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FORMER PRESIDENT OF THE COURT OF APPEAL

HELD IN DUBLIN CASTLE
ON THURSDAY, 5TH MARCH 2020 - DAY 148

148

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

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I N D E X

WITNESS	PAGE
<u>MR. JOSEPH NUGENT</u>	
DIRECTLY-EXAMINED BY MS. McGRATH	6
CROSS-EXAMINED BY MS. MULLIGAN	95
CROSS-EXAMINED BY MR. MCGARRY	113
EXAMINED BY MR. DONAL MCGUINNESS	115
RE-EXAMINED BY MS. McGRATH	132
 <u>FORMER ASSISTANT COMMISSIONER FINTAN FANNING</u>	
DIRECTLY-EXAMINED BY MR. MCGUINNESS,	136

1 THE HEARING RESUMED, AS FOLLOWS, ON THURSDAY, 5TH MARCH
2 2020:

3
4 MS. McGRATH: Good morning, Chairman. Mr. Nugent,
5 please. 10:30

6 CHAIRMAN: Thanks very much. Good morning, Mr. Nugent.
7 Thank you.

8 THE WITNESS: Good morning.

9
10 MR. JOSEPH NUGENT CONTINUED TO BE DIRECTLY-EXAMINED BY 10:30
11 MS. McGRATH, AS FOLLOWS:

12
13 1 Q. MS. McGRATH: Now, good morning, Mr. Nugent?

14 A. Good morning, Ms. McGrath, how are you?

15 2 Q. Now, I think when we finished up yesterday evening, we 10:31
16 had just gone through the sets of minutes in relation
17 to the conference on the 23rd October, isn't that
18 right?

19 A. That's correct.

20 3 Q. We have looked into overnight one of the pages I had 10:31
21 asked you to look at, and that was the page that had
22 the minutes of the meeting that you didn't recognise.
23 It's 10149. So if that comes up just. And just for
24 the record -- so it's 10149?

25 A. Yes, Ms. McGrath. 10:31

26 4 Q. Thank you. So, I think we will ask former Assistant
27 Commissioner Fanning to deal with this, because when
28 looked through the disclosure, it appears to have come
29 in with his material. But in any event, you didn't

1 recognise the document, is that right?

2 A. No, I didn't recognise the document, that's correct.

3 5 Q. Okay, perfect. So in relation to the minutes that we
4 saw, I think when we opened the two sets of minutes,
5 one which was the formal minutes and the second set of 10:32
6 minutes from Mr. Gallagher, I think you'd agree with me
7 that there were some additional matters in the
8 handwritten minutes, isn't that right?

9 A. Yes, that's correct.

10 6 Q. Okay. And I think in the handwritten minutes you had 10:32
11 referred to the words of exposure and you had spoken
12 about delay, isn't that right, at the meeting?

13 A. That's what Mr. Gallagher, Garda Gallagher recorded,
14 that's correct.

15 7 Q. Okay. Now can I ask you this, yesterday evening, when 10:32
16 I was asking you about the impetus for the conference,
17 I had asked you whether it was driven to some extent by
18 requests from the Department of Justice, isn't that
19 right?

20 A. You asked that, yes. 10:33

21 8 Q. Yes.

22 A. I explained yesterday as well that there were two
23 strands to this. There was a broader concern that
24 Commissioner Ó Cualáin had, related to the amount of
25 coverage in the media which suggested that Garda 10:33
26 Keogh's matters were not being dealt with; and in
27 parallel to that, there was a request from the
28 Department of Justice in relation to a frequent or
29 regular update on a number of matters, generally and

1 specifically, in relation to this particular case.

2 9 Q. Can I ask you, again just a question, to what extent
3 might this conference have been driven by matters in
4 the media. In particular, I just want to ask you to
5 look at an e-mail which came in from Mr. John Burke in 10:33
6 RTÉ on the 6th October. Now this is shortly after the
7 first conference, which you were not at, I accept.
8 It's 10110. Now, if Mr. Kavanagh just goes down there.
9 It's an e-mail, you say, from Mr. Burke in RTÉ on the
10 6th October. It's: 10:34

11
12 "Subject: Recording of sick leave of Garda Nicholas
13 Keogh."

14
15 If Mr. Kavanagh just scrolls down through the e-mail 10:34
16 request, we can see that it's primarily concerned with
17 recording of his sick leave, and even if you go into
18 the next page, it's talking about the manner in which
19 it's recorded, it's mentioning work related stress in
20 the second paragraph. It's mentioning his sick record. 10:34
21 Can I just ask you about the last paragraph Mr. Burke
22 has written. He says:

23
24 "What action has been taken by the CAO on this matter
25 or by Garda management in particular to investigator 10:34
26 examine the issues relating to the claims made by Garda
27 Keogh regarding what he says was the persistent and
28 consistent misrecording of his absence and therefore
29 the absence of what his lawyers say was the conducting

1 of a proper examination or investigation into the
2 alleged cause of his stress which necessitated his
3 absence from work since 2015?"

4
5 So, I think will you accept there is a clear reference 10:35
6 to your office there, isn't that right?

7 A. That's correct.

8 10 Q. Now, to what extent were you aware of that, what
9 knowledge did you have of that media interest after the
10 3rd October meeting? 10:35

11 A. I can't recall explicitly seeing the message but I
12 think it's likely it would have been brought to my
13 attention by the Press Office, given the reference to
14 myself and to the office. So I think that's the case.
15 Ms. McGrath, you opened up this by saying that -- you 10:35
16 were asking the question, to what extent was the case
17 conference driven by media coverage. The case
18 conference was driven by concerns from Commissioner
19 Ó Cualáin regarding whether all of the issues raised by
20 Garda Keogh had been addressed. The media commentary, 10:35
21 I suppose, were sending the sorts of signals that we
22 would be want to be listening out to say that there
23 perhaps is a problem here. Commissioner Ó Cualáin, in
24 tasking me to take this on, was to confirm yes or no
25 whether the media reports are -- sorry, whether Garda 10:36
26 Keogh's matters had been dealt with appropriately or
27 not.

28 11 Q. You would accept, though, that there was media interest
29 at around this time in the Garda Keogh issues?

1 A. Yes, I would accept that.

2 12 Q. Okay. And would you accept that your office would have
3 known about that? I am not suggesting to you that that
4 is why the meeting was called, I mean I was asking for
5 your view of that. But you would accept that that was 10:36
6 reality at the time?

7 A. Yes, certainly. I think there was considerable
8 coverage for some periods of time, so, yes, I would
9 accept that.

10 13 Q. Now, one of the things that I opened to you yesterday, 10:36
11 we looked at the -- we didn't go through them in any
12 great detail but we looked at the minutes of the
13 meeting on the 3rd October, and we looked at the task
14 sheet that was drawn up afterwards relating to the
15 appointment of an assistant commissioner. One of the 10:36
16 things I just wanted to ask you about was that you
17 really came upfront and central subsequently on the
18 17th October, when you were put in place or asked to
19 take over by the Assistant Commissioner Ó Cualáin, or
20 the acting commissioner at that time, isn't that right? 10:37

21 A. That's correct.

22 14 Q. Okay. Now, can I ask you this then: There was
23 activity or you thought or it may have been thought
24 that there was some activity after the meeting of the
25 3rd October, with regard to appointing an assistant 10:37
26 commissioner called Orla McPartlin. Do you remember
27 this?

28 A. Yes, I do.

29 15 Q. Okay. Now, we have correspondence which is from

1 Mr. Barrett and he makes reference in correspondence to
2 putting her in place on the 19th October. Now, I am
3 just going to open a letter, we will come back to it in
4 due course, but I only want to open it for a specific
5 reason at the moment. It's a letter to the Secretary 10:37
6 General of the Department of Justice months later, on
7 8th November 2017. It is at 10318. Do you see that
8 there?
9 A. Yeah.
10 16 Q. Now, I think you would have seen this material. As I 10:38
11 say, we're going to come back to it in sequence in a
12 moment. But what I want to ask you about is, this is
13 superintendent Mahon talking to the Department of
14 Justice. If you go to the last page, 10321, please.
15 And what I am asking you to look at, the next page, 10:38
16 please, you see on the 19th October, do you see that?
17 A. Yes, I do.
18 17 Q. "On the 19th October."
19
20 So this is two days after you had been put in place, 10:38
21 maybe a week or more after the 3rd October meeting. It
22 says:
23
24 "Executive director HRPD appointed Assistant
25 Commissioner Orla McPartlin to undertake a fact-finding 10:38
26 investigation."
27
28 Do you see that?
29 A. I see that.

1 18 Q. Okay. Now, what I want to ask you then is, when you
2 sit down in the room on the 23rd October, all of this
3 seems to have fallen away or not certainly to have been
4 upfront and central in relation to in Assistant
5 Commissioner McPartlin. Can you tell us what is 10:39
6 happening really on the ground in relation to this?
7 A. Well, it would appear that very little was happening,
8 in my opinion. From memory, I'm not certain that
9 Assistant Commissioner McPartlin had been told that she
10 had been appointed, to the best of my knowledge. 10:39
11 Perhaps she is better placed to answer that. But
12 certainly if you look at the minutes of the meeting on
13 the 23rd, there was no reference to the actions that
14 we're referring to here.

15 19 Q. Were you aware of this activity before the meeting of 10:39
16 the 23rd?
17 A. I was aware that Mr. Barrett had organised a case
18 conference, I was aware that he had taken certain
19 actions. He did not bring that information to the
20 table at the meeting to that extent. There was a 10:39
21 discussion about this scoping exercise, as I described
22 yesterday. But beyond that, we did not get into an
23 individual being appointed to undertake the bullying
24 and harassment allegations. Again, as I said
25 yesterday, my primary concern was to ensure that the 10:40
26 bullying and harassment complaint was progressed.

27 20 Q. Okay. I mean, we know and we have seen from the
28 attendees that this was an extremely high level meeting
29 on the 23rd October and yet this piece, if we call it

1 that, is missing from it?

2 A. That's correct.

3 21 Q. Can you explain how that might be?

4 A. I can't explain that. Perhaps Mr. Barrett, if he is
5 giving evidence, can talk to that. 10:40

6 22 Q. Okay. Now, as I said to you yesterday evening when he
7 were finishing up, after your meeting on the 23rd
8 October, we have been provided with a number of
9 exchanges between various personnel. Can I ask you to
10 look at a couple of them, please? At page 3600. This 10:40
11 is an e-mail from Mr. Barrett and it is to Ken Ruane
12 and Fiona Broderick and you are copied there, can you
13 see that?

14 A. Yes.

15 23 Q. You can see your name copied? 10:41

16 A. Yes, I can see it.

17 24 Q. Do you remember this e-mail on 25th October 2017?

18 A. I do.

19 25 Q. Okay. So he is referencing the meeting at the Officers
20 Club. He says: 10:41

21

22 "Clari fication required."

23

24 He gives his views. He says there:

25 10:41

26 "The meeting at this office was the occasion when AC
27 Fanning and I agreed that an AC should be appointed to
28 review all the elements of the matter."
29

1 It may be his matter, the matter.

2

3 "We had sight at that meeting of many elements, the
4 file and the fact that segments of it are being dealt
5 with by external as well as internal functions." 10:41

6

7 Now, again Mr. Barrett will be dealing with this in
8 more detail when he is giving evidence. He says:

9

10 "The AC made the point that matters set out by Garda 10:41
11 Keogh were beyond the scope of the bullying and
12 harassment policy and I agreed with that observation.
13 In my view the issues which go beyond that can and are
14 being addressed and that approach does not obviate the
15 need to have review of the specific issues which can 10:42
16 and in my opinion should be addressed under the policy.
17 At the policy owner and being now in the possession of
18 the identity of whom it is that allegation is directed,
19 I intend to proceed."

20

10:42

21 So again, we will ask him in his own evidence but he
22 seems to be dealing about the bullying and harassment
23 policy, is that right?

24 A. That would be my interpretation, yes.

25 26 Q. And he says:

10:42

26

27 "A key issue which was raised by AC Corcoran at the
28 meeting, which in my view requires should fair and
29 appropriate procedural action to be commenced under the

1 policy, is the requirement of the organisation to
2 ensure full and fair and procedural natural justice are
3 made available to the officer against whom the
4 allegation is made. There are very clear obligations
5 resting upon us as the an organisation to ensure that 10:42
6 the pre-steps of administrative law are considered and
7 auctioned. "

8
9 That should probably be actioned. I mean, is there an
10 understanding here by everyone that when he's talking 10:42
11 about the officer against the allegation is made that
12 that's Superintendent Murray

13 A. Certainly I don't recall being told explicitly that it
14 was now Chief Superintendent Murray, but I believe it
15 was felt that was the case. 10:43

16 27 Q. He goes on to say:

17
18 "With respect to the suggestion that the current --"

19 A. would it be possible to scroll down.

20 28 Q. Sorry, I am sorry, I am reading and I wasn't following 10:43
21 the screen. Apologies.

22 A. That's okay.

23 29 Q. There is a reference there, he says, to the
24 Byrne/McGinn type investigation. He says:

25
26 "I am neutral at best. I do not agree that the
27 approach being adopted by the CAO is new or novel."

28
29 You gave evidence yesterday that your approach was

1 proceed with the B&H and then scope the remaining
2 matters; is that right?

3 A. That's correct.

4 30 Q. Okay. He goes on to say, he says:

5

6 "I believe that the best course of action is to ensure
7 that every assistance is given to AC McPartlin."

8

9 So there we see her appearing again.

10 A. Yes.

11 31 Q. And "that independently and immediately the bullying
12 process is commenced."

13

14 Now, you must have sat up and thought, what is the
15 position here? What is he talking about? Why is he
16 referencing AC McPartlin and in what context? Did you
17 take a view on the e-mail when you saw this?

18 A. I took the view from the e-mail that what Mr. Barrett
19 was doing was to formalise his position in relation to
20 Byrne/McGinn and what was being put out here was his
21 view on how to proceed. I didn't take a strong view
22 one way or the other about the individual components of
23 that. My primary concern was that he had agreed that
24 he was going to make an appointment to have the
25 bullying and harassment piece progressed.

26 32 Q. But what was your understanding of his reference to AC
27 McPartlin?

28 A. Again to -- I was seeing it as referencing back to the
29 discussions that we'd had at the case conference, where

1 I had asked would it be possible to make sure that all
2 elements of the complaint from Garda Keogh were being
3 considered.

4 33 Q. Sorry, Mr. Nugent, I have to ask you again, in relation
5 to AC McPartlin what was she doing, when you read this 10:45
6 e-mail?

7 A. My understanding was that she had been tasked by
8 Mr. Barrett to do that scoping exercise as I described.

9 34 Q. Of the bullying and harassment claim?
10 A. No, of the entirety of the claim. 10:45

11 35 Q. Okay. And as we know and as I opened Superintendent
12 Mahon's letter to you earlier, as far as Mr. Barrett
13 was concerned she was in place since the 19th October?

14 A. That's what Chief Superintendent Mahon says in his
15 letter. 10:45

16 36 Q. Okay. Now, then there's a series of e-mails which
17 commence with yourself and Assistant Commissioner
18 Fanning on the 24th October. So this is the following
19 day. If I can ask for that one to be opened up, at
20 10201. If Mr. Kavanagh could scroll down there, 10:46
21 please. So it's 24th October 2017 at 14:49. It's from
22 Assistant Commissioner Fanning to yourself and copied
23 to Mr. Barrett and James McCarthy, whom we know was in
24 Assistant Commissioner Fanning's office; isn't that
25 right? 10:46

26 A. Yes. Ms. McGrath, can I just confirm, I think you
27 suggested there that it was an initiated by myself, I
28 think the exchange was initiated by retired Assistant
29 Commissioner Fanning.

1 37 Q. Okay. So this e-mail comes in from him to you?
2 A. That's correct.

3 38 Q. The following day.
4 A. Yes.

5 39 Q. Okay. I think this is an issue he raises in this and 10:46
6 subsequent e-mails about the confidentiality of the
7 meeting and the broad number of people who were there,
8 is that right?
9 A. That's correct.

10 40 Q. And this is why I had asked about it yesterday, what 10:46
11 was your view on the confidentiality of the meeting?
12 A. And the minutes make it very clear from the outset, the
13 confidentiality of the matters were flagged from the
14 very start of the meeting. That was the first issue
15 that we talked -- before we got into any detail, the 10:47
16 first matter that we addressed was the need for
17 absolute confidentiality, you know, in the meeting
18 itself. And in my evidence yesterday I said that we
19 did not get into the detail of any of the issues that
20 had been raised, rather it was the strands associated 10:47
21 with them. So we did not discuss any specific
22 complaint. By that I mean the nature of our bullying
23 interaction. So none of that was discussed whatsoever.

24 41 Q. Okay. He talks about, there, if you go down, he talks
25 about the pie chart, and again, Assistant Commissioner 10:47
26 Fanning will be dealing with all this in his evidence,
27 that he presented to the meeting, isn't that right?
28 A. He circulated the pie chart at the meeting, that's
29 correct.

1 42 Q. okay. He talks about, he confirms, he says:

2

3 "Lest there be any misunderstanding of the B&H matter,
4 Chief Superintendent John Scanlan is the person who
5 took both statements from Garda Keogh, the first 10:48
6 occasion he was without his solicitor. My role under
7 the B&H is to determine if the allegations cross the
8 threshold in terms of admitting the complaint. I have
9 then communicated with the process owner and now it is
10 down to your decision." 10:48

11

12 So this is to you, isn't that right?

13 A. He is sending that to me.

14 43 Q. "Whichever approach you take, it will need to be an
15 assistant commissioner or external investigator by 10:48
16 agreement with all the parties as there are
17 superintendents and chief superintendents."

18

19 So what is he putting in your court there?

20 A. My interpretation of what he is saying is that his 10:48
21 responsibility was to make the appointment in
22 conjunction with Mr. Barrett, and he was telling me
23 that it was not my responsibility to make an
24 appointment to go into those issues.

25 44 Q. He says in the next paragraph, he says: 10:48

26

27 "I don't know what a fact-finding is. It's not
28 provided for in the process. I certainly would not
29 recommend it. Normally a fact-finding is concerned to

1 establish facts in the absence of some facts, for
2 example, discipline, if there is a report, but some
3 information deficit, there is a requirement for
4 fact-finding to aid the decision-maker to base his/her
5 decision. In discipline there are strict time limits 10:49
6 given as guidelines by the courts, it is six to eight
7 weeks. In this case I had made the decision some
8 months ago."

9
10 So what was he telling you there? 10:49

11 A. Well, he is saying that he made the decision some
12 months ago but there had been no progression of the
13 bullying and harassment investigation. So I understand
14 what he is saying there but it just doesn't stack up.
15 So if he had concluded that the bullying and harassment 10:49
16 matter should progress, I didn't understand why it
17 hadn't been initiated. That's the first part.

18
19 The second part, in relation to the fact-finding, I
20 think we have been over this ground, where I explained 10:49
21 in my perspective what that was about, no more than
22 that. AC Fanning was concerned that it was going into
23 areas that he felt -- in my view he felt was
24 inappropriate and, you know, he is welcome to his
25 opinion on that. My primary concern here, as I keep 10:50
26 saying, was that when you look at the strands of issues
27 that had been raised by Garda Keogh, that the bullying
28 and harassment one had not progressed. And that to
29 start something again, the Byrne/McGinn type approach,

1 was going to do nothing but delay the investigation of
2 the bullying and harassment element even further.

3 45 Q. But I think this is more specific, leaving Byrne/McGinn
4 aside, he's in the B&H territory at this stage, and he
5 says:

10:50

6
7 "In this case I have made the decision some months
8 ago."

9
10 A. But I don't know what decision he made. Like it's not
11 clear to me and certainly at the meeting it wasn't
12 clear what decision was made. What comes out of the
13 meeting is that the bullying and harassment, that
14 nobody had been appointed -- sorry, at the meeting
15 nobody was identified as had being appointed to
16 undertake the bullying and harassment element. That I
17 think is fair in terms of what was said at the meeting.
18 Clearly then we're in to issues, it seems to me, about
19 process. My primary concern, I am like a broken record
20 in some ways on this, was to get the bullying and
21 harassment element commenced. AC Fanning here was
22 suggesting that he had made a decision. It's not clear
23 to me what decision was made in relation to the
24 bullying and harassment piece. He said I think in
25 subsequent correspondence that he has been interacting
26 with the executive director Mr. Barrett on the issues.
27 And, you know, there is a significant amount of
28 material there that shows that to be the case. But at
29 the end of the day, on the 23rd October I was not aware

10:50

10:50

10:51

10:51

1 of anybody who had been appointed to undertake that
2 investigation. And that's what I wanted to --

3 46 Q. Can I stop you there, because when we looked at the
4 formal minutes, there is, at the very last page, a
5 little box which said "decision", and when we read the 10:51
6 decision, it said, I read it out to you, that you were
7 to take charge. Can I ask you this: was a decision
8 made at that meeting around that table to appoint a
9 commissioner to the bullying and harassment
10 investigation? 10:52

11 A. There was a decision that it was to happen, but there
12 was no appointment made at that meeting.

13 47 Q. Okay. well, let's go back to his e-mail there and look
14 at what he says next. He says:
15 10:52

16 "The B&H sets out the process. A complaint is made and
17 this activates the process or not."
18

19 Do you agree with him on that?

20 A. Sorry, the statement as it stands alone is factually 10:52
21 correct, yes.

22 48 Q. Okay.

23 A. The question really comes down to whether the
24 statement, and we talked about this yesterday as well,
25 whether there had been sufficient specificity in the 10:52
26 statements that had been made that would allow the
27 bullying and harassment complaint to progress. I think
28 that's perhaps where there is some disagreement
29 between, perhaps Mr. Barrett and AC Fanning.

1 49 Q. Okay. So can I ask you this: Are you stuck at that
2 point? Are you going around in circles here at this
3 point after the meeting? Because, as I say, what I'm
4 trying to pin down is the concrete decision made at the
5 meeting. As you said, the concrete decision made, in 10:53
6 your evidence, is that the bullying and harassment is
7 to go ahead?

8 A. Yes.

9 50 Q. Okay.

10 A. And AC Fanning, in fairness AC Fanning is saying that 10:53
11 he has responsibility for the appointments in this
12 area. I don't dispute that. My job was to say, can we
13 please move on with it. It has been running since
14 March and nobody has been appointed to undertake it.
15 And within a month AC Finn, as I understand it, is 10:53
16 appointed to take on the investigation.

17 51 Q. By Assistant Commissioner Fanning?

18 A. Yes.

19 52 Q. Okay.

20 A. I don't dispute that, my only point was that this 10:53
21 matter had been -- this is not about individuals,
22 organisationally Garda Keogh had made a complaint
23 through his statement in March, organisationally that
24 matter had not progressed. The meeting of the 23rd, in
25 my opinion, kick starts the process of getting somebody 10:53
26 investigated to deal with the issues itself.

27 53 Q. Okay. And I mean, I think you seem to be at one in
28 that regard, because he says in that paragraph:
29

1 "I just don't want to get it lost in the process, the
2 seriousness of the allegations. When you consider all
3 the other matters, excluding the protected disclosure
4 and the confidential recipient process, there is a lot
5 of serious concern." 10:54
6
7 So are you at one in relation to that then effectively?
8 A. I think in my reply, I am just trying to find the
9 reply.
10 54 Q. Well, we will bring up your reply in a minute, I am 10:54
11 just asking about --
12 A. Sure. I think in my reply I agree with him about the
13 seriousness of the allegations, yes.
14 55 Q. So let's look at your reply there on 2nd November 2017.
15 So this is at page 10235. So you're referring to the 10:54
16 e-mail correspondence to yourself on the 24th October,
17 do you see that?
18 A. I do.
19 56 Q. Which we've just looked at. You say in the second
20 paragraph: 10:54
21
22 "Per our discussion. . ."
23
24 Etcetera.
25 10:54
26 "We're all clear about the breadth and seriousness of
27 the matters raised by Garda Keogh and his solicitor
28 Mr. Cullen."
29

1 Okay. You're at ad idem on that, is that right?

2 A. That's right.

3 57 Q. "To assist in ensuring the totality of the various
4 strands of this complex case are all fully and properly
5 addressed, I support the following course of action." 10:55

6

7 Now, you see, Mr. Nugent, here we are again with
8 Assistant Commissioner McPartlin, you are now saying in
9 affirmative terms:

10

10:55

11 "She has been tasked with a piece of work, to examine
12 the totality of the matters complained of by Garda
13 Keogh. I think there is a broad agreement that such an
14 overview of all aspects of the case is now essential to
15 ensure that each element and the essential 10:55
16 interrelationship between them is fully assessed and
17 understood."

18

19 So, now can you assist the Chair in relation to this?
20 Because when I was asking you earlier about Orla 10:55
21 McPartlin, you seemed to put it in Mr. Barrett's court
22 and not profess any immediate knowledge of this
23 appointment. So can you just assist the Chairman
24 there?

25 A. From memory, from memory I don't believe that Assistant 10:55
26 Commissioner McPartlin was actually tasked to do the
27 job. So it had been put to Mr. Barrett to progress the
28 issue. This records the fact that this was an approach
29 that was been taken to look at those strands. I'm not

1 certain that she was actually tasked to take on that
2 piece of work.

3 58 Q. Okay. But you say in affirmative terms there "she has
4 been tasked"?

5 A. Absolutely, no, I accept that. That is on the basis of 10:56
6 a conversation with Mr. Barrett.

7 59 Q. Okay. So that's by the 2nd November, isn't that right?

8 A. Apologies, say that again?

9 60 Q. That's the 2nd November you are writing this letter,
10 isn't that right? 10:56

11 A. Is it?

12 61 Q. It's on the next page there, the date. Do you see
13 that?

14 A. Okay, that's fine.

15 62 Q. Okay. So we go back to the first page there again, 10:56
16 Mr. Kavanagh. So at the next bullet point you say:
17
18 "Following up on his letter of 13th October 2017 to
19 Garda Keogh's solicitor Mr. John Gerard Cullen, I have
20 asked the executive director Human Resources and People 10:56
21 Development to further engage with Mr. Cullen and Garda
22 Keogh on welfare matters and issues arising from Garda
23 Keogh's correspondence."
24
25 Isn't that right? I think that is reflected as well in 10:57
26 your meeting, that concern that you had, isn't that
27 right

28 A. That's right.

29 63 Q. Okay. You say:

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"I have further asked the executive director HRPD to liaise with you on progressing matters and on a number of documents which you referenced at our meeting."

10:57

You say:

"I very much agree with your view that this entire matter is broad and complex. As I made clear at the outset of our meeting on 23rd October 2017, both speed and thoroughness are best served by coordination and I was very clear in not allowing that the meeting descend into the fine details, that is for another forum."

10:57

Okay, so that is in accordance with your evidence that you have given us to date, isn't that right?

10:57

A. Yes.

64 Q. You say on the next page, at the top of the next page, you say:

"I do not share your views on the need to inform Garda Keogh on the holding of the aforementioned meeting and particularly where legal issues to include ongoing civil litigation on behalf of Garda Keogh were discussed, as such meetings would take place in a legally privileged context."

10:57

10:57

Okay. Now, we know that Garda Keogh is somewhat critical of the fact that he doesn't know what is going

1 on. Your view here is that he doesn't need to know the
2 fine details of the meeting and, in any event, it
3 crosses over into a legally privileged context, is that
4 right?

5 A. It would my view there would be two issues at play. 10:58
6 Garda Keogh has every right to know what is happening
7 in relation to his complaints. But he would not be
8 involved in matters, internal matters, internal HR
9 matters in relation to taking a management position, if
10 I can use that phrase, on progressing the resolution of 10:58
11 the concerns he had made. And that is most
12 particularly the case in circumstances where there was
13 live civil litigation at that point and the meeting
14 just would not have been possible to progress the
15 issues as we proposed. It's not unusual. Again, I 10:58
16 think I made this point yesterday, and I am very
17 conscious that AC Fanning has said in his career he had
18 responsibility for HR for many years, that this was not
19 the case. I respect that view, but equally, certainly
20 in my experience, in my three and a half years or so in 10:59
21 An Garda Síochána, this would not be the only
22 circumstance in which such matters or such case
23 conferences are held.

24 65 Q. would there have been anything which would have taken
25 the Garda Keogh file out of the norm, as it were, with 10:59
26 regard to informing him in general terms, given that
27 there had been this delay since March?

28 A. Sorry, could you clarify your question, sorry,
29 Ms. McGrath?

1 66 Q. Well, what I am asking you there, you're setting out a
2 position there in relation to not informing him and
3 referencing the legal context. I am asking you, in the
4 context of Garda Keogh and given the timeframes and the
5 delay or the period that had passed, could those 10:59
6 factors have taken him out of the norm and required him
7 to be informed in any way about all of this?

8 A. Well, I think maybe I don't accept the entire premise
9 of your question, but what I will accept is that there
10 was a necessity to ensure and to assure Garda Keogh 11:00
11 that his concerns were being properly addressed. That
12 didn't need his attendance at a case conference, but it
13 did require the organisation to provide him with
14 updates. I think the chronology that Chief
15 Superintendent McLoughlin had provided, we talked a 11:00
16 little bit about this, provided him with some comfort
17 that there had been engagements going on between Garda
18 Keogh and the organisation. But clearly Garda Keogh
19 felt that -- or it seems to me Garda Keogh felt he
20 wasn't aware of some of the issues at play. I 11:00
21 certainly would separate the question of his
22 involvement in a management meeting and his -- and our
23 requirement to keep him aware that we were progressing
24 his concerns.

25 67 Q. And whose responsibility was that? 11:01
26 A. It would have been, I suppose, through HR, so it could
27 have been Chief Superintendent McLoughlin and
28 Mr. Barrett.

29 68 Q. Okay. Now can I ask you then, the letter continues, it

1 references the protected disclosures policy procedures
2 document. The next paragraph goes on to say:
3
4 "Any issues or comments with respect to the draft
5 minutes should be conveyed to Mr. Gallagher." 11:01
6
7 No difficulty with that. You say:
8
9 "In conclusion, I wish to assure you that I will stay
10 close to progress so as to ensure that the corporate 11:01
11 response is full and complete. I appreciate your
12 ongoing support to the organisation, efforts and your
13 leadership of the in-region response.
14
15 The executive director HRPD will be in touch with you 11:01
16 shortly."
17
18 Can I ask you, what would seem to be, and it's a matter
19 for your evidence, an omission from this response is a
20 reference to B&H and to appointing somebody to progress 11:01
21 the bullying and harassment, and that was a feature of
22 his e-mail of the 24th October?
23 A. Assistant Commissioner Fanning made it clear that I did
24 not have the responsibility in accordance with policy
25 to make that appointment. 11:02
26 69 Q. And that's why you didn't deal with it in --
27 A. Absolutely. I was not in dispute with AC Fanning
28 around the appointment. My concern was: Can we have
29 an appointment, please?

1 70 Q. But that's not reflected in the letter, is it?
2 A. Well, you know, that's --
3 71 Q. Okay. In black and white, isn't that right?
4 A. It's not in the letter.
5 72 Q. Okay. Now, we see that Assistant Commissioner Fanning 11:02
6 comes back to you on 6th November 2017, and this is an
7 e-mail at 10225. He is referring to your minute of the
8 2nd November. So I think that would be that letter we
9 just looked at. Now there had been texts
10 communications, isn't that right, in the interim? 11:03
11 A. Yes.
12 73 Q. Okay. And I think he was also texting with the acting
13 commissioner Donal Ó Cualáin at the time, but that's
14 not for yourself. In any event, he is referring to
15 those and he refers to the meeting. If you see there 11:03
16 in the middle paragraph, he is talking about the
17 amendments that he thought should be made to the
18 minutes. Now, I think in that paragraph, they're
19 reflected in that box we looked at yesterday, isn't
20 that right? 11:03
21 A. That's correct.
22 74 Q. Okay. And I think they were put on to the formal
23 minutes by way of that amendment, is that right?
24 A. That's correct.
25 75 Q. Okay. He says in the next paragraph he remained 11:03
26 concerned about confidentiality and he references the
27 B&H policy. He queries on the next page, if you could
28 just look at that, he queries your minute of the 2nd
29 November, advising that Assistant Commissioner

1 McPartlin has been tasked with a piece of work. He
2 says:

3
4 "I am unsure under what policy that an appointment has
5 been made as I was not party to that decision. As this 11:04
6 cannot be part of the B&H appointment, I await the
7 identity of the assistant commissioner as agreed on the
8 3rd October, so there is no further delay to the
9 investigation of Garda Keogh's complaint."

10
11 So the missing piece that I was asking you about in
12 your letter of the 2nd November, he is asking you about
13 here in his e-mail of the 6th November. Would you
14 accept that?

15 A. He's asking. As I've said, he has made it very clear 11:04
16 in his previous correspondence that the policy provides
17 for who should be -- who has control of making the
18 appointments. So that's the first part. The second
19 part, in relation to the comments around being tasked
20 with a piece of work and where that sits in the policy, 11:04
21 it doesn't sit in the policy. At the same time, if we
22 were so focused on the policy, so focused on following
23 all the elements of the policy, you know, we were left
24 in a situation where Garda Keogh's complaints had not
25 progressed. There are very often times when you need 11:05
26 to step back from a policy, you need to step back and
27 say, what is the right thing to do? And the right
28 thing to do was to ensure that all of the complaints
29 that were raised by Garda Keogh were being addressed.

