So
28 my suspicions appeared to be founded.

29 225 Q. Yes. If we could then have 16234 up on the screen.

1 This is a conversation with Matt Nyland. You note
2 there that you spoke to him and he was offering support
3 and his legal view is that you're entitled to due
4 process and that you're not getting it. And that
5 you're entitled to your good name and that the Policing 11:35
6 Authority can't continue to keep this sword of Damocles
7 hanging over you in the fashion as alleged.

8 A. Yes, that was his view that he outlined to me.

9 226 Q. If we just go to page 16237. Scroll down,
10 Mr. Kavanagh. This is a note of a meeting with Matt 11:36
11 Nyland. You note:

12
13 "I believe it was a deliberate message from the
14 organi sation. "
15 11:36

16 what do you mean by that?

17 A. That was my mindset at the time, but I don't now think
18 that that's true, I think he was just offering me
19 personal support. I was with my solicitor that morning
20 and I discussed that I was going to meet Matt Nyland 11:36
21 and he advised, go and listen to what he has to say.
22 And I did that.

23 227 Q. If we scroll over to 16238, the last four lines there:
24
25 "He advised me to use legal means against the Policing 11:36
26 Authority and said he would keep me informed. Said I
27 was a victim unnecessarily and the issue is to try and
28 maximise Garda Keogh's financial settlement. He didn't
29 offer any hope for an early solution."

1 A. Yes.

2 228 Q. Then if we could just go forward to 16241. This is a
3 call from Chief Superintendent Gralton and he says that
4 he had met with Commissioner Ó Cualáin that morning.

5 A. That's right. 11:37

6 229 Q. He informed you that Assistant Commissioner Ó Cualáin
7 would like to ring you but he can't and is conscious
8 that he would like to talk to you. I think that's
9 because Commissioner Ó Cualáin had already declared
10 there may be a conflict of interest; isn't that right? 11:38

11 A. That's right. Chief Superintendent Gralton was the
12 chief superintendent in westmeath when I was there, he
13 had left and gone to Crumlin. Commissioner Ó Cualáin
14 was going around visiting superintendents at that time,
15 he hadn't -- he was the commissioner at that stage and 11:38
16 he was visiting every chief superintendent as a result
17 of an undertaking he gave the Policing Authority, and I
18 think that conversation came up in that context here
19 and Chief Superintendent Gralton relayed it to me and I
20 wrote it down. 11:38

21 230 Q. If we look at page 16243 of the material. Again, this
22 is a phone call that you had with Mr. Nugent on the 8th
23 January, at 6:00pm. It was a short phone call, lasting
24 three minutes and 35 seconds. You discuss with him
25 that you had been passed over for a second time and he 11:39
26 indicated that he was anxious to get you over the line?

27 A. Yes.

28 231 Q. Because he felt that you had been badly treated and
29 indicated that he was meeting Helen Hall on Thursday,

1 the 11th January, in an entirely different context, and
2 he is going to meaningfully discuss your case with her.
3 Says that he will have a better sense of the issue then
4 but he mentioned that it's about the bullying. Then
5 you have noted:

11:39

6
7 "He offered the opinion that I couldn't have bullied
8 Garda Keogh in the short time I was with him."

9 A. Yes.

10 232 Q. "He said it was all normal managerial dealings with
11 work related issues, as Judge Charleton said in the
12 Harrison case."

11:40

13
14 Then you:

15
16 "...brought up Garda Keogh's allegations re ex
17 Commissioner O'Sullivan in April 2015, explained how
18 ludicrous it was. He agreed. He brought up Garda
19 Keogh's complaint re overtime. I said the sergeants
20 deal with that. He offered, it is an unbelievable
21 issue to stop your promotion."

11:40

11:40

22
23 Is that right?

24 A. Yes.

25 233 Q. Then if we just go forward to page 16245. Friday, the
26 26th January, you received a call from Assistant
27 Commissioner Finn, at 7:04 in the evening.

11:40

28
29 "Asked if the Policing Authority had been on to me re

1 promoti on. "

2

3 He said he had been talking to Mr. Nugent and he would
4 ring you. And you have recorded there:

5

11:41

6 "Said PA made deci sion Fri day morni ng, the 26th
7 January, and had extended Thursday' s meeting into
8 Friday. Said he would try and find out more. "

9 A. Yes.

10 234 Q. Was he doing this as a favour to you? Because
11 obviously it wasn't part of his investigation.

11:41

12 A. Well, I understand he was engaged with Mr. Nugent in
13 providing some assurances --

14 235 Q. Yes.

15 A. -- around those things, that I felt were impediments to
16 the Policing Authority. And I got a couple of phone
17 calls that evening. I suppose everyone in the
18 organisation at those senior management levels were
19 aware that the Policing Authority had had a meeting
20 where promotions were discussed. There were a number
21 of people waiting for promotions and I had calls from
22 him, I had calls from Mr. Nugent and another chief
23 superintendent who was waiting to be promoted to
24 assistant commissioner, all with the same information,
25 that no one had any information or no one had any idea
26 what the Policing Authority had done. As it turned out
27 they made my appointment on that day but they didn't
28 tell me then until the following Monday evening.

11:41

11:42

11:42

29 236 Q. Okay. We will just now move on to the disclosure of

1 the additional notes in relation to the civil file 2.
2 If we go to page 16249. This is a note of 1st March
3 2017.

4 A. Yes.

5 237 Q. Were you here yesterday -- 11:43

6 A. I was.

7 238 Q. -- when Chief Superintendent Scanlan gave evidence in
8 relation to this? Will you just tell us about that
9 with the aid of your note, of how this conversation
10 arose and what was said? 11:43

11 A. Yes. I was at the Forensic Science Ireland conference
12 in Maynooth and at one of the breaks there Chief
13 Superintendent Scanlan approached me and he said that
14 he had been asked to meet Garda Keogh and see if he
15 wanted to make a complaint under the bullying and 11:43
16 harassment policy against Chief Superintendent Curran
17 and I, that he was writing gibberish to HRPD about us.

18 239 Q. Are you sure that he said that, because he takes issue
19 with that, he said that --

20 A. I'd say that's my word, yeah. 11:43

21 240 Q. You'd say it's your word?

22 A. I'd say it's my word as a result of what I understood
23 him to be saying, that the message that was coming from
24 headquarters was unclear and that's why he was being
25 tasked to go and meet Garda Keogh. 11:44

26 241 Q. Then if we move on, you made disclosures in relation to
27 another file, the original Garda Keogh file. It
28 doesn't appear to me there is anything of significance,
29 but the parties may disagree with that.

1 A. Yes.

2 242 Q. They may wish to explore some of these additional
3 notes. Thank you very much, chief superintendent. If
4 you answer any questions.

5 11:44

6 END OF EXAMINATION

7

8 CHAIRMAN: Very good. Now, Mr. Kelly.

9

10 CHIEF SUPERINTENDENT PATRICK MURRAY WAS CROSS-EXAMINED 11:44
11 BY MR. KELLY, AS FOLLOWS:

12

13 243 Q. MR. KELLY: Yes. Chief superintendent, on the 3rd
14 April, I will take you to it in a moment, according to
15 you, Garda Greene called to your office explaining his 11:45
16 backdoor contacts to the Police Authority, how he
17 passed that information, passed on to them information
18 favourable to you, do you remember that?

19 A. I don't think I said favourable, I said about me.

20 244 Q. Yes. well, we will just look at volume 9, 2620. what 11:45
21 you said there in the middle of it was -- just to put
22 in context, five to six o'clock approximately, the 3rd
23 April '17, Garda Greene called to my office. Then if
24 we go down, it says just after Garda A and CS Glacken,
25 were the ones complained about. 11:46

26

27 "Said he had passed to J Feehily, Policing Authority,
28 through her brother-in-law, her husband's brother that
29 I was doing great work."

1 A. Yes.

2 245 Q. Is that not favourable to you?

3 A. Well, I suppose, it may or may not have, I don't know,
4 you know, what way the Policing Authority would take
5 that. But that's what he said to me. 11:46

6 246 Q. These are your words, not mine.

7 A. Yes.

8 247 Q. "I was doing great work"?

9 A. Yes. That's what he said he informed the Policing
10 Authority. 11:46

11 248 Q. "Said discussion took place re me at Galway races and
12 gave the impression Josephine Feehily was enquiring
13 about Athlone."

14 A. Yes.

15 MR. KANE: Judge, I am very hesitant to -- 11:47

16 CHAIRMAN: I can't see who is speaking. Sorry, forgive
17 me, I am trying to pan around.

18 MR. KANE: Sorry to interrupt, Judge, I am sorry to
19 Mr. Kelly. I represent Garda Greene.

20 CHAIRMAN: Yes. 11:47

21 MR. KANE: I am wondering if this line of questioning
22 has any relevance to the issue. The issue, as I
23 understand it, is issue number 20; namely whether the
24 Ó Cualáin investigation was somehow carried out in a
25 manner that would facilitate Chief Superintendent 11:47
26 Murray's promotion. I am not sure this line of
27 questioning, unless Mr. Kelly can demonstrate it, has
28 any relevance to that issue, Judge.

29 CHAIRMAN: well, Mr. Kelly.

1 MR. KELLY: Yes, I can, because -- it will take me a
2 couple more questions just to get to it, before I get
3 to the point.

4 CHAIRMAN: well, my position at this point, Mr. Kelly,
5 look we all know what we are investigating and we all 11:47
6 know what we are not investigating.

7 MR. KELLY: Yes.

8 CHAIRMAN: And I am reluctant also, so there's direct
9 materiality, okay, stroke, is it strictly relevant.
10 But there's obviously, as we all know, another zone of 11:48
11 cross-examination that is legitimately pursuable in the
12 overall interest of the veracity, credibility,
13 reliability or whatever. So if the issue arises --
14 please proceed, Mr. Kelly, you have asked nothing so
15 far in my view that is legally objectionable. If that 11:48
16 arises, people may -- obviously we have to bear in mind
17 we're not investigating the actions of the Policing
18 Authority.

19 MR. KELLY: Yes.

20 CHAIRMAN: Obviously. Bear that in mind, Mr. Kelly, 11:48
21 and proceed.

22 MR. KELLY: Thank you very much.

23 CHAIRMAN: So, sorry, your question was about 2620.
24 The memo of the 3rd April about the conversation with
25 Garda Greene, as reported, subject to anything else we 11:49
26 may hear, but as reported by Chief Superintendent
27 Murray.

28 249 Q. MR. KELLY: Absolutely. This is as recorded by you,
29 chief superintendent.

1 A. Yes.

2 250 Q. In your diary.

3 CHAIRMAN: Okay, proceed, Mr. Kelly.

4 251 Q. MR. KELLY: You are reporting what Garda Keogh said?

5 A. Greene. 11:49

6 252 Q. You say there --

7 A. Garda Greene.

8 253 Q. Sorry, Garda Greene.

9 CHAIRMAN: Don't worry, I haven't missed that, he made

10 a mistake. Garda Greene said. Okay, Mr. Kelly, 11:49

11 question.

12 254 Q. MR. KELLY:

13

14 "...gave the impression that she had been in touch with

15 Enda Kenny, Taoiseach, sent a report confirming that 11:49

16 they spoke to the Taoiseach's office. Then he got a

17 call from someone in Fianna Fáil to meet Assistant

18 Commissioner Fanning and said he wouldn't."

19

20 And so on. 11:50

21 A. Yes.

22 255 Q. When you were being told this, did this shock you?

23 A. Garda Greene had some issues and I suppose twice in my

24 time in Athlone he had come both to myself and

25 Superintendent Minnock about making a protected 11:50

26 disclosure about the issues that he had which he felt

27 were, I suppose, being resurrected by something that

28 had occurred to him at that recent time. He didn't

29 know how to deal with that and he was thinking of

1 making a protected disclosure. He decided not to. And
2 I think he went towards the Policing Authority then to
3 deal with some issues for him.

4 256 Q. Right. What I am asking you is, here's Garda Greene
5 telling you that he has a backdoor line of 11:50
6 communication to the Policing Authority, to whom you
7 had applied, and that he was supplying information
8 which could broadly be said to be favourable to you. I
9 am asking you, did that shock you?

10 A. No, because my understanding at the time was Garda 11:51
11 Greene was engaging with the Policing Authority about
12 his issues and I suppose he may have been giving an
13 example of how things had changed for him in Athlone,
14 he felt better about the place now, since my arrival.
15 I didn't see it as reflecting in any way information 11:51
16 about me directly to the Policing Authority. Nor did I
17 want him to do it. Nor did I ask him to do it. Nor
18 did I need him to do it.

19 257 Q. Perhaps I can just move quickly through this. I can
20 take you through a whole series of these notes that you 11:51
21 have recorded, where you have met with Garda Greene and
22 Garda Greene is telling you about various contacts he
23 says he is having directly or indirectly with the
24 Police Authority, would you agree with that?

25 A. He did several times come to me to tell me -- 11:52

26 258 Q. It's more than several times, there's at least nine,
27 ten of them, isn't that right?

28 A. I'm not sure. You're saying ten, I don't know.

29 259 Q. Okay, well then unfortunately we will just go through

1 them?

2 A. Yeah.

3 260 Q. Right. Let's then start with page 2636. 31st May
4 2017.

5 A. Yes. 11:52

6 261 Q. Right. "Garda Greene spoke to me about -- he has met
7 Josephine Feehily. He is praising me and wants to show
8 it to me before he sends it. See notes."

9 A. That's a document that he had been preparing in
10 relation to his own issues as a result of his 11:52
11 interaction with the Policing Authority.

12 262 Q. "He is praising me."

13 A. That's what he told me, yeah.

14 263 Q. Is that what attracted your attention?-

15 A. That's what he told me that he in the document. I saw 11:52
16 a copy of a document he ultimately sent, it's
17 disclosed. He did praise me and Superintendent Minnock
18 and Sergeant Haran and he criticised other members who
19 had served in Athlone prior to that.

20 264 Q. Did that surprise you? 11:53

21 A. Which?

22 265 Q. "He is praising me", in a document going to the chair
23 of the Policing Authority?

24 A. Did it surprise me? Well, he held a view of me that I
25 was okay, that I had treated him well and that I had 11:53
26 made changes that he was happy with, both to his own
27 work area and in the station and in the area generally.
28 As I said to you, twice he had expressed a view that he
29 wished to make a protected disclosure. So he was in

1 that mindset. He had some welfare issues. And I
2 suppose Superintendent Minnock and I dealt with him in
3 relation to all that and he engaged with us in relation
4 to -- we kept it confidential. He wanted someone to
5 deal with his issues. I think he had been to 11:54
6 politicians, he had been to GSOC and now he was trying
7 the Policing Authority.