1 whether that meant that one has to do things in a
2 slightly different way, well so be it. If there is a
3 criticism of that, that's fine too. But in my view it
4 was the right thing to do.

5 76 Q. Can I ask you, Mr. Nugent, in real terms, by this date, 11:05
6 on the 6th November, bearing in mind you'd met on the
7 23rd October, in real terms there is no progress,
8 because in real terms Assistant Commissioner McPartlin
9 has not been put in place and there's still no
10 appointment under the B&H policy. Is that not the 11:05
11 reality of what's happening at this point?

12 A. The reality of, what are we talking about, a few weeks,
13 a couple of weeks.

14 77 Q. Well, as of this date?

15 A. As of this date. 11:05

16 78 Q. Isn't that the position?

17 A. What is the date here?

18 79 Q. The 6th November?

19 A. Okay. So we had a meeting on the 23rd October and on
20 the 6th November, what's that? Two weeks? I am making 11:06
21 the point, Ms. McGrath. You're asking was there a
22 delay. I'm just saying, I'm just making the point that
23 things take a little bit of time. This matter had been
24 out there since March, here we are, essentially within
25 two weeks of the meeting taking place, and if I'm not 11:06
26 mistaken, Assistant Commissioner Finn is appointed
27 within a matter of days of this as well. So I think in
28 public service terms that possibly is not bad, and
29 certainly is much better than it would have been given

1 that the matter had been lying there since March.
2 80 Q. Okay. We will see in the next paragraph Assistant
3 Commissioner Fanning is exercised, it seems, about the
4 delay. He says:

5
6 "Procedurally there are a number of matters that I need
7 to progress. The delay in appointing an AC to work
8 with me on this is further exaggerating the delay which
9 is ultimately impacting on a member of Garda Síochána
10 who has additionally made a protected disclosure, the 11:06
11 members subject to the complaint, on me, and on the
12 integrity of the Garda processes and the reputation of
13 An Garda Síochána."

14
15 So, just in light of what you've just said to me 11:07
16 previously about this being all very normal in the
17 public service, I take it you disagree with that
18 comment, is that right?

19 A. No, I don't disagree with it. What AC Fanning was
20 complaining about was that I was addressing the issue 11:07
21 of delay from March, and he said that matters needed to
22 move on. I think what I took from what he is saying
23 here is that he wanted matters to move fast. And, I
24 think, in fairness, matters do progress, as I said,
25 within a matter of days. 11:07

26 81 Q. Okay. I think you go back to him, at 10217, which
27 could be the next page. No, sorry it's different.
28 10217. If you just scroll down, Mr. Kavanagh. You
29 reply on the same day, you say:

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"Fintan, you raise some important issues here. I will revert to you ASAP in that regard. Joe."

A. Yes.

82 Q. Okay. And the important issue being the necessity to progress the matter; is that right? 11:08

A. He raised a series of important issues, that's correct.

83 Q. Okay. And he comes back to you and he says:

"Thanks. I just want to get the next stage of the process up and running. I've obligations under the policy personally. I have no idea what the outcome will be. That will be for the investigator and can only be based on the evidence he or she gathers once I make the appointment. 11:08

Ultimately all those names complained of are serving in ranks are bound by the B&H policy, so it will produce an outcome that we can all stand over." 11:08

So that's his response to you at the end of the day on the 6th, is that right?

A. That's correct.

84 Q. I think he rights again to you on the 16th November. We won't come to that for a moment, because in the interim, I think he proceeds on the 9th November. You will have seen the documentation in the briefs, where he writes to the members he considers are the subject-matter of the complaint; isn't that right? 11:08

1 A. That's correct.

2 85 Q. Then he subsequently appoints Assistant Commissioner
3 Finn on the 15th November?

4 A. That's correct.

5 86 Q. On the 16th November he writes to you, at 10146. He 11:09
6 says:
7
8 "It is ten days since you acknowledged this matter. I
9 do not have a response to this serious matter, which
10 goes to the heart of what I want to do." 11:09
11
12 As you say, in the interim things have started, isn't
13 that right?

14 A. In the interim things have started, that's correct. As 11:09
15 far as I was concerned the matter had now progressed,
16 the primary issue of the bullying and harassment
17 complaint, which those in attendance at the meeting
18 were of the opinion was the one strand that had not
19 progressed sufficiently, was now in train and I was
20 pleased to hear that. 11:09

21 87 Q. Okay. Now, one of the things I would just like to ask
22 you about, because something else that happened in the
23 interim was there was an article in the Irish
24 Independent on 13th November 2017. And this is at
25 10245. 11:10
26
27 "Row erupts over whistleblower's bullying claims."
28
29 It is referencing the conference, it would seem, on the

1 23rd October. Do you accept that?

2 A. I accept that.

3 88 Q. Okay. So --

4 A. Sorry, I accept that's what the story is about. I am
5 not accepting that there was a row. 11:10

6 89 Q. No. Well the row erupts?

7 A. Yes.

8 90 Q. This article concerns --

9 A. I accept that the article concerns that meeting, yes, I
10 do. 11:10

11 91 Q. Okay. So, in fact, the meeting did make its way
12 ultimately into the media. Do you know anything about
13 that or how that might have happened?

14 A. No, I don't. I talked about this briefly yesterday as
15 well, it is a sad feature of the culture of An Garda 11:10
16 Síochána, I think that it's not a healthy culture, I
17 think that to be leaking to the press is something that
18 I don't think does anybody any good whatsoever.
19 Equally, I said yesterday, and more importantly, that
20 healthy disagreement within, you know, a professional 11:11
21 sense, is also important. So I don't accept the tenet
22 there had been a row. I accept there was a difference
23 of views between myself and Assistant Commissioner
24 Fanning and that's okay.

25 92 Q. As I say, things have moved along. I think you may 11:11
26 have also seen in our document ation that Garda Keogh
27 becomes aware of these meetings and his solicitor
28 writes to the Garda Commissioner effectively
29 complaining about the calling of these, what he says

1 are, unprecedented meetings. would you be aware of
2 that correspondence that came in?

3 A. Yes, I am aware of it. I think he complained, if I am
4 not mistaken, that there had been two meetings, which
5 wasn't the case. So I am not sure where the 11:11
6 information that was being provided to Garda Keogh was
7 coming from. Certainly, as I confirmed in my evidence
8 yesterday, there was one case conference meeting which
9 I had organised, no more than that.

10 93 Q. Okay. As you just said there, he did query whether 11:12
11 there was a second such case conference, but --

12 A. There was no --

13 94 Q. -- it was confirmed subsequently to him that there was
14 no such?

15 A. That's correct. 11:12

16 95 Q. Okay. Can I ask you, just before we move onto the
17 issue of Superintendent Murray's promotion, just to
18 finish up this part of the evidence, what is happening
19 then is, the Department of Justice are corresponded
20 with by the Garda Commissioner, I think Superintendent 11:12
21 Mahon. Just to finish up this point about this whole
22 period of time. He writes to the Secretary General of
23 the Department of Justice on 8th December 2017. This
24 is at 10318. Do you see that?

25 A. Yes, I do. 11:13

26 96 Q. Now, in fact it's quite similar to the chronologies
27 that have been generated at this particular point as to
28 what was happening with the bullying complaint from
29 September onwards, isn't that right?

1 A. That's correct.

2 97 Q. Okay. This was the one I opened to you earlier on.

3 A. Yes.

4 98 Q. Where reference to the -- actually, we will look at the
5 last page, sorry, it's easier. 10321. If you keep 11:13
6 going down there, please. That was the page I opened
7 to you, the 19th October, where the Minister is being
8 told that Orla McPartlin has been put in place for a
9 fact-finding investigation and the Minister is also
10 being told that Assistant Commissioner Michael Finn was 11:13
11 appointed by Assistant Commissioner Fanning on 15th
12 November 2017 to investigate the bullying and
13 harassment complaint made by Garda Keogh. There is
14 also references to the sustained support of Garda
15 Keogh. He is under the direct supervision of Garda 11:14
16 Mick Quinn, etcetera. And it outlines the contact with
17 him in relation to his welfare, okay.

18 A. Yes.

19 99 Q. The reason I just wanted you to look at that is because
20 quite some time later, you have a letter here on our 11:14
21 documentation which goes to the Secretary General of
22 the Department of Justice. It's 11669. Do you see
23 this? Now, this is from you. If you look at the
24 second page. Mr. Nugent, that date appears incorrect
25 to us? 11:14

26 A. Yeah.

27 100 Q. It should be 2nd February 2018, would that be right?

28 A. That sounds correct.

29 101 Q. Okay. So if we go to the first page, please. This is

1 where you are telling the Secretary General of the
2 Department of Justice, you say:

3
4 "I refer to the above entitled subject and previous
5 related correspondence most recently dated 8th December 11:15
6 2017."

7
8 That is Superintendent Mahon's letter we looked at.

9
10 "In that correspondence it was reported that the 11:15
11 executive director HRPD had appointed Assistant
12 Commissioner Orla McPartlin to conduct a fact-finding
13 investigation of all the elements of the issues
14 highlighted by Garda Keogh."

15 11:15
16 You say:

17
18 "However, it was discovered in mid January 2018 that
19 due to an administrative oversight in HRPD department
20 that the correspondence informing the assistant 11:15
21 commissioner of her appointment was not transmitted to
22 her.

23
24 This is an unfortunate error and is regretted."

25 11:15
26 So at this stage the error had come to light and
27 everybody now has been informed that she is not in fact
28 in place, isn't that right?

29 A. That's correct.

1 102 Q. Okay. However, you then go on to say, and this is what
2 I would like to ask you about, you say:

3
4 "Upon being made aware of the error, the matter was
5 reconsidered and a decision made to appoint an external 11:15
6 HR employment specialist to guide and advise them on
7 the totality of the issues pertaining to Garda Keogh
8 with the necessary degree of independence."

9
10 Now, can you tell the chair about that? 11:16

11 A. So this was -- so this information was provided to me
12 by Mr. Barrett and I would suggest that it would be
13 better if he can give -- I certainly don't recall the
14 specific detail of this, Ms. McGrath. So apologies, I
15 just don't recall the specific elements of that. 11:16
16 Again, I would be confident that Mr. Barrett will be
17 well placed to answer to that.

18 103 Q. Okay. So it's your evidence that this specific issue
19 came via Mr. Barrett to you, is that right?

20 A. That's my recollection. 11:16

21 104 Q. And it says:

22
23 "An Garda Síochána has identified a number of
24 potentially suitable specialists and will shortly be in
25 a position to engage and brief the selected candidate." 11:16
26

27 Again, do you remember that?

28 A. Well, as I said, I actually don't recall this, this
29 particular letter. I know that's my signature on it, I

1 have no issue with that. I don't recall the detail.
2 If you are going to ask me who it was or who those
3 were, I honestly can't recall. But it wouldn't have
4 been -- the appointments and the engagement of the
5 individuals would not have come from my office. They 11:17
6 would have come from HR. So they would be better
7 placed to provide that information.

8 105 Q. Now, speaking from today, in March 2020, what's your
9 knowledge of that? Did that ever happen?

10 A. I don't know, is the answer. 11:17

11 106 Q. You don't know?

12 A. I don't know if it ever happened.

13 107 Q. Okay. Now, as I say, just finally then, the last issue
14 I just would like you to deal with, Mr. Nugent, is the
15 issue concerning -- issue number 20, which is before 11:17
16 the Chairman, which is the promotion of Superintendent
17 Murray to chief superintendent, okay. I think we have
18 already heard a little bit about this from you
19 yesterday, where on 17th October 2017 the acting
20 commissioner puts you in place for two reasons. One, 11:17
21 to do what we've just been looking at, the strands in
22 relation to Garda Keogh, isn't that right?

23 A. That's correct.

24 108 Q. And one to deal with the clearance issue for
25 Superintendent Murray with the Policing Authority, 11:18
26 isn't that right?

27 A. That's correct. The normal practice would have been
28 that such clearance requests and the collation of that
29 material would have been managed by the office of the

1 Commissioner, but, as we explained yesterday,
2 Commissioner Ó Cualáin sought that it be done
3 differently in this case for the purposes of avoiding
4 any possible perception of conflict and asked me to
5 take on that particular issue. 11:18

6 109 Q. I suppose a good starting point would be, could we look
7 at a letter from the Policing Authority, at 12471.
8 This is addressed from the Policing Authority, the 12th
9 October. So we're going back a little bit. This is
10 before you're put in place, or put in charge. This is 11:18
11 to Commissioner Donal Ó Cualáin, 12th October 2017 and
12 it's from the Policing Authority. It says:

13
14 "Dear Commissioner, further to the clearance form you
15 completed on the 19th September in respect of the above 11:19
16 candidate, I would be grateful if you would clarify a
17 matter arising further to the Authority's clearance
18 process.

19
20 Further, to an alleged matter which is in the public 11:19
21 domain, I would be grateful to know if any bullying or
22 harassment complaint has been received or if there is
23 any investigation relating to same in train or being
24 contemplated with regard to this candidate and if so,
25 the stage of those processes. " 11:19
26

27 okay?

28 A. Yes.

29 110 Q. So that is the 12th October. As we know, you are asked

1 to deal with it by the acting commissioner on the 17th.
2 And you have a reply to this letter, at 12511. Okay.
3 Now, this is the 25th October, you have been put in
4 charge, you have had your case conference, so you are
5 very alive to all of the issues that are bubbling in 11:20
6 relation to Garda Keogh and his files, isn't that
7 right?
8 A. That's right.
9 111 Q. Okay. So you say:
10 11:20
11 "I refer to your letter of the 11th October."
12
13 Now we think that must be the 12th. would you accept
14 that?
15 A. I accept it's the 12th, yes. 11:20
16 112 Q. Okay.
17
18 "And I can confirm that Superintendent Murray has been
19 the subject of a complaint by a Garda member in respect
20 of alleged bullying and harassment through internal 11:20
21 processes and also named separately by means of a
22 personal injury summons in the High Court."
23
24 okay.
25 A. Yes. 11:20
26 113 Q. So, you go on to deal with the civil proceedings, and
27 there's detail there of the service of them in May
28 2017. You confirm Superintendent Murray is separately
29 named as a defendant in it, is that right?

1 A. I confirm that.

2 114 Q. You also confirm the State Claims Agency is dealing
3 with it and as part of the process Chief Superintendent
4 Fergus Healy was tasked with conducting an initial
5 investigation into the various allegations made in the 11:20
6 civil proceedings only, is that right?

7 A. That's right.

8 115 Q. You say:

9
10 "It is expected that the State Claims Agency will 11:21
11 undertake their own examination of the issues as part
12 of their consideration of the personal injury summons,
13 to include consulting with all relevant individuals and
14 those individuals against whom bullying and harassment
15 is alleged." 11:21

16
17 Now, in relation to the bullying and harassment
18 complaint, you tell her:

19
20 "The Garda member concerned has also made separate 11:21
21 allegations of bullying and harassment, exclusion,
22 victimisation, penalisation, and additional issues
23 against Superintendent Murray, which are documented in
24 detail and contained in two statements which have been
25 taken from the relevant member under the oversight of 11:21
26 assistant commissioner Eastern Region. The statements
27 also allege other matters that do not relate in any way
28 to Superintendent Murray and as such I do not propose
29 to address same. It is undoubtedly the case that there

1 will be significant overlap between the allegations
2 raised in the statements taken from the member and the
3 matters alleged in the civil proceedings."

4
5 Okay. Now, that's the detail you give to the Policing 11:21
6 Authority. And I think it is accepted and, as we will
7 see in the communications, it's accepted that the civil
8 proceedings and the bullying and harassment claim, the
9 word used being, mirrored each other.

10 A. Yes, that's correct. 11:22

11 116 Q. Okay. And that's what you are reflecting there in your
12 note to her?

13 A. That is what I am reflecting in my correspondence.

14 117 Q. Okay. Now, that's, as you say, on the 25th October.
15 Can I ask you then, what I would like to do is, and I 11:22
16 hope you have an opportunity to look at them, in the
17 brief -- Superintendent Murray kept notes and journals
18 and I wonder if you have had been opportunity to --

19 A. I've read some of them, yes.

20 118 Q. Okay. I just want to take you through a few of them. 11:22
21 He records in particular some conversations with you
22 and he records some conversations with Assistant
23 Commissioner Finn where you are mentioned. I just
24 would like to deal with those conversations?

25 A. Okay. 11:22

26 119 Q. Okay?

27 A. That's fine, yes.

28 120 Q. If we can start. So you reply on the 25th October to
29 the Policing Authority. We have a note that

1 Superintendent Murray kept at the time. It's at page
2 16228. Now, this is where, you see at the top, he
3 records that he has texted Commissioner Ó Cualáin?

4 A. Yes.

5 121 Q. And he is expressing some concern about being passed 11:23
6 over, etcetera, okay?

7 A. Yes.

8 122 Q. Now, he records a call with you at 17:05, do you see
9 that?

10 A. I do. 11:23

11 123 Q. Received a call from, he gives the number, which lasted
12 six minutes and 20 seconds and it was CAO Joe Nugent.
13 Do you remember this call on the 31st?

14 A. I can't. I mean, I had a number of calls with Chief
15 Superintendent Murray, so I can't recall the specifics 11:23
16 of those and what might have been said from one
17 conversation to another but I am not disputing what
18 Chief Superintendent Murray is saying.

19 124 Q. Okay. So you're not disputing the fact that had you
20 the call, I suppose, let's start at the beginning? 11:23

21 A. No, no. I have no issue with that.

22 125 Q. Okay. And you say you are not disputing the contents
23 of it. Can I just ask you, this is what you are
24 saying.

25 11:24

26 "He said commissioner asked him to contact me as he
27 might be compromised."

28

29 we know that that's reflected in the acting

1 commissioner's own statement, he refers to putting you
2 in place for that reason, isn't that right?

3 A. Yes, that's correct.

4 126 Q. "He said."

5

11:24

6 Now this is you.

7

8 "He and the Commissioner were concerned that there were
9 unsubstantiated allegations to block my appointment."

10

11:24

11 So do you accept his reference to unsubstantiated
12 allegations?

13 A. I accept his reference, yes.

14 127 Q. Okay. And you accept that you said that?

15 A. I can't say I used the word unsubstantiated, I may have 11:24
16 said unproven, you know, again I can't recall the
17 specific words that were used. But I think at that
18 stage they were allegations, they were not proven.

19 128 Q. Okay. He says that you are going to be in touch with 11:24
20 the Policing Authority. In the second paragraph there
21 he says:

22

23 "I explained the situation in Athlone, that I came to
24 him and told him I felt I was being penalised for doing
25 my job. He didn't say anything substantial." 11:25

26

27 Do you remember Superintendent Murray telling you that?

28 A. Again, as I said, Ms. McGrath, like it'll be the same
29 for any of these notes, I can't, I can't talk to the

1 specifics of what's there. I accept completely that
2 these are Chief Superintendent Murray's notes. I am
3 not going to dispute the material that's there. I'm
4 happy to talk to -- as I said, they are his words, so I
5 might differ about different words, but the substance 11:25
6 of what he was saying is fair.

7 129 Q. Okay. Okay. So that is on the 31st October. On the
8 1st November he records a note of another call he has
9 with you. It's 12392. So 12392. At 5:26:
10
11:25

11 "Phoned Joe Nugent. He said the PA had not contacted
12 him yet but he expected they were focusing on the
13 breath test stuff delay."
14

15 I think you mentioned that yesterday, isn't that right? 11:26

16 A. That's correct.

17 130 Q. "He expected to talk to them tomorrow and said he would
18 ring me. He complimented me on my letter to the PA and
19 said it was fair and reasonable what I was asking."
20
11:26

21 Do you remember that?

22 A. Yes. I won't dispute that.

23 131 Q. Okay. So you're quite involved at a quite detailed
24 level, you know his contacts with the PA and what he is
25 communicating with the PA; is that right? 11:26

26 A. I couldn't say I would know his contacts with the PA.
27 Certainly Chief Superintendent Murray would have told
28 me that he would have been in contact with the PA but I
29 wouldn't have any detail about that. What I would

1 equally have had conversations on, I am just guided by
2 the Chair here, about processes. So please, Chair,
3 pull me up if we getting into the Policing Authority
4 space. But there would have been contact from a chief
5 executive of the Policing Authority with myself in
6 relation to these various matters. 11:26

7 132 Q. I think that's quite standard, is that right?

8 A. Yeah, I accept that in this situation it is different.
9 As I described earlier, there is a difference here in
10 that the matters were not going through the office of 11:27
11 the Commissioner firstly; and secondly, the
12 conversations were being held at a very senior level,
13 the chief executive of the Policing Authority and a
14 chief admin officer. I'm not certain that that would
15 happen in all circumstances. 11:27

16 133 Q. Just to be clear, you're saying that the communications
17 had a happened in this case between you and the chief
18 executive officer of the Policing Authority wouldn't
19 have been the normal course?

20 A. No, it wouldn't be the normal course. And that might 11:27
21 just reflect that because I was dealing with the matter
22 personally, that the chief executive of the Policing
23 Authority was dealing with it personally. But in the
24 ordinary course of events, as I understand it, it would
25 be done at a different level, it would be done at a 11:27
26 lower level in the organisation. I think in this
27 situation there were clearly -- we were going into a
28 different territory, in that there were -- there was a
29 concern on behalf of the Policing Authority about

1 getting the information that they would need to assist
2 them in their determination.

3 134 Q. Okay. Now, on the next day, on the 2nd November, it's
4 at 16231. This is the 2nd November, the following day,
5 he gets a reply back to his e-mail from the Policing
6 Authority, and he says:

11:28

7
8 "I drafted a reply and sent it to AC Corcoran for
9 perusal."

10

11:28

11 If you go to the next line, he says that AC Corcoran
12 phoned him. All right? Now, the reason I am opening
13 this one is that AC Corcoran, it's recorded, says --
14 just if Mr. Kavanagh doesn't move the screen, but at
15 the very last two lines there:

11:29

16

17 "He said the most persuasive piece of correspondence
18 must come from the Commissioner's office and he spoke
19 to Joe Nugent about that."

20

11:29

21 Do you remember having a conversation with AC Corcoran
22 about this?

23 A. I don't.

24 135 Q. Okay. Superintendent Murray records, if you just
25 scroll down now to the rest of the page, Mr. Kavanagh,
26 please, he says:

11:29

27

28 "From talking to him and Joe Nugent and hearing from
29 Lorraine Wheatley and what Tony McLoughlin says about

1 John Barrett accepting it being wrong, I am getting the
2 impression that An Garda Síochána in a way to out
3 manoeuvre Mr. Barrett and PA are stalling on supplying
4 details to help because they don't believe the PA are
5 entitled to the civil claim or the bullying claim as 11:29
6 it's outside the criteria for the competition and they
7 are saying those are the issues for the Guards and the
8 State Claims Agency and not the PA. "

9
10 So, can I just open that to you, when Superintendent 11:29
11 Murray was giving evidence on Day 146, at page 62, he
12 was asked about this and he said he was caught in the
13 middle. That's how he saw it. So can I ask you your
14 views on that? Was that the view coming from the
15 senior level of An Garda Síochána, that the civil claim 11:30
16 and bullying claim were outside the remit of the
17 promotions issue?

18 A. Sorry, could you phrase that last part of the question?
19 I just want to be very clear about what you are asking
20 me, Ms. McGrath. 11:30

21 136 Q. Well, he is saying that they don't believe, now he
22 seems to be including you in the they, that the PA are
23 entitled to the civil claim or the bullying claim as
24 it's outside the criteria for the competition.

25 A. Okay. So firstly, can I just revert and then I will 11:30
26 answer your question. I do recall AC Corcoran speaking
27 to me now about the issue associated with the
28 challenges of providing matters related to the civil
29 litigation issue and the potential that material that

1 was sensitive to that process was coming into a broader
2 space, where perhaps it was or was not entitled to be.
3 In relation to the provision of the information in
4 respect of the bullying and harassment, absolutely not.
5 And all of the evidence suggests that we provided the 11:31
6 information -- sorry, I provided the information that I
7 thought was being sought by the Policing Authority to
8 assist them in their determination.

9 137 Q. You certainly did, and we will come to that in a
10 moment. But what I want to ask you is, at the outset 11:31
11 was there a view or a concern as to whether this was
12 within the domain of the competition or not?

13 A. There certainly was not. I mean, there may have been
14 legal concerns about legal issues, but there was no
15 concern about the provision of information, no. For my 11:31
16 part, absolutely not.

17 138 Q. Okay. So when Superintendent Murray feels he is caught
18 in the middle, do you accept or reject that?

19 A. Oh I can understand. Like, this was a very unusual
20 circumstance, where Superintendent Murray was waiting 11:31
21 to be -- was waiting to have a determination made,
22 where the Policing Authority on the one hand were
23 making a call and the material that was being sought
24 was being sought from the organisation. Superintendent
25 Murray was not in a position to influence either of 11:32
26 those two parties in that regard. So I can absolutely
27 understand it being a very uncomfortable place to be.

28 139 Q. Okay. He has a note of a phone call with you on the
29 same day, the 2nd November, it's at page 12393. You

1 see there:

2

3 "Call from Joe Nugent. He rang Helen Hall to meet her
4 but it may not take until after Monday. He will be in
5 touch as soon as he meets her. He showed me he and 11:32
6 the...."

7

8 I'm not sure that's correct

9

10 "He and the organisation feel I have been badly 11:32
11 wronged."

12

13 First of all, do you remember this particular call on
14 the 2nd November?

15 A. I don't. But, as I said before, I am not going to 11:32
16 dispute, you know, the notes Chief Superintendent

17 Murray has made. Do I recall using the word "badly
18 wronged" no, I may have used other words, I might have
19 said unfair perhaps. So what was my position on this?
20 In my, you know, vast experience in the public service 11:33

21 I hadn't come across a situation where an allegation,
22 and that's all it was at that point in time, an
23 allegation which had not at that point be proven, would
24 be used to defer somebody's promotion. Like in my

25 experience I had never come across that. And I am not 11:33
26 saying that -- the Policing Authority has their own
27 processes and I am conscious of what the Judge said
28 yesterday. But in my opinion that's unfair.

29 140 Q. Okay.

1 A. So if that is what Chief Superintendent Murray is
2 reflecting there, then I have no issue.

3 141 Q. Now, you say, in my view that's unfair. I am asking
4 about the organisation's view. You are at the senior
5 executive level of the organisation?

11:33

6 A. Absolutely. I think across the organisation, the
7 idea -- people in the organisation are used to due
8 process and we had a situation where an individual --
9 an individual's promotion was being delayed in advance
10 of the process being completed. No more than that.

11:34

11 There were other ways, it seems to me, to do this.
12 Ultimately an individual appointed, and this would have
13 been appointed on probation, if it a matter of concern
14 surfaced later on, it could have been dealt with that
15 way. What was at play here was not that. So I am
16 offering my view on it, certainly the view of others in
17 the organisation, other senior people in the
18 organisation, as a process it seems unfair.

11:34

19 142 Q. Okay. In this note, if Mr. Kavanagh goes down, he
20 seems to be saying at number 2 there that he has this
21 document that he prepared for Chief Superintendent
22 Healy for the civil claim. He's offering it up
23 effectively. He says:

11:34

24
25 "Can and should that be shown to the PA, as it is so
26 comprehensive it will deal with any bullying claim
27 which can only mirror the civil claim."
28

11:34

29 Do you see that?

1 A. Yes.

2 143 Q. Do you remember that of the 2nd November?

3 A. Yes, I do.

4 144 Q. So he is putting this on the table for a provision to
5 the Policing Authority at this stage; is that right? 11:35

6 A. That's correct.

7 145 Q. I am not sure if it's clear from this, but did you take
8 the position you needed to get advice on the provision?

9 A. Yes, I did.

10 146 Q. Okay. 11:35

11 A. Just to be clear, through this process, through this
12 clearance process I would have been taking legal advice
13 at all of the stages along the road.

14 147 Q. Okay.

15 A. So the replies that were provided to the Policing 11:35
16 Authority, I would have sought legal advice, which
17 explains some timeline differences that are there.

18 148 Q. Okay. Now on the 3rd, the following day, the 3rd
19 November, he has a note at 16232. This is
20 Superintendent Murray. He is talking about an e-mail 11:35
21 that he sent to Helen Hall and that he has received a
22 reply. He said he has he forwarded all the e-mails to
23 CS wheatley, AC Corcoran and to yourself:

24

25 "...with a message asking for the Commissioner's office 11:36
26 to become involved in reassuring the PA about my
27 character re my duties in Athlone."

28

29 Do you remember that?

1 A. Sorry, I don't remember that. But this is a note of
2 what he had said he had done. Fine. But that just --
3 the Commissioner's office did not become involved in
4 any way.

5 149 Q. Okay. So he may have requested it, but you're saying 11:36
6 this didn't happen?

7 A. It didn't happen.

8 150 Q. Okay. Now, what happens next then is 7th November 2017
9 you get a letter from the Policing Authority. This is
10 at 12518. Now, can I ask you first, this is addressed 11:36
11 directly to yourself and it's referring to your letter
12 of the 25th October, which we opened there a little bit
13 ago. Okay?

14 A. Okay.

15 151 Q. And that was where you had described the civil 11:36
16 proceedings and the bullying and harassment
17 proceedings. Okay?

18 A. Yes.

19 152 Q. So this is the Policing Authority coming back to you.
20 Can I ask you about those handwritten notes, are they 11:37
21 your notes?

22 A. That's not my handwriting. You definitely wouldn't be
23 able to read my handwriting, Ms. McGrath, so I know
24 it's not my handwriting. Whose handwriting, I don't
25 know. There is a cleaner copy, I have certainly seen 11:37
26 cleaner copies in evidence, there are cleaner copies
27 there, but I don't know whose handwriting that is.

28 153 Q. Okay. So she says:
29

1 "Having considered the information contained in that
2 correspondence, a number of enquiries arise in respect
3 of which I require further information to progress the
4 clearance process for Superintendent Murray.

11:37

5
6 1. You state that in the High Court personal injury
7 which named Superintendent Murray as a defendant, the
8 plaintiff alleges that he was the subject of various
9 gross acts of harassment, deliberate exclusion,
10 bullying, contrived complaints, humiliation and
11 victimisation carried out by members of An Garda
12 Síochána who are not named as defendants and by
13 Superintendent Murray, who is named as a defendant. "

11:37

14
15 He says:

11:37

16
17 "I request further information in relation to the
18 nature of the allegations made against Superintendent
19 Murray specifically.

11:38

20
21 2. I would be obliged if you would confirm whether the
22 review of Chief Superintendent Healy will consider the
23 allegations in relation to Superintendent Murray,
24 whether Superintendent Murray will be consulted with as
25 part of that review and when that review is likely to
26 be complete.

11:38

27
28 3. With regard to the bullying and harassment
29 complaint, I request the following: Details of the

1 nature of what is alleged regarding Superintendent
2 Murray; details of the process for investigating this
3 matter and the level of fair procedures that will be
4 afforded to the superintendent."

11:38

5
6 And she is looking in the next page for specific
7 details, this is paragraph 4, of timelines. She is
8 saying:

9
10 "At a minimum, When the allegation of bullying and 11:38
11 harassment in respect of Superintendent Murray was
12 received by An Garda Síochána; when the Garda Síochána
13 were notified of the civil proceedings against
14 Superintendent Murray; dates on which key activities
15 relating to both matters have been actioned to date; an 11:38
16 estimated timeline for both the civil litigation and
17 the bullying and harassment investigation."

18
19 So, she says she is requesting this information in
20 accordance with regulation 12 of the Garda Síochána Act 11:38
21 20205, regulations that were put in place in 2016.
22 Okay. So, stopping there. She is asking for quite a
23 lot of detail in relation to both sets of proceedings,
24 isn't that right?

25 A. That's correct. 11:39

26 154 Q. She says at the very end of the paragraph there:

27
28 "As you will be aware, Regulation 12 provides that the
29 Authority shall not appoint a candidate selected for

1 appointment to a specified rank unless the Authority is
2 satisfied as to the outcome of any clearance process
3 and other matters in that regulation."
4

5 So, clearly at this stage the Policing Authority have 11:39
6 taken the view that it's clearly within the interests
7 of the competition and clearance process that they have
8 all this information, do you accept that?

9 A. That's the position of the Policing Authority, that's
10 correct. 11:39

11 155 Q. Okay.

12 A. And just, sorry, I don't dispute. I mean, they were
13 looking for information. My job was to provide them
14 with the information that was needed to assist them in
15 coming to their determination. As they point out, it's 11:39
16 in their --

17 CHAIRMAN: The letter speaks for itself.

18 A. Yeah.

19 156 Q. MS. McGRATH: Okay. So that is on the 7th November.
20 Can I ask you to go to the 16th November, which is at 11:40
21 2835. Again, it's one of Superintendent Murray's
22 notes. And he says:

23
24 "I received a call from Joe Nugent. He told me he was
25 in communication with Helen Hall of the PA and they 11:40
26 wanted today make decisions re appointments for meeting
27 on the 23/11 and particularly my appointment."

28
29 Okay. So you know that there's a meeting coming up on

1 the 23/11 and they are proposing to deal with the
2 promotions on that date, is that right?

3 A. Ms. Hall would have told me that, that's correct.

4 157 Q. Okay. Now, Superintendent Murray says that you told
5 him that he had the support of the organisation and 11:40
6 that you were working on the issue with Ken Ruane, Head
7 of Legal Affairs; is that right?

8 A. That's correct, yes.

9 158 Q. And that you asked him if he had any objection to the
10 giving of the 338-page document to the Policing 11:41
11 Authority, and he said no problem. Okay?

12 A. That's correct. And from recollection, it was a
13 request on legal advice of Mr. Ruane to establish in
14 the first instance whether Superintendent Murray had
15 any objection to the material being provided, not that 11:41
16 we were going to provide it, but we needed in the first
17 instance to understand whether Superintendent Murray
18 had an objection to it being provided.

19 159 Q. Okay. He had offered it on the 2nd November, as we
20 said, and you said in response to that, that you were 11:41
21 getting legal advice on it in the interim, is that
22 right?

23 A. That's correct.

24 160 Q. You said he had the support of the organisation, what
25 did you mean by that? 11:41

26 A. To come back to, I suppose, to the conversation we had
27 just shortly before, where Superintendent Murray felt
28 that he was caught in the middle between the Policing
29 Authority and ourselves. I was saying to him that we

1 would provide whatever information was needed to assist
2 the -- sorry, I said the organisation would provide
3 whatever information was needed to assist the Policing
4 Authority come to their decision.

5 161 Q. Now, there's a reference there where you tell him that 11:42
6 you were in communication with Helen Hall of the
7 Policing Authority. Now that is dated, that note, the
8 16/11. I think you e-mailed her that day, would that
9 be right?

10 A. I can't recall that, but if it's there -- 11:42

11 162 Q. Well, it is just we don't -- look, we will come to that
12 in a moment. It may have been redacted for legal
13 professional reasons, but we will come to it in a
14 moment. If we just stay with the sequence of what I
15 have. Because on the 20th November, a couple of days 11:42
16 later, which is at 12397, he is contacting you again on
17 this date:

18
19 "Phoned Joe Nugent. He agreed..."

20 11:43

21 which is suggesting yourself:

22
23 "...that the meeting of the 19/11 was all very
24 contrived against me and worryng."

25 11:43

26 Can you help the Chairman with what is referenced
27 there?

28 A. The fact that there was a lot of discussion going on in
29 the media about whether Superintendent Murray should be

1 appointed or not. It seemed to me worrying that an
2 independent process, you know, that had that
3 transparent and accountable approach was perhaps being
4 frustrated by media commentary as opposed to, you know,
5 it following the normal routes that it should progress. 11:43

6 163 Q. Okay. So that's on the 20th. You're in contact again
7 the following day, on the 21st, which is 12398. 12398.
8 And he is saying he phoned you, he wants to know if his
9 document has gone to the PA. Now that's his civil
10 document, the 338 pages? 11:44

11 A. The 338 pages, I believe is what he is referring to.

12 164 Q. Okay. And you confirm that it was, isn't that right?

13 A. I said that the material was sent, I didn't say what
14 was sent.

15 165 Q. Okay. And I think that that was an e-mail by you on 11:44
16 the 21st and it was attaching literally the civil
17 material?

18 A. Yes, I won't dispute that, Ms. McGrath, I just can't
19 remember the exact -- I remember being sent a series of
20 material, but I just want to be clear, at that point in 11:44
21 time I wasn't certain of what had been sent.

22 166 Q. Okay. Now it's not in the booklet, we did locate in
23 disclosure an e-mail of the 21st November, but it's
24 essentially attaching the civil summons?

25 A. And related materials. 11:44

26 167 Q. And the related materials?

27 A. Yeah. I have no issue with that, yeah.

28 168 Q. Okay. Now, can I bring you then, staying on the 21st,
29 there's a letter you write back to her. 12524. Now

1 this is where we had a little bit of difficulty. She's
2 referring to an e-mail of the 16th November. Now we
3 haven't been able to locate it and, again, it may have
4 been a legal professional privilege because I know you
5 were talking to Ken Ruane a lot about this, so that may 11:45
6 be the case. But she is saying:

7
8 "I note your reference to section 40(2). This requires
9 the Garda Commissioner to provide on request by the
10 Secretary General any document in the power or control 11:45
11 of Garda Síochána. Section 40 (2)(a) is the provision
12 that applies to the authority and requires the Garda
13 Commissioner to provide to the authority any document
14 relating to policing services in the power or control
15 of An Garda Síochána. I am advised that this may not 11:45
16 provide an appropriate statutory basis to demand the
17 records described in your e-mail of the 16th November."
18

19 what's really going on there in the sense of -- is this
20 the provision of the civil material? 11:45

21 A. Yeah, I think that's certainly my recollection, that
22 there was dialogue around the limitations that might be
23 there around what should or what could be provided to
24 Authority at that point.

25 169 Q. Okay. And as we know, in any event later that day, it 11:46
26 was sent?

27 A. It was sent.

28 170 Q. Okay. Can I ask you to look at the next page, there's
29 just a handwritten note which I had difficulty reading,

1 12525?

2 A. Then I suspect it is my handwriting.

3 171 Q. What is that, Mr. Nugent?

4 A. "The issues contained in the correspondence were
5 overtaken by the content of the CAO's e-mail which 11:46
6 crossed."

7 172 Q. Okay. And that's what we were talking about that it
8 went through?

9 A. As I said, you wouldn't be able to read my handwriting.

10 173 Q. Okay. Moving on a couple of days, 24th November. I 11:46
11 think Ms. Hall comes back to you about this e-mail.
12 It's 12526. It's the 24th November. She's referring
13 to an e-mail of the 22nd November, but it would seem to
14 us to be the 21st?

15 A. The 21st, I believe so, yes. 11:46

16 174 Q. She notes the attachments relate only to the civil
17 litigation. Now here she is, she says:

18

19 "According to information in the public domain, a
20 formal bullying and harassment was made about the 11:47
21 candidate in March 2017 and, indeed, that an assistant
22 commissioner has been appointed to undertake an
23 investigation into the complaint. In my letter of the
24 7th November I also requested documents relating to the
25 bullying and harassment complaint which was referenced 11:47
26 in your letter of the 25th October. I would be obliged
27 if you would provide the details requested regarding
28 this bullying and harassment complaint as per points 3
29 and 4 of that letter.

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In particular, I am requesting details of what is contained in the complaint, what steps have been taken to investigate the complaint, a copy of the relevant procedures and the timeline for completing this investigation. I would also reiterate my request for a timeline regarding both the civil litigation and the bullying and harassment allegations as set out in point 4 of my letter of the 7th November.

11:47

Please note that agree that you should redact third party information from any copy or précis of all third party information with a black marker."

11:47

Etcetera. Okay. So that is the 24th, okay. And she is coming back and she is looking for the bullying and harassment material. Now, I think that you then go back to her on the 8th December by e-mail. Do you remember this e-mail on the 8th December?

11:47

A. Yes, I do. Could we bring it up on screen?

11:48

175 Q. We will bring it up here. It appears a couple of times in the books, but it's 12533, if we can look at that one. This is "Dear Helen", this is from you on the 8th; is that right?

A. That's correct. And to explain the timeline, I would have -- if it's relevant, I would have got legal advice in relation to this and, indeed, the letter would have been composed for me in that regard.

11:48

176 Q. Okay. You say there:

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"I note your comments in respect of matters in the public domain suggesting that a formal complaint under An Garda Síochána bullying and harassment policy was lodged in March 2017. In that regard, I can confirm that difficulties were experienced in progressing an investigation in the respect of the complaint under this policy. Specifically difficulties were experienced as the complaints were broad in nature and extended to Garda members other than Superintendent Murray, covered periods before Superintendent Murray was working with Garda A and related to matters not covered by the policy."

11:49

11:49

okay.

11:49

A. Yes.

177 Q. You go on to say, you confirm that Assistant Commissioner Finn has been appointed, that he has met with Garda Keogh. Now, we know from hearing Assistant Commissioner Finn's evidence he had met with him on the 1st December, and we have seen minutes of a meeting in that regard. You say:

11:49

"The outcome of this meeting is for Garda A to specifically confirm exact matters of his complaint that relate to Superintendent Murray and which are covered by the organisation's bullying and harassment policy: "

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You say:

"Assistant Commissioner Finn expects this work to be completed shortly and the formal investigation of the relevant issues will proceed. You will therefore appreciate that I am not in a position to confirm the fact nature of the allegations under the organisation bullying and harassment policy against Superintendent Murray at this time, other than that they relate to Superintendent Murray and a number of other senior officers. Until such time as Garda A confirms the identity of all persons complained of, Assistant Commissioner Finn is not in a position to confirm when he would expect his investigation to have concluded."

11:49

11:50

11:50

Okay.

A. Yes.

178 Q. Now, we had some to-ing and fro-ing with Assistant Commissioner Finn about this meeting of the 1st and whether or not there was sufficient clarity or not, but effectively this is what you are advised legally and this is what you respond to Ms. Hall with, isn't that right?

11:50

A. That's correct.

179 Q. You say:

11:50

"For the purpose of example and to further assist in providing you with a more detailed response to your enquiry at point 3(a) of your letter dated 24th

1 November 2017. "

2
3 Can I ask you about this, you say:

4
5 "I have appended a redacted copy of correspondence 11:50
6 received from the solicitor of Garda A in which he
7 details some of his issues of complaint (appendix A). "

8
9 Now, what was appendix A, do you remember?

10 A. I don't remember. 11:50

11 180 Q. Okay. We may try and subsequently clarify that. We
12 have looked for it but, as I say, we will try and
13 clarify it.

14 A. And if I can help the Tribunal in that regard, I am
15 happy to take on board. 11:51

16 181 Q. Okay. Can you remember, though, in general terms what
17 you were sending, was a précis of the bullying and
18 harassment complaint?

19 A. I think we may have taken a general element of the
20 complaint and shown in a redacted fashion why there 11:51
21 were difficulties in specific about the nature of the
22 complaint against Superintendent Murray. So from
23 memory, it may have looked at another allegation
24 against another person, it may have been something of
25 that type. But without -- clearly redacting out the 11:51
26 issues, that would have been referenced. But, as I
27 said to the Chair, I will happily take that off line.

28 182 Q. We will keep looking, we may be able to locate it, but
29 as of this morning we don't?

1 A. Okay.

2 183 Q. You are referring to point 3(b) of her letter of the
3 24th. And you say:

4

5 "If you look at the policy, we take cognisance of fair 11:52
6 procedures and natural justice to both the complainant
7 and person complained of. It is in accordance with
8 this policy that the aforementioned investigation of
9 Assistant Commissioner Finn will be conducted."

10

11 You refer to point 4, you give your responses A, B, C 11:52
12 and D. You refer her to the chronology. We do, I
13 think, have the appendix B. If I can just open it up,
14 you might recognise it. 10331, Mr. Kavanagh. Is that
15 the appendix B that you recognise? 11:52

16 A. Yes.

17 184 Q. Okay. And that's similar to what we have seen with the
18 movement of the bullying complaint from late 2016?

19 A. That's correct.

20 185 Q. Then if we go back to your e-mail of the 8th, 12535, 11:52
21 you finish off -- so that's 12535. You finish off at
22 number D, you say:

23

24 "As I explained in my e-mail of 21st November 2017, I
25 am not in a position to provide any indication as to 11:53
26 when the civil litigation matters might be concluded.
27 This is matter for the State Claims Agency."

28

29 You say it may be many months before it's finalised.

1 So you go back to her on the 8th. Now, we will be
2 coming back again to a couple of more e-mails going
3 between both of you, but can I bring you back to a note
4 for that date that Superintendent Murray has. It's at
5 12400. He is saying he met you at the Garda college, 11:53
6 do you remember that, on that date?
7 A. Yes, I would be down regularly. But, yes, again I
8 don't dispute that we met.
9 186 Q. And that you told him you had sent on his civil
10 document, isn't that right? 11:53
11 A. That's correct.
12 187 Q. And that they were now looking for the bullying
13 complaint, okay?
14 A. Yes.
15 188 Q. So he said, and he is attributing this to you: 11:53
16
17 "He was having that material prepared to be sent down
18 to them in a few days. He said he assured the PA that
19 the bullying complaint mirrors the civil complaint."
20 11:54
21 I think you accept that, yes?
22 A. Yes.
23 189 Q. "Which they have and is a wide sweeping, non-specific
24 set of allegations covering a number of people over a
25 period of time." 11:54
26
27 So was that your view?
28 A. That was my view, the absence of specificity, which the
29 Policing Authority were seeking.

1 190 Q. He is saying that you gave him an assurance that the
2 top three were highly supportive. Can you tell the
3 Chairman about that?

4 A. Yeah. Again, as I referenced earlier, we were very
5 keen to provide the material necessary to the Policing 11:54
6 Authority to enable them to make their decision.

7 191 Q. He continues, and I want you to look at this very
8 carefully, he says that you had spoken to the PA re
9 that and had given them assurances about my character.
10 Is that correct? 11:54

11 A. So what -- I can't say I used those particular words.
12 What would I have said is that at that point in time I
13 wasn't aware of any issues that had been proven against
14 Superintendent Murray at that point.

15 192 Q. He records that you said that you advised the PA that 11:55
16 they shouldn't be doing what they are doing and taking
17 account of unsubstantiated allegations being decisions?

18 A. I don't recall saying those words, but I certainly
19 would have expressed concerns to the Policing Authority
20 about the fairness of the process. It's their process 11:55
21 ultimately, so I'm not going to be critical of them.
22 In my view, as I said, in my civil service experience
23 it's not fair.

24 193 Q. Okay. It would seem to suggest that at this stage,
25 certainly by the 8th November, the previous meeting on 11:55
26 the 23/11 has passed, he hasn't been promoted, there's
27 now another meeting coming up I think on the 18th
28 December. But at this stage are you set against each
29 other, the senior executive of An Garda Síochána and

1 the Policing Authority on this issue?

2 A. No. No. I wouldn't say that. I mean, I said, and I
3 have been very clear, I have absolutely no desire
4 whatsoever to criticise the Policing Authority. The
5 Policing Authority have a set of processes. They 11:56
6 follow the process. It's my job to provide them with
7 the information they require. That I did. As I said,
8 I'm offering a personal view, and it's certainly the
9 view elsewhere, that the process by its nature, which
10 would allow somebody's promotion to be deferred where 11:56
11 due process has not concluded, seems to me to be
12 unfair.

13 194 Q. Well that's if, I mean, as I say, we're not
14 investigating the Policing Authority's process?

15 A. No, no, I am just saying. If we park Superintendent 11:56
16 Murray, just the generality of a process that would
17 allow an allegation be made unproven, unproven at that
18 point and that would delay somebody's appointment, in
19 my opinion is not what I have seen across the public
20 service throughout my civil service career. 11:56

21 195 Q. Okay.

22 A. But to be very clear, we're not at odds, not at odds
23 with the Policing Authority.

24 196 Q. CHAIRMAN: Sorry?

25 A. I say we're not at odds with the Policing Authority. 11:56

26 197 Q. CHAIRMAN: No, I understand.

27 A. I wouldn't like it depicted in that way.

28 198 Q. CHAIRMAN: No.

29 A. We may again disagree on the process but it's their

1 process and we provide the information that they
2 require.

3 199 Q. MS. McGRATH: Okay. Now I think that was the 8th
4 December, I think the Policing Authority come back to
5 you, on 12531, which is the 14th December? 11:57

6 A. So there was an issue, I think, in relation to whether
7 material may have been complete or not. So, Ms. Healy,
8 who works for the Policing Authority, was in touch to
9 get touch on clarity on what was there. Again, from
10 memory there was some uncertainty that they had been 11:57
11 provided with all of the information that been saying
12 was being sent down from ourselves.

13 200 Q. And you go back, there's a reply to this from yourself
14 on the 18th December, which is at 12530. Do you
15 recognise this e-mail? 11:58

16 A. Yes.

17 201 Q. "Further to my conversati on wi th Helen on Fri day, I
18 confirm that the material provided last week is a
19 complete document and deals wi th the substantive nature
20 of the complai nt. The appendices referenced were not 11:58
21 included as they are only an add on to the detail of
22 the substantive issue and the very considerable task of
23 reaction (over 60 pages) would have delayed the
24 transmission of the primary element of the document. I
25 further understand that the appendices were passed 11:58
26 directly to the Policing Authori ty by the solici tor to
27 the complainant under separate cover."

28
29 Does that help you jog your memory as to what actually

1 appendix A was?

2 A. It doesn't. But, as I said, Ms. McGrath, I will check
3 into that over lunchtime, if that's helpful.

4 202 Q. Okay.

5 A. But what is here, there is a view in the Policing 11:58
6 Authority that we haven't provided them with all the
7 information. Like we have replied in that regard.

8 203 Q. Ms. Hall comes back to you on the 22nd December, that's
9 at 12536. She says:

10 11:59

11 "Dear Joe, I refer to your e-mail below and to the
12 follow up material received. As the Chairperson
13 explained to you, it was not possible for the Authority
14 to fully consider the clearance of Superintendent
15 Murray in the absence of full information regarding the 11:59
16 bullying and harassment complaint against him.

17
18 We note that you state in your e-mail below that until
19 such time as Garda A confirms the identity of all
20 persons complained of, Assistant Commissioner Finn is 11:59
21 not in a position to confirm when he would expect his
22 investigation to have concluded.

23
24 It is not clear on the basis of information you have
25 provided us with that the delay in commencing an 11:59
26 investigation is justifiable or in accordance with the
27 bullying and harassment policy forwarded by you on the
28 8th December. We note that the policy contains a
29 commitment to select a suitable investigator, which has

1 now been done, and that the investigator will report
2 their findings within 28 days of they being received at
3 the divisional office.

4
5 In the interests of fairness to Superintendent Murray 12:00
6 and the complainant, we would request that this matter
7 be dealt with expeditiously and that a further update
8 in relation to the commencement and progress of this
9 investigation be provided to the Authority well in
10 advance of its next Authority meeting on 25th January 12:00
11 2018. "

12
13 So at this stage we have passed the date of the 18th
14 December?

15 A. Yes. 12:00

16 204 Q. Which is the Policing Authority --

17 A. Which was the Policing Authority meeting.

18 205 Q. So now it's gone down the road into January at the very
19 least?

20 A. That's correct. 12:00

21 206 Q. Okay. She is asking you then for further information.
22 We know and we have seen that Ms. Hall e-mails
23 Superintendent Murray on the 22nd December and she
24 refers to repeated requests for information to you.
25 Now, I can open it if you like, but is there some 12:00
26 frustration building here with regard to the provision
27 of material?

28 A. I think there's frustration on all parties,
29 Superintendent Murray, the Policing Authority and

1 myself with regard to the provision of the information.
2 Yes, I think that's fair.

3 207 Q. Okay. Now you rang Superintendent Murray on the same
4 day, the 22nd December. It's 12407. It says:

5
6 "Joe Nugent rang me re my e-mail and call. He said the
7 PA are looking for further clarification material now
8 and he had given them verbal assurances and summaries
9 of information but they remained unsatisfied and that
10 they were seeking more." 12:01

11
12 Is that correct?

13 A. The Policing Authority were unsatisfied and they were
14 looking for information. Yes, that's correct.

15 208 Q. You said: 12:01
16
17 "I told him I feel the PA are adamant they don't want
18 to promote me."

19
20 And you said you didn't get that sense. Okay? Do you 12:01
21 accept that?

22 A. I accept what the Policing Authority were trying to do
23 were to get the information to enable them to make a
24 decision and they felt that -- so it wasn't anything
25 about Superintendent Murray per se, it was more about 12:01
26 the process had not concluded to a fashion that would
27 allow them make that decision.

28 209 Q. Okay. In the last sentence, again you reassured him,
29 he is saying:

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"...on all three executive support and their
realisation of the unfair way I am being treated."

You have already given your evidence to the Chairman in relation to that? 12:02

A. Yes.

210 Q. Now, can I ask you, on the same day, there's a note, 12309. This is actually a phone call between Superintendent Murray and Assistant Commissioner Finn, who had been put in place on the 15th November. And the reason I am asking you about this is that it is recorded here that Assistant Commissioner Finn said he would contact Joe Nugent and K Mulkerrins re legal issues. Right. Now, I think at that stage you would have been aware that Superintendent Murray was raising issues with Assistant Commissioner Finn as to how he could run the B&H in parallel with the civil litigation; isn't that right? 12:03

A. That's correct. 12:03

211 Q. Okay. I think you were in some contact with Assistant Commissioner Finn, is that correct?

A. So I was in touch with Assistant Commissioner Finn to obtain some further information about the status of the matter and also there would have been probably discussion around the issues associated with the legal issues that have been referenced there by Superintendent Murray. And by that I mean we wouldn't have got into what the issues were, but there would 12:03

1 have been a discussion saying there are legal issues
2 here, there are potential legal issues upon which we
3 need legal advice. Ms. Mulkerrins, to explain, is now
4 the executive director for legal services, so would now
5 be taking the lead in this space. 12:04

6 212 Q. Okay. So we see you're speaking to Assistant
7 Commissioner Finn during this process as well, is that
8 right?

9 A. Speaking to him, not about the investigation, but more
10 the status of the investigation. That was the nature 12:04
11 of my contact.

12 213 Q. Now, if we can move along then, I think that on the
13 22nd we see things go quiet for a little while over the
14 Christmas period, is that right?

15 A. Yes. 12:04

16 214 Q. And we have again some notes from Superintendent
17 Murray, he is in contact with you on the 8th January,
18 at 16243:

19

20 "Phoned Joe Nugent. No answer. Mr. Nugent called 12:05
21 back. "

22

23 Do you see that?

24 A. Yes.

25 215 Q. Do you remember this particular call? 12:05

26 A. Again, I won't dispute the call. So, I can't recall it
27 directly. As I said, there were so many calls, I
28 couldn't be --

29 216 Q. Okay. He is saying that:

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"We discussed me being passed over for a second time. He said he was anxious to get me over the line as he felt I have been badly treated."

12:05

So this is quite a theme that is developing in the sense of the organisation supporting Superintendent Murray and the phrase here is "getting him over the line" do you accept that language or the sentiment that is being expressed?

12:05

A. I certainly express the sentiment. I mean, again to reflect on this, this matter, just this particular matter had now been running since -- are we saying the request was the 12th October I think, so at this point we had essentially run -- just on this issue, had been running for a series of months. In that regard, it was taking an excessive amount to address whether Superintendent Murray should be promoted or not. That's unfair. I am not putting blame on anybody, but I am saying it is unfair for the length of time for this to be dealt with. You know, I take responsibility for the material we provided to the Policing Authority and that wasn't answering the questions they have. That is unfair and it was unfair on Superintendent Murray that it would drag on that long.

12:06

12:06

12:06

217 Q. Well, he goes on in a lot more detail. He said that you were meeting Helen Hall on the 11/1 in a different context and you were going to meaningful discuss his case with her.

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"Says he will have a better sense of the issue then but he mentioned that it's about the bullying. He offered the opinion."

12:06

And this is you:

"That I couldn't have bullied Garda Keogh in the short time I was with him."

12:06

Did you offer that opinion?

A. I don't recall saying that. I just don't recall saying it.

218 Q. "He says."

12:06

And this is you

"It was all normal managerial dealings with work related issues, as Judge Charleton said in the Harrison case."

12:07

Did you say that?

A. And again, I suspect that there was a conversation between Superintendent Murray where he would have been, you know, putting his position in relation to the matter, so I may well have said that from what he describes and that was the case.

12:07

219 Q. You may have said it?

A. I may have said it in the context of how it was

1 described, but not on the basis of information,
2 separate information I would have had.

3 220 Q. It says:

4

5 "I told him about the bullying case in the Supreme 12:07
6 Court and Judge Charleton's involvement in the Reddy
7 case. I brought up Garda Keogh's allegations re ex
8 Commissioner O'Sullivan in April '15 and explained how
9 ludicrous it was. He agreed."

10

11 Is that correct?

12 A. Is which correct? That I agreed.

13 221 Q. He agreed. Yes.

14 A. And I don't know what I was agreeing to, so...

15 222 Q. Well, it was the previous sentence? 12:07

16 A. Okay. Well, you know, there's a couple of things
17 there. But, no, I don't know. I can't recall that.

18 223 Q. Okay. He, this is you:

19

20 "Brought up Garda Keogh's complaint re overtime. I 12:07
21 said the sergeants deal with that. He..."

22

23 which is you.

24

25 "...offered it as an unbelievable issue to stop my
26 promotion with."

27

28 Is that correct?

29 A. It would sound, at face value, yes. It's certainly

1 unproven at that point in time.

2 224 Q. Okay, so you are digging into the substance of the
3 matter here with him?

4 A. So, Superintendent Murray is explaining to me the
5 situation that he faced and I am offering a personal 12:08
6 view, and it is only a personal view, about whether
7 what was being described, which at that point in time
8 had not been proven as bullying, as unfair. I still
9 hold that view.

10 225 Q. "I asked him if he knew of anything else and I was very 12:08
11 confident I had done nothing wrong. He agreed and said
12 as far as he know this was the only issue."
13

14 Again, is that correct?

15 A. That sounds fair. 12:08

16 226 Q. Okay. what happens then, it would seem from the
17 e-mails that we have seen, is that -- so that date,
18 just let me refresh, that is the 8th January, and a
19 couple of days later you write to Assistant
20 Commissioner Finn. This is at 12549, which is the 11th 12:09
21 January. So 12549. And you say:
22

23 "We spoke briefly about this earlier this week."
24

25 This is Assistant Commissioner Finn. 12:09
26

27 "Grateful if you were able to send me something short
28 by means of update which might answer some of the
29 issues raised by Helen Hall."

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He comes back to you on the 15th, which is 12547, and this is --

A. A status update.

227 Q. -- a status update, which we will go through with Assistant Commissioner Finn when he is recalled. He is giving you, as you say, the status update of the investigation. And he says at number 11: 12:09

"It is anticipated it will take a number of weeks to complete the investigation." 12:09

Do you see that?

A. Yes.

228 Q. Now, I think you send that on to Ms. Hall on the same day, isn't that right? 12:10

A. That's correct.

229 Q. That's the 15th January. And what happens then, the next contact is, she comes back to you on the 18th January, and this is 12544, the 18th January? 12:10

A. Yes.

230 Q. She says:

"I refer to our conversations yesterday and earlier today in relation to this matter. As I understand it, the Garda Síochána has recently received a refinement of the bullying and harassment complaint (dated March 2017) previously received in relation to Superintendent Murray. In order to ensure that the Authority are 12:10

1 provided with the most up-to-date information on this
2 matter, I would request that you forward any updated
3 allegations and/or refinement of previous allegations
4 to us as quickly as possible so as to avoid any
5 unnecessary delays in advancing this clearance
6 process. "

12:11

7
8 So that is the 18th January. Do you see that?

9 A. Yes, I do.

10 231 Q. That's the essence of that e-mail really. I think what
11 is really coming out of that, would that be a reference
12 to the addendum complaint that was handed to Assistant
13 Commissioner Finn when he met Garda Keogh on the 1st
14 December?

12:11

15 A. Yes, that's correct.

12:11

16 232 Q. I think she comes back to you on the 23rd January,
17 looking for this, because there was a clarification on
18 the date issue?

19 A. That's correct.

20 233 Q. Which we don't need to go into?

12:11

21 A. Yeah.

22 234 Q. But she comes back to you, 12539.

23 A. Yes.

24 235 Q. And at 12539, this is the 23rd January, she says:

25
26 "In reference to my e-mail below of the 19th January,
27 we are still awaiting the updated allegations and a
28 refinement of previous allegations that you referred to
29 last week when we spoke. As you know, I want to avoid

12:12

1 any unnecessary delays in advancing this clearance
2 process, so I would appreciate if this information
3 could be provided to us today."

4
5 okay?

12:12

6 A. Okay.

7 236 Q. Then you go back to her, the following day I think it
8 is, and it is at 12538. You say:

9
10 "I refer to your request in respect of the nature of
11 the additional information provided to AC Finn as part
12 of his investigation. I can confirm that the
13 additional material provided almost entirely relates to
14 the broad bullying question and related to individuals
15 other than Superintendent Murray. Only one reference
16 was made to Superintendent Murray (below) and in that
17 regard it related to clarification of one small aspect
18 of the allegations against Superintendent Murray."

12:12

12:12

19
20 Now, this gets to the nub of it. You put in the
21 extract from the addendum, which is on the 2/3/2017:

12:13

22
23 "Garda A states he met Garda T for the purpose of
24 making a statement."

12:13

25
26 And Garda A is Garda Keogh, isn't that right?

27 A. I believe so, yes.

28 237 Q. "And it became evident to Garda A that he should make a
29 written statement. Garda A states that he gave a

1 written statement to Garda T on 27/3/17 and heard
2 nothing further about the processing of the complaint
3 at such time. Garda A states that he didn't realise
4 that the complaint had gone missing until he found out
5 that Superintendent Pat Murray (who had come to Athlone 12:13
6 from Garda G's region) was on the promotion list. It
7 is further stated that Garda G was the point of contact
8 with the Policing Authority and therefore critically
9 involved in any clearance of Superintendent Murray in
10 respect of his bullying complaint to the Policing 12:13
11 Authority for the purposes of the promotion."
12

13 As I say, that came from the addendum Garda Keogh
14 handed over on the 1st December; isn't that right?

15 A. That's correct. 12:13

16 238 Q. Okay. So I think that is where effectively the to-ing
17 and fro-ing with the Policing Authority ended as
18 regards information, is that right?

19 A. Well, no, there's one further interaction, which was on
20 the 26th. 12:14

21 239 Q. We will come to that in a moment, where you are asked
22 for the clearance?

23 A. Yes.

24 240 Q. But as regards the information, sorry, of the bullying
25 complaint, that was where it ended? 12:14

26 A. That was where it ended.

27 241 Q. Okay. And that was the information they had?

28 A. Yes.

29 242 Q. Now, as I say, that brings us up to January, the 24th

1 January. Now, in the meantime, what we have then in
2 the days in between that, we have some further notes
3 that Superintendent Murray kept and. One of them would
4 be 12413. This is a conversation you had with him,
5 which is a couple of days before, while all these 12:15
6 exchanges are going on with the Policing Authority, he
7 says he's talking to you, do you see that?

8 A. Yes.

9 243 Q. That you said, midway down, you're working with Finn in
10 providing a report to the Policing Authority and 12:15
11 understanding where M Finn is. And that's what we saw,
12 isn't that right?

13 A. The status update, yes.

14 244 Q. Yes. 12:15

15
16 "He said the PA realised they were being unfair to me.
17 He said he expected a positive outcome and would
18 contact me if anything cropped up to change that."
19

20 Is that correct as of that date, the 12th? 12:15

21 A. I think, and it comes back to this question of
22 frustration, I think that they and ourselves were
23 collectively recognising that the process was being
24 unfair as opposed to the decision. So I can't say I
25 used the words that they are unfair, but the generality 12:15
26 of it was, this matter, the clearance matter was taking
27 an excessive amount of time.

28 245 Q. Now, we know that Assistant Commissioner Finn down with
29 Superintendent Murray a couple of days later, on the

1 18th January. would you be aware of that from the
2 papers?

3 A. No.

4 246 Q. He referenced a four and a half hour meeting with
5 Superintendent Murray, do you remember that? 12:16

6 A. No.

7 247 Q. Okay. well, if I can just ask you to look at 12378.
8 12378. Actually it's a little bit unclear, so I just
9 want you to clarify this. He seems to have phoned you
10 on that day, do you see that? 12:16

11 A. Yes.

12 248 Q. He says:

13

14 "No answer, left message."

15 A. Okay. 12:16

16 249 Q. He is asking you had you spoken to M Finn.

17

18 "F Healy report analysis. My question re my defence
19 document. Do PA realise the legal issues?"

20 12:16

21 Are these all familiar issues to you at this stage?

22 A. Yes.

23 250 Q. Okay. It says:

24

25 "Joe Nugent conversation 20/1." 12:16

26

27 Do you remember having a conversation with him on 20/1?

28 A. I don't recall, but again, I'm not -- if Superintendent
29 Murray recorded the notes, I won't dispute them.

1 251 Q. Well, he has a note here of 12418 of that conversation:

2

3

"Phoned Joe Nugent as instructed."

4

5

I think you had told him to phone you back at a particular time that was suitable; is that right?

12:17

6

7

A. That's probably it.

8

252 Q. You are telling him that you are going to be talking to Helen Hall again on Monday and Tuesday.

9

10

12:17

11

"He doesn't know what they are going to do at their meeting but he assured me he will make sure they have all they want."

12

13

14

15

So at this stage you're assuring Superintendent Murray that you're working closely with the Authority, is that right?

12:17

16

17

18

A. That's correct.

19

253 Q. Now he says he told of the four and a half hour meeting he had with Assistant Commissioner Finn and he says:

20

12:17

21

22

"Assistant Commissioner Finn's view is that all is okay."

23

24

25

Do you remember a conversation around that?

12:17

26

A. No, I don't. But I would suspect -- the only piece that I would have, I can only envisage, related to the status of the material and the provision by me to the Policing Authority of the material that's there. But I

27

28

29

1 certainly have no recollection of talking about the
2 specifics. In fact, I don't recall any discussion
3 around the specifics of Assistant Commissioner Finn's
4 investigation. It would merely have been about
5 something, you know, that I am working on with it, but 12:18
6 certainly not in any detail at all.