8 266 Q. Yes. I think then on the 14th August, we will find
9 that I think at 2070 of the documents. If we could
10 have that up on the screen. 11:54

11
12 "14th August. Garda Greene spoke to me about his
13 interaction with Ms. Josephine Feehily, Policing
14 Authority."
15 11:54

16 MR. KANE: Judge, I am again very sorry to Mr. Kelly.
17 This is my last intervention, I am very sorry, Judge.
18 CHAIRMAN: No, don't apologise. Mr. Kelly, here's my
19 concern, help me on this: The Policing Authority is
20 not here. 11:54

21 MR. KELLY: Yes.
22 CHAIRMAN: We're not investigating them.
23 MR. KELLY: That's right.
24 CHAIRMAN: It strikes me that it must be possible to
25 ask, in fairness to you and without inhibiting you in 11:55
26 any way, that it should be possible for you to ask a
27 global question that doesn't involve particular
28 reference to interactions with (a) a party who has not
29 yet given evidence, and where we go with that evidence

1 is another day's work, but I think much the same thing
2 will arise in it. So, can you help me on this? I
3 mean, obviously I don't want to inhibit your
4 cross-examination. At the same time, I think we looked
5 at a question, how far do we go, what is our remit, and 11:55
6 we said it's not to do -- I mean, Garda Keogh says,
7 look, An Garda Síochána facilitated the promotion of
8 Superintendent Murray and I regard that as
9 targeting/discrediting. It may be debated which of
10 them it is, but that's what he says, I made legitimate 11:56
11 submissions to the Policing Authority, the Gardaí
12 frustrated that, if you like. That's his complaint.

13
14 I can't say whether the Policing Authority did right or
15 did wrong or did anything. So I am in a difficulty. I 11:56
16 can well imagine that through the door will come the
17 Policing Authority lawyered up for a fray and they'll
18 be right, because they'll be saying, what are you
19 doing? So, help me on this.

20 MR. KELLY: Yeah. 11:56

21 CHAIRMAN: I have the documents. We will be looking at
22 the documents. So, can you ask a question in general
23 terms? I mean, we can count how many encounters there
24 are.

25 MR. KELLY: Yes. 11:56

26 CHAIRMAN: And the details, that's not a worry and so
27 on. Can you put that into a question that saves -- I
28 mean, I am asking for your assistance as much as
29 anything else, in endeavouring to --

1 MR. KELLY: I will certainly, yeah.

2 CHAIRMAN: Thank you very much.

3 MR. KELLY: Just if I can do this before I do it. The

4 only reason I was going down that road was --

5 CHAIRMAN: I will leave it to you, Mr. Kelly. 11:57

6 MR. KELLY: -- the chief superintendent thought it was

7 appropriate to challenge the number of times he had

8 such interactions.

9 CHAIRMAN: I understand that. Look, don't worry about

10 that. I can count. 11:57

11 267 Q. MR. KELLY: Chief superintendent, the question is

12 simply this: If this was going on and you were aware

13 and you were making notes about it, did you ever report

14 it to the Policing Authority, saying, look, there's a

15 lot of canvassing going on on my behalf and it's wrong? 11:57

16 A. Oh, no, there was no canvassing going on on my behalf.

17 That's an outrageous thing to suggest. I never needed

18 anyone to canvass for me. My promotion was achieved on

19 merit.

20 268 Q. Yeah. But you were aware -- 11:58

21 A. I find that outrageous, to suggest that.

22 269 Q. You were perfectly well aware that canvassing was

23 utterly prohibited?

24 A. Absolutely, and I made that very clear to a person in

25 June of '17, after I did my interview. 11:58

26 270 Q. What I am just wondering about, is here you are

27 recording in your diary these things where one member

28 at Athlone is saying that he is canvassing on your

29 behalf. I am asking, why didn't you report it to the

1 Policing Authority?

2 A. He didn't say he was canvassing on my behalf. As I
3 said to you, he also wrote comments about
4 Superintendent Minnock, who also got promoted and was
5 in a competition that year. There was no canvassing. 11:58
6 Neither I nor Superintendent Minnock asked Garda Keogh
7 [sic] to do anything for us. Nor I certainly wouldn't
8 need anything to be done for me. I don't think from
9 what I know of Superintendent Minnock he would need
10 anything to be done for him either. My promotion 11:58
11 application and my interview stand on their merit.

12 271 Q. I'm not suggesting that you --

13 A. Well, you are, and I take grave exception to that.

14 272 Q. You may well do. Let me ask the question. I am not
15 suggesting to you that you were getting Garda Greene to 11:59
16 canvass on your behalf. What I am suggesting to you
17 is, you are recording him telling that there is
18 canvassing going on which benefits you. I am simply
19 asking, did you report that to the Policing Authority?

20 A. No, I didn't. 11:59

21 273 Q. Thank you.

22 A. Nor did I see any need to in the circumstances in which
23 Garda Greene outlined to me that he made contact with
24 the Policing Authority to discuss his issues. And if
25 he used an example of what was happening in Athlone at 11:59
26 a time prior to my arrival with something that was now
27 happening because of changes I brought in, well that's
28 a matter for him.

29 274 Q. CHAIRMAN: May I ask a question that's as neutral as I

1 can? Let's leave the word canvassing out of the
2 equation. As Mr. Kelly expressly acknowledges there's
3 no suggestion that you inspired Garda Greene or anybody
4 else to make representations on your behalf. There is
5 no suggestion of that kind. But if Garda Greene, in 12:00
6 whatever circumstances, I appreciate that he had
7 occasion to be in touch, but in whatever circumstances
8 he was in communication with the Policing Authority,
9 and if he was saying things that were helpful, if you
10 like, or defensive, or putting accurately the position 12:00
11 in regard to you in a helpful way, would you have
12 regarded that as being acceptable, not acceptable,
13 something of that kind?

14 A. I'd be neutral on it, because the interview process
15 that I went through had four people on the first 12:01
16 interview board who were independent and five people on
17 the second interview board who had assess me, my
18 character and what I presented to them.

19 275 Q. CHAIRMAN: So you got over the hurdles and the decision
20 was made that you were entitled to promotion? 12:01

21 A. Well, I was successful in the competition.

22 276 Q. CHAIRMAN: That's the case, yes, and you're number 7?

23 A. Yes.

24 277 Q. CHAIRMAN: This much we know?

25 A. Yes. 12:01

26 278 Q. CHAIRMAN: And you say that went straightforward,
27 perfectly proper and everything. But now there is an
28 issue, and whether it's fair or unfair, there is a
29 question, the Policing Authority, some might say

1 they're swithering around, they're dithering, some
2 might say they are genuinely concerned, I don't know,
3 I'm trying to avoid any indication of a view?

4 A. Yes.

5 279 Q. CHAIRMAN: Mr. Kelly asked you, and I appreciate your 12:02
6 resentment of the suggestion of canvassing?

7 A. Yes.

8 280 Q. CHAIRMAN: Okay. But if in those circumstances
9 somebody, having got through the process and now the
10 authority is considering it, and somebody, Garda Greene 12:02
11 is making helpful noises, I think some of these reflect
12 helpful communications.

13 A. Yes.

14 281 Q. CHAIRMAN: Did you regard that as proper, improper or
15 did you have any view on it? Can you understand my 12:02
16 question? I am trying to be as neutral as I can?

17 A. I really didn't have a view on it, other than I was
18 outrageously concerned. And when Garda Greene told me
19 on the 1st November what he told me, I went home
20 immediately and I contacted a solicitor. 12:02

21 282 Q. CHAIRMAN: Okay, very good. So you did not think in
22 the context, in the circumstances you did not think
23 that anything that Garda Greene was doing to your
24 knowledge, you didn't think that was something to be
25 reported, complained about, or whatever it was? 12:03

26 A. No. And I suppose I gave that letter, when I got it,
27 to my solicitor immediately and I did report it to the
28 Policing Authority subsequently.

29 283 Q. CHAIRMAN: Okay.

1 A. On his advice.

2 CHAIRMAN: Okay. Now, I am sorry, Mr. Kelly. But I
3 think that may be illuminating in some way, and it may
4 also get us over a specific question, if you like, of
5 the involvement.

12:03

6 284 Q. MR. KELLY: Yes. There is just one other matter before
7 I move on from that. You instructed your solicitors,
8 McInnes Dunne, to subsequently write to the Police
9 Authority, didn't you?

10 A. Yes.

12:03

11 285 Q. And they did write on 4th April 2018. We can turn that
12 letter up, I think it's at 7561. It's a letter of the
13 4th April, complaining that others were using channels
14 to influence the selection process. Did you find it?

15 A. One second now. Yes, I have it.

12:04

16 286 Q. Paragraph 2, for example, do you see that?

17 A. Yes.

18 287 Q. "Our client has learned that during the course of the
19 application process the Policing Authority engaged in a
20 series of contacts with a serving rank and file member
21 of An Garda Síochána regarding our client's application
22 for promotion. Our client has been advised that the
23 Policing Authority not only corresponded with this
24 serving member, but also met with him and asked him for
25 his opinion on our client's character and suitability
26 for appointment."

12:04

12:05

27 A. Yes.

28 288 Q. "Details of the Policing Authority's interaction with
29 the serving member in question have been provided to

1 our client by the serving member, including a copy of a
2 letter sent by him to the Policing Authority which
3 includes, apparently at the Policing Authority's
4 request, his opinion on our client."

5 A. Yes. 12:05

6 289 Q. Now, just pausing there, I want to make clear, before
7 anybody objects, that the Policing Authority utterly
8 rejected this. That's perfectly plain, and I am not
9 making any imputation. But I am asking you about that
10 paragraph. 12:05

11 A. Yes.

12 290 Q. why did you wait until after your appointment, your
13 promotion was confirmed, before you get the solicitors
14 to write this letter?

15 A. That, I sent that letter on the advice of my solicitor, 12:05
16 who felt that I should do something about this, that I
17 couldn't hold that information. He sent that letter.
18 It was met with a denial. A second letter went with
19 more information in it. And...

20 291 Q. But that was after you got the appointment, promotion? 12:06

21 A. Absolutely, absolutely.

22 292 Q. I'm asking you why didn't do you it before it?

23 A. Because the Policing Authority, I was led to believe,
24 were engaging with Garda Greene through a third party.

25 293 Q. I will ask you -- 12:06

26 A. I didn't know what was going on with that.

27 294 Q. I will ask you the question one more time: why didn't
28 do you it before your appointment?

29 A. Because I was acting on the advice of my solicitor and

1 I didn't see a need to do it before my appointment. I
2 didn't feel it had any relevance before my appointment.
3 My appointment was based on the interview process, the
4 competition I won. But and then an analysis of my
5 character, that's based on my service in the Garda 12:06
6 Síochána and a character reference form that I had
7 provided to the Policing Authority, which they were
8 obliged to check with the guards and with GSOC.

9 295 Q. If I can just ask you this, we've looked at this
10 already and the Chairman will be familiar with it, it 12:07
11 is in Volume 17, page 16249. It's a diary entry of 1st
12 March 2017. Do you see that?

13 A. Yes.

14 296 Q. So you're approached by Chief Superintendent Scanlan at
15 a Forensic Science of Ireland conference? 12:07

16 A. Yes.

17 297 Q. Right?

18 A. Yes.

19 298 Q. "Said", I take it that is Chief Superintendent Scanlan
20 said? 12:07

21 A. Yes.

22 299 Q. "He was asked by an assistant commissioner from Human
23 Resources and People Development to meet Garda Keogh to
24 see if he wanted to make a complaint under bullying
25 policy against Chief Superintendent Curran and I, as he 12:08
26 was writing gibberish to Human Resources and People
27 Development about us."

28 A. Yes.

29 300 Q. That's what he said to you, is it?

1 CHAIRMAN: No.

2 A. Well, I've dealt with this already. The word gibberish
3 is my word.

4 301 Q. MR. KELLY: Right.

5 A. But in relation to his explanation of it, that's my 12:08
6 interpretation of what he said when I some time later
7 wrote out that note. Not at the time.

8 302 Q. Did he say it was to make a complaint under the
9 bullying policy?

10 A. He did, yeah. 12:08

11 303 Q. So back then in March you knew a complaint was in the
12 offering from Nick Keogh?

13 A. But these things had been mentioned in the Dáil, in
14 relation to my promotion in October '16, so I knew
15 there was something in the offering. 12:08

16 304 Q. There was more than something. Bullying policy.

17 A. Yeah. But that had been mentioned --

18 305 Q. Yeah?

19 A. -- you know, in public outings of me.

20 306 Q. Just before I leave that. If that's right, you knew 12:08
21 about the bullying policy, why didn't you put it in the
22 application form?

23 A. There was no obligation to me to anything about
24 bullying on the application form, and all one has to do
25 is read the clearance form that I filled out, that I 12:09
26 disclosed. I suppose it would be prudent to put it up
27 on the screen, seeing that you are asking that
28 question, and if you bear with me, I should be able to
29 get the page number. I think it could be around 2624

1 or thereabouts. It's the copy of the declaration that
2 I completed, and you will see from reading that, that
3 nowhere on it does it say anything about it. It could
4 be a few pages on.

5 307 Q. CHAIRMAN: That's all right. You say the application 12:10
6 form did not say -- I mean, there's no need for us to
7 put it up, unless you particularly want to draw
8 attention to it.

9 A. The application form didn't say it, nor did the vetting
10 form. 12:10

11 CHAIRMAN: I understand.

12 308 Q. MR. KELLY: I just put it to you, so there's no need to
13 take it up, that the application form does ask for you
14 to update any of the matters that you deal with should
15 they change? 12:10

16 A. Absolutely. And the update, as far as I was concerned,
17 could only have been provided after the 15th November,
18 when I was noted formally of the bullying complaint.
19 At that time I discussed with my solicitor, should I
20 now formally notify the Policing Authority of this, and 12:10
21 because they already were now aware of it, it was in
22 the public domain, I decided not to. I didn't think it
23 would serve any purpose.

24 309 Q. Well, I am putting it to you that, as you say, it was
25 quite clear to you back in March, the 1st March, that 12:10
26 this was -- there was an investigation underway in
27 respect of claims of bullying and harassment being made
28 by Nick Keogh against you?

29 A. No, that's not true.

1 310 Q. Okay, I understand that.

2 A. No, allow me answer the question please. On the 1st
3 March, and I think I heard Chief Superintendent Scanlan
4 say it yesterday, he was not appointed to investigate
5 anybody or anything at that point in time. He led me 12:11
6 to believe he was meeting Garda Keogh the next day, to
7 take some kind of a statement. He mentioned it to me
8 again on the 23rd March, and we went through the note
9 earlier on, and he said to me that he hadn't been able
10 to meet Garda Keogh. And that's as I saw it. And I 12:11
11 didn't know that there was any bullying complaint made
12 against me until the 24th September, when it appeared
13 in the public domain and then on the 27th in the Dáil.

14 311 Q. I will draw your attention and that of the Chairman to
15 the penultimate sentence: 12:12
16
17 "I asked if the internal process could be entered into
18 considering Garda Keogh had initiated civil proceedings
19 against the State naming me as respondent. He said it
20 was a good question and he would pose it." 12:12

21 A. Yes.

22 312 Q. "Internal process", that clearly is a reference to
23 bullying and harassment, isn't it?