7 254 Q. Well, when Superintendent Murray was asked about this
8 on Day 146, at page 113, he saw this as AC Finn passing
9 on assurances to you. When he references the words
10 assurances and what is being assured about, what is 12:18
11 your understanding of that?

12 A. My understanding is that the material that was needed
13 to assist the Policing Authority to make a decision was
14 being provided. No more than that. Certainly there
15 was no more assurances around the nature of what was 12:19
16 being considered by Assistant Commissioner Finn's
17 investigation. So assurances would have related to
18 where this investigation is in terms of its current
19 position, assurances would have been around the
20 timelines provided, assurances that AC Finn was dealing 12:19
21 with the matter expeditiously and assurances on my part
22 that that information would be communicated to the
23 Policing Authority, as we did earlier.

24 255 Q. Okay. Because a couple of lines down:
25
26 "Joe Nugent spoke about M Finn doing his investigation
27 quickly."

28 A. Yes, I would have asked him, I mean this is in the
29 broad context, to say this matter had been going on

1 since March and that I really felt that the matter
2 needed to be progressed.

3 256 Q. Now, moving along then, as we say, your information,
4 we're calling it, contact with the Policing Authority
5 had run its course by the 24th January, as we just saw, 12:20
6 when you went back about the addendum, isn't that
7 right?

8 A. That's correct.

9 257 Q. Superintendent Murray has a note, at 12421, where he
10 says he got an unexpected call from you and that you 12:20
11 said.
12

13 "The PA had just confirmed to him that there is now
14 nothing outstanding in relation to me from the Guards
15 that they want." 12:20
16

17 Is that right?

18 A. That's correct.

19 258 Q. Okay. Then, as you said yourself, you had one further
20 dealing with the Policing Authority on the issue, that 12:20
21 was on the 26th January. This would be at 12570. This
22 is where you enclose a declaration of suitability in
23 respect of Superintendent Murray, and you say:
24

25 "I declare that there are no grounds known to Garda 12:21
26 Síochána relating to health, character or otherwise why
27 Superintendent Pat Murray is not suitable to be
28 appointed to the position of chief superintendent at
29 this time. I declare that the candidate is suitable to

1 be appointed to the post of chief superintendent having
2 regard to the candidate's sick leave record and any
3 relevant sick leave regulations and policies. "

4
5 Can you tell the Chair how that came about? 12:21

6 A. So, that day there was a meeting of the senior
7 leadership team in Wexford, I took a phone call from
8 Ms. Hall to say that they required one final piece,
9 which was a declaration from the organisation in
10 relation to Superintendent Murray's suitability for 12:21
11 promotion. I sought advice from Ms. Mulkerrins, who
12 was in attendance at the meeting in this regard, and
13 that resulted in this declaration being sent to the
14 Policing Authority.

15 259 Q. Okay. As you say there, you sought advice from the 12:21
16 organisation?

17 A. I sought advice from the legal representative of the
18 organisation, just to be very clear, I sought advice
19 from the legal representative of the organisation.

20 260 Q. Okay. Now, I think as we know then, the superintendent 12:22
21 was subsequently promoted, isn't that right?

22 A. That's correct.

23 261 Q. At the next meeting. And you're aware of that?

24 A. Yes.

25 262 Q. Was that effectively where matters ended? And the 12:22
26 reason I ask you that, because we are now in January,
27 the end of January 2018, and in disclosure we were
28 provided with some text messages, and you might have
29 seen them, at 12574. This is 16th February 2018. Did

1 you see these in disclosure?

2 A. I have seen them, yes.

3 263 Q. These are text messages between yourself and the
4 Policing Authority; is that right?

5 A. I apologies, I couldn't hear, could you say that again, 12:23
6 please?

7 264 Q. Are these text messages between yourself and the
8 Policing Authority?

9 A. I suspect so, yes.

10 265 Q. I want to ask you, not to go into the details of them, 12:23
11 but was there ongoing issues or was the matter at an
12 end in relation to Superintendent Murray?

13 A. No, I think as far as I was concerned the matter was at
14 an end.

15 266 Q. You're not aware of any ongoing issues? 12:23

16 A. No.

17 267 Q. Okay. All right. And really then to bring your
18 involvement with all of this -- I mean, you will be
19 cross-examined by other parties, but to ring your
20 involvement to a close, we saw Assistant Commissioner 12:23
21 Finn's report coming in at the end of 2018. Where we
22 see you getting involved again is, we know that
23 Assistant Commissioner Fanning can't complete the
24 review and I think you were the person to put Assistant
25 Commissioner O'Brien in place in January 2019; is that 12:24
26 right?

27 A. That's correct.

28 268 Q. If you just give me a moment, Mr. Nugent?

29 A. Of course.

1 269 Q. Thank you, Mr. Nugent. If you can answer any
2 questions, please?

3

4

END OF EXAMINATION

5

12:24

6

CHAIRMAN: Thanks very much. Now. Yes, Ms. Mulligan.

7

8

MR. JOSEPH NUGENT WITNESS WAS THEN CROSS-EXAMINED BY

9

MS. MULLIGAN, AS FOLLOWS:

10

12:24

11 270 Q. MS. MULLIGAN: Good afternoon, Mr. Nugent. Can I just
12 ask, in relation to your role, to be clear, you step
13 into the shoes of Acting Commissioner Ó Cualáin because
14 of an identified conflict.

15

A. Yes, that's correct.

12:24

16 271 Q. So from an organisational point of view, it wouldn't be
17 ordinary for the CAO to perform either of the two roles
18 that we just heard about between yesterday and today?

19

A. It wouldn't be -- it wouldn't be usual, I think would
20 be fair to say. I am struggling to think of other
21 examples.

12:24

22

272 Q. Yes.

23

A. But it would not be inappropriate.

24

273 Q. No suggestion from that point of view. My question is,
25 so it's not something that you would do on a regular
26 basis?

12:24

27

A. No, certainly not, no.

28

274 Q. Ordinarily that role would be filled by the acting
29 commissioner and you, in doing these two pieces, we'll

1 say, in relation to directly with Garda Keogh and
2 directly dealing with Superintendent Murray, were in
3 new territory, would that be fair?

4 A. I think that's fair.

5 275 Q. Okay. Just in relation to how we deal with the issue 12:25
6 of the promotion. You said yesterday that you didn't
7 think it would be appropriate for you have contacted
8 Garda Keogh and that was a matter for HR. And then we
9 see in relation to the promotion, what I am going to
10 describe as, an extensive amount of contact, largely 12:25
11 which you don't dispute, between yourself and Pat
12 Murray. From an organisational point of view, can you
13 see how that might look as somewhat suspicious to both
14 the general public and in particular to Garda Keogh?

15 A. No. 12:25

16 276 Q. No? You don't see any --

17 A. No, I don't. I mean Superintendent Murray was -- the
18 matter that we are talking about here relates to the
19 promotion of Superintendent Murray. In many ways it
20 had nothing to do with anyone else in the organisation 12:25
21 and I don't mean that in a disrespectful way, the
22 matter related to Superintendent Murray. I was the one
23 who was tasked with addressing and engaging with the
24 Policing Authority in relation to that matter. I
25 wasn't the person who was tasked in relation to dealing 12:26
26 with the bullying and harassment allegations levelled
27 by Garda Keogh. So my engagement with Superintendent
28 Murray seems to me most appropriate. In fact, I think
29 it would have been -- I think I was equally critical of

1 the organisation yesterday in terms of not providing
2 sufficient information to Garda Keogh in relation to
3 what was happening in relation to the bullying
4 complaint.

5 277 Q. Just to go back then to my question then in relation to 12:26
6 the level of contact that you had with Superintendent
7 Murray, I think I know the answer because you haven't
8 done this role before, can you confirm or deny to the
9 Chairman whether or not you viewed that contact as
10 quite substantial? 12:26

11 A. Yeah, it was substantial. I think we equally need to
12 reference that a lot of the contacts were occurring in
13 or around meetings of the Policing Authority, where
14 these matters were going to be addressed. So there was
15 naturally a spike of contact in advance of that. 12:27
16 Clearly it was equally unusual for somebody whose
17 promotion was being put forward, and was being delayed
18 because a matter had not gone through due process,
19 that's unusual as well. So it is not surprising, if I
20 was sitting in Superintendent Murray's shoes, that I 12:27
21 would equally have been seeking assurances that the
22 material that was required by the Policing Authority
23 was being provided. And ultimately that's really what
24 Superintendent Murray was on to me about.

25 278 Q. We will come back to this issue of due process in due 12:27
26 course. But can we just go back for a minute and look
27 at Garda Keogh and your decision not to contact him
28 after you had this initial meeting? You say it was a
29 matter for HR, yes?

1 A. Sorry, after which initial meeting now?
2 279 Q. So your case conference?
3 A. Okay.
4 280 Q. Singular case conference.
5 A. Okay. 12:28
6 281 Q. And in that regard you decided that it wasn't
7 appropriate because HR could do it. You have just
8 identified to the Chairman Superintendent Murray's need
9 to be reassured in terms of the organisation. Did
10 Garda Keogh not require the same level of reassurance 12:28
11 in terms of the organisation and would it not have been
12 appropriate for to you reach out to give that
13 assurance?
14 A. I said equally yesterday I was comforted by the level
15 of contact there had been between HR and Garda Keogh. 12:28
16 It seemed to me that for me to step into that space
17 would only be complicating matters. There was agreed
18 communication lines open, the chronology shows there
19 was substantial contact between the organisation and
20 Garda Keogh. So, therefore, it seemed to me to be -- 12:28
21 it was not my role to become involved in that.
22 282 Q. And again, I am just going to clarify, in terms of
23 while it may not have been your role, in terms of the
24 concept of the reassurance and going back to your
25 concept of fair procedures and justice being seen to be 12:29
26 done, we have a situation now where we see you having
27 extensive contact with Superintendent Murray about a
28 promotion which is largely linked to this issue of
29 bullying and harassment, and you have given your

1 evidence to the Tribunal that you didn't think it was
2 appropriate to make any contact with Garda Keogh. I
3 just want to give you the opportunity to clarify any
4 position that you might have. But it appears,
5 certainly to me, that an issue arises with the 12:29
6 hierarchy changes, the level of contact and importance
7 changes.

8 A. No --

9 283 Q. Sorry, just so I am clear and so that you can give your
10 he evidence to the Chairman, Superintendent Murray 12:29
11 gets, I recall it, contacted three to four times a week
12 for a period of three months. Garda Keogh finds
13 himself in a situation where he gets a number of
14 letters and some contact, finds out about a meeting, a
15 case conference and you don't think to pick up a phone 12:30
16 and reassure him in any way when you are stepping into
17 the shoes of the Commissioner. I just want to give you
18 an opportunity to comment on that?

19 CHAIRMAN: what is your question, Ms. Mulligan?

20 MS. MULLIGAN: I just want to give him an opportunity 12:30
21 to comment on whether or not he thinks that is
22 appropriate.

23 CHAIRMAN: what's appropriate?

24 MS. MULLIGAN: Not making contact.

25 CHAIRMAN: That he should have phoned Garda Keogh. 12:30
26 MS. MULLIGAN: Yes.

27 284 Q. CHAIRMAN: Okay. Should you have phoned Garda Keogh?

28 A. No, I should not have phoned Garda Keogh. I was tasked
29 -- you have contrasted that with my engagement in

1 relation to Superintendent Murray. I was personally
2 tasked with providing the information to the Policing
3 Authority in relation to Garda Murray's promotion
4 [sic]. My role in relation to Garda Keogh was about
5 the process. There were others who were tasked with 12:30
6 making and dealing with those issues. That was their
7 responsibility. For me to become involved, in my
8 opinion would have been inappropriate.

9 285 Q. MS. MULLIGAN: So you were personally tasked to liaise
10 with the Policing Authority for Superintendent Murray? 12:30

11 A. I was personally tasked with addressing those issues,
12 yes.

13 286 Q. Yes, but with the Policing Authority, not with
14 Superintendent Murray?

15 A. But that required the engagement with Superintendent 12:31
16 Murray. It wouldn't have been possible to do this with
17 it. Because there were clearly -- and we have seen
18 some of the interactions, where there was a necessity
19 to ensure that Superintendent Murray's materials were
20 -- in some instances whether Superintendent Murray was 12:31
21 satisfied with the material being provided. So it
22 would not have been possible to do that without having
23 contact with Superintendent Murray.

24 287 Q. Okay. In relation to your role in Superintendent
25 Murray's engagement with the Policing Authority, and I 12:31
26 am mindful, Chairman, of your ruling, when you
27 identified this issue of an unproven or an
28 unsubstantiated allegation and you identified to the
29 Chairman the need for due process, can I confirm, are

1 you discussing the idea of the presumption of
2 innocence? Just I wasn't entirely clear what you are
3 describing as due process?

4 A. Absolutely. A presumption of innocence. At that
5 moment in time there wasn't a finding of fact against 12:32
6 Superintendent Murray. And in my view, in my civil
7 service experience I have not come across situations
8 where matters that have not reached a finding of fact
9 would have prevented somebody from progressing for
10 promotion. 12:32

11 288 Q. I just want to give you an opportunity to make this
12 clear to the Chairman, this is the first time you step
13 into this role, yes?

14 A. It's the first time I step into this role, yes.

15 289 Q. Is it the only time you have ever had to step into this 12:32
16 role?

17 A. Yes, I believe so. From memory, I believe so, yes.

18 290 Q. Okay. I don't want to go into the role of the Policing
19 Authority in any way, and I am sure the Chairman will
20 stop me if I am do, but in relation to the appointment 12:32
21 of a chief superintendent, am I correct in saying
22 there's only 47?

23 A. It would be of that order, that's correct.

24 291 Q. You continually go back to this idea of a civil servant
25 and their presumption of how this would be unusual, but 12:32
26 surely the role of the chief superintendent within the
27 State has to be considered to a different threshold and
28 a different standard. Did you consider that at all?

29 A. Absolutely. And I don't think there is any suggestion

1 I did not. But the point is at that point in time
2 nothing had been found against Superintendent Murray.
3 That seems to me a very basic, normal natural position
4 to be. And to suggest anything otherwise, in my view
5 is unfair. I think in those circumstances anybody can 12:33
6 make -- and this is not about Garda Keogh, to be very
7 clear what I am saying here, but that fair process
8 means fair process and it cuts for all ways. And to
9 presume an outcome before a process has completed and
10 make a finding that is substantially important in the 12:33
11 context of anyone's promotion, in my view, in my civil
12 service career, a long time, as I said yesterday, I
13 have been since 2002 in senior positions in the public
14 service and across the civil and public service I
15 haven't come across it. 12:33

16 292 Q. And do you say that in relation to all allegations as
17 opposed to just the allegations that Garda Keogh made?
18 A. Excuse me, could you say that again?

19 293 Q. Do you say that in respect of all allegations, once
20 unproven shouldn't be considered, or just the 12:34
21 allegations that Garda Keogh made?
22 A. I want to be clear. I don't want to talk specifically
23 about Garda Keogh, I am talking about the generality of
24 this. That the concept that an individual could have
25 their promotion deferred because of an allegation, not 12:34
26 landed at that point in time, in my view is unfair.
27 That is not about Garda Keogh, this is a general
28 position.

29 294 Q. Just because you were stepping in the shoes of the

1 Commissioner at the time that this is relevant, does
2 that include allegations in terms of a sexual assault
3 then or of sexual harassment?
4 A. Well, you know, again that's not something that I was
5 dealing with. And without looking into specifics of 12:34
6 that, I would need -- you know, you are asking a very
7 hypothetical question.
8 295 Q. Well no, I am not?
9 A. You are.
10 296 Q. I am not, because I gave you a specific opportunity to 12:34
11 draw a distinction and say that there are individual
12 facts and then you said no, blanket, that's your
13 position?
14 A. But sorry --
15 297 Q. So now I need to ask you the question, respectfully, 12:35
16 that this is a role that should have been completed by
17 the acting commissioner, in relation to a public post,
18 of which only 47 people hold, for the benefit of the
19 State and for the functioning of the nation and in
20 those standards, perhaps using our civil service hat, 12:35
21 for want of a better word, was not entirely
22 appropriate?
23 A. I disagree.
24 298 Q. You disagree. And in terms of that issue, then we find 12:35
25 ourselves in a situation where unless an allegation,
26 irrespective of what it is, is proven, a person or a
27 member of An Garda Síochána, should be promoted to
28 senior ranks without any further question from anybody
29 else, is that your evidence to the Chairman?

1 A. I didn't say that at all.

2 299 Q. All right. Well, can I just go through -- and I don't
3 propose to reopen all of the issues that were raised by
4 Ms. McGrath, because there is so much correspondence,
5 but it appears that you don't dispute any of the -- in 12:36
6 substance any of the notes of Superintendent Murray,
7 isn't that correct?

8 A. Well, I said they were his words and I said that I
9 accepted the generality of them. But, you know,
10 without again -- if have you a specific question, I 12:36
11 would be happy to answer it for you.

12 300 Q. I am going to identify that you spoke to -- I did the
13 dates for my own record. You spoke to Superintendent
14 Pat Murray on the 31st October, on the 1st November, on
15 the 20th November, on the 16th November, on the 2nd 12:36
16 November, on the 13th November, on the 8/12, on the
17 22/12, on the 8/1, on the 13/1, on the 21st and I think
18 again on the 24th. I think there were other days as
19 well. But it's a huge amount of contact to have with
20 one member in terms of your role when you're stepping 12:37
21 into the shoes of the acting commissioner and you don't
22 take any notes, yourself, you don't take notes of that
23 correspondence or any of those conversations?

24 A. No, I don't.

25 301 Q. No. So we have notes that you don't refute in 12:37
26 substance?

27 A. In substance, no.

28 302 Q. Yes. Where you seem to accept that you believed that
29 it was unfair for a member of An Garda Síochána to

1 be -- for their promotion to be, we'll say, stalled
2 based on unproven and unsubstantiated allegations.
3 Isn't that your evidence to the Chairman?
4 A. Yes.
5 303 Q. Yes. In the role of the acting commissioner -- 12:38
6 A. Well, I wasn't in the role of acting commissioner, just
7 to be clear. There is technical difference here. I
8 was asked to take responsibility and delegate for a
9 specific function.
10 304 Q. Yes. In the role of the acting commissioner for this 12:38
11 purpose, you applied, I am going to describe it as,
12 your general civil service experience to a role that
13 perhaps required a higher level of scrutiny?
14 A. That is an extraordinary comment, I have to say. As
15 somebody who served -- 12:38
16 305 Q. Well, certainly --
17 A. Well, sorry, as somebody who has served -- let me
18 finish. For somebody who has served in senior manager
19 positions for a large portion of my career, having been
20 appointed to the position of chief administrative 12:38
21 officer in 2016, I find it objectionable, being honest,
22 that you would question my ability to make decisions.
23 That to me is not acceptable.
24 306 Q. Nonetheless, I am still doing it.
25 A. That's fine. And we disagree. 12:39
26 307 Q. And that's the position?
27 A. That's okay.
28 308 Q. Because it's my understanding of your evidence that in
29 acting as the commissioner, you have identified to the

1 Chairman that An Garda Síochána support an accused
2 until such time as an allegation has been proven?

3 A. Sorry, explain that last piece again.

4 309 Q. That in acting as commissioner, as did you in this
5 role, you have given your evidence to the Chairman that 12:39
6 An Garda Síochána support an accused until such time as
7 an allegation has been proven, irrespective of what
8 that allegation is?

9 A. And I said in relation to this particular case, that's
10 the position, yes. 12:39

11 310 Q. Well, I am going to repeat myself, you didn't say it in
12 relation to this particular case, you said it
13 generally. That was your evidence to the Chairman?

14 A. That's fair. But you're bringing about a series of
15 hypotheticals, you brought in a particular matter which 12:39
16 is not relevant to here at all. I have given my
17 general position. My general position is that to
18 withhold somebody's promotion on the back of an
19 unproven and unsubstantiated allegation is unfair,
20 based on what I have seen in multiple -- a variety of 12:40
21 different organisations across the public service.
22 That's my position. Clearly in circumstances you would
23 look at -- if there were other circumstances that may
24 apply, you might look at that differently. But in
25 general terms, yes, that is my view. And in relation 12:40
26 to this specific case, it is absolutely my view.

27 311 Q. Irrespective of the effect may have on the alleged
28 victims?

29 A. I wasn't dealing with the alleged victims, I was

1 dealing with -- in this case the issue related to the
2 promotion of Superintendent Murray, that's what my
3 responsibility was. It wasn't in relation to the
4 generality of the matters being dealt with by Garda
5 Keogh. As I said, I was dealing with the clearance of 12:40
6 Superintendent Murray in this regard.

7 312 Q. I will repeat myself. Irrespective of what happened,
8 irrespective of how this would affect Garda Keogh,
9 Superintendent Murray, prior to any determination, is
10 appointed as a chief superintendent, irrespective of 12:41
11 any outcome of the complaints made by Garda Keogh in
12 2016. We're here to discuss whether or not that had
13 the effect of discrediting or targeting Garda Keogh. I
14 am putting it to you that it must have the effect of
15 discrediting Garda Keogh? 12:41

16 A. I certainly am not in a position to give any evidence
17 around that whatsoever. My responsibility related to
18 the specific issues associated with the appointment of
19 Superintendent Murray, who entered into a process that
20 was advertised by the Policing Authority with a set of 12:41
21 procedures that were applied. My job was to address
22 and deal with those. No more than that.

23 313 Q. Very good. Could I just ask, Mr. Kavanagh, could we
24 just for the sake of completeness go to page 12390.

25 A. Sorry, I am going to turn my back on you. 12:42

26 314 Q. That's fine. Just to go to the post, the italicised
27 piece, onto the third and fourth line, the fourth line.
28 It identifies that Pat Murray spoke to Joe Nugent.
29

1 "He said Commissioner asked him to make contact. He
2 said he and the Commissioner were concerned that
3 unsubstantiated allegations could block my
4 appointment."

12:42

5
6 I think, just to give you the benefit, you said you
7 didn't say the word unsubstantiated but that is the
8 thrust of the --

9 A. Yeah, I wouldn't argue with the thrust of it.

10 315 Q. If we could just go to page 12392. Do you see that?
11 Can I just ask:

12:42

12
13 "HR confident I will be okay."

14

15 Could you just confirm for me who in HR are confident
16 he would be okay?

12:43

17 A. Can I just read this, apologies?

18 316 Q. Of course.

19 A. I am just wondering is that a separate -- maybe I'm
20 wrong, 6:28 call from Tony McLoughlin. So I am just
21 wondering if that note relates to Chief Superintendent
22 McLoughlin.

12:43

23 317 Q. Very good, you think that might relate --

24 CHAIRMAN: It does seem to be.

25 MS. MULLIGAN: No issue, Chairman, I am just clarifying
26 it.

12:43

27 CHAIRMAN: There shouldn't be any doubt about that.

28 "Call from T McLoughlin, HR confident I will be okay."

29

1 In fact, I can even envisage what that was about.

2 318 Q. MS. MULLIGAN: Okay, very good, Chairman. If we can go
3 to page 12397. Just in relation to this issue of the
4 media, all very contrived against me and worrying. I
5 think again you didn't take issue with the substance of 12:44
6 that when Ms. McGrath mentioned this piece. I just
7 want to give you again the opportunity to clarify any
8 position that you might have. Is it your position that
9 the media should have no involvement or concerns or any
10 publication of appointments of senior members of An 12:44
11 Garda Síochána.

12 A. It's my position that the process should be allowed to
13 complete and that the media commentary on that could be
14 seen to be interfering with the process. We have
15 appointed -- we put in place a Policing Authority, we 12:44
16 have put in place a process which would take the
17 appointment of senior ranks out of the hands An Garda
18 Síochána, from a public trust point of view, let the
19 Policing Authority get on with it. I am not sure what
20 the media commentary around some aspects of that, how 12:45
21 that was helpful.

22 319 Q. And just to go back then to page 12400, just to be
23 absolutely clear about this. It says:
24
25 "He gave me assurances that the top three were highly 12:45
26 supportive and that he had spoken to the Policing
27 Authority and given them assurances about my
28 character."
29

1 Can you just confirm that you are happy that you did
2 give assurances about character?

3 A. As I think I said in my evidence earlier, that I
4 suspect what I had said in that regard, that I had --
5 nothing had come to my attention at that point in time, 12:45
6 proven in fact, in relation to complaints associated
7 with Superintendent Murray.

8 320 Q. Okay. And I am going to confirm then, so in order for
9 you not to give assurances about someone's character,
10 it would have to be a proven fact as opposed to an 12:46
11 allegation?

12 A. Yeah, I would say proven, yes.

13 321 Q. And that is in all scenarios or specifically in
14 relation to the --

15 A. I think I have answered this question, Chairman. 12:46

16 322 Q. I just want to give you the opportunity because I think
17 there --

18 CHAIRMAN: We have been over it, he has made it very
19 clear.

20 MS. MULLIGAN: Very good, Chairman. 12:46

21 CHAIRMAN: It's called fair procedures.

22 MS. MULLIGAN: Very good, Chairman.

23 CHAIRMAN: That's his position.

24 323 Q. MS. MULLIGAN: Yes, very good, Chairman. Then if we go
25 to page 12407. This just relates to the diary note of 12:46
26 Chief Superintendent Murray, arising out of something
27 that Ms. McGrath asked you at page 12533. Ms. McGrath
28 asked you in relation to the documents that were sent
29 to Ms. Hall, at page 12533, what the appendix A was, do

1 you remember that?

2 A. Yeah. I said I can't answer with that is but I will
3 happily take that, see if I can clarify that and I will
4 try and do that over lunchtime.

5 324 Q. Very good. Just on that note, was there any attempt 12:47
6 or, I suppose, just trying to understand why more
7 material couldn't -- all of the material that had been
8 gathered to be provided to Mr. Finn just couldn't go
9 straight to the Policing Authority? I just wanted to
10 ask that question. 12:47

11 CHAIRMAN: Sorry, could you say that again,
12 Ms. Mulligan?

13 MS. MULLIGAN: why every piece material that everyone
14 had, be it from Pat Murray or given to Assistant
15 Commissioner Finn, why it wasn't just handed straight 12:47
16 over to the Policing Authority for them to --

17 CHAIRMAN: In other words, why was there any kind of
18 discussion as to what was to be sent?

19 325 Q. MS. MULLIGAN: Yes, just hand it over.

20 A. And this was the advice I was given, this was the 12:48
21 appropriate way to proceed.

22 326 Q. Can I just confirm, is that the legal advice that you
23 were given?

24 A. Legal, yes.

25 327 Q. And that's Mr. Ken Ruane; is that right? 12:48
26 A. Or Ms. Mulkerrins.

27 328 Q. Right.

28 A. Or Assistant Commissioner Corcoran, because they were
29 all in at different stages of the process. So, sorry,

1 apologies, for that part it would have been Mr. Ruane
2 and Ms. Mulkerrins.

3 329 Q. Just if I could go to page 12415. I am not sure if
4 this was opened to you.

5 12:48

6 "Spoke with M Finn, to meet on the 18th. See bullying
7 file. Following conversation with J Nugent and him it
8 appears to me the bullying investigation is now being
9 driven entirely to satisfy the Policing Authority and
10 to get them out of a tight spot."

11 12:48

12 Are you satisfied that that's an accurate -- I know
13 it's to Mick Finn.

14 A. It's to Mick Finn.

15 330 Q. I appreciate it's to Mick Finn, but I just want to give 12:49
16 you an opportunity because he does reference you. Was
17 the purpose of the bullying investigation entirely to
18 satisfy the Policing Authority and to get them out of a
19 tight spot?

20 A. No. 12:49

21 331 Q. No. So Superintendent Murray is incorrect about that?

22 A. Well, he was giving his opinion at a moment in time. I
23 mean, I can't answer as to what is there but I can say
24 that the bullying and harassment investigation was not
25 related to the promotional process. 12:49

26 332 Q. I just want to give you an opportunity to comment on
27 whether or not, based on what you have given to the
28 Chairman and the information you've provided, it is
29 your view that An Garda Síochána should only provide

1 material to the Policing Authority where there have
2 been proven allegations?

3 A. Could you repeat the question, please, just to be clear
4 what you are asking.

5 333 Q. That -- 12:50

6 A. We should only provide information -- but we --

7 334 Q. Against proven allegations?

8 A. No, we provided information. We have provided
9 information relating to a bullying and harassment claim
10 that wasn't proven at that stage. So I am puzzled as 12:50
11 to the premise of your question.

12 335 Q. Very good. I have no further questions.

13

14 END OF EXAMINATION

15 12:50

16 CHAIRMAN: Thank you very much. Who else?

17 MR. McGARRY: Chairman.

18 CHAIRMAN: Mr. McGarry, you're for Assistant
19 Commissioner Fanning.

20 MR. McGARRY: Yes. 12:51

21

22 MR. JOSEPH NUGENT WAS CROSS-EXAMINED BY MR. McGARRY, AS
23 FOLLOWS:

24

25 336 Q. MR. McGARRY: There is one matter, Mr. Nugent, I just 12:51
26 want to ask you about very briefly, and it relates to
27 the point of disagreement, maybe that's a strong way of
28 describing it, between yourself and AC Fanning at the
29 meeting on the 23rd October. If we could just have

1 page 10235, please. This is your letter, we had this
2 earlier, to him on 2nd November 2017. As I understand
3 your evidence, the point of disagreement related to the
4 fact that AC Fanning's view was that there was more to
5 this than simply a bullying and harassment issue, that 12:51
6 there were a whole range of issues, a much wider set of
7 concerns. He referred to the pie chart and so on; is
8 that right?

9 A. I would share that position, yes. There's was
10 disagreement between myself and the assistant 12:51
11 commissioner about the breadth of the issues, no.

12 337 Q. And it wasn't limited solely to concern on his part
13 that there had to be a Byrne/McGinn style inquiry, he
14 was concerned in a general sense that all of the issues
15 should be looked at? 12:52

16 A. I think the point of disagreement would be around the
17 approach of dealing with it. I don't think either of
18 us would be in disagreement that the matter shouldn't
19 be considered.

20 338 Q. Yes. It's perhaps not the case then that there is any 12:52
21 change of mind or change of heart on your part when you
22 refer to all the various complex issues in this letter
23 of the 2nd November?

24 A. No. Myself and the assistant commissioner were in
25 agreement that this was complex, it covered multiple 12:52
26 strands. I have no issue with that at all.

27 339 Q. Thank you.

28
29 END OF EXAMINATION

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CHAIRMAN: Very good. Anybody else? Yes,
Mr. McGuinness.

MR. JOSEPH NUGENT WAS EXAMINED BY MR. DONAL MCGUINNESS, 12:52
AS FOLLOWS:

- 340 Q. MR. DONAL MCGUINNESS: Mr. Nugent, if we could just deal with the Policing Authority issue first. In terms of the level of contact that you had with Superintendent Murray, and there seems to be some criticism about the level of contact from Garda Keogh's counsel. Superintendent Murray himself described himself as under pressure at the time, insofar as he considered he was under attack from a number of different angles. How did he strike you at the time? 12:53
- A. Yeah, I certainly share that. I think a lot of the contact was being initiated by Superintendent Murray and it reflected, I think, a broader concern that -- I think he referenced it in other evidence, about the impact this was having on himself, on his family and how he was perceived. So I absolutely felt -- and I could hear that in the nature of the tone of the conversations, that he did feel under pressure, yes. 12:53
- 341 Q. Notwithstanding anything that Superintendent Murray, as he was at this stage, would have said to you, you had a very clearly defined role at the time? 12:53
- A. That's correct, Chairman.
- 342 Q. And that role was engagement with the Policing

1 Authority, to get them whatever information they needed
2 in order to consider his promotion?

3 A. That's correct.

4 343 Q. And am I right that you didn't engage in any
5 consideration of the substantive aspects of Garda 12:54
6 Keogh's complaint?

7 A. No, certainly not, no.

8 344 Q. In your discussions with the Policing Authority?
9 A. Absolutely not, no. It was about what information did
10 they require to enable them to make their decision. No 12:54
11 more than that.

12 345 Q. And would I be correct in saying that insofar as you
13 were aware of any of the substantive allegations, that
14 information would have been in the limited context of
15 those conversations that you had with Pat Murray? 12:54

16 A. Yeah. So material I would have passed on, which
17 clearly would have got into some of the substance, was
18 literally -- I was a conduit in that regard, I wasn't
19 looking into the primary substance of that at that
20 point. 12:54

21 346 Q. And your contact with AC Finn was also only for the
22 purpose of getting information and providing that to
23 the Policing Authority?

24 A. Absolutely. The Policing Authority wanted an update as
25 to the status of the investigation, they wanted to 12:54
26 understand how long it was going to take to be
27 progressed and my contact with AC Finn was purely in
28 relation to that, no more.

29 347 Q. Did you offer to the Policing Authority any subjective

1 comments or opinions on the bullying and harassment
2 complaint?

3 A. No, I didn't. No.

4 348 Q. Just in relation to the issue of fairness, the bullying
5 and harassment complaint is one thing, it comes to a 12:55
6 conclusion, but I assume from the point of view of An
7 Garda Síochána, if someone is found to be guilty of
8 bullying and harassment or a serious breach of
9 discipline, that there are consequences for the garda
10 concerned? 12:55

11 A. Absolutely.

12 349 Q. One of those consequences for a serious breach could
13 actually be demotion; isn't that correct?