24 A. When Chief Superintendent Scanlan mentioned that to me
25 on the 1st March, he said he was tasked to go and see 12:12
26 if Garda Keogh was making a complaint under the
27 bullying and harassment policy. So, I have no issue
28 with that. But he came to me on the 23rd March and he
29 said he hadn't, nothing had happened.

1 313 Q. He said he hadn't yet met him?
2 A. He said he hadn't been able to get a statement from
3 him.
4 314 Q. So back in March you knew that a bullying and
5 harassment claim was in the offering? 12:12
6 A. I knew that Chief Superintendent Scanlan had been
7 tasked with something and I heard no more about it
8 after the 23rd March until, as I said to you, in
9 September and then subsequently in news media in
10 October, again in November and December. 12:13
11 315 Q. So when you put in -- we know that the bullying and
12 harassment claim with Nick Keogh was given to Chief
13 Superintendent Scanlan on the 27th March?
14 A. Well I didn't know that.
15 316 Q. Yeah. And I think it was around the same time that you 12:13
16 put in your application?
17 A. The 28th.
18 317 Q. The 28th, the following day?
19 A. Absolutely.
20 318 Q. Before completing it, having had that conversation on 12:13
21 the 1st March, did you think to ring and ask, just to
22 be sure, look, has anything come of this because of
23 this bullying and harassment claim, because I have got
24 to fill out this declaration which requires me to say
25 whether such a complaint is being made against me? 12:13
26 A. Now, a couple of points there. The declaration didn't
27 require me to say that such a complaint was being made
28 against me. And secondly, that declaration was not
29 completed or was not required to be completed by me

1 semantics. And they have never raised an issue with me
2 about that, and it's their competition and their rules
3 and their vetting and their decision to appoint.
4 322 Q. well, I am certainly raising it now. what I am
5 suggesting to you is, and we will go through the 12:15
6 documents in due course, in submissions with the
7 Chairman rather than debate it at length now, that
8 there was a clear obligation on you to notify the
9 Policing Authority of the existence of the bullying and
10 harassment complaint made by Nick Keogh against you and 12:16
11 you didn't?
12 A. I wasn't aware of its existence until the 15th
13 November.
14 323 Q. And I am suggesting to you, you were aware of it
15 plainly by reference to that note of 1st March 2017? 12:16
16 A. No.
17 324 Q. Okay.
18 A. I don't agree at all with you there.
19 325 Q. You also had -- we know the complaint was filed on the
20 27th. I am not sure whether you answered the question. 12:16
21 I will ask it again. Did you ask Chief Superintendent
22 Scanlan if there had been a complaint before or at any
23 point -- before you filled out the application or at
24 any point thereafter?
25 A. No. 12:17
26 326 Q. Before November?
27 A. No, I didn't speak -- after the 23rd March, I have no
28 recollection of meeting Chief Superintendent Scanlan
29 again for quite some time or talking with him or

1 engaging with him in any way. Up until, I think, the
2 19th November, when I phoned him to find out where this
3 had been. And he told me he had sent it in immediately
4 when he took it. And I did that result of the media
5 that had occurred that day, which I found quite 12:17
6 upsetting, and the lack of confidentiality around the
7 whole process was quite worrying for me, combined with
8 what I saw at that time as a definite and direct
9 campaign to destroy me.

10 327 Q. I want to now look, if I may, at some of the entries, 12:17
11 some of them you have been through with Mr. Marrinan,
12 others not. These are the diary notes which you have
13 disclosed only recently in the last few weeks. And I
14 think they begin -- it's volume 57, the first one I
15 want to look at is 16209, the 4th September. 12:18

16 A. What year?

17 328 Q. 2015. That's what is written on my copy, 16209.

18 A. Yes.

19 329 Q. Have you got it?

20 A. Yes. 12:18

21 330 Q. "Spoke to Detective Superintendent Mulcahy re
22 whistleblower's cases as on files he had sent
23 re-arrest. Superintendent Murray to look after same."
24

25 what was that about? 12:18

26 A. Detective Superintendent Mulcahy phoned me in relation
27 to a legacy file he had come across during his
28 investigation, which I think related to Athlone and
29 particular subject there, had been investigated by a

1 guard who had been in Athlone but had been transferred
2 to Mullingar. He wanted some correspondence that he
3 had sent returned in relation to the query he had on
4 it, and I simply informed him that that guard was no
5 longer in Athlone, he was in Mullingar and I passed the 12:19
6 matter on to my colleague over there, Superintendent
7 Alan Murray, to deal with, and I never heard anything
8 more about it again.

9 331 Q. These notes which you've just disclosed in the last few
10 weeks, why didn't you disclose them before? 12:19

11 A. Because at the time when I did my statement, I didn't
12 think they were relevant, and there's one in
13 particular, because I knew in my mind that it had
14 nothing to do with this issue. So I didn't feel it was
15 relevant and I did that in March of '19 and, as I said, 12:19
16 you know, it's an error on my part, I am very
17 disappointed and annoyed with myself that, you know, it
18 can be used against me or to, I suppose, create the
19 impression that I am conceited in some way, when that
20 couldn't be further from the truth. 12:20

21 332 Q. Well, I was just wondering about not relevant. If you
22 look at 16223?

23 A. Just give me the date.

24 333 Q. That's the first meeting between you and Garda Keogh,
25 March the 15th? 12:20

26 A. This list, is it?

27 334 Q. Yeah, it's your list?

28 A. Yes.

29 335 Q. Right. work related stress issues, March the 15th

1 [sic].

2 A. Yes.

3 336 Q. "Alcohol sickness."

4

5 Did you not think that that was relevant? 12:20

6 CHAIRMAN: He didn't meet him on March the 15th. He

7 didn't meet him until March the 26th.

8 MR. KELLY: March 2015.

9 CHAIRMAN: I'm sorry.

10 MR. KELLY: 26th March 2015. 12:20

11 CHAIRMAN: I'm sorry. Sorry, Mr. Kelly, a stupid

12 mistake on my part.

13 337 Q. MR. KELLY: Don't worry about it. Do you not regard

14 that as relevant, the first item, "alcohol sickness"?

15 A. I think that's two words, so if you look at the 12:21

16 original there, it's "alcohol/sickness", it's not one

17 word.

18 338 Q. Yes, but is the whole lot of this, his car tax, absent

19 without leave, trailer thefts and so on.

20 A. Yes. 12:21

21 339 Q. Support, blah, blah, blah. Why is that not relevant?

22 A. Because it's similar to a note I think I disclosed in

23 relation to when I was going to the CMO, with the same

24 things on it. And this is one I think I prepared in

25 assisting me to compile the 338-page document that I 12:21

26 did in January of '17.

27 340 Q. Just in relation to that first one, I will ask you

28 that, at that point clearly you thought that Garda

29 Keogh's problem was alcohol sickness, not work related

1 stress?

2 A. No, it's two separate words. It is alcohol/sickness.

3 341 Q. I see, okay.

4 A. Yeah, and you can look at the original here.

5 342 Q. Show me the original, where I can see the stroke. 12:22

6 A. [INDICATING].

7 343 Q. Well, I can't see it from here.

8 A. It is a photocopy here. [SAME HANDED].

9 344 Q. Well, you're right, the photocopy I have been given
10 seems to show alcohol and then stroke sickness. 12:22
11 Somebody has written over to the right, stroke?

12 A. That's my own note that I put on it. That's my copy.

13 345 Q. Why would you put on a note saying "stroke" if you have
14 got a stroke there?

15 A. Because I read in the transcripts where this had been 12:22
16 raised as an issue.

17 346 Q. Perhaps you will show that to the Chairman?

18 A. Absolutely. The original is available for anybody to
19 see and photocopies of the original were given to the
20 Tribunal in December. And that's, I suppose, the copy 12:23
21 that the Tribunal gave to me, gave back to me, it's not
22 my copy, it's a copy that the Tribunal gave back to me
23 [SAME HANDED].

24 CHAIRMAN: Yes, I see the point.

25 MR. KELLY: Yeah. 12:23

26 CHAIRMAN: Thank you very much. I will hand it back.

27 347 Q. MR. KELLY: I will move on from that. But the point
28 is, it doesn't say anything about work related stress
29 at all in that note, does it?

1 A. No, and we have been through this when I was here
2 before, you know, I reported work related stress for
3 Garda Keogh on the 2nd April.

4 348 Q. Just going on through the notes, if we go back to where
5 we were, 11th June 2016, it's over the next page, 12:24
6 16210?

7 A. 11th June 2016?

8 349 Q. Yes. Here we have the 11th June, you called to Deputy
9 Commissioner Ó Cualáin at home?

10 A. Yes. 12:24

11 350 Q. We have talked a little about this?

12 A. Yes.

13 351 Q. With a small thank you gift?

14 A. Yes.

15 352 Q. What were you doing giving him a gift? 12:24

16 A. I called to his home, so I brought the gift with me for
17 him. The purpose of my call was to express my
18 gratitude to the board through him for placing faith in
19 me. I was absolutely delighted to be promoted, exuberant,
20 in fact. And I felt it was a huge achievement for me 12:24
21 to get it.

22 353 Q. What was the gift?

23 A. A small bottle of whiskey.

24 CHAIRMAN: A small bottle of whiskey or a bottle of
25 whiskey. 12:24

26 A. Well, a bottle of whiskey, in that it wasn't an
27 expensive bottle of whiskey.

28 CHAIRMAN: I'm sorry. I'm sorry. You gave him a
29 bottle of whiskey.

1 A. Right. It wasn't anything special.

2 354 Q. MR. KELLY: So having done that, you then went on to
3 discuss issues in respect of ACs, what's that,
4 assistant commissioners?

5 A. Yes. As I said, there were six people who were 12:25
6 selected to be promoted to assistant commissioner and
7 Commissioner Ó Cualáin discussed with me how I would be
8 supporting those and had the support.

9 355 Q. "Whistleblowers Commissioner's plan" what is that?

10 A. No, it's two separate words, it's not to be -- you're 12:25
11 reading it as if it's one word it's not, it's the
12 whistleblowers situation in terms of changing the
13 culture of the organisation, and then the
14 Commissioner's plans in terms of the modernisation and
15 renewal programme that then existed and again, what 12:25
16 support would have to be given to that. And as I said,
17 one of the things that I distinctly remember him saying
18 to me, we will have to pull on the green jersey because
19 the organisation is in difficulty.

20 356 Q. And what actually is meant by that? 12:26

21 A. Excuse me?

22 357 Q. What in this context is actually meant by that? We
23 have got to pull on the green jersey.

24 A. It means that we have to put our shoulder to the wheel
25 because the organisation, I suppose, needs to change 12:26
26 and modernise, we have a plan there for it and it was a
27 very ambitious plan and we have to drive that forward
28 now and that'll be one of the main things that all of
29 the people who are promoted will be doing.

1 358 Q. And was that in connection with whistleblowers?

2 A. No, it was the organisation in general.

3 359 Q. I see. Okay.

4

5 Chairman, I wonder whether at this time it would be 12:26

6 time to have the earlier break that Mr. McGuinness

7 yesterday was suggesting, resuming earlier too.

8 Because I have some more to do.

9 CHAIRMAN: I was just wondering, is it convenient to
10 carry on, for you not to interrupt your 12:26

11 cross-examination, and then we will have a shorter

12 session in the afternoon. If that is convenient, then

13 that is, I think, probably --

14 MR. KELLY: I am happy to do that.

15 CHAIRMAN: Are you happy to do that? 12:27

16 MR. KELLY: I am.

17 CHAIRMAN: Very good. Thanks very much.

18 360 Q. MR. KELLY: Okay. The 27th July '16, that diary entry
19 there, page 16211?

20 A. Yes. 12:27

21 361 Q. You attended -- you spoke to Chief Superintendent Finn
22 about promotion?

23 A. Yes.

24 362 Q. What was that about?

25 A. So I was in Mullingar at a briefing that he was 12:27

26 conducting in relation to the performance and

27 accountability framework system that was being

28 introduced. He was then a chief superintendent who had

29 been on a list waiting to be promoted to assistant

1 commissioner, and I was a superintendent waiting to be
2 promoted to chief superintendent. We discussed very
3 briefly if either of us had heard anything about the
4 promotions because ten people, as I said, had been
5 promoted on the 13th July but eight hadn't, and I was 12:28
6 one of those eight. That was the extent of it.

7 363 Q. Just looking down that page then. 11th November 2016,
8 you met with Jim O'Callaghan at Harold's Cross at
9 12:30, promotion with B Sutton?

10 A. Yes. 12:28

11 364 Q. Further discussions with other 8"?

12 A. Yes.

13 365 Q. Jim O'Callaghan was the Fianna Fáil TD?

14 A. Correct.

15 366 Q. Isn't that right? 12:28

16 A. Correct.

17 367 Q. Why were you involving him?

18 A. As I explained to you, in 2016, when, I suppose, the
19 eight people who hadn't -- who were waiting for
20 promotion and hadn't any information about it, engaged 12:28
21 with our association, who in turn engaged with the
22 Commissioner. A meeting was arranged by one of my
23 colleagues and I was asked by the other group of eight
24 or selected one of my colleagues to go to that and to
25 meet Mr. O'Callaghan, put our case forwarded under the 12:28
26 auspices of our representative association.

27 368 Q. So you met with him, you also met with Boxer Moran?

28 A. I did, and I had people with me on most of those
29 visits, members of the group.

1 369 Q. And then you also met with Dennis Naughton?
2 A. I did, I had someone with me there, yeah.

3 370 Q. And you met with Peter Burke?
4 A. I was on my own in that one.

5 371 Q. And you met again with Jim O'Callaghan? 12:29
6 A. With two other guys, yes.

7 372 Q. So this was all to advance your promotion, was it?
8 A. This was, I suppose, to find out if it was possible for
9 us to be promoted prior to the expiration of the list
10 in unusual circumstances on the 31st December or the 12:29
11 passing of regulations, whichever came first.

12 373 Q. Was this you and others involving politicians to
13 advance your cause?
14 A. Under the auspices of our representative association.

15 374 Q. So the answer is yes? 12:29
16 A. Well, we gave them a document which set out our case
17 and if they could help us, obviously we would be
18 delighted to do that.

19 375 Q. I also see in this, at Volume 58, page 16552, a
20 newspaper report is being recorded, that: 12:30
21
22 "The government is facing a legal challenge from a
23 group of senior Garda officers who secured promotion in
24 recent months but who now have to reapply under a new
25 system about to be introduced." 12:30
26
27 Yeah?

28 A. We did discuss that, yeah, with our representative
29 association again. And the five of us that were left

1 politicians and one in particular.

2 386 Q. Right. "And e-mail Leo Varadkar."

3

4 I take that to be. was that you?

5 A. Not me, no. He said he might do that, but he didn't as 12:32

6 it turned out.

7 387 Q. CHAIRMAN: Sorry, say that again?

8 A. He didn't as it turned out.

9 388 Q. CHAIRMAN: He didn't e-mail Mr. Varadkar.

10 A. No, he didn't. 12:32

11 389 Q. MR. KELLY: who is he?

12 A. My friend the priest.

13 390 Q. Right. so he didn't actually do that?

14 A. He didn't actually do it.

15 391 Q. Okay. Another one, 16213, the next page, 28th February 12:32

16 '17.

17 A. 28th February '17. Yes.

18 392 Q. You see there?

19 A. Yes.

20 393 Q. "Call from Boxer Moran re promotion. Said Frances 12:32

21 Fitzgerald didn't want to promote me re whistleblowers.

22 Said he was going to get it done."

23 A. Yes.

24 394 Q. Just pausing there, is that Boxer saying he is going to

25 get it done? 12:33

26 A. Yes.

27 395 Q. Right. And "S Ross", is that Shane Ross?

28 A. Yes.

29 396 Q. "And others may ring me."

1 A. Yes.

2 397 Q. Did they?

3 A. No.

4 398 Q. "Assured him I had no issues that would prevent my
5 promotion." 12:33

6 A. Yes. That has always been my position.

7 399 Q. Then on the 23rd March, you then say there:
8
9 "Got chief to sign my promotion form."

10 A. That was the day I was at the function for the retiring 12:33
11 chief superintendent in Portlaoise. The chief
12 superintendent at the time was there. I think he might
13 have been on annual leave then before I was due to send
14 it in and I got him to sign it for me.

15 400 Q. Who was that? 12:33

16 A. Chief Superintendent Galton.

17 401 Q. Right.

18 A. He didn't have to do anything other than to witness my
19 signature.

20 402 Q. Well, he had to -- well, we will come to that. You say 12:33
21 he just had to witness your signature?

22 A. Yeah, he was just certifying that it was --

23 403 Q. CHAIRMAN: It was your application.

24 A. That I was who I was. Yeah. It wasn't a major --

25 404 Q. CHAIRMAN: So this one wasn't carrying an endorsement 12:33
26 of any kind?

27 A. No, no, no. There was no endorsement.

28 CHAIRMAN: Okay.

29 405 Q. MR. KELLY: If we look over, 19th June 2017. I think

1 you have got to scroll down, Mr. Kavanagh.

2 A. Yes.

3 406 Q. "Got call from Boxer Moran re how I got on in
4 interviews. Told he did shortlisting plus two
5 interviewers and go on well." 12:34

6

7 who did the shortlisting?

8 A. well, no, no, no.

9 407 Q. CHAIRMAN: Got on well.

10 A. "Got call from Boxer Moran re how I got on in 12:34
11 interviews. Told him did shortlisting and two
12 interviews and got on well."

13

14 408 Q. I see. I see.

15 A. Yes. 12:34

16 409 Q. "He said he was meeting Charlie Flanagan."

17 A. Yes.

18 410 Q. The 20th June?

19 A. Yes.

20 411 Q. "I told him not to say anything." 12:35

21 A. Yes.

22 412 Q. "As canvassing disallows."

23 A. Correct.

24 413 Q. So at that stage you weren't keen to have a government
25 minister lobbied or canvassed? 12:35

26 A. I didn't want anybody canvassed. The representations
27 that we made to politicians as group under our
28 association in '16 were to do with the '16 list.

29 414 Q. CHAIRMAN: I understand.

1 A. That expired and I went into a new competition and I
2 didn't want -- I didn't need anyone to do anything. At
3 that point in 2016 I had already been selected for
4 promotion. It wasn't --

5 415 Q. CHAIRMAN: I understand the point you're making. You 12:35
6 say that the situation was different after selection.
7 A. Yes.

8 416 Q. CHAIRMAN: Going through the section process.
9 A. Yes.

10 417 Q. CHAIRMAN: And we know there was a guillotine of the 12:35
11 31st December?
12 A. Correct, December.

13 418 Q. CHAIRMAN: Or if regulations came in, whichever came
14 first.
15 A. Yes. 12:35
16 CHAIRMAN: Anyway, there it is.

17 419 Q. MR. KELLY: You go on to say there:
18
19 "Shared with WhatsApp group."
20 A. Yes. 12:36
21 420 Q. What WhatsApp group?
22 A. The five people, my colleagues who had been, I suppose,
23 not selected for promotion, who had lost out the
24 previous year. And all of us --

25 421 Q. CHAIRMAN: 14 to 18. 12:36
26 A. 14 to 18.

27 422 Q. CHAIRMAN: Had a WhatsApp group.
28 A. Absolutely.

29 423 Q. CHAIRMAN: Which they could put, saw Boxer today?

1 A. Yes.

2 424 Q. CHAIRMAN: Wrote to Leo, whoever it was?

3 A. Yes.

4 425 Q. CHAIRMAN: Okay.

5 A. And we all entered a new competition again. 12:36

6 426 Q. I see. Friday, the 20th May?

7 A. Two thousand and?

8 427 Q. 2016, sorry.

9 CHAIRMAN: You want to go back?

10 MR. KELLY: I think it must be going back. Well, I 12:36

11 have it at a diary entry.

12 CHAIRMAN: No, no, I understand.

13 MR. KELLY: It may not be in this, in the diary entry.

14 CHAIRMAN: The date you're referring to is?

15 MR. KELLY: It's -- 12:37

16 CHAIRMAN: The date you're referring to.

17 MR. KELLY: Let me just call this up.

18 CHAIRMAN: I'm sorry.

19 MR. KELLY: Just to make sure.

20 CHAIRMAN: Sorry, I don't want to be hassling you. I 12:37

21 just want to know what I am to write down. Can we help

22 you, Mr. Kelly. Do you want to say what it's about?

23 MR. KELLY: Yes, it's just, if you call up page 2530.

24 It's on the screen. It's volume 9, if you want to look

25 at it in hard copy. 2530. 12:38

26 A. Yes. Okay.

27 428 Q. It's a diary entry, you're talking about a call from

28 Dave McCarthy and then Assistant Commissioner Nolan?

29 A. Yes.

1 429 Q. "Garda Greene called in to the office. Inspector
2 Minnock telling him go home."
3 A. Yes.
4 430 Q. "Chief phoned me later to say she was told to tell me I
5 am going a great job." 12:38
6
7 Etcetera.
8 A. Yes.
9 431 Q. "Sceptical re all that."
10 A. Yes. 12:38
11 432 Q. "Most important information received is that somebody
12 at a very high level is telling whistleblower group."
13
14 what do you mean by that?
15 A. So that was, Garda Greene had come with information 12:38
16 from Garda Keogh that day, called to Superintendent
17 Minnock's home and he also told me later and
18 Superintendent Minnock told me as well. And there's
19 is a longer note to go with that.
20 433 Q. CHAIRMAN: Are you sure it wasn't Inspector Minnock who 12:39
21 called to Garda Keogh's home?
22 A. No. Garda Greene called to Superintendent Minnock's
23 home.
24 CHAIRMAN: I am getting confused, I am sorry, yes.
25 Garda Greene called, okay. 12:39
26 434 Q. MR. KELLY: Right. You then say "commissioner about to
27 promote Chief Superintendent Glacken."
28
29 And then this other one:

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"Deputy Commissioner Ó Cualáin watered down report to DPP. Someone knows what DPP wrote back about lack of recommendations."

A. Yes.

12:39

435 Q. Help me with that. What do you mean by that?

A. So that was the information that was being provided, that there was a lack of recommendations, is the message that was coming to me, and then I wrote surmising that someone obviously knows about a lack of recommendations. I didn't know anything about it.

12:39

436 Q. So who was telling you that Deputy Commissioner Ó Cualáin watered down report?

A. It was Garda Keogh telling Garda Keogh telling Superintendent Minnock, discussing it with me. And Garda Greene also discussing it with me.

12:40

CHAIRMAN: Well, that made sure it was accurate so!

437 Q. MR. KELLY: Yeah, quite. It seems to have gone around the whole of the midlands before it gets to you.

A. That's the way it happened.

12:40

438 Q. Right.

CHAIRMAN: I'm sorry. I'm sorry.

439 Q. MR. KELLY: We have a new definition of second, third, fourth hand. I want to ask you, you have been asked about it already but I am going to ask about it again, it is page 16222. Go back to 57. There. This is a recording of this meeting of Saturday, 13th January?

12:40

A. Yes.

440 Q. 2018.

1 A. A telephone call, yeah.

2 441 Q. Rang Assistant Commissioner Finn, having texted him
3 first?

4 A. Yes.

5 442 Q. He told you he had been speaking to Chief 12:41
6 Superintendent Healy.
7
8 "He said he now knows of the meticulous files and
9 records and notes I have."
10 12:41
11 Was that Healy or Finn, which?

12 A. It is Finn telling Healy. Or sorry, Healy telling
13 Finn.

14 443 Q. That he, Healy, knows of the meticulous notes you have?

15 A. Yes. 12:41

16 444 Q. I see. "He said he knew now of the corrections I had
17 made in Athlone."
18
19 Again, is this Healy?

20 A. My recollection is that it's Healy telling Finn, who is 12:41
21 telling me.

22 445 Q. I see, okay. "He spoke of Chief Superintendent T
23 Meyers' reception from people accused he spoke to and
24 his view of the ethical calibre of the people accused."
25 A. That's Tom Meyers' view, yes. 12:42

26 446 Q. What's his ethical view?

27 A. Well, he had --

28 447 Q. Ethical calibre, rather?

29 A. He had met people and he made comments about you how he

1 found them to be very personable, that they seemed to
2 be at the top of their game. I transcribed that into,
3 I suppose, my words, ethical calibre, not his.

4 448 Q. So this was a very ethical calibre, was it?

5 A. It's my word. You see, I had worked with the people in 12:42
6 Athlone for nearly three years then and I found them a
7 very willing and able bunch of people, who were very
8 anxious to engage with me in the change programme that
9 I had engaged in. And I found them to be very
10 honourable and ethical people in all of the 12:43
11 interactions I've had with them on duty.

12 449 Q. CHAIRMAN: But this is reporting Chief Superintendent
13 Meyers' favourable view of the calibre of the people
14 that were accused?

15 A. I think that he had mentioned that to me when I met him 12:43
16 on the 11th and he also it mentioned to --

17 450 Q. CHAIRMAN: Okay. But this note is saying, he is
18 referring to superintendent Meyers' view?

19 A. Yes.

20 451 Q. CHAIRMAN: As to the favourable ethical calibre? 12:43

21 A. Yes.

22 452 Q. CHAIRMAN: Is that right?

23 A. Yes. My interpretation of what he was saying to me.
24 And I suppose I have added my own dimension to it in
25 terms of ethical calibre. 12:43

26 453 Q. MR. KELLY: Just going on down: "Assistant
27 Commissioner Finn offered a view that Garda Keogh and
28 his solicitor were only looking for money in a civil
29 claim."

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Now, you covered this with Mr. Marrinan this morning. It was put back on Day 142, page 263, line 26, by Mr. O'Brien to AC Finn. AC Finn offered a view. This note was put to him. Sorry, have you got it? 263. It's down towards the bottom, it's line 26 we will begin with:

12:44

"Then he says: 'AC Finn offered a view that Garda Keogh and his solicitor were only looking for money in a civil claim. '

12:44

A. I dispute that. I wouldn't have said that, Chair, I mean that would be very unprofessional and unethical of me to say something like that. I might have said I knew, because they had a civil action, but I wouldn't have expressed a view. That is a very derogatory comment to make, Chair. I think it would be highly inappropriate and unprofessional for me to say something like that."

12:45

what do you say about that? That's him talking about your diary entry.

12:45

A. Yes. Well, I suppose the short note reflects what he said there, that we said it, or both of us, and it certainly is my view and I transposed my view in the mindset I had at that time, on 13th January '18, I transposed my view into this expanded note, the longer note. I suppose I imbued it then with what can only be described, as far as I'm concerned, as a personal

12:45

1 perspective in a defensive way. I was being sued by
2 Garda Keogh personally and I was a named defendant in
3 his civil proceedings.

4 454 Q. Right. If we turn up page 12309, the late disclosed
5 documents -- no, it's not, the earlier ones, yeah. 12:46
6 It's a conversation on 22nd December '17 with Mr. Finn.

7 A. Yes.

8 455 Q. They phoned him -- you had phoned him. Sorry, find it.
9 A. I did, after speaking to Ms. Hall, yes.

10 456 Q. And discussed various issues and so on. Just going 12:46
11 down:

12
13 "He said he could look at my 338-page document."

14 A. Yes.

15 457 Q. "And might bring clarity to the police authority about 12:47
16 the issues through the organisation of J Nugent."

17
18 Did he in fact look at this document?

19 A. No, he didn't, but I talked through it on the day he
20 called to me, on the 18th January. 12:47

21 458 Q. And did he look at it then in January?
22 A. No, I talked through it, he didn't look at it.

23 459 Q. Okay.
24 A. When he came to me, I'm sure he was mesmerised by
25 everything I was telling him and I don't know if half 12:47
26 of it even went in.

27 460 Q. What, he was mesmerised?
28 A. Yeah. I don't know if, you know, he fully understood
29 what I was saying.

1 461 Q. CHAIRMAN: well, he was listening to this for four
2 hours.

3 A. Yeah, he was listening to a lot of stuff.

4 462 Q. CHAIRMAN: It might be understandable he was
5 mesmerised. I'm not being flippant, please don't think 12:47
6 I am being -- I am being flippant but I am not being
7 un-serious. The prospect, the thought, the picture,
8 I'm sorry, the picture conjured up of the assistant
9 commissioner listening to his host taking him through
10 it 338-page document, does conjure up a certain picture 12:48
11 for me. Okay.

12 463 Q. MR. KELLY: It does. If you call up page 12418.
13 Again, it's your diaries I think, and it's speaking to
14 Joe Nugent. Do you have that? 18th January '18.

15 A. Yes. 12:48

16 464 Q. "M Finn's view is that all okay." what does that mean?

17 A. These are, I suppose, what I thought from my
18 perspective was being relayed from Assistant
19 Commissioner Finn to Mr. Nugent to Policing Authority
20 in a very official and formal way. The things that I 12:49
21 felt in my conversation with Ms. Hall had been
22 problems, that there were was a legal impediment, and
23 she didn't seem to understand that, and I gave -- or I
24 e-mailed Assistant Commissioner Finn on the evening of
25 the 18th January, an e-mail I sent to the Head of Legal 12:49
26 Affairs in the Garda Síochána at that time, outlining,
27 I suppose, what I saw as impediments and asking for
28 legal advice. I gave him a copy of that. Ms. Hall had
29 indicated to me that she couldn't understand about this

1 delay and I wanted again information to be conveyed in
2 a proper way, that the delay wasn't of my making. And
3 I gave Commissioner Finn the letter that was opened
4 this morning, that I sent to the executive of the Garda
5 Síochána on the 28th November. 12:49

6 465 Q. Just remind me, Mr. Finn at that time is the
7 investigator conducting the investigation?

8 A. He was appointed to --

9 466 Q. Bullying and harassment?

10 A. -- to conduct a bullying and harassment investigation. 12:50
11 I didn't see that, him with that, and I suppose in
12 conversations I had with him and Mr. Nugent on the 22nd
13 December, I suggested that perhaps Commissioner Finn in
14 meeting me could provide assurances that the Policing
15 Authority required, which they indicated had been not 12:50
16 forthcoming from the Garda Síochána by way of
17 information.