14 A. That's correct. Certainly, there would be
15 circumstances in which individuals have not been 12:55
16 promoted because of proven issues that they have had,
17 yes.

18 350 Q. Now, moving back to the first issue. You have been
19 questioned at length about the delays that have been
20 referred to in evidence. I just want to ask you a few 12:56
21 questions about that. If we could look briefly at page
22 105, please. This is the statement of Garda Keogh. I
23 have a reference to:

24

25 "I did not make my written statement to Chief 12:56
26 Superintendent John Scanlan until 27th March 2017, when
27 I physically handed to it to him. This statement went
28 missing for approximately seven months. My solicitor
29 resubmitted my bullying and harassment complaint to

1 Garda Human Resources (NK 9 refers) on 25th September
2 2017. "

3

4 Are you aware of any complaint going missing?

5 A. No, I'm not aware.

12:57

6 351 Q. This matter is further developed by Garda Keogh in the
7 addendum to the bullying and harassment complaint that
8 he gave on 30th November 2017, and it's at page 322.
9 And he states, I will just read it out:

10

11 "I heard nothing further about the processing of my
12 complaint until such time I didn't realise the
13 complaint had gone missing until I found out that
14 Superintendent Murray who had come to Athlone from
15 Donal Ó Cualáin's Western Region was on a promotion
16 list."

12:57

17

18 So, he's referencing in the first instance in his
19 discussions with the Tribunal that the complaint went
20 missing but he is tying the fact that it went missing
21 to the promotion of Pat Murray. Are you aware of any
22 connection --

12:57

23 A. No.

24 352 Q. -- between the delays -- we know it didn't go missing,
25 but between the delays and the promotion of Pat Murray?

12:58

26 A. No, I'm not aware of any.

27 353 Q. And in any sense was the so-called delays in processing
28 the bullying and harassment complaint associated with
29 the promotion of Pat Murray, to the best of your

1 knowledge?

2 A. No.

3 354 Q. Could I ask you to look at page 6873, please? Now, we
4 know that the bullying and harassment complaint was
5 completed by Chief Superintendent Scanlan or by Garda 12:58
6 Keogh on 31st March 2017. You have been asked at some
7 length by my Friend Ms. McGrath in relation to the
8 delays in dealing with the bullying and harassment
9 issue, and you indicated your concern in the October 23
10 meeting that this matter needed to move on. But if I 12:59
11 can just ask you to look at this letter. This letter
12 is from AC Fanning to Garda Keogh on the 16th May. He
13 is essentially telling Garda Keogh -- if we could just
14 scroll up, one moment please. He is essentially
15 acknowledging the fact that he still has the bullying 12:59
16 and harassment complaint in his possession at this
17 point in time, he has been on annual leave for a while
18 and he is anxious to proceed with the matter:

19
20 "In order that I can make a determination on how to 13:00
21 proceed, I would appreciate confirmation on whether or
22 not you have further material to offer in this matter
23 and, if so, I would appreciate your response to reach
24 the Commissioner, before 30th May 2017. "

25 A. Yes. 13:00

26 355 Q. So the complaint is completed in March, end of March
27 2017, AC Fanning is now indicating that he is going to
28 move forward with this issue and he wants Garda Keogh
29 to indicate if he wants to add anything further in

1 relation to it, that's essentially it.

2 A. Yes.

3 356 Q. Then if we just go 6874. Is that 6874? Yes. And at
4 paragraph three of that letter:

5

13:01

6 "Garda Keogh has indicated..."

7

8 This is Inspector McCarthy, who is assisting AC Fanning
9 in relation to this issue.

10

13:01

11 "Garda Keogh has indicated that he was satisfied that
12 all of his issues were included in both his signed and
13 unsigned statements."

14

15 So Garda Keogh is very much in the loop here at this
16 point in time in relation to his bullying and
17 harassment complaint?

13:01

18 A. Yes.

19 357 Q. We're now at the 17th May. Mr. McCarthy visited Garda
20 Keogh on the 22nd May and then the complaint actually
21 goes to headquarters on 24th May 2017. Just for the
22 record, this is in accordance with the documents at
23 10050 and 10049. I don't think we need to necessarily
24 open them. If we could have a look at document 10051,
25 please. And once more we have a communication from
26 Assistant Commissioner Fanning to Garda Keogh, saying:

13:01

13:02

27

28 "I am updating you as to the current position.

29

1 I have noted that Inspector McCarthy visited you on the
2 22nd May, where you raised two further issues. I have
3 included those issues along with your statements and
4 forwarded them to chief executive of Human Resources on
5 24th May 2017.

13:02

6
7 The purpose is, I am of a view these matters merit
8 consideration outside the bullying and harassment
9 policy. Before proceeding to the next steps, I am
10 awaiting his decision and once I have his decision I
11 will communicate with you further."

13:02

12 A. I see that, yes.

13 358 Q. And then just document 10052, please, takes us to the
14 5th June. This is again a communication from Inspector
15 McCarthy. He refers to discussions about Garda Keogh,
16 on the third paragraph there:

13:03

17
18 "On the 1st June Garda Keogh contacted me by phone to
19 confirmed that he had received this correspondence
20 dated the 31st May and that he was satisfied that the
21 matter was progressing and was thankful for the
22 progress report."

13:03

23
24 So, essentially AC Fanning has indicated this is
25 something bigger than bullying and harassment, Garda
26 Keogh is essentially saying, yes, he is happy with that
27 position. And we're now on 5th June 2017

13:03

28 A. I'd agree with that position, yes.

29 359 Q. And then, just for completeness of the record, a

1 reminder was then sent on 16th June 2017 by AC Fanning
2 to the Executive Director of HRPD. We don't need to go
3 to this document, but it's 1055, for the record. And
4 then, at document number 5902, he advised Garda Keogh
5 of this fact also. So Garda Keogh is very much in the 13:04
6 loop as of the 16th June 2017.

7
8 On 17th August 2017, AC Fanning sends a further
9 reminder and that's at document number 5898. Again, he
10 tells Garda Keogh, at document 5897, that he has sent a 13:04
11 reminder. And that document, if we just call up that
12 document, please, 5897, this document acknowledges a
13 meeting between James McCarthy, Inspector McCarthy, on
14 Assistant Commissioner Fanning's behalf:

15
16 "I wish to acknowledge our meeting yesterday." 13:04
17

18 So the meeting would have been on the 16th August.
19

20 "At your home, wherein you spoke about matters 13:05
21 regarding members of An Garda Síochána who had
22 previously served or are presently serving in
23 Westmeath. I also refer to previous correspondence."
24

25 So he is very much being kept in the loop in relation 13:05
26 to what's going on?

27 A. Yes.

28 360 Q. And there's no suggestion of a lost bullying and
29 harassment complaint or anything like that?

1 A. No, that's correct.

2 361 Q. Then if we could just go to the 17th August, which is
3 same day essentially. Page 3542. This is a letter
4 from Mr. Cullen on behalf of Garda Keogh to the
5 Minister for Justice, Nóirín O'Sullivan and Josephine 13:05
6 Feehily of the Policing Authority. And in this letter
7 there's reference to:

8
9 "Garda Keogh has been advised in fact of the
10 whereabouts in An Garda Síochána of his formal 13:05
11 complaints are unknown, his complaints have effectively
12 been clandestinely secreted and covered up."

13
14 That would appear to be completely untrue, isn't that
15 correct? 13:06

16 A. That's correct.

17 362 Q. Just for the record, that's the second paragraph on
18 that page there.

19
20 "His complaints have been effectively clandestinely 13:06
21 secreted and covered up."

22
23 Then just over the page, at 3543. The first paragraph:

24
25 "It appears on the one hand that for over 18 months any 13:06
26 investigation into this grave and systematic bullying
27 has been officially camouflaged, secreted and placed on
28 hold while on the other hand the promotion of
29 Superintendent Murray to chief superintendent has been

1 covertly preferred, protected from the inside and
2 furtively advanced."

3

4 what do you have to say about that?

5 A. It just doesn't sound consistent at all with what was 13:06
6 being -- you know, the evidence would suggest.

7 363 Q. Yes, and also is inconsistent with --

8 A. Inconsistent, absolutely, with what had been said and
9 the communications between AC Fanning and Garda Keogh.

10 364 Q. Yes. Matters progress a little, and in fairness to AC 13:07
11 Fanning, he sends a further reminder of 1st September
12 2017, that's at document number 5896. If we could just
13 have a brief look at that document, please. It's a
14 reminder but it's also a view that he continues to
15 express: 13:07

16

17 "I recommend a full investigation into this matters and
18 also that any delay should be kept to a minimum."

19

20 So the letter has two purposes. One, he wants to 13:07
21 indicate that he is still of the view that a full
22 investigation is required.

23 A. Yes.

24 365 Q. And the other is, he would like to keep the delay to a 13:08
25 minimum?

26 A. Yes, that's correct.

27 366 Q. Then if I can just go to page 5891, please. Again we
28 have a letter from Mr. Cullen, of 21st September '17.
29 This is the letter that Mr. Cullen encloses a further

1 statement from Garda Keogh, that the Tribunal has
2 already seen but I might just refer. This letter,
3 sorry, to Minister Flanagan, Commissioner O Cualáin and
4 Josephine Feehily, and it's cc'd to AC Fanning, John
5 Barrett, Clare Daly, Michael Wallace and Caoimhghín Ó 13:08
6 Caoláin TD. He encloses the additional statement that
7 Garda Keogh sent to him dated 17th September '17. And
8 if we might just call up that document, which is page
9 3560.

10
11 Now, at the bottom of paragraph 1 there, Garda Keogh
12 says:

13
14 "I want to know who is investigating this and where
15 does it stand." 13:09

16
17 And then if we go just over to paragraph 4, which is on
18 the next page, please, Mr. Kavanagh. At the end of
19 that paragraph 4, he says:

20
21 "In the meantime..." 13:09

22
23 He talks about the Policing Authority in the top of the
24 paragraph. But he finishes by saying:

25
26 "In the meantime, the actual complaint is withheld/lost
27 by Garda management to facilitate their choice of
28 candidate being promoted. Is this possible!" 13:09
29

1 Not a question mark, but an exclamation mark.

2 A. Well firstly, it was the Garda Síochána's choice
3 candidate, this was a Policing Authority, independently
4 run process. So just to say, and that last part, the
5 documents weren't lost. 13:10

6 367 Q. Yes. And then, just for completeness sake, if we go
7 over to the next page, 3562, the last line just above
8 paragraph 6. If you just scroll down to paragraph 6
9 and then stop there, please. Garda Keogh says:
10
11 "Especially since my bullying and harassment complaint
12 is now missing."
13
14 He repeats that assertion. So, it does seem somewhat
15 odd that in light of the communication with Inspector 13:10
16 McCarthy on behalf of AC Fanning, who is keeping him
17 very much in the loop, that he persists in this
18 allegation that the complaint is lost and is being
19 deliberately arrested to assist a promotion, is that
20 correct? 13:11

21 A. That's correct.

22 368 Q. Now, we will move on to -- sorry, if we just move on to
23 24th September 2017, at page 5887, please. Sorry,
24 Judge, I didn't realise it's 1:10?
25 CHAIRMAN: Have you much more to go? 13:12
26 MR. DONAL McGUINNESS: I might have perhaps maybe five
27 to ten minutes.
28 CHAIRMAN: Five or ten minutes, we will continue. We
29 will finish, Mr. McGuinness.

1 MR. DONAL MCGUINNESS: May it please you, Chairman.
2 369 Q. Page 5887 please. 5887, Mr. Kavanagh, please. Again,
3 this is another example of Inspector McCarthy writing
4 to Garda Keogh to keep him advised as to what's
5 happening, and refers to a meeting with Garda Keogh. 13:12
6
7 "I wish to acknowledge our meeting yesterday, the 25th
8 September, at your home wherein you spoke about the
9 file regarding the complaint which you discussed and
10 documented with Chief Superintendent Scanlan, 13:12
11 Portlaoise, and that to date you have received no
12 updated report regarding those allegations.
13
14 I also wish to inform you that AC Eastern Region has
15 once again written to executive director Human 13:13
16 Resources People Development on 22nd September seeking
17 an updated report regarding this matter."
18
19 So that's the position in advance of the meetings that
20 we have gone into in some detail. 13:13
21 A. Yes, that's correct.
22 370 Q. On the 2nd October and 23rd October?
23 A. 23rd, yeah.
24 371 Q. If I can just ask you to look at page 3549, please. We
25 don't have to look -- look, we've gone through this 13:13
26 already, but this is meeting where AC Fanning was
27 concerned to make an appointment under bullying and
28 harassment. He says that the investigation should be
29 made under the Byrne/McGinn model when it encompasses a

1 wider investigation. I suppose the reason I am
2 referencing this is, would you agree that it's AC
3 Fanning is concerned about making an appointment under
4 bullying and harassment because he thinks it's a bigger
5 deal? 13:13

6 A. Yes, and I had agreed with it.

7 372 Q. So at least as of the 3rd October 2017, the bullying
8 and harassment hasn't kicked in essentially because the
9 person who has carriage of it, so to speak, believes
10 that it's a bigger deal than the bullying and 13:14
11 harassment he needs --

12 A. I would agree, that's what would be suggested here,
13 yes.

14 373 Q. Then we have gone into the detail about what happened
15 next. We go on then to the -- you become involved 13:14
16 essentially on the 20th October, and the first thing
17 you do is call the meeting of the 23rd October?

18 A. That's correct.

19 374 Q. And your evidence, as I understand it, would you agree
20 with me, is, the purpose of this was to make sure that 13:14
21 all the strands in relation to Garda Keogh, one of the
22 purposes, was to ensure that all of the strands of
23 complaints that concerned Garda Keogh were being dealt
24 with properly?

25 A. That is my position, yes. 13:14

26 375 Q. And that one of those strands was the bullying and
27 harassment complaint?

28 A. That's correct, yes.

29 376 Q. And you had a different view to AC Fanning in relation

1 to this. Your view was that the bullying and
2 harassment complaint should proceed on its own?
3 A. That is my evidence and that's my position, yes.
4 377 Q. And at that meeting there was certainly some
5 disagreement as to whether or not that was appropriate 13:15
6 or not?
7 A. That's correct.
8 378 Q. As of the 23rd October, had AC Fanning changed his view
9 on that point?
10 A. Not at that point. 13:15
11 379 Q. The day after that meeting AC Fanning text Donal
12 Ó Cualáin, and just for the sake of the narrative, we
13 might just have a look at the wording of that text. AC
14 Nugent refers to it at page 6593.
15 A. I think it's 6953. 13:16
16 CHAIRMAN: This witness has nothing to do with that.
17 MR. DONAL McGUI NNESS: I appreciate that.
18 CHAIRMAN: He didn't write it, he didn't receive it.
19 MR. DONAL McGUI NNESS: Very good, Chairman.
20 380 Q. We then go on to the 26th October and AC Fanning 13:16
21 contacts the Commissioner and he is trying to involve
22 the Commissioner in the process again, isn't that
23 correct?
24 A. That's correct.
25 381 Q. And the Commissioner refers it back to you? 13:16
26 A. He does.
27 382 Q. And that's because as far as the Commissioner is
28 concerned he carried out the investigation previously,
29 over in Athlone and he doesn't think it is appropriate

1 that he gets involved in the process?

2 A. That's correct, yes.

3 383 Q. So the next step that is taken is, AC Fanning actually
4 decides to engage in the bullying and harassment
5 policy, isn't that correct? 13:16

6 A. That's correct.

7 384 Q. He decides that that he has ownership of this and that
8 it is he who decides?

9 A. Yes, he made that very clear at the meeting and in
10 subsequent correspondence to me, that responsibility 13:17
11 rested with himself, that's correct.

12 385 Q. He kicks off the process on 9th November 2017 with an
13 offer of mediation to Garda Keogh and to the other
14 parties involved?

15 A. That's part of the policy. 13:17

16 386 Q. Garda Keogh rejects the offer of mediation the day
17 after that, on 10th November 2017?

18 A. Yes.

19 387 Q. And then the process continues and we have heard --

20 A. That's correct yes. 13:17

21 388 Q. -- as much as we need to hear about that. Then there
22 is the issue of the -- the dispute is referred to in
23 the Independent article that has been referred to also?

24 A. Yes.

25 389 Q. CHAIRMAN: Are you sure you need any of this, 13:17
26 Mr. McGuinness? We have been over this.

27 MR. DONAL MCGUINNESS: It's just I thought it was
28 useful since this witness has being taken through --

29 CHAIRMAN: No, look, I don't want to get into criticism

1 of anybody. But the reality is, we have been right
2 over this, up and down and in and out, and Assistant
3 Commissioner Fanning is going to be giving evidence on
4 his role in the matter. So, if there is anything about
5 Mr. Nugent's role you specifically want to revisit, 13:18
6 well and good. Otherwise, I know what we are going to
7 hear from Assistant Commissioner Fanning and I know
8 what the disagreement was and I know the thing in the
9 Irish Independent and, you know, whatever about it
10 MR. DONAL MCGUINNESS: Very good, Chairman. I might 13:18
11 just finish off.
12 CHAIRMAN: Yes, sure.
13 390 Q. MR. DONAL MCGUINNESS: with a document at 3630, please.
14 This is a document from John Gerard Cullen to Michael
15 Finn, AC Finn. This is the document, again I don't 13:18
16 have to open it to the Chairman because he has read it,
17 but this document refers to an atomising of the
18 complaint, not according to its natural joints put on
19 procrustean bed. He seems to be critical at this point
20 of the bullying and harassment proceeding as a separate 13:19
21 issue, is that correct?
22 A. That's correct.
23 391 Q. Thank you very much.
24 392 Q. CHAIRMAN: I mean, the essential situation as I
25 understand it is that Garda Keogh said, look, I had a 13:19
26 bullying and harassment complaint, other things perhaps
27 as well, but I certainly had that, and that was
28 outstanding, it was unnecessarily delayed, he says, for
29 the purpose of facilitating Superintendent Murray's

1 promotion, and he says when it comes to the Policing
2 Authority, they should not have proceeded with it while
3 there was pending an outstanding complaint. That's his
4 position as I understand it and you have said what your
5 role was, that the Commissioner handed over to you and 13:20
6 then you took a position, you say, that said unproven
7 allegations should not stop somebody's promotion based
8 on fair procedures and Ms. Mulligan challenges that and
9 says no, that couldn't apply, either in particular or
10 in general, because there must be some cases where the 13:20
11 nature of the allegation should stymie the promotion.
12 That's essentially the situation we have.

13 A. Yes.

14 393 Q. CHAIRMAN: That is me telling you.

15 A. AND I wouldn't disagree with what you said, Chairman. 13:20
16 CHAIRMAN: That's essentially it, and I think that's
17 where the dispute essentially arises in regard to your
18 function concerning the promotion of Superintendent
19 Murray.

20 13:20

21 END OF EXAMINATION

22

23 MS. McGRATH: Chairman, I just have two very quick
24 questions.

25 CHAIRMAN: Sorry, Ms. McGrath.

26

27 MR. JOSEPH NUGENT WAS RE-EXAMINED BY MS. McGRATH, AS

28 FOLLOWS:

29

1 394 Q. MS. McGRATH: First of awful, it's something I should
2 have asked you earlier, Mr. Nugent. There is a
3 document from Assistant Commissioner Fanning, I won't
4 bring it up, I will just put the point to you. He
5 says, his language is:

13:21

6
7 "There may have been a subsequent meeting that I was
8 not invited to attend and was excluded from."

9
10 And he is talking to post the 23rd October. Did that
11 ever happen? Is that the case?

13:21

12 A. That never happened and it's not the case.

13 395 Q. Okay. Now, one thing I want to go back to is this
14 issue of a missing complaint or a document being lost.
15 You are very emphatic in your evidence, you say
16 documents were not lost. Are you aware of a complaint
17 going missing, Mr. McGuinness asked you, you said no.
18 Now, you had been asked on the 19th October by the
19 Commissioner's office to establish possession. That
20 was the word that was used by Superintendent Mahon,
21 possession of the bullying complaint. Did you ever
22 establish in physical real terms where the complaint
23 had been between March and when you sat down in
24 October?

13:21

25 CHAIRMAN: The 23rd October.

13:21

26 396 Q. MS. McGRATH: whose desk was it on as far as you were
27 concerned?

28 A. So my primary responsibility on the 23rd October was to
29 move forward. I think looking back wasn't going to

1 resolve the issues. My primary role was to get the
2 thing moving on. So in the context of where it was at,
3 it was in in that sense. But it wasn't in the sense of
4 blame or it wasn't in the sense of what's happening.
5 It was what I could control now. I couldn't wind back 13:22
6 the clock. So it was a matter of moving things on.

7 397 Q. Did you have a view as to whose desk was it on during
8 those months, in simple terms?

9 A. I felt it was on AC Fanning's desk. I am not sure AC
10 Fanning would necessarily agree with that. But that 13:22
11 was my impression at the time and these issues were
12 clarified at the meeting on the 23rd, where AC Fanning
13 in subsequent correspondence referenced the interaction
14 between the assistant commissioner and the executive
15 director. 13:22

16 398 Q. Okay. But you accept the formal minutes of the meeting
17 don't seem to reflect a discussion around this?

18 A. That's correct.

19 399 Q. Can I ask you just a very last question, if the
20 document can be brought up, 12477. This is a letter 13:22
21 from Mr. John Barrett to the Policing Authority. You
22 may have seen it in the papers, it's 13th October 2017.
23 He is extracting a paragraph from Garda Keogh's letter
24 of the 21st September, which my friend Donal McGuinness
25 opened there a moment ago, the second page of the 13:23
26 handwritten letter. If you scroll down, Mr. Kavanagh.
27 It's the paragraph talking about the complaint being
28 withheld or lost. He says he is writing this
29 confidentially to the Policing Authority. Can I ask

1 you, did you know (a) about this letter or (b), know
2 that the Policing Authority had been told this
3 information?
4 A. No.
5 400 Q. Okay. 13:23
6 A. In both grounds, no.
7 401 Q. Can you assist the Chair in any way about this letter?
8 A. No.
9 402 Q. Okay. Thank you, Mr. Nugent.
10 CHAIRMAN: Okay. Just the date of that letter again? 13:23
11 MS. McGRATH: It's the 13th October. If you scroll
12 down, Mr. Kavanagh, please. 13th October 2017. It's
13 at the end there.
14 CHAIRMAN: The 13th, thank you very much.
15
13:23
16 END OF EXAMINATION
17
18 CHAIRMAN: Thank you very much.
19 THE WITNESS: Thanks.
20 CHAIRMAN: You're free to go now, but you were going to 13:23
21 check.
22 THE WITNESS: Yes, I will.
23 CHAIRMAN: If you can.
24 THE WITNESS: Appendix A.
25 MS. McGRATH: we have actually written to the CSSO 13:24
26 during the course of the evidence for clarification.
27 CHAIRMAN: You can help them liaise with that.
28 MS. McGRATH: If it's necessary we can deal with it at
29 another time, but we will get it in writing.

1 CHAIRMAN: Okay. we will resume at 2:30. Thanks very
2 much.

3
4 THE WITNESS THEN WITHDREW

5
6 THE HEARING THEN ADJOURNED FOR LUNCH AND RESUMED AS
7 FOLLOWS:

8
9 MR. McGUI NNESS: Chairman, the next witness is Former
10 Assistant Commissioner Fintan Fanning.

11 CHAIRMAN: Thank you very much.

12
13 FORMER ASSISTANT COMMISSIONER FINTAN FANNING, HAVING
14 BEEN SWORN, WAS DIRECTLY-EXAMINED BY MR. McGUI NNESS, AS
15 FOLLOWS:

16
17 THE WITNESS: Fintan Fanning.

18 CHAIRMAN: Thank you very much. Thanks, assistant
19 commissioner.

20
21 403 Q. MR. McGUI NNESS: Chairman, for the convenience of
22 parties, Mr. Fanning's statement is to be found in
23 volume 22, at page 6447.

24 CHAIRMAN: Thanks very much.

25 404 Q. MR. McGUI NNESS: with associated documentation
26 continuing into volume 23, 24 and 25. He has produced
27 a second statement for the benefit of the Tribunal on
28 14th January 2020, which is in volume 56, at page
29 15851?

1 CHAIRMAN: 851.
2 MR. MCGUINNESS: 15851.
3 CHAIRMAN: Thanks very much.
4 405 Q. MR. MCGUINNESS: Could you provide us with an overview
5 of your career in An Garda Síochána? 14:33
6 A. Thank you, Chairman. I joined the Guards in 1980 and I
7 worked mainly in Dublin. Then I worked in Donegal and
8 I worked in Enniscorthy, Kilkenny, Garda Headquarters
9 and finally Mullingar, and I retired in August, last
10 August. 14:33
11 406 Q. Yes. Just in terms of some of the more senior ranks
12 you held, when were you first appointed as a
13 superintendent?
14 A. Maybe in 1992, I went to Enniscorthy as a
15 superintendent. 14:33
16 407 Q. Yes.
17 A. And then I transferred to IT, the computer section, as
18 a superintendent in Garda Headquarters. And then I was
19 promoted to chief superintendent and spent sometime in
20 Garda Headquarters in the same section. 14:33
21 408 Q. Yes.
22 A. Then I moved as a chief superintendent to Pearse
23 Street.
24 409 Q. Yes.
25 A. I was promoted assistant commissioner in Pearse Street 14:33
26 and went to Kilkenny, and was responsible for Wexford
27 and Tipperary and Waterford. And then I was
28 transferred back to Human Resource Management, I think
29 about 2008, and I stayed there until about 2014. And

1 then I was transferred to the Eastern Region, Mullingar
2 which included the counties of Wicklow, Kildare, Laois,
3 Offaly, Meath and Westmeath. And I retired on the 25th
4 August.

5 410 Q. You retired last year on the 25th August? 14:34

6 A. That's correct.

7 411 Q. You had remained in position then as assistant
8 commissioner of the Eastern Region for approximately
9 five years?

10 A. Yeah. I think it was September '14 to September '19. 14:34

11 412 Q. Yes. In any event, I think you were in HRM in May of
12 2014?

13 A. I think I was there until September.

14 413 Q. Yes.

15 A. That's correct. 14:34

16 414 Q. So you were in headquarters when Garda Keogh made his
17 protected disclosure and that got a lot of publicity in
18 the Dáil. Did you become aware of that at that time?

19 A. No. I had no responsibility for people who made
20 protected disclosures. So apart from something I may 14:35
21 have read in the papers, if it was in the papers at the
22 time, it wasn't something that concerned me, because I
23 wasn't aware of the circumstances of it.

24 415 Q. Yes. The Tribunal has heard obviously that the
25 Commissioner appointed Assistant Commissioner Ó Cualáin 14:35
26 to investigate those protected disclosures, had you any
27 knowledge of that?

28 A. Very little. If I had, I may have factual knowledge if
29 somebody said that the then Assistant Commissioner Ó

1 Cualáin was investigating something.

2 416 Q. Yes.

3 A. But it is something I had no involvement in as such,
4 because I was just conscious that if somebody makes a
5 protected disclosure, that there's certain protection 14:35
6 around it.

7 417 Q. Yes.

8 A. When it didn't concern me, I didn't go enquiring about
9 it.

10 418 Q. Obviously as of May 2014, I think Mr. Barrett hadn't 14:35
11 been yet appointed; isn't that correct?

12 A. That's correct. When I finished in the HR section in
13 September of that year, I think Mr. Barrett started in
14 October, so he was the first civilian to come in to do
15 the job that I had been doing. 14:36

16 419 Q. Yes.

17 A. So part of civilisation.

18 420 Q. So he was effectively your successor?

19 A. Exactly.

20 421 Q. You being the last AC in charge of that directly? 14:36

21 A. Yes.

22 422 Q. In that capacity, I think you were furnished with a
23 copy of the Pulse entry created by Garda Keogh on or
24 about the 21st May. If we look at page 6649.
25 Mr. Fanning, we can provide you with paper copies of 14:36
26 any of the documentation or if you are happy to follow
27 it on screen. I think that came from Chief
28 Superintendent Clavin on the 21st, directed to you. It
29 says:

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"In the light of the recent allegations made by Garda Keogh, I respectfully recommend that the information recorded in the attached Pulse printout be forwarded for the information of assistant commissioner Eastern Region for investigation, to assistant commissioner Crime and Security as owner of Pulse and intelligence, and to assistant commissioner organisational development and strategic planning from a data protection point of view."

14:37

14:37

Now, as I understand it, you had no role at that stage in relation to this other than to pass it on to the assistant commissioner Eastern Region, a position that you would later be appointed to that year

14:37

A. Yeah, that appears to be correct, Chairman. Yeah, the position is that the report says that the owner Pulse data -- the computer system in the Guards is called Pulse, the owner of the data was then assistant commissioner Crime and Security. So, I mean, if there was something to be attended to in terms of the data, it was a matter for the data owner.

14:37

423 Q. Yes.

A. So I had no function in it.

424 Q. You did forward it on, if we look at the previous page, 6648. Was it Assistant Commissioner Kenny who was at that stage AC of the Eastern Region?

14:38

A. He was the assistant commissioner in the Northern Region and he may have been covering Eastern Region,

1 because I think it was Assistant Commissioner Phillips
2 up to his retirement had been there, and then there may
3 have been a gap.

4 425 Q. Yes.

5 A. I'm only assuming that now. 14:38

6 426 Q. Anyway, you did forward that on. It says:

7

8 "The matter is forwarded for your information, please."
9

10 Can I just ask you for your interpretation. What was 14:38
11 meant to be done with it at that stage?

12 A. Whatever, he could have investigate the minute, the
13 report that I got from the professional standards unit,
14 and it was a matter for him then to attend to it in
15 whatever way he thought was necessary. 14:38

16 427 Q. Yes. In any event, you succeeded as the assistant
17 commissioner Eastern Region and you were involved in
18 some further correspondence in relation to this issue.
19 Could I ask you to look at page 6611? You're
20 addressing this to the chief superintendent in 14:39
21 Mullingar and you're noting that Superintendent McBrien
22 has made an enquiry with Assistant Commissioner Ó
23 Cualáin to establish that the matters referred to in
24 the intelligence created were the subject of
25 investigation. And then you are asking other questions 14:39
26 relating to the matter. From your point of view, were
27 you directing any process in that regard in relation to
28 the content of the entry or relating to the making of
29 the entry?

1 A. Chairman, to be best of recollection, I'm referring to
2 the previous correspondence of the 8th August, the 4th
3 September and the 9th September. I think those three
4 dates predate my arrival in Mullingar.

5 428 Q. Yes. 14:40

6 A. So, what the office would have doing there is making
7 sure the matter was being attended to. So, in that
8 case I would have -- there must have been some evidence
9 on the file that Superintendent McBrien had enquired of
10 Commissioner Ó Cualáin's investigation team to 14:40
11 establish if the matters were created.

12 429 Q. Yes.

13 A. Were the subject of the investigation.

14 430 Q. Yes.

15 A. And then I said -- 14:40

16 431 Q. You do appear to have been kept up-to-date and briefed
17 on the matter, because you wrote a more substantive
18 letter on 23rd October 2014. If we look at page 6603.
19 That's addressed to Assistant Commissioner Ó Cualáin.
20 6602 on to 6603. The entry is referred to there. 14:40
21 There's a recital of what had been found out by local
22 management, what Garda Keogh reported, if we go on to
23 the next page, reported to the district officer. And
24 then you're raising the issue:

25 14:41

26 "The divisional officer in Mullingar would appreciate
27 your views as to how this matter might be progressed
28 and that the terms of HQ Directive 126/10 is complied
29 with."

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That related to CHIS, isn't that right?

A. If I could see that directive. But I take it that it does, yeah.

432 Q. Yes. From the point of view of matters being reported to you, did it seem a perfectly reasonable matter to see whether CHIS was applicable and had been complied with? 14:41

A. Yeah. It would be important that all the policies were being followed. 14:41

433 Q. Yes.

A. So, I mean, it's a matter for -- like, I would have been bringing it to their attention that if that's a CHIS directive that that would need to be followed.

434 Q. Yes. 14:41

A. So ultimately all the commissioners or all the Garda policies have to be followed.

435 Q. Yes. You did receive a report from Chief Superintendent Curran in December '14 and you sent it up to Crime and Security. I don't think we need to open them, but it seemed to go up to headquarters for views from the policy owner, as it were, isn't that right? 14:42

A. Yes, because they own the data on Pulse.

436 Q. Yes. I think you pursued that over a number of months and, indeed, into the following year in correspondence. I think, is it correct to say, without having to open them all, that you didn't get any further response clarifying matters directly as to what ought to be 14:42

1 done?

2 A. No. And I suppose my primary concern was the
3 intelligence and it was accurate. Then the other issue
4 was, my understanding is that Garda A had raised an
5 issue about it and for me it was important that that 14:42
6 issue was closed off. I think some time later a chief
7 superintendent in Mullingar arranged for Garda A to be
8 met and to establish whether or not he had an actual
9 complaint to make about it. And my recollection is
10 that he had no complaint to make about it. 14:43

11 437 Q. Yes.

12 A. So I was keen just to close it off.

13 438 Q. Yes.

14 A. So, you know, in fairness if Garda A had raised an
15 issue, it was important that somebody get back to him 14:43
16 and say, well, you know, what exactly is your position
17 on this.

18 439 Q. Yes.