18 467 Q. You see, I am just wondering what Nick Keogh, or the
19 Tribunal for that part, is to make of this, the
20 investigator, you speaking and you recording: 12:50
21
22 "M Finn's view is that this is all okay."
23
24 I am just wondering what we are supposed to make of
25 that? 12:50

26 A. Well, that those points --

27 468 Q. Given he's the investigator.

28 A. Those points that were okay to outline, and there was
29 credibility around them, to, I suppose, overcome or

1 provide the information, the assurances the Policing
2 Authority needed in a proper way through the
3 organisation. And, as I said earlier, both Assistant
4 Commissioner Finn and I were well aware that the
5 bullying issue would be subject to a review under the 12:51
6 policy, possibly, had to be conducted properly, that
7 these proceedings were before the High Court, would be
8 examined and reviewed there, that the Policing
9 Authority, the statutory body overseeing the Guards,
10 would be, you know, getting assurances from the 12:51
11 organisation and information relating to this. Then in
12 relation to my promotion and then this Tribunal, term
13 of reference (b) was a live issue as well. So I was
14 just very anxious to do everything properly and I felt
15 -- never felt I had anything to hide. 12:51

16 469 Q. Well, can you just help me then with the last paragraph
17 in that entry:
18
19 "I then sent M Finn a text at 10.51, asking him to
20 promise he would fill in J Nugent in re our meeting." 12:51
21

22 A. Yes.

23 470 Q. He text back at 14:06 saying "already on it."
24 A. Yes.

25 471 Q. "And he would ring me Sunday, 21st August 2018." 12:52
26 A. Yes.

27 472 Q. What did you understand that to mean?
28 A. That to again me making sure Assistant Commissioner
29 Finn was passing on the information and the assurances

1 under those terms to Mr. Nugent in a proper fashion, so
2 that it could in turn be communicated in a formal way
3 to the Policing Authority to, I suppose, overcome the
4 impasse in relation to my promotion.

5 473 Q. Just to roundup this particular aspect, turn over the 12:52
6 page, we will just see what the conversation is. It's
7 12419. It's Sunday, 21st January 2018, just to
8 complete it. You spoke with Mr. Fin for three minutes?
9 A. Yes.

10 474 Q. And 42 seconds? 12:52
11 A. Yes.

12 475 Q. At 18:40.
13 A. Yes.

14 476 Q. "He assured me he spoken to Joe Nugent on Friday about
15 what he had learned over his four-hour visit with me." 12:52
16 A. Yes.

17 477 Q. "He also assured me Joe Nugent get it."
18 A. Yes.

19 478 Q. "And is talking it to the Policing Authority."
20 A. Yes. 12:53

21 479 Q. "He is to run it by Joe Nugent whether or not I should
22 offer the Policing Authority my document and get back
23 to me."
24 A. Yes.

25 480 Q. That completes it, okay. what I want to ask you then 12:53
26 about is back to your recent notes, page 16231. It's
27 an entry there for 2nd November 2017, it's 5:44pm.
28 Have you found it?
29 A. Go ahead.

1 481 Q. It's on the screen in front of you?
2 A. Yes.

3 482 Q. "I received a reply e-mail from the Policing Authority.
4 I drafted a reply and sent it to AC Corcoran for
5 perusal. At 8:23." 12:54
6 A. Yes.

7 483 Q. "He phoned me at 9:14."
8 A. Yes.

9 484 Q. "He made suggestions regarding the e-mail."
10 A. Yes. 12:54

11 485 Q. "And its content to maximise its impact."
12 A. Yes.

13 486 Q. "With emphasis on the order of merit."
14 A. Yes.

15 487 Q. "What's preventing my appointment at this time and it 12:54
16 is not clear from what's being said what's preventing
17 it."
18 A. Yes.

19 488 Q. "Indicate their letter is incomplete and doesn't
20 indicate the issue." 12:54
21

22 Then this one:
23

24 "Tell them you are aware that the claims process is
25 complete and that my declaration has been 12:54
26 substantiated."
27 A. Yes.

28 489 Q. "Tell them they are not telling me the substantial
29 reason for my appointment. Tell them to live up to

1 their commitment to me by selecting me at number 7."

2 A. Yes.

3 490 Q. Then:

4

5 "He said not to acknowledge that I am aware that the
6 issue is what the issue is." 12:55

7 A. Yes.

8 491 Q. "So that the paragraph re publicity can go."

9 A. Yes.

10 492 Q. What is meant by that? Is that the bullying and
11 harassment? 12:55

12 A. So I had indicated in the letter -- this is -- so I
13 sent a first letter on my own, they replied and Chief
14 Superintendent Wheatley had put me in touch with
15 Assistant Commissioner Corcoran for advice. I asked
16 him to have a look at the draft letter I did and he
17 sent back, gave me this advice. And what is meant by
18 the -- 12:55

19 493 Q. "He said not to acknowledge that I am aware that the
20 issue is what the issue is." 12:55

21 A. Yes. So, the Policing Authority hadn't made me aware
22 of the issue, although it was in the public domain.
23 And so, he was advising me, don't be blaming them for
24 putting it out in the public domain and change that
25 wording in that paragraph or sentence. 12:56

26 MR. KELLY: Judge, I wonder if we could just take a
27 break at that, I think I have virtually completed.

28 CHAIRMAN: Yes.

29 MR. KELLY: I just want to take an instruction.

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CHAIRMAN: Very good.

MR. KELLY: And if I do have to have some, it is going to be very, very short.

CHAIRMAN: That's very good. Thank you very much. No problem whatsoever. We will take a break then and we will come back at two o'clock. Okay.

12:56

THE HEARING THEN ADJOURNED FOR LUNCH

1 THE HEARING RESUMED, AS FOLLOWS, AFTER LUNCH:

2
3 CHAIRMAN: Thanks very much. Now, Mr. Kelly.

4 494 Q. MR. KELLY: If we could turn up page 16245, please.
5 This is a diary entry of yours, Friday, 26th January 14:04
6 2018.

7
8 "Call from M Finn at 7:04 for 1 minute 11 seconds.
9 Asked if the PA had been on to me re promotion. Said
10 he and J Nugent talking and he would ring me." 14:04

11
12 Just those two sentences, what do you mean by that? I
13 understand you got a call from Assistant Commissioner
14 Finn, then who is it asked if the Police Authority had
15 been on to you in respect of promotion? 14:05

16 A. Commissioner Finn, Assistant Commissioner Finn.

17 495 Q. And that's that he, Commissioner Finn, and Joe Nugent
18 were talking and he would ring me, who is that, Nugent
19 or --

20 A. Mr. Nugent, yes, and I did get a call from Mr. Nugent. 14:05

21 496 Q. Right.

22 A. And one from another chief superintendent then who was
23 waiting to be promoted to assistant commissioner. And
24 there was an air of anticipation that day as whether
25 the Policing Authority had made decisions or not. And 14:05
26 I got phone calls from a number of colleagues asking me
27 if I had heard anything, because the authority meeting
28 was on the 25th.

29 497 Q. What was meant by your note "said he would try and find

1 out more." what's that about?

2 A. As to whether or not the Policing Authority had
3 actually made any decisions, whether they were going to
4 announce them. I suppose that was the general air of
5 expectation that was around those waiting to be 14:05
6 appointed at that time, to see if the Authority had
7 made decisions.

8 498 Q. Just to be clear, that was Commissioner Finn that said
9 that?

10 A. Commissioner Finn, yeah. 14:06

11 499 Q. Okay.

12 A. Just to be clear, that said which now, which line?

13 500 Q. Said that he would try and find out?

14 A. That he would try and find out more as to whether any
15 decision had been made or not, yeah. 14:06

16 501 Q. Well, it's your note?

17 A. Yes.

18 502 Q. Was it Mr. Finn or was it --

19 A. Sorry?

20 503 Q. It's your note, was it Commissioner Finn said this? 14:06

21 A. Yes, Assistant Commissioner Finn said he would try and
22 find out whether or not any decisions had been made.

23 504 Q. Okay, I've got it.

24 A. Yeah.

25 505 Q. Page 16241. This is a diary entry of yours, it's dated 14:06
26 January 2018. This is a call from CS Galton?

27 A. Yes.

28 506 Q. "Met Commissioner Ó Cualáin this morning."

29 A. Yes.

1 507 Q. "My case was discussed. He reported as follows."
2 A. Yes.

3 508 Q. Is this Chief Superintendent Galton reporting to you
4 or Ó Cualáin reporting to Galton? which?
5 A. Yes, it's Chief Superintendent Galton's view of what 14:07
6 Commissioner Ó Cualáin said to him.

7 509 Q. I see. "Commissioner Ó Cualáin was well aware. Would
8 like to ring me but can't and is conscious that he
9 would like to talk to me."
10 14:07

11 Is that right?
12 A. Mm-hmm.

13 510 Q. "Said he told Policing Authority they were very wrong
14 to allow this interfere with my promotion and career.
15 Said he has told Policing Authority on a few occasions 14:07
16 there is no issue with me. Said he was hopeful it
17 would be resolved."
18

19 Is that right?
20 A. That's my understanding of what was said to me. 14:07

21 511 Q. Well, Chief Superintendent Galton is in fact your
22 brother-in-law, isn't he?
23 A. That's correct.

24 512 Q. Who told the Police Authority that they were wrong to
25 interfere? 14:08
26 A. Sorry?

27 513 Q. Who was it that was telling the Policing Authority they
28 were wrong to interfere with your promotion?
29 A. That's Chief Superintendent Galton reporting to me in

1 relation to a conversation he had with Commissioner
2 Ó Cualáin.

3 514 Q. I see. So it's Ó Cualáin?
4 A. That's the way it was reported to me, yeah.

5 515 Q. I see. Thank you. Now, there's just one other matter 14:08
6 I want to raise, I will be very brief. If we look at a
7 diary note of yours, it's at 2934. This is your
8 description of Josephine Feehily coming up to you in
9 the reception room, passing out parade in Templemore?

10 A. Yes. 14:09

11 516 Q. "She said we probably need to have a chat."
12 A. Yes.

13 517 Q. "Went on to say sorry for delay."
14 A. Yes.

15 518 Q. "But they would try have decisions evidence based." 14:09
16 A. Yes.

17 519 Q. "She spoke of all the noise and said she is before the
18 Justice Committee Wednesday, 21st March, where she has
19 to answer re not talking to two girls and expects my
20 promotion to be brought up." 14:09
21

22 And so on.

23 A. Yes, and it was brought up and she was asked questions
24 about my promotion.

25 520 Q. Yes. 14:09
26 A. And, indeed, Ms. Hall had explained to me that there
27 would be such a backlash when she informed me that the
28 decision had been made to appoint me on the 29th
29 January.

1 521 Q. Then you write:

2

3

"I said I was writing to her. She said perhaps you don't need to write and we could meet over coffee."

4

5 A. Yes.

14:09

6

522 Q. You are quite clear about that?

7

8 A. Yes.

9

523 Q. "I said it was about trust and I would prefer to write and then hopefully do our business in private."

10

11 A. Yes.

14:10

12

524 Q. "She spoke of people with agendas and I said I could advise her about that if she cared to listen."

13

14 A. Yes.

15

525 Q. "Others came over then and the conversation ended."

16

17 A. Yes.

14:10

18

526 Q. Now, you will be kind enough to then just look at what Ms. Feehily says about that, which you will find at 7512. It's paragraph 21 I am interested in.

19

Ms. Feehily says:

20

14:10

21

"I confirm I had such a conversation."

22

23

That's the one we've just looked at.

24

25

"Which I regarded as being in the nature of a social conversation, which was unremarkable. It took place in circumstances where it was my first visit to the Garda college since Chief Superintendent Murray was assigned to his position there. Chief Superintendent Murray had

14:10

26

27

28

29

1 been particularly helpful to me by giving a colleague
2 and I the use of his office and I thanked him. My
3 recollection of the conversation differs somewhat from
4 his account. My recollection is that it was Chief
5 Superintendent Murray who proposed that we meet for a
6 coffee and asked if before doing so he would write to
7 me, but I would not take issue with the general
8 thrust."

14:11

10 Is that right? Do you disagree with that?

14:11

11 A. I do.

12 527 Q. Her account?

13 A. Yes, I do, yes.

14 528 Q. What do you disagree with in particular?

15 A. Well she -- like she asked if we would have a coffee
16 and then I said that I was on the point of writing to
17 her and perhaps after she got that letter we could have
18 that coffee. That's my recollection.

14:11

19 529 Q. I see. Thank you very much.

14:11

21 END OF EXAMINATION

23 CHAIRMAN: Very good. Now, who is next?

24 MR. KANE: Chairperson, I would ask if I could go next,
25 if that's appropriate.

14:12

26 CHAIRMAN: Yes, indeed.

28 CHIEF SUPERINTENDENT PATRICK MURRAY WAS CROSS-EXAMINED
29 BY MR. KANE, AS FOLLOWS:

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530 Q. MR. KANE: Good afternoon, Superintendent Murray. James Kane is my name and I act for Garda Fergal Greene. I want to ask you to begin with, if you leave aside what was said, by who and when it was said, and if you leave aside general chitchat, if you look at all the sworn statements that are now in, would you accept that in light of that, when Garda Greene says that he never spoke about you or your promotion to Johnny Feehily?

14:12

14:12

A. Well, I can only tell you what he said to me and that's what he told me at the time. I think he also told Superintendent Minnock that he was talking about me.

531 Q. No. I understand that, Chief Superintendent Murray, but I am anxious that there is not a half allegation against Garda Greene. You'll appreciate it's potentially a serious allegation that you are making and, in light of what I would suggest to you is the absence of any real evidence of this happening, I am inviting you to abandon any implication that Garda Greene spoke about you and your promotion to Johnny Feehily?

14:12

14:13

A. I can't do that, because he approached me on the 1st November to tell me he had got this clandestine phone call and from there then he engaged with Mr. Feehily. He told me in relation to me, that's what I recorded, that's what I remember him telling me. I suppose the paragraph that he has in a document he sent in, sort of misplaced or out of place with the main thrust of the

14:13

1 complaints he had in making to the Policing Authority,
2 makes reference to me and Superintendent Minnock and
3 Sergeant Haran.

4 532 Q. well, do I take it that you also won't abandon any
5 allegation that Garda Greene spoke to Josephine Feehily 14:14
6 about your promotion?

7 A. I am not making any allegation. I have never made an
8 allegation against anybody. I can only tell you what
9 he told me and I wrote that down.

10 533 Q. I appreciate what you are saying, chief superintendent, 14:14
11 just it's either out there and it's part of your
12 evidence or it's not. And if it's part of your
13 evidence I am going to have to address it with you?

14 A. well, I don't mind, because like, that's what Garda
15 Greene came to me and told me and that's what I wrote 14:14
16 down, so that's where I am.

17 534 Q. And he is now saying in a sworn statement and will give
18 sworn evidence that he didn't speak about you and your
19 promotion to Johnny Feehily and that he didn't meet
20 Josephine Feehily. So, that's why I am giving you the 14:14
21 opportunity now to abandon it?