19 A. They he did, you know, I mean, the answer back was that
20 he didn't wish to have any further action taken. 14:43

21 440 Q. Yes.

22 A. So I was satisfied that all the 00 the data owner was
23 happy and that the garda was happy.

24 441 Q. You did get confirmation back obviously in the interim
25 from Assistant Commissioner Ó Cualáin that they weren't 14:43
26 investigating the creation of the intelligence?

27 A. Yeah. I take it, I have no recollection, but I take it
28 that --

29 442 Q. That's a letter of the 24th November?

1 A. Yes.

2 443 Q. It's at page 6572. You did, however, at some stage
3 raise the issue of discipline. Do you recall raising
4 the issue of initiating discipline in relation to the
5 matter? 14:44

6 A. No, but I am sure the question I would have had, and
7 it's just a general management question, would be that,
8 you know, if there is something wrong well then we need
9 to get it sorted out.

10 444 Q. Yes. 14:44

11 A. And if a disciplinary investigation is necessary, well
12 then a disciplinary investigation is necessary. It's a
13 tool in the toolbox.

14 445 Q. Yes. In any event, you did direct Inspector Folan to
15 meet with Garda A eventually, and that took place then. 14:44

16 A. It may have been the divisional officer, the chief
17 superintendent who directed him, I think.

18 446 Q. Yes. But you were certainly reported to by Chief
19 Superintendent Duff?

20 A. Yes, that he closed off the matter with Garda A. I 14:44
21 think it may be that the chief superintendent asked
22 Inspector Folan to meet Garda A.

23 447 Q. Yes.

24 A. Just to establish whether or not he had a complaint to
25 make basically. 14:44

26 448 Q. Yes. But from the point of view of your being the
27 commander of the region, as it were, would you expect
28 that the matter would have been investigated in normal
29 circumstances?

1 A. No. I think, looking at the role I had, there was
2 responsibility for the six counties surrounding Dublin,
3 which were quite busy.

4 449 Q. Yes.

5 A. And there was a lot of work. So this was one of many 14:45
6 files that I would have dealt with. So, I suppose I
7 would have wanted closure in the matter, that if you
8 have a garda saying or reporting as being upset about
9 something that's on Pulse about them, well then we need
10 to get closure. But I mean, at my level, I wasn't 14:45
11 going to do it, it was a matter for the divisional
12 officer, who in most cases deals with discipline in the
13 Guards, and was also responsible for management of that
14 unit. And then it's for the superintendent then to
15 deal with it. And also, the ownership of the data is 14:45
16 with the assistant commissioner Crime and Security.

17 450 Q. Yes. We have seen obviously from the report that Chief
18 Superintendent Curran sent to you about the matter in
19 which she reported Garda Keogh's response, was a
20 complaint ever made to you that this request for a 14:46
21 response or a report constituted targeting of Garda
22 Keogh?

23 A. No. I mean, no, no, I couldn't see that at all. Like,
24 my concern about this file was, that having read it,
25 and having inherited it, if you like, that this was a 14:46
26 bit of unfinished business, that it wasn't clear who
27 had created the incident, as far as I can recall.
28 Garda A had raised an issue about the data being on
29 Pulse. For me, it was to make sure that the

1 appropriate people in the regional structure dealt with
2 the matter to a closure. But I certainly had no sense
3 of any targeting or anything like that.

4 451 Q. I mean, would you expect a superintendent and a chief
5 superintendent under your control to raise a query with 14:46
6 a member as to why they had created such an entry and
7 what the basis for it might have been?

8 A. Yes. I think, like, we're an organisation, it is
9 hierarchical and there is responsibility and, you know,
10 if a matter comes to the attention of management or to 14:47
11 an officer in the Guards, that they have an obligation
12 to, you know, be fair about it and go back and check it
13 out. Just as Garda A had raised an issue about it and
14 I wanted to make sure it was closed off. It transpired
15 Garda A didn't want to make a complaint about it. But 14:47
16 there was nothing about anybody being targeted or
17 anything else. It was simply we had an obligation to
18 keep the data on the data base accurately.

19 452 Q. Yes.
20 A. Keep it up-to-date and keep it relevant and accurate. 14:47
21 The issue was in this that Garda A had a concern about
22 it.

23 453 Q. Yes. We are led to believe that even as of this phase,
24 the Tribunal is examining the issue, that the entry is
25 still there, unchanged, unamended and, as it were, 14:47
26 without any investigation into its creation. Do you
27 regard that as a satisfactory position?

28 A. Well, the person who created the record on Pulse
29 created the record. A garda, Garda A raised an issue

1 about it. Eventually it got to my level. I caused
2 enquiries to be made. I am satisfied that the data
3 owner, who was the then the assistant commissioner
4 Crime and Security, knew about it. And I am sure their
5 view is it was accurate at the time, it was accurate at 14:48
6 the time. You know, but I don't have the authority to
7 change any data on it, nor would I have it in my role
8 because I'm not the data owner.

9 454 Q. Yes.

10 A. If the garda who believes that he -- Garda A, because I 14:48
11 don't think he is named in it, from memory, I think he
12 believes the same or he might suspect the same or
13 something like that, he has never made a complaint.
14 And the purpose for me going out and asking the then
15 chief superintendent to make enquiries -- because he's 14:48
16 not names, to the best of my recollection.

17 455 Q. No, he's not named?

18 A. He's not named.

19 456 Q. No.

20 A. So I think he's speculating it's him. 14:48

21 457 Q. Yes.

22 A. So the piece I saw on it that was important was, well,
23 if he has a concern, let's listen to him as his
24 employer and let's go and go the journey with him. But
25 he didn't make a complaint, he didn't say it was him. 14:49

26 458 Q. Okay. Passing on then to another matter. You did
27 receive correspondence in April 2015 from Garda Keogh
28 directly to you. You have referred --

29 A. That was a letter, yeah.

1 459 Q. Yes, you referred to that on the first page of your
2 statement?

3 A. Yes. That was one of the issues, yeah. I got a letter
4 from him in the post. I don't believe I had never met
5 Garda Keogh in my life before. I read the letter. A 14:49
6 few things in it. So, what I did was, I immediately
7 reported to my superior that I got the letter. And
8 then I proposed a draft response. Because he was a
9 protected discloser and he had certain rights, that I
10 wasn't an expert in, I sought legal advice on the draft 14:49
11 letter, and I think from memory -- the draft response
12 back to him. I think from memory I said to him
13 basically that it's not easy. I mean, I recognise this
14 is a rank based organisation, it is not easy for a
15 garda to approach an assistant commissioner, and I 14:49
16 recognise that. But I said, on the other hand then,
17 there are structures in place, there's management
18 structures and we're a disciplined organisation, so,
19 you know, within reason but. So I wrote back to him
20 and said to him that I was aware of that and that he 14:50
21 should really deal with it through management issues,
22 but if there was something there that he felt he should
23 come back to me about, write back to me, set out the
24 details of what it was and I'd consider it. But I
25 never got a response. So I trusted everything was in 14:50
26 order.

27 460 Q. Well, perhaps we will look at Garda Keogh's letter,
28 it's page 6467. It's a handwritten letter, the 15th
29 April date stamp on it, 2015. It says:

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"On 8th May 2014 I made a formal complaint of Garda malpractice in the Athlone district. The said matter is under investigation. Over the last year I have been advised by members of An Garda Síochána in both my current Westmeath division and my previous Wicklow division to speak to yourself. I am now being advised by both Independent TDs Clare Daly and Mick Wallace to speak to you. I am aware that you are the assistant commissioner for the region and I would be obliged if you would consider meeting with me."

So you obviously took it that this was the whistleblower, the person who had made a protected disclosure, I take it?

A. Well, I wasn't sure, but I mean, you know, he hadn't said it in that. I had never met him before in my life.

461 Q. Yes.

A. So I wasn't sure it was him. But he said he made a formal complaint of Garda malpractice in the Athlone district and then he said it was being investigated so...

462 Q. But in terms of the reference to the deputies there, were you conscious that Deputy Wallace had raised the issue of the behaviour of the superintendent in Athlone on the 31st March in the Dáil?

A. I can't say I was. You know what I mean. If I read it in the newspaper. But it didn't matter to me in the

1 sense that he said that he had made a complaint and it
2 was being investigated. So, you know, once there was
3 an investigation ongoing.

4 463 Q. Yes. But just in terms of speaking to Garda Keogh, who
5 said here he had made a formal complaint. Presumably 14:52
6 when you moved in to your headquarters in Mullingar you
7 knew that you had a protected discloser in your
8 division?

9 A. No, I was aware we had a very high profile person, a
10 different person altogether, had been involved in 14:52
11 utilising that practice, and I had I worked closely
12 with him. He has since retired from the Guards. I was
13 aware of that particular case.

14 464 Q. Yes.

15 A. But I mean, I can't say whether I was or wasn't, to be 14:52
16 honest with you. But it didn't concern me because it
17 was being investigated by a competent person elsewhere.
18 And there are certain rights around a person who makes
19 that. And that's the reason I reported it to my --
20 when I got the letter, that's the reason I reported it 14:52
21 to my superior, and I also sought legal advice, because
22 I didn't want to go back and aggravate the situation or
23 do something that was unlawful.

24 465 Q. You are obviously quite correct in saying you did that.
25 If we look at page 6466. This is your letter to the 14:53
26 deputy commissioner of operations?

27 A. Yeah.

28 466 Q. Written the following day. You say in the first
29 paragraph you have received the letter. You say what

1 it states. And in the last paragraph you say:

2
3 "It is my intention that I would write to him
4 acknowledging his letter, enquiring from him as to why
5 he needs meet with me rather than his immediate line
6 management." 14:53

7
8 You refer to a draft there. You did send out a
9 response to Garda Keogh, which is at page 6462, on the
10 24th April. If we look at that, 6462. In the second
11 paragraph you say: 14:53

12
13 "I know it cannot have been easy for you to write to me
14 as assistant commissioner, however on the other hand
15 you feel that you had to do so. 14:53

16
17 You advise me that the said matters of Garda
18 malpractice are under investigation and accordingly I
19 wish to inform you that I am precluded from discussing
20 any matter that has been previously investigated or is
21 being investigated in any ongoing process. Should the
22 matter relate to something other than that, my normal
23 response is that you should take the matter up with
24 your immediate line management in accordance with code
25 provisions. If on the other hand there are human
26 resource or workplace related issues, then I can relate
27 those to the executive director of Human Resources and
28 development people." 14:54

29

1 Then you say:
2
3 "As a valued member of the regional team. I would ask
4 you to consider my position and if it is the case that
5 you still feel the need to meet, you can make contact 14:54
6 with inspector Jimmy McCarthy to make the necessary
7 arrangements."
8
9 And there is a number given there. Now, you never got
10 any formal written response to that, isn't that right? 14:54
11 A. That's correct.
12 467 Q. And as far as you know, did Garda Keogh ever contact
13 Inspector McCarthy on foot of this?
14 A. Not that I am aware of, because if he had, he would
15 have written back to him and there would be a written 14:54
16 record of it.
17 468 Q. Yes. You seem there to leave the door open, as it
18 were, for him to come to you with work related issues.
19 Would you have expected to be informed by either the
20 local superintendent or chief superintendents that 14:55
21 there were work related issues?
22 A. And I would have been if there were. You know, so in
23 the sense that he was writing to me with an issue and,
24 you know, I wasn't going to dismiss him and close him
25 down completely but I was saying, it's important that 14:55
26 you use the structures that are there.
27 469 Q. Yes.
28 A. I acknowledge the very first thing that it can't be
29 easy for a garda to write to an assistant commissioner.

1 Because we are a hierarchical organisation.

2 470 Q. Yes.

3 A. And I know, having spent 39 years in it, you know, it's
4 -- it's not that anybody -- it's just the environment
5 that's there. I set out then and I said to him, well, 14:55
6 if there is something exceptional, you know, I wasn't
7 going to say you can't tell me, I said, make an
8 appointment with the inspector. And I would have
9 expected an agenda or whatever and I would have put in
10 an appropriate response. 14:56

11 471 Q. Yes. I mean, the Tribunal has heard of a number of
12 different issues that were ongoing and about which
13 Garda Keogh has complained obviously. work related
14 stress, did anyone bring that to your attention at the
15 time? 14:56

16 A. I just can't -- I can't say that they did for sure.
17 Like, I mean, the correspondence -- normally anything
18 to do with absence or sickness goes as far as the
19 district officer, a superintendent, and then it would
20 go across to HRM and be dealt with. I remember we were 14:56
21 at a meeting in October and something came up about the
22 classification of his illness.

23 472 Q. Yes.

24 A. So I can't say definitely not. But I mean, I heard
25 about it at that meeting. 14:56

26 473 Q. Yes.

27 A. That is one thing that just registers with me.

28 474 Q. Yes.

29 A. But I wasn't aware that there was any big issue. Nor,

1 in fairness to Garda Keogh, he didn't tell me.

2 475 Q. I am just really concerned about the period when you
3 had come to the region as assistant commissioner and
4 before Garda Keogh went out sick on a full-time basis
5 essentially from the end of December '15. So it's sort of 14-15 month period there. But you wouldn't expect 14:57
6 to have been informed if he had been referred to the
7 CMO, for instance, or the level of absenteeism?
8
9 A. No.

10 476 Q. Or the nature of his sick certs? 14:57

11 A. No. I think from memory the circular deals with sick
12 absences HQ 139/10 or something and that sort of
13 finishes at the district officer, at the super's office
14 level, superintendent's office level and then there may
15 be an exception where it goes to the chief 14:57
16 superintendent. You know, as I say, I was at one
17 meeting, I think it was in October, the '14, where I
18 have a recollection of it.

19 477 Q. Yes. You do, in your statement of the 20th January, at
20 page 15856, refer to a meeting that you had with Garda 14:57
21 Keogh at Athlone Garda Station?
22 A. In October or something?

23 478 Q. In October.

24 A. Yeah, that's correct.

25 479 Q. October 2015. 14:58

26 A. Yeah.

27 480 Q. What you say is:
28
29 "The first occasion was during an unannounced visit to

1 Athlone Garda Station on 30th October 2015. I have now
2 found a diary entry which makes reference to the
3 meeting. I believe I was on a journey to Galway Garda
4 station when I made a routine and unannounced visit to
5 the station. My handwritten note is as follows: 14:58

6 'called to Athlone GS, checked mail, met Garda Keogh
7 and female garda. Garda Keogh said he was in fairly
8 good form. Showed me around station public office and
9 told me he was under the care of OVO and Mick Quinn
10 EAS. I told him to ensure he utilised all the 14:58
11 structures and discuss with management. Struck me as a
12 good man. Discussed Halloween and operational Tombola.
13 Well aware of his duty, Roscommon visit."

14
15 So your purpose of the visit doesn't seem to have been 14:59
16 to meet him in particular, is that right?

17 A. No, Chairman. So my responsibility, as I said earlier,
18 was the six counties over as far as the Shannon, we'll
19 say. Then in the absence of the then assistant
20 commissioner in the Western Region, I was also 14:59
21 responsible for the five or six counties in the Western
22 Region. This was a Friday, from memory, it was
23 Halloween time anyway. What I done was, I started
24 working, I was up in UCD, then I was at something in
25 Kildare. I was going on to the west of Ireland because 14:59
26 there was a significant incident, an operational
27 incident going to happen on Monday or Tuesday of the
28 following week and what I did was, I went down and I
29 stayed in Athlone that night and I was going on to -- I

1 went to Roscommon the next morning, got into Roscommon
2 Garda station just to see what was happening there, as
3 part of my work of course. Then I went on to Galway to
4 look at a site over in west Galway where there was
5 going to be a search. 15:00
6
7 what I did the night before was, having been
8 operational all day Friday, I called in -- I stayed in
9 Athlone and I called into the Garda station in Athlone
10 for to access Pulse and for to access the e-mails, and 15:00
11 to see what e-mails were there. When I went in, I
12 introduced myself and told them who I was. There was a
13 female garda there and a garda there. The female garda
14 went off to attend to whatever duties she was attending
15 to, and the other garda was there. I don't even recall 15:00
16 I recognised him, at the time I think he told me who he
17 was. That's the notes I took.

18 481 Q. Yes.

19 A. And OVO is the CMO, Mick Quinn is the EAS.

20 482 Q. Yes. 15:00

21 A. Operation Tombola is the operational plan for
22 Halloween. What struck me was, he had all the details
23 there that if somebody rang in about bonfires or some
24 problems, he had contact numbers. And I just, you
25 know, just to myself, that's a good man. 15:00

26 483 Q. He didn't raise any complaint to you about being
27 assigned to that duty in the public office?

28 A. No. No, no, my notes are, struck me as a good man.

29 484 Q. Yes.

1 A. He wasn't complaining or he wasn't doing anything like
2 that, you know.

3 485 Q. Did he introduce himself to you or vice versa?

4 A. I'd say -- well, I would have certainly introduced
5 myself as Fintan Fanning, the assistant commissioner. 15:01

6 486 Q. Yes.

7 A. Because I can't take it for granted he knew me, you
8 know.

9 487 Q. Yes.

10 A. And the other thing is, there is always a disparity in 15:01
11 ranks. So I find it easier to go and say, how are you,
12 you know, hello, my name is Fintan Fanning, I'm the
13 assistant commissioner, because I wasn't in uniform at
14 the time. I wouldn't think I was anyhow.

15 488 Q. All right. 15:01

16 A. You know, then the chat goes on. They were my notes.

17 489 Q. He has a slightly different note of it. He does have a
18 note of it in his diary for the 30th October. If we
19 look at page 1335. It's on the right-hand side. He
20 seems to be putting it at 9:00pm perhaps: 15:01
21

22 "AC FF came in to station. He knew who I was even
23 though we never met."
24

25 would you care to comment on that? Did you know him? 15:02
26 Did you know who you were speaking to was Garda Keogh,
27 who had written to you?

28 A. Oh yeah, because when he told me his name. However I
29 found out his name. But I mean like, I'm not an expert

1 on -- you know, I am poor enough on facial recognition.
2 So when I went in, like I always introduce myself to
3 people because they then generally tell me who they are
4 and that leaves it a lot easier for me then, and I
5 probably relate to them if they are on their own in 15:02
6 first name terms and try and get over that.

7 490 Q. It goes on:
8
9 "He said he appreciates what I am doing."
10 A. That's correct, yeah. 15:02
11 491 Q. "We couldn't really talk."
12
13 So is that his work in the public office, is that it?
14 A. Yeah, like, I mean, I would have told him I appreciated
15 what he was doing, because I think, you know, he was 15:02
16 very clear on Operation Tombola. It was important for
17 me to sort of be able to affirm what a garda is doing,
18 as an assistant commissioner, and I would have used
19 that opportunity to say -- when he explained his
20 operational plan for Halloween, which is operation 15:03
21 Tombola, that, you know, if you like, if I was the
22 inspector inspecting the classroom, he gave me a very
23 good account of it.

24 492 Q. So he was telling you precisely what he was doing in
25 the station, is that right? 15:03
26 A. Yeah, and he showed me around it. There was CCTV
27 cameras, he showed me around those and he showed me how
28 they work, they're in a room beside the public office
29 in the garda station.

1 493 Q. Yes.

2 A. He seemed to be competent, he was able move around and
3 was able to show me everything in there.

4 494 Q. Yes.

5 A. I was probably in there for about 10 or 15 minutes, I'd 15:03
6 say, around that.

7 495 Q. The entries goes on:
8
9 "Printed Pulse re reclassifications. Copies. . . ."
10 15:03
11 He didn't mention anything about Pulse records to you,
12 that doesn't appear to relate --

13 A. No, I think I'd go as far as talk.

14 496 Q. Just to deal with it at this stage, is it the position
15 that that was the first time you had met Garda Keogh? 15:03
16 A. Yeah. It's the first time I believe. Now, if I was
17 going to a Bray Wanderers football match and he was on
18 duty as part of the Guards there, in Bray, if you like,
19 you know, I can't say. It's the first time I am aware
20 I ever met and had a conversation with him. 15:04

21 497 Q. Then in terms of meeting him after that on any other
22 occasion?

23 A. No, I think I only had one more meeting shortly to my
24 retirement, I had business to attend to with him. I
25 think that was another meeting I had with him, and that 15:04
26 was in August.

27 498 Q. Yes. You say at page 15857:
28
29 "I can only recall ever speaking or meeting Garda Keogh

1 on one other occasion, in August 2019, when I met him
2 in the presence of his solicitor at Mullingar Garda
3 station to deal with garda discipline matters."

4 A. That's correct, my Lord, yeah.

5 499 Q. That seems to maybe leave a doubt as to whether you 15:04
6 might have met him on some other occasion. Are you
7 fairly clear that you didn't?

8 A. Oh I don't believe I did. But if you were to show me a
9 photograph at a football match where he was on duty or
10 something like that. You know, I am not conscious that 15:04
11 I met him anywhere else. But because I was the one
12 assistant commissioner for all those counties, it is
13 conceivable we could have been in each other's company
14 somewhere, yeah.

15 500 Q. Okay. That occasion, was that when you were giving him 15:05
16 a Regulation 10 notice?

17 A. Yeah. What I did was, I dealt with a disciplinary
18 matter and I found him in breach of discipline.

19 501 Q. Yes. Is that the one that relates to the phone calls
20 to Portlaoise Garda station? 15:05

21 A. Yeah, but I think it was more about the way that he
22 was -- I think he -- yes, it was about the phone calls,
23 yes, and other behaviours or the behaviours in the
24 phone call.

25 502 Q. All right. Well, could we just go back to December 15:05
26 2016. I think you received correspondence from
27 Mr. Barrett, who had succeeded to your position. And
28 if we could look at a letter that you received from him
29 on the 21st December. It's page 6800. You probably

1 recall getting this, it's one where Mr. Barrett appears
2 to nominate Chief Superintendent Roche to investigate
3 the complaint.

4 A. That's correct, yes.

5 503 Q. Just to be specific about your state of knowledge at 15:06
6 this point in time, did you know whether Assistant
7 Commissioner Ó Cualáin's investigation had been
8 completed?

9 A. I wasn't aware, because in fair to then Assistant
10 Commissioner Ó Cualáin, he dealt with that matter, you 15:06
11 know, he wasn't disclosing anything to me about it.

12 504 Q. Yes.

13 A. Because obviously I didn't need to know about it.

14 505 Q. Yes.

15 A. Because I am sure if there was something I needed to 15:07
16 know about, he'd have been the first man to tell me.

17 506 Q. Yes. Even in the most general way you didn't really
18 know what he was investigating?

19 A. No, no, no.

20 507 Q. Any specifics? 15:07

21 A. No, because I mean, I never needed to ask him and he
22 never needed to tell me in the sense that -- well, it's
23 still my position that he was doing his investigation.
24 I have no doubt that if there was something, he would
25 be the first man to tell me. 15:07

26 508 Q. Yes. The issue of the disciplinary inquiry that was
27 then also underway, had you been aware of the
28 appointment of Assistant Commissioner Jack Nolan to
29 investigate discipline matters on foot of or arising

1 out of Assistant Commissioner Ó Cualáin's
2 investigations?

3 A. I can't say I wasn't aware, but I wasn't aware in any
4 great detail. If I was aware, you know, it may be that
5 somebody said that Jack Nolan was doing some 15:07
6 disciplinary investigation or something like that. But
7 I wasn't aware of what the focus of the investigation
8 was or anything else.

9 509 Q. Yes. But the request here to nominate Chief
10 Superintendent Roche, did you have any concerns at this 15:08
11 time over appointing somebody to investigate a
12 complaint?

13 A. No. The only issue I had was, that if I was to be the
14 person to make the appointment, I was going to utilise
15 the Garda policy that's in agreement between the four 15:08
16 staff associations and the Garda Commissioner. And
17 that requires to know who the complaint was made
18 against and what was the substance or what was the
19 information that the person who was wishing to use the
20 policy or utilise the policy was doing. And neither of 15:08
21 those elements of information were available to me at
22 that time.

23 510 Q. Yes. Well, you sent a reply to Mr. Barrett, if we look
24 at page 6802. You referred to the provisions of the
25 policy in terms of following the process and the need 15:09
26 to know. But it does appear that you corresponded with
27 Chief Superintendent Scanlan on the 23rd of that month?

28 A. As a result of that -- first of all, before I could use
29 the policy I had to be satisfied that it was a member

1 of the Garda Síochána that the issue was about.

2 511 Q. Yes.

3 A. And I didn't know that. The only way I was going to
4 find that out was, and what I said to the executive
5 director of HRPD was, that maybe we should send 15:09
6 somebody out to talk to him and find out from Garda
7 Keogh what exactly was the information he wanted to
8 give us and who was the person he the issue with. So I
9 wrote back up to the executive director of HRPD, who
10 was John Barrett, and he agreed with that course of 15:10
11 action. Then I carefully considered who was the best
12 person was to go out to meet Garda Keogh. And I
13 selected Chief Superintendent John Scanlan as being
14 neutral because he came from a different division and
15 he is a very experienced investigator and he is, you 15:10
16 know, a very professional and very competent man.

17 512 Q. Yes. Your letter of instruction to Chief
18 Superintendent Scanlan is at page 6805. Perhaps we
19 will just look at that. Is it clear then that -- 6805,
20 I am just waiting for it to come up there. That's on 15:10
21 the 23rd December. You're providing him with the
22 correspondence from Mr. Barrett, you're providing him
23 with Mr. Cullen's letter and then you're asking in the
24 third paragraph:

25
26 "In order to determine (a) if Garda Keogh's complaint
27 comes within the policy for resolution and (b) the
28 correct rank/grade to be appointed as investigator, if
29 applicable. Please make the necessary arrangements to 15:10

1 ensure that a copy of the policy available on the Garda
2 portal is provided to Garda Keogh, who is currently on
3 sickness absence. He should be advised of the
4 procedures and processes involved and that he may seek
5 the advice of the equality officer in Garda
6 Headquarters or, indeed, the equality adviser."

15:11

7
8 So what's clear is that you are not appointing someone
9 to investigate any complaint.

10 A. That's correct.

15:11

11 513 Q. You're simply allowing Chief Superintendent Scanlan to
12 inform him of the process, is that right?

13 A. And to establish (a) if Garda Keogh's complaint comes
14 within the Garda policy for resolution.

15 514 Q. Yes.

15:11

16 A. And (b), if that is the case, then who is the
17 appropriate investigator? Because in the
18 correspondence I had, it didn't say that it was a
19 member of the Garda Síochána or the Garda reserve that
20 was being complained of. If it was, it was the Garda
21 policy. If it was a civilian in the guards it was a
22 different policy and I didn't have the power to make
23 the appointment under that policy. So, under the Garda
24 policy a complaint must be made in writing. And the
25 purpose of my appointing Chief Superintendent Scanlan
26 was to go out and talk to the guard who had on issue,
27 establish what -- give him whatever help he had.
28 Particularly tell him about the equality officer and
29 the equality advisers, because if he wanted independent

15:12

15:12

1 advice. It was free to him but it wasn't for me to
2 talk to his staff association. The piece I had, make
3 sure I had the information from him to determine
4 whether or not it was a complaint that met the
5 requirements of the Garda policy or not, and then if it 15:12
6 did, what was the appropriate rank if we were going to
7 consider that.

8 515 Q. Chief Superintendent Scanlan wrote back to you a minute
9 in which he referred to a conversation with Garda Keogh
10 for the purposes of arranging a meeting and a query was 15:12
11 raised about whether other officer had been appointed.
12 Also this issue of a conflict that Garda Keogh had
13 raised with him. I think you wrote to Mr. Barrett on
14 foot of that, isn't that right? If we look at page
15 6808. You state in the second paragraph: 15:13

16
17 "The purpose was to bring the policy to the attention
18 of Garda Keogh."

19 A. Yes.

20 516 Q. And the third paragraph raised this issue about: 15:13

21
22 "Garda Keogh alleges he supplied an amount of material
23 to Chief Superintendent McLoughlin in terms of his
24 complaint and that he would need same before proceeding
25 and that he is consulting with his solicitor." 15:13

26
27 Was that news to you at that point in time?

28 A. Yeah, I wasn't aware that he had made -- so the piece
29 about the news is about the piece that he told the

1 chief superintendent in HRM, is it?

2 517 Q. well, in the next paragraph you seem to be saying
3 material was withheld from you?

4 A. Yeah, because that material wasn't made available to
5 me. I am not saying it's deliberately withheld, I am 15:14
6 just saying, if the material existed.

7 518 Q. Yes.

8 A. It was not provided to me. Therefore it was withheld.

9 519 Q. Okay.

10 A. But I mean, there could be very good reasons for it 15:14
11 being withheld.

12 520 Q. Yes. well, factually you hadn't received anything from
13 Mr. Barrett's office or from Mr. Mulligan?

14 A. No, no. I accept that. My recollection is that I got
15 the letter, the first letter originally just before 15:14
16 Christmas and I think we dealt with it the next day and
17 responded back very quickly. We sought clarification.
18 Then, in a bid to move the thing along, we proposed
19 that we'd get somebody to go out and bring the policy
20 to the attention of Garda Keogh and then that the we'd 15:14
21 move it along and get the information and bring it to
22 the next level.

23 521 Q. Yes. If we turn over the page, you concluded with two
24 short paragraphs saying:
25
26 "I simply cannot progress the issue until I am provided
27 with Garda Keogh's complaint, be it from him or the
28 material allegedly in the possession of chief
29 superintendent HRM. 15:15

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I do not know the identity of the member/person, the subject of Garda Keogh's allegations. Garda Keogh is a very proud member of An Garda Síochána and I am keen to progress the matter as soon as possible."

15:15

So, did you then the material that Chief Superintendent McLoughlin, who had actually given it to Mr. Barrett's office on the 9th November, did you get that material at that stage?

15:15

A. I have no recollection of getting it. Because the alternative was, under the Garda policy there's two people can start an investigation. Either me, and I was directed by headquarters to do it, or the equality officer has the same powers to do it. So in my case, I was asking -- that's one thing I was asking, did the equality officer start the investigation or was there something there, or was it for me. If it's for me, I simply can't progress the issue until I am provided with Garda Keogh's complaint. And that is what Chief Superintendent Scanlan was going out to get from him. Or if there was something there already, that chief superintendent HRM already had. But I didn't have it. I just said, I don't know the identity or of the member or person who is the subject of Garda Keogh's allegations.

15:15

15:16

15:16

522 Q. Yes.

A. So that's basically saying -- that was the same point I had made earlier, that for to determine that the Garda

1 policy applied to it, I had to be satisfied it was a
2 member of the Garda Síochána was being complained of,
3 and I didn't know the content of the complaint or what
4 the nature of the complaint was, and I didn't know the
5 identity of the person complained against, or persons. 15:16

6 523 Q. Yes. Well, Mr. Barrett appears to have agreed with you
7 on those points, when he wrote back to you on the 8th
8 February. If we look at page 6810. The second
9 paragraph recites Garda Keogh's wish to have it dealt
10 with under the policy. The third paragraph refers to 15:17
11 Chief Superintendent McLoughlin informing Mr. Barrett
12 of the correspondence and providing him with the same.
13 He notes there the details of who was being complained
14 against or about. Relevant details were not provided.
15 Garda Keogh was requested to provide relevant details. 15:17
16 But at the end of the day, Mr. Barrett seemed to agree
17 with your position, if we look at the next page:

18
19 "To progress the matter --" this is 6811:

20 15:17
21 "To progress this matter, Garda Keogh should be
22 informed that he should provide a statement of
23 complaint, to include the identity of the person being
24 complained of, relevant dates and details of the
25 alleged incidents to Chief Superintendent Scanlan as 15:17
26 soon as possible.

27
28 Until a statement of complaint is provided by Garda
29 Keogh clearly identifying the person and alleged

1 incidents being complained of, it is not possible to
2 make any decision on the appropriate policy or rank of
3 investigator to resolve this complaint."
4

5 You agreed with that?

15:18

6 A. Yes.

7 524 Q. Everyone seemed to agree then that Chief Superintendent
8 Scanlan could take that initial statement, which would
9 satisfy those requirements, if possible?

10 A. Yes. To identify if there were a person or persons
11 complained of and if it was the Garda policy that would
12 apply.

15:18

13 525 Q. Yes. I don't want to go into all the toing and froing
14 about dates that were fixed and set and appointments
15 cancelled, but both you and Mr. Barrett and Chief
16 McLoughlin were keeping an eye on what was happening
17 with the appointments and the taking of the statement
18 and you were getting appropriate reports back from
19 Chief Superintendent Scanlan?

15:18

20 A. Yes. Chief Superintendent Scanlan is a very
21 experienced investigator and, you know, I trusted him
22 implicitly and I had no concern whatsoever about how he
23 did his job.

15:18

24 526 Q. Yes.

25 A. There was several appointments, for very good reasons
26 Garda Keogh couldn't meet him. But I mean, as far as I
27 was concerned Chief Superintendent Scanlan was diligent
28 and he had met him as advisor.

15:18

29 527 Q. Certainly as of the 8th March Mr. Barrett was writing

1 to you, enquiring whether Garda Keogh had provided a
2 statement, if so, what action had been taken. And also
3 says, this is on page 6815, in the last line:
4

5 "I would appreciate a copy of Garda Keogh's statement 15:19
6 of complaint for inclusion in this office. Copy of
7 file under harassment, sexual harassment and bullying
8 policy if applicable."
9

10 So it seemed that he was anxious to get it when it was 15:19
11 made there, isn't that right? Skipping over all the
12 details of the meeting, Chief Superintendent Scanlan
13 appears to have sent you a copy of Garda Keogh's
14 statement on 31st March 2017. If we look at page 6821.
15 You refer to that in later correspondence and in later 15:20
16 timelines, that was the 17-page statement made by Garda
17 Keogh dated the 27th March.