22 A. I'm sorry, but that's what he told me and that's what I
23 have written. So that's where I am.

24 535 Q. Okay. well I can start then, I think the first of
25 these meetings insofar as they are relevant to what I 14:15
26 wanted to discuss with you, I think occurred on 3rd
27 April 2017. You have prepared, I think, a note of that
28 meeting and I think it's at page 2620. That might be
29 opened, please. You're familiar with that, yes?

1 A. Yes.

2 536 Q. And is that an accurate note of what occurred?

3 A. Yes. Yes. It was a conversation over an hour and it's

4 my note of what occurred. It's not verbatim. It was

5 made after the conversation. 14:15

6 537 Q. And when was it made after the conversation, do you

7 recall?

8 A. I'd say that evening.

9 538 Q. Now, just formally, Garda Greene's account is that he

10 never spoke to Josephine Feehily, he never spoke to 14:16

11 Johnny Feehily about you or your promotion.

12 CHAIRMAN: Mr. Kane, may I just endeavour to clarify.

13 You will recall, in fact in response to your own

14 comments and not so much objection, well, intervention,

15 the limit of what Chief Superintendent Murray says is, 14:16

16 I had this conversation. He is not in a position to

17 say any meeting took place, any event took place. So

18 really, it seems to me, maybe I am wrong, that the

19 essence of this issue is whether Garda Greene denies

20 that this conversation took place. He may also say, no 14:16

21 such thing took place, therefore I couldn't have had

22 this conversation. But number one and the way it keeps

23 everybody right, it seems to me, is, I am guessing, I'm

24 assuming that are you going to put that Garda Greene

25 says either this conversation didn't take place at all 14:17

26 or it did take place but was on a different subject or

27 that some other things were said. Am I understanding

28 you correctly.

29 MR. KANE: Yes, Judge, that the conversation happened

1 but that the note of it is incorrect essentially.
2 CHAIRMAN: Some other conversation.
3 MR. KANE: Yes, Chairman.
4 CHAIRMAN: Different things were said than as are
5 recorded. 14:17
6 MR. KANE: Yes, Judge.
7 CHAIRMAN: well, isn't it a safer method, if I may
8 respectfully suggest it, isn't it a safer method for
9 you to say that Garda Greene will give evidence that
10 nothing of the kind happened but that here's the 14:17
11 conversation that actually did happen.
12 MR. KANE: Yes.
13 CHAIRMAN: Or here's the bit he disagrees with,
14 whatever it is. In other words, that the focus is on
15 the conversation rather than on the events. Because in 14:17
16 fairness to the witness, he cannot say whether meetings
17 took place or didn't take place.
18 MR. KANE: well --
19 CHAIRMAN: He cannot endorse a statement by Garda
20 Greene, well, look, I didn't meet them, or, I did meet 14:18
21 them, or whatever. All he knows is what he says he was
22 told. Does that make sense?
23 MR. KANE: No, Judge, I am sorry.
24 CHAIRMAN: That's okay. Tell me where it's wrong.
25 MR. KANE: I have invited him to withdraw it, it's 14:18
26 quite a serious allegation. He hasn't withdrawn it and
27 that's his right. But if Chief Superintendent Murray
28 is not withdrawing it, I want the chance to test it.
29 CHAIRMAN: what is the it, Mr. Kane.

1 MR. KANE: I'm sorry, that Garda Greene, one, spoke to
2 Johnny Feehily.

3 CHAIRMAN: He's not saying that. He is saying Garda
4 Greene told me he did this, that and the other. That's
5 the extent of his evidence. He has made that very 14:18
6 clear.

7 MR. KANE: well, the problem is, Judge, there's a
8 public record of this.

9 CHAIRMAN: Yes.

10 MR. KANE: And in my submission, it's at least a half 14:19
11 allegation that he is making against Garda Greene,
12 saying that Garda Greene told him that he did the
13 following.

14 CHAIRMAN: You may say the implication, the
15 implication, the necessary implication or inference 14:19
16 from it is that this indeed happened, because if
17 somebody says it happened, then the inference is it did
18 happen.

19 MR. KANE: Yes, Judge.

20 CHAIRMAN: Assuming the person is believed. 14:19

21 MR. KANE: Yes, Judge.

22 CHAIRMAN: I agree. How can he say -- I mean, suppose
23 you were to say, just suppose, whatever particular
24 date, the 3rd, whatever date it is, suppose you were to
25 say, I can prove categorically that Garda Greene was in 14:19
26 Russia on a three-week holiday, and so he couldn't have
27 met somebody on that. Does that make a whit of
28 difference to the evidence that Garda Greene said, I
29 met this, I met that? I mean, I am trying to clarify

1 what's in my mind.

2 MR. KANE: well, the problem is, Judge, the allegation,
3 if it is an allegation.

4 CHAIRMAN: Okay.

5 MR. KANE: Is out there. 14:20

6 CHAIRMAN: well, carry on for a moment and we will see
7 how far we go. I am very conscious, however, that
8 somebody is going to come, before we are much older
9 somebody is going to come complaining bitterly from the
10 Policing Authority and I am not sure that we are going 14:20
11 to have a good answer for it. But anyway.

12 MR. KANE: Could I make the following --

13 CHAIRMAN: Mr. McGuinness and Mr. Marrinan and
14 Ms. McGrath will be worrying about that one. Anyway.
15 Okay. Carry on for the moment. 14:20

16 MR. KANE: Judge, I could make the following suggestion
17 if the Tribunal is minded. If the Tribunal was willing
18 to give a ruling that what Garda Greene is alleged to
19 have said or not said to the Policing Authority is
20 inadmissible, I would be happy to stop my line of 14:20
21 cross-examination.

22 CHAIRMAN: Inadmissible by reference to the Terms of
23 Reference. well, Mr. Marrinan, what do you say to
24 that?

25 MR. MARRINAN: It seems an unusual situation, but since 14:21
26 the application is coming from the person, one of two
27 people who are affected by this, because it seems to
28 me there are two --

29 CHAIRMAN: Speak a little more closely to the

1 microphone, Mr. Marrinan, please.

2 MR. MARRINAN: Yes. There are two people, as it were,
3 in the firing line in relation to this. There's
4 Superintendent Murray, who says I have a note of what
5 took place and this is what Garda Greene told me took 14:21
6 place, I am not saying that it's actually true, but all
7 I am saying is, this is what I have been advised. On
8 the other hand, you have Garda Greene, who submitted a
9 statement to the Tribunal dealing with each of these
10 conversations and saying, no, I didn't say that to 14:22
11 Superintendent Murray. We took the view, rightly or
12 wrongly, in relation to the matter that it wasn't a
13 matter that we would pursue as part of the proceedings
14 of the Tribunal, because it seemed to be irrelevant to
15 issue number 20. 14:22

16 CHAIRMAN: Not relevant. Irrelevant.

17 MR. MARRINAN: Irrelevant, yes. So from that point of
18 view, one can understand that perhaps the parties may
19 feel in some way compromised by that, because they may
20 feel that it's left there in the papers that there is 14:22
21 this conflict between the two of them.

22 CHAIRMAN: Mr. Kane suggests that if I declare it
23 irrelevant at this point --

24 MR. MARRINAN: So if Mr. Kane is accepting, as it were,
25 that this is irrelevant and, therefore, there should be 14:22
26 a ruling from the Tribunal that it is irrelevant, and
27 that we shouldn't go down that route, if he is happy
28 with that on behalf of his client, and Superintendent
29 Murray's team --

1 CHAIRMAN: well, we will worry with them in a minute.
2 what do you say? You say it is irrelevant.
3 MR. MARRINAN: well, we haven't introduced it and it
4 wasn't the intention to introduce it in the evidence of
5 Garda Greene because it's merely a conflict in relation 14:23
6 to the content of a conversation.
7 CHAIRMAN: Of a conversation.
8 MR. MARRINAN: Yes.
9 CHAIRMAN: Okay. Mr. Kelly, what do you say?
10 MR. KELLY: For my part, Chairman, it seems to me that 14:23
11 it is a matter which -- it's not a matter of what was
12 or was not said to the Police Authority, but rather it
13 is one which goes directly to credibility. If on the
14 one hand you have - it's a classic position in many
15 ways - one witness saying, well, yes, this was said, 14:23
16 another who was said to be involved in that
17 conversation saying, no, it wasn't. It's a token one
18 as a fact-finder can assess credibility. I have never
19 seen it for my own part other than in that way.
20 CHAIRMAN: Assume, Mr. Kelly -- clearly that's, if I 14:24
21 may say so -- sorry, I don't mean that -- I agree with
22 that.
23 MR. KELLY: Yes.
24 CHAIRMAN: On the face of it. So if you have a
25 straight conflict of fact between two witnesses, 14:24
26 clearly the resolution of that -- but equally clearly,
27 the Tribunal will have to say, do I need to resolve
28 that or am I permitted to resolve that?
29 MR. KELLY: well, it could --

1 CHAIRMAN: Mr. Kane says, listen, if you declare this
2 as irrelevant, we won't go any further. which has
3 certain obvious advantages, because it closes down an
4 avenue of exploration in relation to an authority that
5 isn't a party to these proceedings. On the issue of 14:25
6 relevance, leave aside credibility, which I do not
7 quarrel with. On the issue of relevance, are you with
8 Mr. Marrinan and Mr. Kane, or do you say it is relevant
9 to this inquiry? Yes, of course take a moment.

10 MR. KELLY: I am not sure I am going -- I would love to 14:25
11 be able to come back to you with a very crisp and
12 concise reply to that, which is what I'd normally do.
13 However, the factual matrix here is sufficiently
14 complex. And before I could commit to a position one
15 way or the other, I think I would need five or ten 14:26
16 minutes to take instructions from my client.

17 CHAIRMAN: Sure.

18 MR. KELLY: I am not suggesting you rise now.

19 CHAIRMAN: No, no.

20 MR. KELLY: Because it may be -- 14:26

21 CHAIRMAN: I will tell you, have a think about that,
22 Mr. Kelly, with your colleagues, have a think about
23 that for a few minutes while I -- if there are obvious
24 views elsewhere, I will come back, and I am not even
25 sure that we -- I see Mr. McGuinness talking to 14:26
26 Mr. Marrinan and they may have some further thoughts on
27 the matter. Mr. O'Higgins.

28 MR. MÍCHEÁL O' HIGGINS: Chairman, the An Garda Síochána
29 legal team have been proceeding on the basis,

1 particularly on foot of your comments earlier, have
2 always proceeded on the basis that the Tribunal is not
3 in fact carrying out any inquiry into the processes or
4 correctness of actions of the Policing Authority. That
5 was the basis on which we were proceeding. So from 14:26
6 that point of view, it wasn't my intention to canvass
7 these matters.

8 CHAIRMAN: Anybody else? Ms. O'Rourke, you have
9 nothing to say about this.

10 MS. O'ROURKE: Not in relation to this issue. 14:27

11 CHAIRMAN: Mr. McGarry, the same. So, Mr. Murrinan,
12 anything further to add?

13 MR. MURRINAN: No. Other than suggest that it may be
14 an appropriate time to take ten minutes, because
15 obviously there's a crossroads that we are at. 14:27

16 CHAIRMAN: well, this does seem -- I mean, it's clear
17 that Mr. Kelly's submission as to the credibility of
18 any two witnesses is perfectly correct, that insofar as
19 any issue arises and is decided, whether traffic lights
20 are red or green, take the most obvious example, did 14:27
21 the lorry crash into the car or the other way round, or
22 whatever it is. Now this is clearly at a more serious
23 level, because there is a more sustained pattern of
24 communication between two witnesses. So it goes
25 further than a simple yes, no, on a particular issue 14:28
26 about which people might be expected to differ although
27 being completely honest about it. It goes further than
28 that. My concern is, that a further exploration of
29 this invites an application by the Authority. We have

1 already set our faces against an examination of the
2 procedures and processes of the Authority. So, my
3 inclination is to accept Mr. Kane's suggestion and his
4 submission that -- I think he is right in saying
5 there's no two ways about it, it's either in or it's 14:29
6 out. If it's irrelevant, I should shut it down and
7 then reassure him that there won't be any further --
8 and that the report will not -- there will be no
9 findings as to who said what and to whom.

10
11 A decision that this issue is irrelevant carries with
12 it a consequence that the report cannot say there was
13 this lengthy sequence of conversations about what Garda
14 Greene said he did or didn't do or spoke to or didn't
15 speak to, there cannot be any findings about that, 14:30
16 clearly, if a ruling is made that the matter is
17 irrelevant and is shutdown.

18
19 So, Mr. Marrinan, one point, I will rise if you want me
20 to, but what do you say to the point that Mr. Kelly 14:30
21 makes, which, I have to say, I think is well-founded,
22 which is that an issue involving an important witness
23 -- now obviously I am saying this entirely neutrally as
24 between Chief Superintendent Murray and Garda Greene,
25 involving an important witness about a sustained 14:30
26 pattern of conversation, clearly any issue as to yes,
27 no, it happened, no it didn't happen, affects
28 credibility. But in this instance the matter actually
29 extends over a substantial period. So, it's of a more

1 significant nature than a simple conflict of fact.
2 There is a substantial conflict of fact. So it has
3 relevance in that sort of adjectival way rather than
4 substantive way.

5
6 So what is your response to that, Mr. Marrinan? I am
7 sorry to be putting you on the spot with these. If you
8 think it would be desirable to have a few minutes to
9 reflect on this, that's not a problem.

10 MR. MARRINAN: I think it would be desirable.

11 CHAIRMAN: Okay.

12 MR. MARRINAN: Because obviously it has consequences.

13 CHAIRMAN: Yes.

14 MR. MARRINAN: Because if you were to follow-through
15 Mr. Kelly's argument, which is attractive in one sense,
16 but if you follow-through on that, it seems to me that
17 the consequence ultimately will be to drag in the
18 Policing Authority.

19 CHAIRMAN: That's my fear. But I acknowledge it's more
20 than just a yes, no, because it's over such a
21 sustained -- sorry, I don't mean to make out it's over
22 that sustained a period, but because it involves quite
23 an amount of detail and if that is accepted on one side
24 or rejected on the other, it is serious. Let me put it
25 this way, if Garda Greene is right, it has serious
26 consequences for Chief Superintendent Murray's
27 credibility, let's be blunt about it.

28 MR. KELLY: Chairman, if it helps --

29 CHAIRMAN: Sorry, forgive me for talking about you as

1 if you weren't there. I am just discussing this legal
2 issue.

3 MR. KELLY: Chairman, if it helps. I want to make it
4 clear that we are not criticising nor are we concerned
5 with the procedures of the -- 14:33

6 CHAIRMAN: Quite, I understand.

7 MR. KELLY: -- Policing Authority and at no point, I
8 hope, have I advanced that.

9 CHAIRMAN: No, no, no, I am completely understanding
10 that. 14:33

11 MR. KELLY: Therefore, from the Policing Authority's
12 point of view, there would be little reason to
13 intervene. Firstly, they have a statement from
14 Josephine Feehily, which just sets out clearly the
15 position, and from Ms. Hall, the chief executive, who 14:33
16 just simply spells it out clearly and crystally. I
17 don't take issue with that at all, if that helps.

18 CHAIRMAN: That is what I understand. Okay. Thank you
19 very much. I think I am satisfied to make a ruling,
20 Mr. Murrinan. 14:33

21 MR. MARRINAN: Very well.

22 CHAIRMAN: Very good. Look, I think that the
23 implications of Mr. Kane's submission, it seems to me,
24 are irresistible. He says, I have to be permitted to
25 cross-examine -- these are not his words, but this is 14:34
26 my understanding of his position. I have to be able to
27 cross-examine on behalf of my client, Garda Greene, in
28 respect of each of these conversations as recorded by
29 Chief Superintendent Murray. I can't be restricted to

1 simply saying he said B and you say A. I have to be
2 able to explore more fully, I have to be able to, I
3 suppose, discuss likelihoods, possibilities,
4 practicalities, about the material that is contained in
5 these statements. 14:34

6
7 so, I think there is logic to what Mr. Kane says. He
8 says, look, okay, the only way -- the way he suggests
9 avoiding this is by declaring the material irrelevant.
10 Now, as it happens, the view taken by counsel for the 14:35
11 Tribunal is that this material is irrelevant to the
12 issues in Term of Reference (p), which is our mandate
13 and our only mandate. If it is not within Term of
14 Reference (p) then we have no business exploring it or
15 inquiring into it, either directly or indirectly. 14:35
16 We're all agreed on that.

17
18 I do take Mr. Kelly's point about the credibility but I
19 have to say that is not a substantive but an adjectival
20 matter, i.e. essentially procedural. While as a matter 14:35
21 of law and the law of evidence I agree with his
22 proposition, it doesn't overcome the issue about
23 materiality of the evidence. And so, it seems to me
24 clear here that if the Tribunal gets into a big debate
25 about this particular issue, we will inevitably be 14:36
26 driven towards exploration of what happened involving
27 the Policing Authority. Clearly that is outside our
28 remit, as we are all agreed, and it seems to me in the
29 circumstances that Mr. Kane's submission is a correct

1 one and I propose to rule this evidence as to the
2 conversations and the sequence of conversations
3 recorded by Chief Superintendent Murray involving Garda
4 Greene as being irrelevant.

5
6 I hasten to add that this is not a criticism of Garda
7 Greene, still less is it a criticism -- not still less,
8 to the same extent it's not a criticism of Chief
9 Superintendent Murray, but it is a ruling that follows
10 a well-founded submission in my opinion and my
11 judgment.

12
13 It follows, as I have indicated, there are consequences
14 for what may be in the report, i.e. what it would be
15 permissible to put into the report and what it would be
16 not permissible to put into the report, and I think
17 that the exchanges between Chief Superintendent Murray
18 and Garda Greene will not be a subject of
19 determination. I cannot say there won't be any
20 reference to them but there will not be any
21 determination as between who is correct or who is wrong
22 or any exploration in detail of them.

23
24 So that is the position. Thank you very much. Okay,
25 Mr. Kane.

26 MR. KANE: Thanks very much, Chairperson. I don't have
27 any more questions.

28
29 END OF EXAMINATION

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CHAIRMAN: Thank you very much. Now, Mr. O'Higgins, does that make your job easier or harder?

MR. MÍCHEÁL O' HIGGINS: It makes it shorter, Judge.

CHAIRMAN: Okay, thank you very much.

14:38

CHIEF SUPERINTENDENT PATRICK MURRAY WAS THEN EXAMINED BY MR. MÍCHEÁL O' HIGGINS:

539 Q. MR. MÍCHEÁL O' HIGGINS: Just going back then, Chief Superintendent Murray, to - and I we will try and do this with as much dispatch as we can - the period at the end of 2015, all right?

14:38

A. Yes.

540 Q. Just to locate it in time for you, because I am actually going to start with a conversation that you did with have Garda Fergal Greene but related to a different matter.

14:38

CHAIRMAN: I mean, a conversation may be referred to, it's just the dispute as to who said what is not. But the fact that is something is recorded as a conversation, that's not off limits. So it is okay to refer to that.

14:38

MR. MÍCHEÁL O' HIGGINS: Yes, thank you, Chairman.

541 Q. So I think on the 15th December 2015, at the end of 2015, you are already given evidence, that TDs Wallace and Daly had made -- basically accused you publicly in Dáil Éireann of harassing and bullying Garda Keogh?

14:39

A. That's correct.

- 1 542 Q. That was allied to a suggestion that you had wrongly
2 classified crimes in your district in a fashion that
3 was deliberate?
- 4 A. That's correct, Chairman.
- 5 543 Q. I think a short time after that you had a conversation 14:39
6 with Garda Greene, on 19th January 2016?
- 7 A. Yes.
- 8 544 Q. Nothing to do with the Policing Authority but
9 concerning Garda Keogh and his being anxious to, I
10 think it was put in the note, dig up dirt on you? 14:39
- 11 A. Yes.
- 12 545 Q. Can you just tell the Chairman briefly about that
13 conversation?
- 14 A. My recollection is that Garda Greene came to me to tell
15 me this. He was giving -- he told me that this was 14:40
16 with a view to having it mentioned in the Dáil, to
17 damage me, is the impression I got from it. And he
18 indicated that Garda Keogh had said he hadn't found
19 anything yet but he would keep trying. And I asked him
20 to tell Garda Keogh that I wasn't his enemy, that I was 14:40
21 concerned for his welfare.
- 22 546 Q. Right. And I think you made a note of that and, we
23 needn't look at it now, but that's in the materials at
24 page 25280.
- 25 A. Yes. 14:40
- 26 547 Q. Then moving time on, around about the same time, in
27 fact on 18th January 2016, you had actually applied for
28 promotion to the rank of chief superintendent?
- 29 A. Yes.

1 548 Q. You were called for interview in May of 2016, isn't
2 that so?

3 A. I was.

4 549 Q. I think on 25th May 2016 you received good news, that
5 you were successful in the promotion competition and 14:41
6 you had been placed at number 14 on the list?

7 A. That's correct, Chairman.

8 550 Q. And then moving the timeline on then, well just before
9 I move to that, May '16 now, you're told you're number
10 14 on the list, at that point in time, when did you 14:41
11 anticipate that your promotion would proceed and be
12 finalised?

13 A. The information in the organisation was that it was
14 imminent at that time, because of the change programme
15 and the, I suppose, expanded number that was required, 14:41
16 of chief superintendents that was required going to 52
17 to allow that to happen, to, I suppose, have command
18 positions in particular areas where change was
19 occurring.

20 551 Q. All right. Then I think moving matters towards June, 14:41
21 on the 12th June and again on the 19th June, there were
22 certain articles relating -- which made indirect
23 reference to you, I think. For instance, a Sunday
24 Business Post article of 12th June 2016?

25 A. Yes. 14:42

26 552 Q. Which, when read one particular way, was critical of
27 your position?

28 A. Yes.

29 553 Q. We might just very briefly look at that, it's page

1 2546, please. Just while we are calling that up, I
2 think it's the case that you didn't know at the time
3 but around this time you learned later that Garda Keogh
4 had written to the Minister of Justice casting
5 aspersions on your selection for promotion? 14:42

6 A. Yes. When I got his statement from the Tribunal in
7 February of '19.

8 554 Q. And that's the correspondence that he had copied to the
9 Policing Authority?

10 A. Yes. 14:42

11 555 Q. GSOC and also Clare Daly TD?

12 A. That's correct, Chairman.

13 556 Q. Then looking at this, what is up on the screen at the
14 moment, this is a Francesca Comyn article from the
15 Business Post of 12th June '16. And it records, it 14:43
16 states:

17

18 "A chief superintendent is to launch an internal
19 investigation into claims that a Garda whistleblower in
20 County Westmeath has been the victim of a two-year 14:43
21 harassment campaign.

22

23 Garda Commissioner Nóirín O'Sullivan appointed Chief
24 Superintendent Tony McLoughlin to handle protected
25 disclosures last month." 14:43

26

27 And on it goes. Perhaps if we turn over the page then
28 to page 2547. There is this passage I just want you to
29 deal with, please. If Mr. Kavanagh might go to the

1 next page. Scroll down a small bit there. If we take
2 it up from a little bit further down, please. Thank
3 you. It says, it's the third column over, in the
4 middle of the bracketed piece there:

5
6 "Garda Nick Keogh first approached the Garda
7 confidential recipient in May 2014 with a number of
8 claims of misconduct, including an allegation that a
9 member in Athlone district was linked to the heroin
10 trade. Having had an exemplary record as a young
11 guard, since becoming a whistleblower he claims he has
12 been disciplined, confined to desk duty and deprived of
13 overtime. He also alleges that senior officers
14 subjected his work to an unreasonable degree of
15 scrutiny."

14:44

14:44

14:44

16
17 The in next paragraph it says, and this is to tie in
18 with your promotion:

19
20 "One of the senior officers in question is listed for
21 promotion. Keogh is a currently out on sick leave."

14:44

22
23 Did you take that as a reference to yourself?

24 A. I did, Chairman.

25 557 Q. And just, can you assist the Chair, what did you feel
26 about that when you read that and similar articles?

14:44

27 A. I suppose over a period of time the same theme
28 continued in a huge amount of public media and I felt
29 it was constantly destroying me and belittling me and

1 making, you know -- destroying my reputation.

2 558 Q. CHAIRMAN: That's fairly neutral as far as it goes, of
3 the examples in newspaper and media.

4 A. Yes.

5 559 Q. CHAIRMAN: I mean, I'm not sure, you couldn't sue for 14:45
6 defamation in it, at least -- sorry, I am sorry, I
7 forget myself. But it's pretty neutral. It says,
8 look, claims are made, and it says the person involved
9 is -- so it is reasonably neutral.

10 560 Q. MR. MÍCHEÁL O' HIGGINS: Just moving matters on then, 14:45
11 chief superintendent, I think on 2nd September 2016,
12 you are aware now I think that Garda Keogh had written
13 again to the Minister for Justice, casting further
14 aspersions on the possibility of you being promoted?

15 A. Yes. 14:46

16 561 Q. And then on the 5th October you viewed an Oireachtas
17 report in which Clare Daly TD spoke in Dáil Éireann
18 about the person who was at number 14 on the promotion
19 list and that was yourself?

20 A. Yes. 14:46

21 562 Q. Now, I think then if we move down to page -- if we
22 could have -- if Mr. Barnes might put up page 2559,
23 please, which is a journal.ie publication. This is
24 simply a record of Frances Fitzgerald stating that she
25 was extremely concerned about policing in Athlone at 14:46
26 this time. She tells Deputy Wallace that she has
27 indeed written to him but was awaiting a reply. So,
28 just can you assist the Chairman with this, from your
29 point of view, you put forward the case that rather

1 than you being engaged in any targeting of Garda Keogh,
2 you feel that in fact you were targeted?

3 A. Yes. My promotion in particular.

4 563 Q. CHAIRMAN: Yes.

5 A. And the elements around that were the subject of a 14:47
6 campaign to prevent it happening.

7 564 Q. MR. MÍCHEÁL O' HIGGINS: And as far as you are
8 concerned, what form did that campaign take?

9 A. What I was aware of at the time was that it was played
10 out in the Dáil and then subsequently in the media. I 14:47
11 wasn't aware of the extent of the letters that had
12 occurred until I got the material from the Tribunal.

13 565 Q. Yes. And then just to move matters on, you have made
14 reference in your statement to articles across the
15 period from October '16, Irish Examiner, Irish 14:47
16 Independent?

17 A. Yes.

18 566 Q. Sunday Times, Sunday Business Post, the Irish Examiner,
19 and you have drawn attention I think to an article of
20 the 20th December -- sorry, the 16th October, the 14:48
21 Sunday Business Post?

22 A. Yes.

23 567 Q. And I think it's been your evidence that as far as
24 you're concerned the campaign continued and, in fact,
25 intensified as we moved into 2017? 14:48

26 A. It did. And I suppose at the start of '17, in January,
27 February and March Mr. Wallace mentioned me three times
28 in the Dáil. I see in the materials there where Garda
29 Keogh wrote a letter to the Minister, which prompted a

1 response from her, indicating that the promotion list
2 was dead and it wouldn't happen. Things seemed to go
3 quiet then until -- in the letters department until the
4 July time, when I appeared in the media again on the
5 Policing Authority's promotion list. 14:48

6 568 Q. Right. Just before we move to that, you were contacted
7 by Chief Superintendent Tony McLoughlin I think and
8 alerted to the fact that the initial panel was
9 effectively scrapped?

10 A. Yes, the regulations had been enacted. 14:49

11 569 Q. Yes.
12 CHAIRMAN: Did that happen before the 31st December?
13 A. It did, it happened around the 20th. Yes.
14 CHAIRMAN: Okay. Thank you.

15 570 Q. MR. MÍCHEÁL O' HIGGINS: Can you assist the Chair, I 14:49
16 mean, are you tying that in with any of the consequence
17 of the media campaign or no?
18 A. Well, when I see --

19 571 Q. CHAIRMAN: You had to get appointed before the end of
20 the year. 14:49
21 A. Yes.

22 572 Q. CHAIRMAN: Or when the regulations came in?
23 A. Yes.

24 573 Q. CHAIRMAN: And he had been approved in May. So the
25 expectation was there were vacancies, there were gaps, 14:49
26 and there was 14 to 18, numbers 14 to 18 were --
27 A. Lost out.

28 574 Q. CHAIRMAN: -- waiting at the alter.
29 A. Yes.

1 MR. MÍCHEÁL O' HIGGINS: Yes.

2 575 Q. CHAIRMAN: And comforting themselves on their whatsapp
3 group.

4 A. Absolutely.

5 576 Q. CHAIRMAN: To the best of their ability. 14:49

6 A. And they all dusted themselves off and went again.
7 Unfortunately, only two were selected the next year,
8 the other three lost out.

9 CHAIRMAN: I see.

10 577 Q. MR. MÍCHEÁL O' HIGGINS: Yes. The Chairman made 14:49
11 reference to the article that came up on the screen a
12 few moments ago, that it might past defamation muster,
13 he didn't use that expression, but could I ask you to
14 look at an article just by way of example, at page
15 2594, Mr. Barnes, please. 2594. This is a Dáil 14:50
16 report, exchanges between Deputy wallace and another --
17 24th January 2017.