18 A. Yeah, I just see on that, the one dated the 31st March
19 from John Scanlan to me, he said a more detailed report
20 will follow in the context of this statement. So I 15:20
21 think there was two statements, from memory, there was
22 two statements Garda Keogh made.

23 528 Q. Yes.

24 A. One was short, a five or six-page one, and then, with
25 the benefit of legal advice, he made a longer one. I 15:20
26 am not sure what the exact sequence was. But I think
27 the two of them came in around April.

28 529 Q. A draft had been prepared for you to send on to
29 Mr. Barrett forwarding that statement but it doesn't

1 appear to have been sent on the 4th April. If we look
2 at just page 10005. This is a draft, unsigned letter,
3 which says:

4
5 "I refer to your minute 22nd March 2017. I also refer 15:21
6 to attached correspondence dated March 2017 from chief
7 superintendent Portlaoise together with statement of
8 Garda Nicholas Keogh, which is now forwarded for your
9 attention."

10
11 There's handwriting there, which is apparently your 15:21
12 handwriting and was turned into the letter that was
13 actually sent the following day, on the 5th April. If
14 we could look at page 6823. The body of this
15 constitutes what was handwritten on the previous draft. 15:22
16 So this is going to Mr. Barrett. It says:

17
18 "I refer to your minute of 22nd March 2017 and wish to
19 report the following by way of interim report.

20
21 Chief Superintendent Scanlan, Portlaoise, has sent me
22 one (1) part of a two (2) part report from Garda Keogh.

23
24 I am examining it and from an early perusal of the
25 file, it appears to be much wider than a bullying and 15:22
26 harassment matter.

27
28 I will revert on receipt of the next phase of the
29 report."

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That went to Mr. Barrett, it would seem, without the statement itself being forwarded at that point in time. Do you agree with that?

A. Yeah. It doesn't refer to the statement. 15:23

530 Q. No.

A. But the purpose of the statement is information to enable me to make a decision whether or not to initiate the bullying policy.

531 Q. Yes, I was going to come to that in a moment. 15:23

A. Yeah.

532 Q. Obviously without the two parts, you probably considered that you didn't have enough or the complete picture to make that decision?

A. Yes. And I think later on, I think I was away on annual leave then and I think during that period of time the second statement came in, and I think the two statements were the forwarded on something like the 12th. 15:23

533 Q. Well, we will come to that step-by-step, Mr. Fanning, thank you. 15:23

A. Yeah.

534 Q. In any event, you received further correspondence from Chief Superintendent Scanlan dated 12th April 2017, which contained a five-page statement dated 2nd March 2017. If we just look at that statement. You may recall seeing it. At page 6824. We don't have to look through it all, but if Mr. Kavanagh scrolls down four or five pages to 6828, it takes the narrative up to a 15:24

1 particular point in time and it's neither signed nor
2 witnessed by anyone, isn't that right? And there's a
3 list of appendices attached to it also, at page 6829.
4

5 If we just look at the covering letter that came with 15:25
6 it. If we go to page 10013, this should be the letter
7 of the 12th April from Chief Scanlan. If we look at
8 the text there.

9
10 "In reference on 2nd March 2017, accompanied by his 15:25
11 solicitor, Garda Keogh attended Portlaoise Garda
12 station and commenced making a statement in respect of
13 the matters pursuant to the bullying and harassment
14 policy.

15 15:25
16 He was not in a position to conclude his statement.
17 Having made a number of appointments to meet with Garda
18 Keogh, he was not in a position to attend until the
19 27th March. At this time he presented a prepared
20 statement which was read back over to him, he signed it 15:25
21 and he also presented a volume of appendices. This
22 volume of appendices was in line with the appendices
23 received at the original interview of the 2nd March
24 with the exception of the second page of the statement
25 of [blank] listed at Exhibit 7 of his original 15:25
26 statement. Garda Keogh agreed that this should be
27 added to his list of exhibits. He presented with his
28 present statement.
29

1 Garda Keogh was invited to sign the incomplete
2 statement of the 2nd March. He declined to do so. I
3 advised him that I was submitting the incomplete
4 statement of the 2nd March as a record of that meeting
5 with the attached appendices. It was read over to him. 15:26
6 I signed it and it was witnessed by Detective Inspector
7 Dunne. Detective Inspector Dunne and I also witnessed
8 the statement of the 27th March, which Garda Nicholas
9 Keogh signed."

10
11 So, it would certainly appear that of the receipt of
12 the two parts by this stage, you had what he wanted to
13 submit to you, as it were?

14 A. I had, I had adequate information to enable me to make
15 a decision then. 15:26

16 535 Q. Yes. You wrote on the 21st April to Mr. Barrett. If
17 we perhaps just look at that, it's page 10021. That
18 says:

19
20 "I am directed by assistant commissioner Eastern Region 15:27
21 to refer to previous correspondence from office dated
22 5th April 2017.

23
24 This office is now in receipt of a further report dated
25 12th April 2017 from chief superintendent Portlaoise 15:27
26 with enclosed document of Garda Keogh dated 2nd March
27 2017 and relevant appendices please.

28
29 Assistant commissioner Eastern Region will now give

1 this matter further consideration and report more fully
2 in early course."

3
4 So, that clearly appears to be sending on the five-page
5 unsigned statement on to Mr. Barrett at that point in 15:27
6 time?

7 A. I think I was away on leave, I think I was away for
8 three weeks at that stage.

9 536 Q. Yes.

10 A. To keep the files moving, they were sending them up to 15:27
11 Garda Headquarters.

12 537 Q. Inspector Ferry was signing that for you?

13 A. He would have been there, in Inspector McCarthy's
14 absence he would have performed that duty.

15 538 Q. Yes. 15:28

16 A. I'd say it was just a matter of moving everything on.

17 539 Q. And that was acknowledged by Mr. Barrett, if we look at
18 page 6872, on the 28th April. It says:

19
20 "I am to acknowledge receipt of your correspondence 15:28
21 dated the 21st inst. under the above caption, the
22 contents of which are noted.

23
24 I await for further report in course."

25 15:28

26 So at that point in time what were you intending to do
27 then?

28 A. Under the policy I had now got the information that
29 identified there was a number of gardaí who the garda

1 was complaining about. I established that the policy
2 which covers five ranks applied to the five, to the
3 five people that were involved. And then, I was giving
4 thought about it and I was mindful that the bullying
5 policy was there, but the bullying policy is an 15:29
6 agreement between the Garda associations and the Garda
7 Commissioner. My predecessor, in a difficult case
8 beforehand, had this model, the Byrne/McGinn model, and
9 it was a slightly wider approach than the policy. I
10 suppose the question I had in my head was, with the 15:29
11 policy owner, I needed to bring this information to the
12 policy owner's attention so the policy owner could make
13 a decision about whether it should be Byrne/McGinn,
14 whether it should be the default position, which was
15 the bullying policy. There was also two other issues 15:29
16 involved in it, one was that it would need to be an
17 assistant commissioner because of the ranks that were
18 complained of. I couldn't pick an assistant
19 commissioner, it had to be the policy owner, because I
20 couldn't pick a peer, so it had to be a policy owner 15:29
21 that would determine one of those.

22
23 There's also an obligation under the bullying policy to
24 make sure there is no conflict of interest in the
25 decision-making. So I would have been aware at that 15:30
26 stage that I had had the letter from Garda Keogh and
27 stuff like that. So I just thought, I want to make
28 sure that the policy owner was completely happy and
29 that's why I was looking for a meeting with the policy

1 holder, the policy owner.

2 540 Q. Yes. You took the precaution in the interim of writing
3 to Garda Keogh on the 16th May, isn't that correct?

4 A. Yeah. I would have communicated to the garda what the
5 current position was, that would have been the end of 15:30
6 the letter, without reading it.

7 541 Q. Perhaps we will just look at that, 6873. You're
8 referring there just very briefly to the history of the
9 correspondence with Mr. Barrett. Paragraph 4, you're
10 referring to the receiving of the correspondence from 15:30
11 Chief Superintendent Scanlan with the larger statement
12 first and the second, unsigned one second. And then
13 you say you're on annual leave. I think Inspector
14 McCarthy, you're satisfied, he hand-delivered the
15 letter, he spoke to Garda Keogh on the evening of the 15:31
16 16th and he confirmed that there was nothing more he
17 wanted to put in the written statements?

18 A. Yeah. So like, I mean, I had a written statement, I
19 had a written statement signed with the benefit of
20 legal advice. I had another document that was 15:31
21 unsigned, but I mean, the proofs were there that the
22 chief superintendent, the detective inspector and Garda
23 Keogh accepted was there. And I was just checking with
24 him, is there anything else that you want to include
25 now before I give the matter consideration or while I 15:31
26 am giving the matter consideration. I had been away on
27 annual leave and now I'm back and this is going to
28 be -- you know, of the many things that go through the
29 office every day, but I just wanted to be very clear

1 that, you know, he understood. I didn't want to miss
2 something in it either, like you know, if there was
3 another issue that he thought I should consider, well
4 now is the time for it.

5 542 Q. Yes. Inspector McCarthy wrote back to Garda Keogh 15:32
6 again on the 23rd, confirming the contents of the
7 meeting and the conversation on the 16th. That's at
8 page 6875. That was done on your authority, I am sure.

9 A. Yes.

10 543 Q. On the occasion of these visits by Inspector McCarthy, 15:32
11 would you have typically briefed him what he might
12 encounter, what he should say or how he should respond
13 to Garda Keogh in relation to questions about different
14 issues? Were you giving him a full briefing?

15 A. No, Inspector McCarthy was bringing the -- Inspector 15:33
16 McCarthy would probably have prepared the file for me,
17 would have discussed it, he would have arranged to have
18 it typed, have the letters typed and all that, the
19 correspondence going up and down. So he'd be familiar
20 with the file. 15:33

21 544 Q. Yes.

22 A. And you know, one of the issues coming out of that file
23 would be a letter to Garda Keogh, telling him what
24 exactly was happening. And then the purpose of
25 dropping it over to him was, well, there was going to 15:33
26 be no confusion about whether or not he got it or
27 whatever else happened. But Inspector McCarthy is very
28 professional. He'd just go and, you know, be courteous
29 and drop it in and that'd be the end of it. I would

1 assume. I was never there, but I'm aware of anything
2 that happened in those visits. But I mean, the
3 instruction was to bring the letter.

4 545 Q. Okay. Do the letters not reflect a discussion on these
5 dates that Inspector McCarthy had about whether he 15:33
6 wanted these other issues contained or not. Because
7 there doesn't seem to be any direct correspondence on
8 the issue?

9 A. Did I not write to Garda Keogh and ask him had he
10 everything included? 15:34

11 546 Q. Yes. But Inspector McCarthy reports back that there
12 were these two issues. So he must have discussed them
13 with Garda Keogh presumably?

14 A. Yeah, he must have.

15 547 Q. But that's what I am asking you, had you briefed 15:34
16 Inspector McCarthy to discuss matters with Garda Keogh?

17 A. No, no, no. Inspector McCarthy's knowledge would have
18 came from what he saw on the file, I'm sure. I mean, I
19 can't speak for him.

20 548 Q. So he would have been au fait with how matters were at 15:34
21 any given time?

22 A. Oh he would, because he was the office manager as well
23 as the operational inspector.

24 549 Q. Yes.

25 A. So maybe 20% of his time was spent on admin functions 15:34
26 in the office, this file would have been one of many,
27 and 80% of his time was operational, out working.

28 550 Q. Yes. Now, it would appear that after you got this
29 clarification from Inspector McCarthy and from Garda

1 Keogh as nothing more, I think you had a meeting with
2 Mr. Mulligan on the 22nd, which you describe as a
3 preliminary discussion with him, where you set out a
4 summary of the facts as you saw them, is that right?

5 A. That's correct, yeah. So like, in my thinking all the 15:35
6 material was in Garda Headquarters. I went to Dublin
7 one day, I was up probably about other matters, and
8 when I was there I went in to see if John Barrett was
9 there, the executive director of HRPD, I understand he
10 was away or he on leave. Then I met the acting or the 15:35
11 senior person there, who was Mr. Alan Mulligan. And I
12 would have mentioned to him, look it, you know, set up
13 all this correspondence and whatever was in -- I think
14 I might have followed up with an e-mail or something,
15 or there might be some written record of it somewhere. 15:35

16 551 Q. Well, we will come to that in due course, but the next
17 thing you did after meeting Mr. Mulligan was to set out
18 your view of the facts in a letter to Mr. Barrett on
19 the 24th May; isn't that correct? If we look at page
20 6876 and 6877. This letter may be of some importance 15:35
21 because you subsequently in a number of your accounts
22 say that Garda Keogh's complaint was sent with this. I
23 don't know if you recall that?

24 A. I can't. But if I say it, you know, it's probably
25 accurate at the time. I have the added feature that 15:36
26 Jimmy or whoever prepared it, Inspector McCarthy or
27 whoever prepared the report --

28 552 Q. You see, that's what I am anxious to just establish.
29 If we could just go through this then line-by-line. It

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says:

"I refer to your previous correspondence dated 8th March 2017. "

15:36

That is the letter we have seen from Mr. Barrett anxious to know about the complaints.

"I also refer to correspondence from this office dated 21st April 2017, tab B. "

15:36

And we have seen that one. That's the one where you send him the five-page, unsigned, unwitnessed statement, isn't that correct? We've just looked at that.

15:37

"And your correspondence dated 28th April 2017. "

That is his acknowledgment of that. It then goes on:

15:37

"On 16th May 2017, I also corresponded with Garda Nicholas Keogh, copy attached, tab D. "

we have looked at that.

15:37

"To enquire if he had any further material to offer and to respond to my office before the 30th May. Should Garda Keogh offer any further material, I will revert to you.

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On 22nd May 2017, I held a preliminary discussion with Mr. Mulligan HRPD, where I set out a summary of facts regarding this matter.

15:37

Later on that day..."

That recounts Inspector McCarthy's interaction with him there. And then the second last paragraph:

15:37

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

15:37

It then goes on to describe the second issue there, that we are not concerned with. And then on the next page, you say:

15:38

"One of the greatest issues of concern to me is the opening line of Garda Keogh statement dated 27th March 2017 'following my making protected disclosures, I encountered harassment, exclusion victimisation penalisation...'

15:38

I am not aware of the issues raised under the protected disclosure investigation. However, these matters now raised in both statements and in his account to

1 Inspector McCarthy may welcome within protected
2 disclosures policy. It is clear that his allegations
3 are grounded in his current statutes as a protected
4 discloser. I am of the view that this could well be
5 treated as effectively being a protected disclosure and 15:38
6 it may well be that those allegations are included in
7 the earlier disclosure. I am aware of one incident
8 where a garda raised issues about Pulse data relating
9 to intelligence record. I have again requested an
10 update from Chief Superintendent Gralton on this 15:38
11 matter.

12
13 The issues set out in the statement witnessed by Chief
14 Superintendent Scanlan and the additional list set out
15 in the unsigned statement also handed to Chief 15:39
16 Superintendent Scanlan by Garda Keogh are most serious.
17 The allegations could in some circumstances merit a
18 criminal investigation and the allegations include an
19 allegation against a Garda Commissioner by a protected
20 discloser. I am of the view that the bullying policy 15:39
21 is not wide enough to include any comprehensive
22 investigation. You decide. The decision in an earlier
23 case (McCabe) by HRM.

24
25 I am reluctant to make any appointments in this matter 15:39
26 as there may well be a conflict of interest in that I
27 had prior involvement in a previous correspondence
28 regarding Garda Keogh and it may well be perception of
29 the parties that I would not be impartial. Garda Keogh

1 corresponded with me on 15th April 2015, which issued a
2 response 24th April 2015...."

3
4 And you give the reference

5
6 "You will recall in correspondence dated 20th December
7 2016, tab B, that Chief Superintendent Roche, Naas, was
8 nominated to investigate the complaint under the
9 harassment, sexual harassment and bullying policy and
10 it was requested of me to formalise the appointment. 15:39

11 You will also know Garda Keogh informed Inspector
12 McCarthy he had first raised this issue directly with
13 Chief Superintendent McLoughlin in HRPD in June 2016 and that
14 information then provided was not made available to me
15 as part of the decision-making process. 15:40

16
17 I recommend a full investigation into these matters."

18
19 So, I just want to, as it were, sort of formally
20 suggest to you that you enclose a number of tabs with 15:40
21 this, tabs A, B and C, but that the 17-page statement
22 of the 27th isn't forwarded with this letter, do you
23 agree with that?

24 A. I simply don't know.

25 553 Q. All right. 15:40

26 A. If it's not tabbed on it, I take it.

27 554 Q. Okay. Now, at that point in time, and it's a position
28 you didn't appear to waiver from until much later, but
29 you were looking at a single, comprehensive

1 investigation into all matters?

2 A. Yeah. So the position is, the garda made a complaint
3 under the Garda bullying policy.

4 555 Q. Yes.

5 A. The precedent and the policy is that the policy owner 15:41
6 in one particular case concerning somebody went for
7 this wider investigation, which we call the
8 Byrne/McGinn model.

9 556 Q. Yes.

10 A. The question I was asking, there was four purposes |I 15:41
11 sent the file up; one, was to ask, well is that
12 something the policy owner was going to consider on
13 this case on the basis of that information. The second
14 thing was, was I conflicted because of the prior
15 involvement with the letter? The third thing was to 15:41
16 enquire about who -- if the default position was the
17 garda bullying policy, what assistant commissioner was
18 I going to get to do the investigation.

19 557 Q. Yes. Obviously if the complaint -- just looking at it
20 from the top down, if the complaint concerned the 15:41
21 Commissioner, it wouldn't fit in under the policy?

22 A. Because the policy only covers the four staff
23 associations up to and including the rank of chief
24 superintendent.

25 558 Q. Yes. 15:41

26 A. It doesn't apply to assistant commissioners or it
27 doesn't apply to deputy commissioners or commissioner,
28 or civilians in the garda workplace.

29 559 Q. I suppose there was a danger in what you were proposing

1 there, and I think you were conscious of this, because
2 you weren't aware what matters had been investigated
3 under the protected disclosures?

4 A. Yes.

5 560 Q. And to what extent matters had already been looked at
6 in that respect. And I suppose there was no easy way
7 for you to find that out?

15:42

8 A. Well, I had been appointed or directed by the policy
9 owner the previous December to start this process. So
10 the policy owner -- when I reported back up in May, was
11 it, in that report, it was then for the policy owner to
12 speak to the then Assistant Commissioner Ó Cualáin or
13 to talk -- it was a decision for the policy owner, not
14 for me. And it would have been open for the policy
15 owner to get legal advice or whatever, you know what I
16 mean. The policy owner was going to be a very busy
17 person, a huge amount of correspondence going through
18 different parts of the organisation. Like, I was only
19 one particular region.

15:42

15:42

20 561 Q. Yes.

15:42

21 A. So I can only imagine, and knowing from my time in
22 being the assistant commissioner in HRM, how busy the
23 place is and the volumes of material that are going
24 through. So I expected he give the matter very careful
25 consideration.

15:43

26 562 Q. Yes. I don't want to get involved in unnecessary
27 debate about protocol or who is the owner of different
28 bits of it, but your recommendation to Mr. Barrett
29 here, was he entitled, as it were, to make a decision

1 which would embrace some or all of what required to be
2 investigated?

3 A. Yes, because the Byrne/McGinn model, as we call it, is
4 a much wider approach to investigating. It would
5 include more -- you know, you could everything under 15:43
6 the Byrne/McGinn model. And I was asking the question,
7 do you wish to consider, as the policy owner do you
8 wish the investigation to be that wide or do you wish
9 to have an investigation under Garda policy for
10 bullying and harassment. 15:43

11 563 Q. CHAIRMAN: Can I ask you, assistant commissioner, who
12 would decide, if it was decided to have the
13 Byrne/McGinn model, who would decide that?

14 A. The policy owner, would be the executive director of
15 HRPD, after getting advice from people. 15:44

16 564 Q. CHAIRMAN: Who is?

17 A. Mr. John Barrett.

18 565 Q. CHAIRMAN: Okay. So Mr. Barrett was the policy owner?

19 A. Yeah, he owns the process, exactly.

20 566 Q. CHAIRMAN: That's okay. That's all right. I mean, I 15:44
21 understand that you use sort of technical terms. So it
22 was a matter for Mr. Barrett to decide to do a
23 Byrne/McGinn, or alternatively, to decide to a bullying
24 and harassment; is that correct?

25 A. The default position is it would be a bullying and 15:44
26 harassment.

27 567 Q. CHAIRMAN: I follow. Unless he chose the other one,
28 there had to be an investigation?

29 A. Exactly.

1 568 Q. CHAIRMAN: And that was a bullying and harassment
2 unless, okay. I see the point, yeah. And your advice,
3 your suggestion was, look, there's more here than fits
4 comfortably into a bullying and harassment?
5 A. Yes, on the basis of the information I had, Chairman, 15:44
6 which was the unsigned and signed statement, and that
7 was the information. Like a full investigation would
8 determine.
9 569 Q. CHAIRMAN: I'm sorry, Mr. McGuinness. The information
10 you had was in the unsigned -- 15:45
11 A. And signed, there was two documents, there was the
12 unsigned and signed one.
13 570 Q. CHAIRMAN: The big one was the 27th March?
14 A. Yes.
15 571 Q. CHAIRMAN: That was signed? 15:45
16 A. Yes.
17 572 Q. CHAIRMAN: And there was a further -- it was the 2nd
18 March, but that's not important, and it was about a
19 five-page document?
20 A. Yes. 15:45
21 573 Q. CHAIRMAN: So between the two, you were satisfied,
22 look, there's more here, that was your opinion?
23 A. Yeah, exactly, and it was only my opinion.
24 574 Q. CHAIRMAN: That's okay.
25 A. I wanted to make sure that everybody knew what I 15:45
26 thought and it was for other people to make decisions.
27 575 Q. CHAIRMAN: I follow. Ultimately it was Mr. Barrett's
28 call?
29 A. Yeah. And, you know, I'm assuming, I had done the job

1 for five and a half years before that, if I was to do
2 it I would get advice from lots of other people as
3 well.

4 576 Q. CHAIRMAN: I follow. But however he did it, whether he
5 got advice or didn't get advice, he would have come 15:45
6 back and said, look, I have taken into account what
7 you've said, my decision is as follows.

8 A. Absolutely.

9 577 Q. CHAIRMAN: Either agree with you or not agree with you.
10 A. And he would direct. 15:45

11 578 Q. CHAIRMAN: Okay, thanks very much.
12 A. Thank you, Chairman.

13 CHAIRMAN: I am sorry, Mr. McGuinness.

14 579 Q. MR. MCGUINNESS: Not at all, Chairman. Just a follow
15 on question from the Chairman's question there. You 15:46
16 did stake out your position at a later meeting that
17 that it was your responsibility to appoint under the
18 bullying and harassment?

19 A. Yes.

20 580 Q. So, if Mr. Barrett and others had agreed for a large 15:46
21 scale Byrne/McGinn, would he have responsibility for
22 appointing someone to do that?

23 A. Yes.

24 581 Q. would that side step your policy responsibility under
25 the bullying and harassment? 15:46

26 A. Yes, because it would sort of be the Commissioner's
27 policy.

28 582 Q. Yes.
29 A. Because the whole bullying policy is an agreement

1 between the Commissioner and the staff associations.
2 So the Commissioner and the staff associations are the
3 people concerned, can vary it.

4 583 Q. Yes.
5 A. And if they all agree to go down the Byrne/McGinn road, 15:46
6 well then that's the model they use.

7 584 Q. Well, that's what I was going to ask. I mean, if it
8 was a Byrne/McGinn investigating everything, that would
9 be, as it were, a side stepping of the policy and would
10 be an investigation including the bullying and 15:46
11 harassment but outside the scope of the policy?

12 A. Well, I am sure the Policy would -- but it would be
13 agreed between both sides, like I mean, the legal
14 representatives and the others. Because the agreement
15 -- the bullying policy is an agreement that stands, but 15:47
16 then that agreement can be varied by consent or by
17 whatever with the other people.

18 585 Q. CHAIRMAN: But the Byrne/McGinn is not the subject of
19 an agreement?

20 A. No. No. It's a once off. It was used once. 15:47

21 586 Q. CHAIRMAN: The Commissioner could say -- the authority,
22 Garda that headquarters could say, it is appropriate in
23 this case to have a full inquiry and that was in their
24 jurisdiction as police officers in authority?

25 A. Yes. 15:47

26 587 Q. CHAIRMAN: Correct me if I am wrong, if it was the
27 bullying policy, the bullying and harassment policy,
28 that's the subject of an agreement?

29 A. Yes, and that's the default position.

1 588 Q. CHAIRMAN: That was the default position in accordance
2 with the agreement but the parties could agree to vary
3 that agreement in respect of the bullying and
4 harassment policy?

5 A. Exactly. And it comes from -- the basic principle is 15:48
6 management always have the right to manage.

7 589 Q. CHAIRMAN: Yes.

8 A. And secondly, there is a statutory piece that we always
9 interpreted, the Commissioner has the right to direct,
10 control the force. And if there was such a matter, the 15:48
11 Commissioner would control and direct the force.

12 CHAIRMAN: Okay. Sorry. Thank you very much.

13 THE WITNESS: Thank you, Chairman.

14 590 Q. MR. McGUI NNESS: In any event, subsequent to this
15 letter, you didn't get an immediate reply, I think. 15:48
16 You wrote subsequently then to Garda Keogh on the 31st
17 May to tell him the position, to keep him updated,
18 isn't that right? And if we look at page 6878. In the
19 main paragraph at the middle, you say:

20 15:48
21 "The purpose is that I am of the view that these
22 matters merit consideration outside the bullying and
23 harassment policy. Before proceeding to next steps, I
24 am awaiting his decision."

25 15:49
26 That is the executive director.

27
28 "And once I have his decision I will communicate with
29 you further."

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So, as matters stand, that's where it was that is where it was at that point in time. We have seen in other documents a fairly constant flow of minutes from the Commissioner's office, enquiring about the taking of a statement, progressing the investigation, instructing the chief administrative officer to convene a case conference. That gets passed over to Mr. Barrett's office and Mr. Mulligan to have responsibility for a case conference. We know that at a stage in middle March when no statements had been taken, it was obviously considered there was no reason to have a case conference. But did you understand that that was a process that the Commissioner wanted, that there should be a case conference on the matter once the statements had been received? 15:49 15:50

A. No, Chairman. I don't think I was copied in that correspondence. But I mean, that wouldn't be unusual, because the Commissioner, you know, is going to be a busy person and they are they are going to control and direct the force, they are going to ask their head of HR to do whatever it is, or the CAO, I suppose, is the way it probably came down. But, no, I hadn't part of that. As you see, any correspondence I had is there, up and down. I think the first I wrote in September then looking for a case conference and then we had it on the 3rd October. That was the first. But I wrote I think on the 24th or the 26th, something like that. I wrote twice looking for a case conference. 15:50

1 591 Q. I am just wondering, is the reason a case conference
2 may not have been held was because you had only sent
3 over one part of the statement rather than the
4 substantive 17 part?

5 A. I'm not aware. Nobody ever said to me there was a 15:50
6 problem with not getting statements. There was no
7 issue. I mean I wouldn't expect, don't take me up
8 wrong, I wouldn't be expect to be consulted by the
9 Commissioner about everything on it. I was doing my
10 piece. It was going to the policy owner. What I 15:50
11 understand about that part is, that was the
12 Commissioner communicating with the policy holder, the
13 policy owner, you know.

14 592 Q. Yes.

15 A. So it wouldn't be in that relationship. 15:51

16 593 Q. In any event, we have heard reference this morning to
17 reminders that you wrote to the executive director
18 Mr. Barrett. You wrote on the 16th June, we don't need
19 to look at these, 6879, urging him to keep delay to a
20 minimum and to express your concern that you were keen 15:51
21 to revert to Garda Keogh with a decision. You inform
22 Garda Keogh of that on the 16th June, also at page
23 6680. The next page. Mr. Barrett writes back to you
24 in June, informing you of Chief McLoughlin being on
25 annual leave at that point in time and a desire to 15:51
26 arrange a meeting. 6882, the 17th August, you're
27 pressing for an update on the position there, the
28 current position. You're informing Garda Keogh again
29 of that, on the 17th August, if we look at 6883. And

1 you're telling him there that you are seeking an
2 updated report regarding this matter. You again wrote
3 to the executive director then on the 1st September, if
4 you look at 6884. Keen to avoid delay. You're again
5 copying Mr. Cullen on that. 6885. 15:52

6 A. Sorry, copying Mr. Cullen there, sorry?

7 594 Q. You are informing Mr. Cullen of that position I think?
8 CHAIRMAN: Mr. Cullen, the solicitor of Garda Keogh's.

9 A. Yeah, sorry, yeah.

10 595 Q. MR. McGUINESS: well, you're informing him there 15:53
11 that --

12 A. That it was gone to HRPD, yeah.

13 596 Q. That it was gone to Mr. Barrett?

14 A. Yes.

15 597 Q. You write to Mr. Barrett then on the 22nd September, 15:53
16 seeking a meeting, if we look at 6889. You're
17 informing Garda Keogh of that, 6890. And then a
18 meeting takes place shortly after that, on the 3rd
19 October. Perhaps we will just look at the minutes
20 briefly of that, page 10118. You make the case for a 15:54
21 bigger investigation there. Was there general
22 agreement on that issue at that point in that meeting?

23 A. I remember it was a productive meeting. The minutes
24 came out relatively recently, I think I just got a --
25 after the meeting we got an item or an item list with 15:54
26 about ten points on it. No, it was a good -- because I
27 remember we worked through lunch, like. So everybody
28 was there and everybody was really concerned. I think
29 that's the meeting came up about the classification of

1 the member's absence and that, that he wanted it
2 reclassified. So there was a lot of stuff covered in
3 that and a lot of people came and worked through lunch
4 with this. You know, that's when it came up and I gave
5 my points about the Byrne/McGinn model, or the default 15:55
6 position being the policy or do we go the other way.

7 598 Q. You see, at the bottom of this first page, 10118, you
8 seem to be urging that a statement needs to be taken
9 from Garda Keogh and a process followed.

10
11 "Someone neutral needs to carry out an investigation.
12 Assistant Commissioner Fanning suggested a full
13 statement be taken and sent to the Director of
14 Prosecutions and outlined what had already been
15 submitted on the file. Then, when the Director of 15:55
16 Public Prosecutions come back, all other matters should
17 be looked at under the relevant policies. Mr. Barrett
18 is in agreement with this."

19
20 But would that not have been setting the process back 15:55
21 to the beginning again?

22 A. No, Chairman. No. Because the process, the formal
23 investigation had not started. So the formal
24 investigation was going to start either as the default
25 position, which is the bullying and harassment policy, 15:55
26 or, if the policy owner changed it. So we hadn't got
27 to day one yet. So if it was to be the Byrne/McGinn
28 model, it was going to start that day, or, if it was
29 the bullying policy, it was going to start as soon as I

1 got the name of the person from Garda Headquarters to
2 appoint. And that didn't happen I think until
3 November.

4 599 Q. well, I am just concerned to see whether from your
5 point of view, you didn't know what statements Garda 15:56
6 Keogh had made in the criminal --

7 A. Absolutely not, no, not for the protected, disclosure
8 no.

9 600 Q. You did know what he had done under the bullying
10 policy? 15:56

11 A. Yes, because he had sent the unsigned and the signed
12 statements, the two statements that Chief
13 Superintendent Scanlan had.

14 601 Q. Yes.

15 A. They were the two I got. They were information to 15:56
16 allow me to decide whether or not the complaint was to
17 be accepted or it met the threshold to be investigated.

18 602 Q. Yes.

19 A. And I was at that point and the default position was
20 the bullying investigation or, if the policy owner -- 15:56
21 which I was saying seemed a bit wider. One instance
22 was, he had some difficulty with the Commissioner at
23 the time. The Commissioner wasn't covered under the
24 bullying policy. So the easiest thing was to say,
25 well, you know, what have you got to say about that and 15:57
26 follow it out and close it out, whatever the outcome
27 was.

28 603 Q. Yes.

29 A. And that couldn't be done under the bullying policy,

1 whereas it could have been done under the Byrne/McGinn
2 model.

3 604 Q. All right. On the second page there it seems to report
4 Mr. Barrett to appoint someone at assistant
5 commissioner level to do the investigation. If we just 15:57
6 go down to the middle of the page. Just there. That
7 would only be possible if it was the sort of larger
8 Byrne/McGinn type model, wouldn't that be correct?

9 A. This is the line beginning, Assistant Commissioner
10 Fanning, no? 15:57

11 605 Q. No, Mr. Barrett?

12 A. Is in agreement the rule --

13 606 Q. At the bottom there.

14 CHAIRMAN: Mr. Barrett to appoint someone at assistant
15 commissioner level. 15:57

16 A. Well, he was going to have to appoint an assistant
17 commissioner whether it was --

18 607 Q. CHAIRMAN: One way or the other.