18 A. Yes.

19 578 Q. Perhaps if we go down towards the end of page 2595,
20 which is the next page. This is Deputy Mick wallace 14:50
21 speaking, and he is saying, the last paragraph there:
22
23 "Meanwhile, Taoiseach, 14 times there's a reference to
24 Keith Harrison, detailing his harassment and bullying.
25 He's out sick since May 2010." 14:50
26
27 Makes reference to his income.
28
29 "Nick Keogh has got nothing but grief since he reported

1 mal practice. "

2

3 And over the page there, if we turn on a bit. Yes,
4 just that paragraph there:

5

14:51

6

"The Commissioner yesterday was boasting yesterday
7 about taking part in the fight against heroin, but she
8 is protecting the chief superintendent who has been
9 involved in a case in Athlone and last year she placed
10 a superintendent on the promotion list who has been
11 accused on numerous occasions of harassing a
12 whistle blower. "

14:51

13

14 Did you take that as a reference to yourself?

15

A. Absolutely.

14:51

16

579 Q. Moving matters on then, if we could move the timeline
17 on to March '17. I think at this point you were
18 dragged into controversy about Garda breath tests?

19

A. Yes.

20

580 Q. You might just tell the Chairman about that.

14:51

21

CHAIRMAN: I know already about it. The Commissioner
22 suggested that she was going to put somebody in charge
23 of trying to work out what had happened with the breath
24 tests. She mentioned Chief Superintendent Murray,
25 which produced -- was a red rag to a bull.

14:52

26

A. Yes.

27

CHAIRMAN: what's more, the man who has been bullying
28 all over the place. So, I mean, that was the TDs who
29 were already on the trail, so that scuppered that one.

1 MR. MÍCHEÁL O' HIGGINS: Yes.

2 581 Q. CHAIRMAN: I mean, that's about the size of it.

3 A. Yes.

4 582 Q. MR. MÍCHEÁL O' HIGGINS: I think then in September 2017
5 you had conversation with Garda Fergal Greene -- 14:52

6 583 Q. CHAIRMAN: But at this stage you had been promoted,
7 isn't that right?

8 A. No.

9 584 Q. CHAIRMAN: Oh, you hadn't?

10 A. No. 14:52

11 585 Q. CHAIRMAN: As a superintendent you were being
12 suggested?

13 A. Yes.

14 586 Q. CHAIRMAN: Oh, thanks very much. Okay.

15 A. Yes. 14:52

16 587 Q. MR. MÍCHEÁL O' HIGGINS: Just on that, my understanding
17 of matters is that you were selected to sit in the
18 first round interview for a promotion and the interview
19 took place in May of '17?

20 A. That's correct. The 5th May, I think. Yeah. 14:52

21 588 Q. And on the 19th May I think you were informed by the
22 Policing Authority that you were selected to progress
23 to the final interview stage. That interview took
24 place on 15th June '17?

25 A. That's correct. 14:53

26 589 Q. Then, I think on 30th June '17, you were informed by
27 the Policing Authority that you were successful in the
28 competition for promotion?

29 A. That's correct, Chairman.

1 590 Q. And you had been placed at number 7 in the order of
2 merit list?

3 A. Yes.

4 591 Q. That notification was the end of June '17?

5 A. Yes. 14:53

6 592 Q. And so, I was bringing you then to the conversation
7 about Garda Fergal Greene. You had a conversation with
8 him on 4th September '17?

9 A. Yes.

10 593 Q. In the presence of Inspector Minnock, is that right? 14:53

11 A. Yes. We were leaving the station to go for a coffee
12 and we met Garda Greene at the door.

13 594 Q. Did he give you any news concerning Garda Keogh's --

14 A. Yes.

15 595 Q. -- intentions in terms of going after you or anything 14:53
16 like that?

17 A. Yes, he said that Garda Keogh --

18 596 Q. CHAIRMAN: Have we had this before, Mr. O'Higgins?

19 A. We have.

20 597 Q. CHAIRMAN: There's a very familiar ring to it all. I 14:54
21 mean, I can nearly tell you what the answers are,
22 because they did have this conversation and I wondered
23 whether this was Inspector Minnock visiting Garda
24 Keogh.

25 A. Yes. 14:54

26 598 Q. CHAIRMAN: But it wasn't, it was the conversation
27 between -- is this the four-way hearsay we're having?

28 A. No.

29 CHAIRMAN: No, it's not, that's a different one, sorry.

1 Anyway, I think we have that, Mr. O'Higgins.

2 MR. MÍCHEÁL O' HIGGINS: May it please you, Chairman.

3 599 Q. Moving matters on then, you mentioned -- I think you
4 have mentioned, in fairness, already that in October of
5 2017 there was an RTÉ News at One radio programme, 14:54
6 maybe more than one programme, featuring a story about
7 Garda Keogh and again linking in with the whole matter
8 of your promotion, isn't that so?

9 A. September, October, November and December.

10 600 Q. Yes. And you were conscious of that and you were 14:54
11 listening to this yourself?

12 A. I was. I was nervous dread every Sunday, to see
13 whether or not I would be referenced in that programme.

14 601 Q. Presumably your family members similarly?

15 A. Absolutely. It caused a lot of distress. 14:55

16 602 Q. Then, I think, on 15th November '17 you received the
17 e-mail correspondence from Assistant Commissioner
18 Fanning, informing you that he had appointed Assistant
19 Commissioner Finn to carry out the bullying and
20 harassment investigation? 14:55

21 A. That's correct, Chairman.

22 603 Q. Then I think again, around about the same time, on 19th
23 November 2017, there was again an RTÉ News at One radio
24 programme regarding Assistant Commissioner Finn's
25 appointment to investigate you and others relating to 14:55
26 the bullying and harassment allegation?

27 A. Correct.

28 604 Q. Can I ask you about that, in terms of the timing and
29 the sequencing of matters? You highlighted your

1 concerns to the Garda organisation at the end of
2 November 2017, isn't that so?

3 A. I did, Chairman.

4 605 Q. And you sought to make -- you made the case that you
5 felt there was, what you termed, an orchestrated effort 14:56
6 to prevent your promotion?

7 A. I did.

8 606 Q. And I think subsequently then, in December 2017,
9 there's yet further coverage, RTE News at One
10 programmes, again featuring another item about Garda 14:56
11 Keogh, quoting from correspondence that had been sent
12 to the Minister for Justice?

13 A. That's correct, Chairman. And as with all those
14 reports, a new element is introduced each time, but the
15 whole story is rehashed each time again then. It 14:56
16 brings -- it just adds extra dimensions.

17 607 Q. Yes. I think the position then is that -- if we move
18 matters on, in relation to the appointment of AC Finn
19 by AC Fanning, a year on from that I think you were
20 looking to find out, well, has the report been 14:57
21 finalised and I can I get the answer please.

22 A. Yes.

23 608 Q. And you took steps to find that out.

24 A. Yes.

25 609 Q. Can you tell the Chairman about that, please. 14:57
26 A. Chief Superintendent Wheatley and I asked for
27 representations from our representative body, the Chief
28 Superintendent Association, to see if we could see
29 where the investigation was and if the result would be

1 available. Assistant Commissioner Fanning then
2 notified us in December that the result was there but
3 he couldn't give it to us then. We each contacted the
4 association again separately then in January, to see if
5 we could get the result.

14:57

6 610 Q. I think you raised a complaint effectively against AC
7 Fanning in relation to your not being happy with, as
8 you saw it, there wasn't an immediate release of the
9 report when he received it?

10 A. Well, I wouldn't say it was a complaint, but I made the
11 point that I didn't understand how it couldn't be
12 released. And there was no sufficient rationale around
13 that other than just to say, I can't give it to you
14 now.

14:58

15 611 Q. We might just have page 2968 up, please, just briefly.
16 I think this is your communication to CS Fergus Healy?

14:58

17 A. He's the general secretary of the Association of Chief
18 Superintendents.

19 612 Q. In which you -- we see there at the second paragraph:

20
21 "As you can see from the e-mail, the investigation is
22 complete and findings and conclusion have been arrived
23 at by the appointed investigator AC Finn, who has
24 submitted the completed investigation to the appointing
25 officer AC Fanning, who now it appears is declining to
26 release the results to me, one of the persons
27 complained of."

14:58

14:59

28
29 And you make the case that:

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"AC Fanning offers no rationale for his arbitrary decision to deny me the results of the investigation, which appears to be at variance with section 8.9 of the policy document under which the matter is dealt with. 14:59
As I find AC Fanning's denial of the results of the investigation to be objectionable, I unfortunately must again seek assistance and representation of the association to allow me to be provided with the results of the investigation." 14:59

In the next paragraph you make reference to the fact that -- second line:

"My name has been mentioned 11 times in Dáil Éireann 14:59
and further numerous times in the media in association with these allegations and the Policing Authority withheld my promotion to chief superintendent for four months, bypassing me in the order of merit for promotion on two occasions in a very public way. As 15:00
these are what I say are unfounded allegations, have had a very personal impact on me, I am most anxious that I am informed immediately of the conclusion of the investigation." 15:00

Is that how you saw matters?

A. Yes.

613 Q. What joy, if any, did that e-mail that you sent yield?

A. On the 11th February then the result was released by

1 Assistant Commissioner O'Brien.

2 CHAIRMAN: The report was released.

3 A. The report, to all parties, yeah.

4 614 Q. CHAIRMAN: So it had gone from Assistant Commissioner
5 Finn to Assistant Commissioner O'Brien? 15:00

6 A. It went to Eastern Region I think on the 20th December,
7 I believe, 2018, and then Assistant Commissioner
8 O'Brien became involved.

9 615 Q. CHAIRMAN: And he circulated it?
10 A. He circulated it in February. 15:00

11 CHAIRMAN: Thank you. That's 11th February '19.

12 A. 11th February 2019.

13 CHAIRMAN: Okay.

14 616 Q. MR. MÍCHEÁL O' HIGGINS: Chief superintendent, just
15 going back then to matters that have been canvassed, 15:01
16 and I will do this briefly, in relation to what I might
17 term the long note and the short note of the
18 conversation of the 18th January.

19 A. Yes.

20 617 Q. We needn't look at them on screen, but just so we are 15:01
21 clear, the long note is at page 16222 and the short
22 note is page 12380?

23 A. Yes.

24 618 Q. Can I ask you, in relation to -- can you be as precise
25 as you can in relation to when you made those 15:01
26 respective notes?

27 A. The short note --

28 CHAIRMAN: He made the short note shortly afterwards
29 and he made the other one three days later.

1 A. Yes, Chairman.

2 MR. MÍCHEÁL O' HIGGINS: Just in terms of the first one.

3 CHAIRMAN: Is that right?

4 A. Yes, Chairman, you have it.

5 619 Q. MR. MÍCHEÁL O' HIGGINS: And as far as you're concerned, 15:01

6 which note is more reliable?

7 CHAIRMAN: The short one.

8 A. Yes, Chairman.

9 CHAIRMAN: I am sorry, but we have been over this

10 before, Mr. O'Higgins, pretty thoroughly, and if I am 15:02

11 able to remember what the evidence was. That's what he

12 says.

13 MR. MÍCHEÁL O' HIGGINS: I am asking questions, and I

14 will be doing it quickly.

15 CHAIRMAN: Assume that we know that and so on. 15:02

16 620 Q. MR. MÍCHEÁL O' HIGGINS: You had commenced, had you not

17 -- you had opened a number of files to deal with, as

18 you saw it, the various campaigns and proceedings

19 against you?

20 A. I did. As each issue came along I opened a file in 15:02

21 relation to it.

22 621 Q. Just can you assist the Chairman in relation to, for

23 instance, these two notes, or other situations where

24 there is more than one note of the same conversation or

25 meeting, what were the files and where did you locate 15:02

26 them?

27 A. I suppose the files themselves were kept in my office.

28 If I had some interaction that I needed to put in the

29 file while I wasn't in the office, I just made a note

1 on a sheet of paper and later wrote it into the file.
2 622 Q. You'll recall, chief superintendent, that Mr. Kelly
3 asked you in relation to a particular note that was at
4 page 16669, and he noted that there was a stroke on the
5 particular document, do you recall that? 15:03
6 A. Yes.
7 623 Q. Can you assist the Chairman with that? Am I correct
8 that the original of all of the notes you disclosed are
9 recorded with the Tribunal, is that so?
10 A. Well, I would say copies of the originals. 15:03
11 624 Q. Copies of the originals.
12 A. Yes.
13 625 Q. The notes that you have retained up there, one of which
14 you passed down to Mr. Kelly, was presumably -- was
15 what? 15:03
16 A. Was what was passed back to me by the Tribunal, to the
17 CSSO, so as I could have a copy.
18 CHAIRMAN: I understand, yeah.
19 626 Q. MR. MÍCHEÁL O' HIGGINS: Presumably then you made your
20 own notations on those now passed back copies? 15:03
21 A. Yes, when I was looking at the them.
22 627 Q. CHAIRMAN: He says he wrote down "stroke" to point out
23 or indicate that that was missing on the typed version.
24 A. Yes.
25 628 Q. CHAIRMAN: That's the evidence. 15:04
26 A. To remind me when I was here in the witness box.
27 629 Q. CHAIRMAN: That's what you told Mr. Kelly.
28 A. Yes.
29 630 Q. MR. MÍCHEÁL O' HIGGINS: Thank you. Lastly, I want to

1 just ask you this, and mindful that we are dealing here
2 with one central issue.

3 A. Yes.

4 631 Q. Concerning the question of whether you engaged in the
5 targeting or discrediting of Garda Keogh, and we are 15:04
6 looking at it under the rubric of your promotion. What
7 is the position you take in relation to how your
8 promotion was dealt with and Garda Keogh?

9 A. Well, I don't -- I can't understand how the allegation
10 could be made that I targeted and discredited Garda 15:04
11 Keogh merely by trying to fulfil a mission and move my
12 career forward by applying for promotion and being
13 successful in those competitions and demonstrating
14 competency and the capability and capacity to carry out
15 the role, being, I suppose, tested in that fashion at 15:05
16 the interview boards that I sat.

17 632 Q. Thanks very much.

18

19 END OF EXAMINATION

20

15:05

21 CHAIRMAN: Okay. Thank you very much. Anybody else
22 want to? Very good. Thanks very much. Yes,
23 Mr. Murrinan.

24 MR. MURRINAN: Nothing arising.

25 CHAIRMAN: Thank you very much. Thank you very much, 15:05
26 chief superintendent.

27 THE WITNESS: Thank you, Chairman.

28 CHAIRMAN: You will be glad to know that you are
29 finished now from all the various phases and all the

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various issues. Thank you very much.

THE WITNESS THEN WITHDREW

CHAIRMAN: Now, Mr. Marrinan and Mr. McGuinness, where do we stand. 15:05

MR. MARRINAN: Yes, the next witness is Garda Fergal Greene.

CHAIRMAN: Yes. Do you want to get Garda Greene started? Is that a good idea, Mr. Marrinan? Tell me what you wanted to do. I will be stopping at 3:30, as I say. If you think it's worthwhile, well and good, if you don't think it's worthwhile, well, I think we might just be a little indulgent. 15:05

MR. MARRINAN: I know what everybody wants me to say. I think Garda Greene will inevitably be coming back in the morning, so if we started him tomorrow morning. 15:05

CHAIRMAN: Okay. I hope nobody has any great objection to that. Ten o'clock tomorrow, is that all right? Very good. Thanks very much. Lovely. 15:06

THE HEARING THEN ADJOURNED UNTIL WEDNESDAY, 4TH MARCH 2020, AT 10:00AM

| | | | | |
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