19 A. One way or the other, exactly. Sorry, was going to
20 have nominate an assistant commissioner. 15:57

21 CHAIRMAN: I understand.

22 608 Q. MR. MCGUINNESS: Do you recollect Assistant
23 Commissioner McPartlin being discussed at this?

24 A. I do, yeah. I thought it was something about she was
25 going to do a fact-finding or something like that, 15:58
26 which was something else.

27 609 Q. Yes. Well, what would that be?

28 A. I don't know because it wasn't one of the two
29 alternatives I have. I think, as I say, these minutes,

1 all I got from that meeting was an action list and
2 Assistant Commissioner McPartlin's name is in that
3 action list I think. But I mean, that was something
4 that the executive director John Barrett was going to
5 appoint her to do, I don't know what it was or what 15:58
6 policy it was under or whatever. I don't mean that in
7 a disparaging way, but I just simply don't have the
8 information.

9 610 Q. Well, the action list is at page 10820, if we just turn
10 to that. So when you got this, did you think that the 15:58
11 Byrne/McGinn sort of overarching comprehensive
12 investigation was what had been decided upon?

13 A. No, because I wasn't told at the meeting that the
14 default position had stopped, that it was definitely
15 going to be a Byrne/McGinn investigation. So like, I 15:59
16 wasn't -- I wasn't -- there was a lot of discussion
17 went on that day, we worked through luncheon on it.
18 But I certainly wasn't of the view that I had been
19 relieved of anything at that stage.

20 611 Q. So were you expecting then to get a nomination from 15:59
21 Mr. Barrett as to appointing somebody under the
22 bullying policy?

23 A. To me this was a third thing. He's the policy owner,
24 he has the absolute right to treat the matter whatever
25 way he wanted. But the issue was, if the Byrne/McGinn 15:59
26 model, which was the established model and had been
27 established before, there was precedence for it, or the
28 default position wasn't going to go ahead, then I'd
29 expect to be told that. So I wasn't told neither was

1 going to occur. So I was left in the position that I
2 was going to have to make an appointment. But I would
3 be relying on the executive director, Mr. John Barrett
4 to nominate one of the assistant commissioners to be
5 available to me to make the appointment under the 16:00
6 bullying policy.

7 612 Q. As of after this meeting?

8 A. Yeah, after that meeting. I mean, look, it was
9 perfectly reasonable for Mr. Barrett to consider this,
10 like I mean. He probably came back off holidays, you 16:00
11 know, I mean I have a lot of correspondence to deal
12 with and he has six or eight regions, six regions and
13 two other functions, so he is going to have six or
14 eight times the amount of paper, and a lot of the
15 regions have a lot more gardaí than I had. So, you 16:00
16 know, for every one of mine he had ten others.

17 613 Q. CHAIRMAN: Assistant commissioner, this meeting ended,
18 as I understand from your evidence, it ended without a
19 specific decision as to what kind of investigation was
20 going to take place, is that correct? 16:00

21 A. Yeah, and there was some suggestion that he was going
22 to ask Assistant Commissioner McPartlin.

23 614 Q. CHAIRMAN: I follow. So she was mentioned,

24 A. Yeah.

25 615 Q. CHAIRMAN: Possibly for some fact-finding or whatever. 16:01
26 But if I am understanding, there wasn't a consensus as
27 people left this meeting as to precisely what was going
28 to happen next. In other words, what investigation was
29 going to happen; is that right?

1 A. Well, I felt I was still in the same position, that it
2 was going to be one of two.

3 616 Q. CHAIRMAN: But it hadn't been decided?

4 A. No, there was no firm decision which way we're going.
5 And that was perfectly reasonable in my view. 16:01

6 617 Q. CHAIRMAN: Sorry, and I'm not implying a criticism or
7 anything else.

8 A. Yes.

9 618 Q. CHAIRMAN: There may be criticisms, but I am just
10 trying to establish the factual situation, that it 16:01
11 wasn't decided at this meeting.

12 A. Exactly.

13 619 Q. CHAIRMAN: There was a discussion and you say a very
14 useful discussion and so on. Anyway, there we are.

15 620 Q. MR. MCGUINNESS: Just before passing on from this 16:01
16 meeting then, can you confirm whether there was any
17 discussion at all of Superintendent Murray's promotion
18 or the consideration of it by the Policing Authority in
19 any respect?

20 CHAIRMAN: At this meeting. 16:02

21 621 Q. MR. MCGUINNESS: At this meeting?

22 A. No. Not to the best of my knowledge, because I had no
23 recollection of any discussion about Superintendent
24 Murray's promotion, with anybody.

25 622 Q. It would appear that on the day after the meeting 16:02
26 Inspector McCarthy forwarded Garda Keogh's statement of
27 the 27th March to the executive director's office. If
28 we look at page 6893, it says:
29

1 "I am directed by assistant commissioner Eastern Region
2 to refer to a meeting of yesterday's date and to
3 forward copy statement witnessed by Garda Nick Keogh on
4 27th March 2017 and hand delivered to HRM on 24th May
5 2017, per file from Assistant Commissioner Fanning 16:03
6 dated 24th May 2017, please."
7

8 Now, we have seen the letter, it doesn't actually refer
9 to it at all. So is this perhaps the first occasion
10 when the major part of the statement is sent to the 16:03
11 executive director's office

12 A. I can't be sure. But I suspect what came up at the
13 meeting was they wanted a copy of everything.

14 623 Q. Yes.

15 A. I don't know. I mean, whatever they asked for, we gave 16:03
16 them.

17 624 Q. Yes.

18 A. And made sure it went up the next day like.

19 625 Q. Yes.

20 A. But I wouldn't just assume that it didn't go the first 16:03
21 time.

22 626 Q. Yes.

23 A. I think I'd be of the view that, you know, there when
24 there was a request made at the meeting for certain
25 things, there were certain actions to follow the 16:03
26 meeting and we complied with it the very next day.

27 627 Q. Yes. Chairman, I have some considerable time to go on
28 the matter.

29 CHAIRMAN: Yes. Just so we can clarify, I am sure

1 Mr. Kelly will be back in a moment. How long do you
2 anticipate?

3 MR. McGUI NNESS: Perhaps an hour.

4 CHAIRMAN: Ms. Mulligan, are you proposing to
5 cross-examine? 16:04

6 MS. MULLIGAN: I anticipate it to be very short,
7 Chairman.

8 CHAIRMAN: Thank you very much. Okay. All I am
9 thinking of is this, do we need to start early
10 tomorrow? Because we have to finish the assistant 16:04
11 commissioner, we have Commissioner Ó Cualáin and we
12 have Assistant Commissioner Finn, isn't that right?

13 MR. McGUI NNESS: No, we just have Commissioner
14 Ó Cualáin after this witness and Mr. Marrinan thinks he
15 will be half an hour. 16:04

16 CHAIRMAN: Oh, that's fine. That is fine. So there's
17 no particular pressure on us in that case for tomorrow.
18 Sorry. So okay. Very good. We will leave it over
19 until tomorrow. 10:30 tomorrow, yes. That's why I was
20 enquiring, I was wondering if we needed some special 16:04
21 arrangements. Thanks very much, everybody.

22

23 THE HEARING THEN ADJOURNED UNTIL FRIDAY, 6TH MARCH 2020
24 AT 10:30AM

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1				
<p>1 [4] - 3:2, 58:6, 125:11, 172:22 10 [3] - 3:7, 160:5, 161:16 10005 [1] - 172:2 10013 [1] - 174:6 10021 [1] - 175:17 10049 [1] - 120:23 10050 [1] - 120:23 10051 [1] - 120:24 10052 [1] - 121:13 10110 [1] - 8:8 10118 [2] - 195:20, 196:7 10146 [1] - 36:5 10149 [2] - 6:23, 6:24 10201 [1] - 17:20 10217 [2] - 34:26, 34:28 10225 [1] - 31:7 10235 [2] - 24:15, 114:1 10245 [1] - 36:25 10318 [2] - 11:7, 38:24 10321 [2] - 11:14, 39:5 10331 [1] - 70:14 105 [1] - 117:22 1055 [1] - 122:3 10820 [1] - 199:9 10:30 [1] - 203:19 10:30AM [1] - 203:24 10th [1] - 130:17 11 [3] - 3:7, 84:8, 183:14 11-13 [1] - 4:3 11/1 [1] - 80:27 113 [2] - 5:7, 91:8</p>				

<p>2835 [1] - 60:21 28th [2] - 176:18, 182:17 29 [1] - 3:17 2:30 [1] - 136:1 2nd [24] - 24:14, 26:7, 26:9, 31:8, 31:28, 32:12, 39:27, 51:3, 51:4, 53:29, 54:14, 56:2, 61:19, 104:15, 114:2, 114:23, 127:22, 173:25, 174:10, 174:23, 175:2, 175:4, 175:26, 189:17</p>	<p style="text-align: center;">4</p> <p>4 [9] - 2:19, 3:4, 59:7, 65:29, 66:9, 70:11, 125:17, 125:19, 178:9 40 [1] - 64:11 40(2) [1] - 64:8 47 [2] - 101:22, 103:18 4th [2] - 142:2, 172:1</p>	<p>6821 [1] - 171:14 6823 [1] - 172:14 6824 [1] - 173:27 6828 [1] - 173:29 6829 [1] - 174:3 6872 [1] - 176:18 6873 [2] - 119:3, 178:7 6874 [2] - 120:3 6875 [1] - 179:8 6876 [1] - 181:20 6877 [1] - 181:20 6878 [1] - 192:18 6879 [1] - 194:19 6882 [1] - 194:26 6883 [1] - 194:29 6884 [1] - 195:4 6885 [1] - 195:5 6889 [1] - 195:16 6890 [1] - 195:17 6893 [1] - 201:28 6953 [1] - 129:15 6:28 [1] - 108:20 6th [8] - 8:6, 8:10, 31:6, 32:13, 33:6, 33:18, 33:20, 35:22 6TH [1] - 203:23</p>	<p style="text-align: center;">A</p> <p>A) [1] - 69:7 ability [1] - 105:22 able [8] - 57:23, 64:3, 65:9, 69:28, 83:27, 159:17, 160:2, 160:3 above-named [1] - 1:26 absence [11] - 8:28, 8:29, 9:3, 20:1, 71:28, 75:15, 154:18, 156:19, 165:3, 176:14, 196:1 absences [1] - 155:12 absenteeism [1] - 155:8 absolute [2] - 18:17, 199:24 absolutely [18] - 26:5, 30:27, 53:4, 53:16, 53:26, 55:6, 73:3, 101:4, 101:29, 106:26, 109:23, 115:22, 116:9, 116:24, 117:11, 124:8, 190:8, 197:7 AC [57] - 13:26, 13:27, 14:10, 14:27, 16:7, 16:16, 16:26, 17:5, 20:22, 21:21, 22:29, 23:10, 23:15, 28:17, 30:27, 34:7, 34:19, 51:8, 51:11, 51:13, 51:21, 52:26, 56:23, 86:11, 91:8, 91:20, 113:28, 114:4, 116:21, 116:27, 119:12, 119:27, 120:8, 121:24, 122:1, 122:8, 124:9, 124:10, 125:4, 126:16, 127:14, 127:26, 128:2, 128:29, 129:8, 129:11, 129:13, 129:20, 130:3, 131:15, 134:9, 134:12, 139:20, 140:27, 158:22 accept [33] - 8:7, 9:5, 9:28, 10:1, 10:2, 10:5, 10:9, 26:5, 29:8, 29:9, 32:14, 37:1, 37:2, 37:4, 37:9, 37:21, 37:22, 44:13, 44:15, 48:11, 48:13, 48:14, 49:1, 50:8, 53:18, 60:8, 71:21, 77:21,</p>	<p>77:22, 80:9, 104:28, 134:16, 167:14 acceptable [1] - 105:23 accepted [5] - 46:6, 46:7, 104:9, 178:23, 197:17 accepting [2] - 37:5, 52:1 access [2] - 157:10 accompanied [1] - 174:10 accordance [8] - 27:15, 30:24, 59:20, 70:7, 75:26, 120:22, 152:24, 192:1 according [2] - 65:19, 131:18 accordingly [1] - 152:18 account [4] - 72:17, 159:23, 183:29, 190:6 accountable [1] - 63:3 accounts [1] - 181:21 accurate [6] - 112:12, 144:3, 147:20, 148:5, 181:25 accurately [1] - 147:18 accused [2] - 106:1, 106:6 acknowledge [4] - 122:16, 127:7, 153:28, 176:20 acknowledged [2] - 36:8, 176:17 acknowledges [1] - 122:12 acknowledging [2] - 119:15, 152:4 acknowledgment [1] - 182:19 Act [1] - 59:20 ACT [2] - 1:3, 1:8 acting [14] - 10:20, 31:12, 42:19, 44:1, 47:29, 95:28, 103:17, 104:21, 105:5, 105:6, 105:10, 105:29, 106:4, 181:10 ACTING [2] - 3:7, 3:13 Acting [1] - 95:13 action [11] - 1:27, 8:24, 14:29, 16:6, 25:5, 144:20, 164:11, 171:2, 199:1, 199:3, 199:9</p>
<p style="text-align: center;">3</p>	<p style="text-align: center;">5</p> <p>5 [1] - 3:4 51 [1] - 2:18 56 [1] - 136:28 5887 [3] - 126:23, 127:2 5891 [1] - 124:27 5896 [1] - 124:12 5897 [2] - 122:10, 122:12 5898 [1] - 122:9 5902 [1] - 122:4 5:26 [1] - 49:9 5TH [2] - 1:18, 6:1 5th [4] - 121:14, 121:27, 172:13, 175:22</p>	<p style="text-align: center;">7</p> <p>7 [5] - 1:9, 2:25, 3:5, 4:13, 174:25 7th [4] - 57:8, 60:19, 65:24, 66:9</p>		
<p>3 [3] - 3:3, 58:28, 65:28 3(a) [1] - 68:29 3(b) [1] - 70:2 30 [1] - 3:17 30th [5] - 118:8, 119:24, 156:1, 158:18, 182:27 31 [1] - 3:18 31st [9] - 47:13, 49:7, 104:14, 119:6, 121:20, 150:27, 171:14, 171:18, 192:16 32 [2] - 2:24, 3:18 322 [1] - 118:8 33 [1] - 3:19 33-34 [1] - 4:12 338 [2] - 63:10, 63:11 338-page [1] - 61:10 34 [1] - 3:19 35 [1] - 3:20 3542 [1] - 123:3 3543 [1] - 123:23 3549 [1] - 127:24 3560 [1] - 125:9 3562 [1] - 126:7 36 [1] - 3:20 3600 [1] - 13:10 3630 [1] - 131:13 37 [1] - 3:21 38 [1] - 3:21 39 [2] - 3:22, 154:3 3rd [10] - 9:10, 10:13, 10:25, 11:21, 32:8, 56:18, 128:7, 193:27, 195:18</p>	<p style="text-align: center;">6</p> <p>6 [4] - 3:5, 5:5, 126:8 60 [1] - 74:23 62 [1] - 52:11 6447 [1] - 136:23 6462 [2] - 152:9, 152:10 6466 [1] - 151:25 6467 [1] - 149:28 6572 [1] - 145:2 6593 [1] - 129:14 6602 [1] - 142:20 6603 [2] - 142:18, 142:20 6611 [1] - 141:19 6648 [1] - 140:26 6649 [1] - 139:24 6680 [1] - 194:23 6800 [1] - 161:29 6802 [1] - 163:24 6805 [2] - 164:18, 164:19 6808 [1] - 166:15 6810 [1] - 169:8 6811 [1] - 169:19 6815 [1] - 171:3</p>	<p style="text-align: center;">8</p> <p>8 [2] - 3:6, 3:28 8/1 [1] - 104:17 8/12 [1] - 104:16 80% [1] - 180:27 851 [1] - 137:1 8th [18] - 11:7, 38:23, 40:5, 66:18, 66:19, 66:24, 70:20, 71:1, 72:25, 74:3, 75:28, 79:17, 83:18, 142:2, 150:2, 169:7, 170:29, 182:3</p>	<p style="text-align: center;">9</p> <p>9 [2] - 3:6, 118:1 95 [1] - 5:6 9:00pm [1] - 158:20 9th [4] - 35:26, 130:12, 142:3, 168:9</p>	

<p>actioned [2] - 15:9, 59:15</p> <p>actions [3] - 12:13, 12:19, 202:25</p> <p>activates [1] - 22:17</p> <p>activities [1] - 59:14</p> <p>activity [3] - 10:23, 10:24, 12:15</p> <p>acts [1] - 58:9</p> <p>actual [2] - 125:26, 144:8</p> <p>ad [1] - 25:1</p> <p>adamant [1] - 77:17</p> <p>add [2] - 74:21, 119:29</p> <p>added [2] - 174:27, 181:25</p> <p>addendum [5] - 85:12, 86:21, 87:13, 92:6, 118:7</p> <p>additional [6] - 7:7, 45:22, 86:11, 86:13, 125:6, 184:14</p> <p>additionally [1] - 34:10</p> <p>address [3] - 45:29, 80:17, 107:21</p> <p>addressed [11] - 9:20, 14:14, 14:16, 18:16, 25:5, 29:11, 32:29, 43:8, 57:10, 97:14, 142:19</p> <p>addressing [4] - 34:20, 96:23, 100:11, 141:20</p> <p>adequate [1] - 175:14</p> <p>ADJOURNED [2] - 136:6, 203:23</p> <p>admin [2] - 50:14, 180:25</p> <p>administrative [4] - 15:6, 40:19, 105:20, 193:7</p> <p>ADMINISTRATIVE [1] - 3:14</p> <p>admitting [1] - 19:8</p> <p>adopted [1] - 15:27</p> <p>advance [4] - 55:9, 76:10, 97:15, 127:19</p> <p>advanced [1] - 124:2</p> <p>advancing [2] - 85:5, 86:1</p> <p>advertised [1] - 107:20</p> <p>advice [25] - 56:8, 56:12, 56:16, 61:13, 61:21, 66:26, 79:3, 93:11, 93:15, 93:17, 93:18, 111:20,</p>	<p>111:22, 149:10, 151:21, 165:5, 166:1, 171:25, 178:20, 187:15, 188:15, 189:2, 190:2, 190:5</p> <p>advise [2] - 41:6, 152:17</p> <p>advised [10] - 64:15, 68:21, 72:15, 122:4, 123:9, 127:4, 150:5, 150:7, 165:3, 175:3</p> <p>adviser [1] - 165:6</p> <p>advisers [1] - 165:29</p> <p>advising [1] - 31:29</p> <p>advisor [1] - 170:28</p> <p>Affairs [1] - 61:7</p> <p>affect [1] - 107:8</p> <p>affirm [1] - 159:17</p> <p>afforded [1] - 59:4</p> <p>mentioned [2] - 27:22, 70:8</p> <p>afternoon [1] - 95:11</p> <p>afterwards [1] - 10:14</p> <p>Agency [4] - 45:2, 45:10, 52:8, 70:27</p> <p>agenda [1] - 154:9</p> <p>aggravate [1] - 151:22</p> <p>ago [6] - 20:8, 20:12, 21:8, 57:13, 134:25, 183:15</p> <p>agree [19] - 7:6, 15:26, 22:19, 24:12, 27:8, 66:11, 121:28, 128:2, 128:12, 128:19, 134:10, 169:16, 170:7, 173:4, 185:23, 190:9, 191:5, 192:2</p> <p>agreed [16] - 13:27, 14:12, 16:23, 32:7, 82:9, 82:12, 82:13, 83:11, 98:17, 128:6, 164:10, 169:6, 170:5, 174:26, 190:20, 191:13</p> <p>agreed.. [1] - 62:19</p> <p>agreeing [1] - 82:14</p> <p>agreement [16] - 19:16, 25:13, 114:25, 163:15, 177:6, 190:29, 191:14, 191:15, 191:16, 191:19, 191:28, 192:2, 192:3, 195:22, 196:18, 198:12</p> <p>AGSI [1] - 4:4</p> <p>ahead [2] - 23:7, 199:28</p>	<p>aid [1] - 20:4</p> <p>AIDAN [2] - 3:9, 4:6</p> <p>AISLING [2] - 2:11, 3:21</p> <p>Alan [1] - 181:11</p> <p>ALAN [2] - 3:9, 3:13</p> <p>ALISON [1] - 3:26</p> <p>alive [1] - 44:5</p> <p>allegation [19] - 14:18, 15:4, 15:11, 54:21, 54:23, 59:10, 69:23, 73:17, 100:28, 102:25, 103:25, 106:2, 106:7, 106:8, 106:19, 110:11, 126:18, 132:11, 184:19</p> <p>allegations [42] - 12:24, 19:7, 24:2, 24:13, 45:5, 45:21, 46:1, 48:9, 48:12, 48:18, 58:18, 58:23, 66:8, 68:7, 71:24, 72:17, 82:7, 85:3, 85:27, 85:28, 86:18, 96:26, 102:16, 102:17, 102:19, 102:21, 103:2, 105:2, 108:3, 113:2, 113:7, 116:13, 127:12, 132:7, 140:2, 168:3, 168:26, 184:2, 184:6, 184:17, 184:18</p> <p>allege [1] - 45:27</p> <p>alleged [10] - 9:2, 43:20, 44:20, 45:15, 46:3, 59:1, 106:27, 106:29, 169:25, 169:29</p> <p>allegedly [1] - 167:28</p> <p>alleges [2] - 58:8, 166:22</p> <p>allow [5] - 22:26, 73:10, 73:17, 77:27, 197:16</p> <p>allowed [1] - 109:12</p> <p>allowing [2] - 27:12, 165:11</p> <p>almost [1] - 86:13</p> <p>alone [1] - 22:20</p> <p>alternative [1] - 168:12</p> <p>alternatively [1] - 188:23</p> <p>alternatives [1] - 198:29</p> <p>altogether [1] - 151:10</p> <p>AMENDED [1] - 1:9</p>	<p>amendment [1] - 31:23</p> <p>amendments [1] - 31:17</p> <p>amount [9] - 7:24, 21:27, 80:17, 88:27, 96:10, 104:19, 166:22, 187:17, 200:14</p> <p>AN [1] - 3:2</p> <p>analysis [1] - 89:18</p> <p>AND [6] - 1:3, 1:4, 1:8, 3:15, 132:15, 136:6</p> <p>ANDREW [2] - 2:22, 4:5</p> <p>angles [1] - 115:16</p> <p>ANNE [2] - 3:8, 3:17</p> <p>annual [5] - 119:17, 173:16, 178:13, 178:27, 194:25</p> <p>answer [13] - 12:11, 41:17, 42:10, 52:26, 79:20, 83:28, 89:14, 95:1, 97:7, 104:11, 111:2, 112:23, 144:19</p> <p>answered [1] - 110:15</p> <p>answering [1] - 80:23</p> <p>ANTHONY [1] - 3:6</p> <p>anticipate [2] - 203:2, 203:6</p> <p>anticipated [1] - 84:10</p> <p>anxious [5] - 80:3, 119:18, 171:10, 181:28, 182:7</p> <p>anyhow [1] - 158:14</p> <p>anyway [3] - 141:6, 156:23, 201:14</p> <p>apart [1] - 138:20</p> <p>apologies [6] - 15:21, 26:8, 41:14, 94:5, 108:17, 112:1</p> <p>APPEAL [2] - 1:13, 2:3</p> <p>appear [10] - 12:7, 123:14, 142:16, 160:12, 163:26, 172:1, 175:11, 180:28, 185:28, 201:25</p> <p>APPEARANCES [1] - 2:1</p> <p>appearing [1] - 16:9</p> <p>appended [1] - 69:5</p> <p>appendices [8] - 74:20, 74:25, 174:3, 174:21, 174:22,</p>	<p>175:5, 175:27</p> <p>appendix [7] - 69:7, 69:9, 70:13, 70:15, 75:1, 110:29, 135:24</p> <p>applicable [3] - 143:7, 164:29, 171:8</p> <p>applied [4] - 105:11, 107:21, 169:1, 177:2</p> <p>applies [1] - 64:12</p> <p>apply [5] - 106:24, 132:9, 170:12, 186:26, 186:27</p> <p>appoint [9] - 22:8, 41:5, 59:29, 190:17, 197:2, 198:4, 198:14, 198:16, 199:5</p> <p>appointed [29] - 11:24, 12:10, 12:23, 13:27, 21:14, 21:15, 22:1, 23:14, 23:16, 33:26, 39:11, 40:11, 55:12, 55:13, 63:1, 65:22, 67:18, 92:28, 93:1, 105:20, 107:10, 109:15, 137:12, 138:25, 139:11, 140:15, 164:28, 166:11, 187:8</p> <p>appointing [8] - 10:25, 30:20, 34:7, 163:11, 165:8, 165:25, 190:22, 199:21</p> <p>appointment [31] - 10:15, 16:24, 19:21, 19:24, 22:12, 25:23, 30:25, 30:28, 30:29, 32:4, 32:6, 33:10, 35:15, 40:21, 48:9, 60:1, 60:27, 73:18, 101:20, 107:18, 108:4, 109:17, 127:27, 128:3, 154:8, 162:28, 163:14, 165:23, 185:10, 200:2, 200:5</p> <p>appointments [10] - 23:11, 32:18, 42:4, 60:26, 109:10, 170:14, 170:17, 170:25, 174:17, 184:25</p> <p>appoints [1] - 36:2</p> <p>appreciate [9] - 30:11, 68:6, 86:2, 112:15, 119:21, 119:23, 129:17, 142:26, 171:5</p> <p>appreciated [1] - 159:14</p>
--	---	---	--	--

<p>appreciates [1] - 159:9</p> <p>approach [11] - 14:14, 15:27, 15:29, 19:14, 20:29, 25:28, 63:3, 114:17, 149:15, 177:9, 188:4</p> <p>appropriate [20] - 14:29, 64:16, 96:7, 96:28, 98:7, 98:12, 99:2, 99:22, 99:23, 103:22, 111:21, 129:5, 129:29, 147:1, 154:10, 165:17, 166:6, 170:2, 170:18, 191:22</p> <p>appropriately [1] - 9:26</p> <p>April [17] - 82:8, 148:27, 149:29, 152:10, 171:27, 172:1, 172:13, 173:24, 174:7, 175:16, 175:22, 175:25, 176:18, 182:10, 182:17, 185:1, 185:2</p> <p>area [1] - 23:12</p> <p>areas [1] - 20:23</p> <p>argue [1] - 108:9</p> <p>arise [1] - 58:2</p> <p>arises [2] - 99:5, 132:17</p> <p>arising [4] - 26:22, 43:17, 110:26, 162:29</p> <p>ARRAN [2] - 2:24, 4:12</p> <p>arrange [1] - 194:26</p> <p>arranged [2] - 144:7, 179:17</p> <p>arrangements [3] - 153:7, 164:29, 203:21</p> <p>arranging [1] - 166:10</p> <p>arrested [1] - 126:19</p> <p>arrival [1] - 142:4</p> <p>article [4] - 36:23, 37:8, 37:9, 130:23</p> <p>AS [9] - 1:9, 6:1, 6:11, 95:9, 113:22, 115:6, 132:27, 136:6, 136:14</p> <p>ASAP [1] - 35:3</p> <p>aside [1] - 21:4</p> <p>aspect [1] - 86:17</p> <p>aspects [3] - 25:14, 109:20, 116:5</p> <p>assault [1] - 103:2</p> <p>assertion [1] - 126:14</p>	<p>assessed [1] - 25:16</p> <p>assigned [1] - 157:27</p> <p>assist [12] - 25:3, 25:19, 25:23, 51:1, 53:8, 60:14, 62:1, 62:3, 68:27, 91:13, 126:19, 135:7</p> <p>assistance [1] - 16:7</p> <p>assistant [48] - 10:15, 10:25, 19:15, 32:7, 40:20, 45:26, 65:21, 114:10, 114:24, 134:14, 136:18, 137:25, 138:7, 140:5, 140:6, 140:8, 140:14, 140:19, 140:28, 141:16, 146:16, 148:3, 149:15, 150:9, 152:14, 153:29, 155:3, 156:19, 158:5, 158:13, 159:18, 161:12, 175:20, 175:29, 177:17, 177:18, 186:17, 186:26, 187:22, 188:11, 198:4, 198:14, 198:16, 198:20, 200:4, 200:17, 202:1, 203:10</p> <p>Assistant [78] - 6:26, 10:19, 11:24, 12:4, 12:9, 17:17, 17:22, 17:24, 17:28, 18:25, 23:17, 25:8, 25:25, 30:23, 31:5, 31:29, 33:8, 33:26, 34:2, 36:2, 37:23, 39:10, 39:11, 40:11, 46:22, 67:17, 67:19, 68:3, 68:12, 68:18, 70:9, 75:20, 78:10, 78:13, 78:17, 78:21, 78:23, 79:6, 83:19, 83:25, 84:6, 85:12, 88:28, 90:20, 90:22, 91:3, 91:16, 94:20, 94:23, 94:24, 111:14, 111:28, 113:18, 120:26, 122:14, 131:2, 131:7, 133:3, 136:10, 138:25, 138:29, 140:26, 141:1, 141:22, 142:19, 144:25, 162:6, 162:9, 162:28, 163:1, 187:12, 196:12, 198:9, 198:22, 199:2,</p>	<p>200:22, 202:5, 203:12</p> <p>ASSISTANT [8] - 2:20, 3:5, 3:6, 3:8, 3:18, 3:20, 5:11, 136:13</p> <p>assisting [1] - 120:8</p> <p>associated [7] - 18:20, 52:27, 78:26, 107:18, 110:6, 118:28, 136:25</p> <p>association [1] - 166:2</p> <p>associations [5] - 163:16, 177:6, 186:23, 191:1, 191:2</p> <p>assume [3] - 117:6, 180:1, 202:20</p> <p>assuming [2] - 141:5, 189:29</p> <p>assurance [2] - 72:1, 98:13</p> <p>assurances [14] - 72:9, 77:8, 91:9, 91:10, 91:15, 91:17, 91:19, 91:20, 91:21, 97:21, 109:25, 109:27, 110:2, 110:9</p> <p>assure [2] - 29:10, 30:9</p> <p>assured [3] - 71:18, 90:12, 91:10</p> <p>assuring [1] - 90:15</p> <p>AT [1] - 203:24</p> <p>ATHLONE [1] - 4:3</p> <p>Athlone [14] - 48:23, 56:27, 87:5, 118:14, 129:29, 150:3, 150:21, 150:26, 155:21, 156:1, 156:6, 156:29, 157:9</p> <p>ation [1] - 37:26</p> <p>atomising [1] - 131:17</p> <p>attached [5] - 140:4, 172:6, 174:3, 175:5, 182:22</p> <p>attaching [2] - 63:16, 63:24</p> <p>attachments [1] - 65:16</p> <p>attack [1] - 115:15</p> <p>attempt [1] - 111:5</p> <p>attend [5] - 133:8, 141:14, 157:14, 160:24, 174:18</p> <p>attendance [3] - 29:12, 36:17, 93:12</p> <p>attended [3] - 140:21, 142:7, 174:11</p> <p>attendees [1] - 12:28</p>	<p>attending [1] - 157:14</p> <p>attention [9] - 9:13, 110:5, 143:13, 147:10, 154:14, 166:17, 167:20, 172:9, 177:12</p> <p>attributing [1] - 71:15</p> <p>au [1] - 180:20</p> <p>auctioned [1] - 15:7</p> <p>August [12] - 122:8, 122:18, 123:2, 137:9, 137:10, 138:4, 138:5, 142:2, 160:26, 161:1, 194:26, 194:29</p> <p>authority [14] - 59:29, 60:1, 64:12, 64:13, 64:24, 75:13, 76:9, 76:10, 84:29, 90:16, 148:6, 179:8, 191:21, 191:24</p> <p>Authority [89] - 42:25, 43:7, 43:8, 43:12, 46:6, 46:29, 48:20, 50:3, 50:5, 50:13, 50:18, 50:23, 50:29, 51:6, 53:7, 53:22, 54:26, 56:5, 56:16, 57:9, 57:19, 60:5, 60:9, 61:11, 61:29, 62:4, 62:7, 71:29, 72:6, 72:19, 73:1, 73:4, 73:5, 73:23, 73:25, 74:4, 74:8, 74:26, 75:6, 76:16, 76:17, 76:29, 77:13, 77:22, 80:22, 87:8, 87:11, 87:17, 88:6, 88:10, 90:29, 91:13, 91:23, 92:4, 92:20, 93:14, 94:4, 94:8, 96:24, 97:13, 97:22, 100:3, 100:10, 100:13, 100:25, 101:19, 107:20, 109:15, 109:19, 109:27, 111:9, 111:16, 112:9, 112:18, 113:1, 115:9, 116:1, 116:8, 116:23, 116:24, 116:29, 123:6, 125:23, 126:3, 132:2, 134:21, 134:29, 135:2, 201:18</p> <p>Authority's [1] - 73:14</p> <p>authority's [1] - 43:17</p> <p>available [6] - 15:3,</p>	<p>163:21, 165:1, 167:4, 185:14, 200:5</p> <p>avoid [3] - 85:4, 85:29, 195:4</p> <p>avoiding [1] - 43:3</p> <p>await [2] - 32:6, 176:24</p> <p>awaiting [3] - 85:27, 121:10, 192:24</p> <p>aware [46] - 9:8, 12:15, 12:17, 12:18, 21:29, 29:20, 29:23, 37:27, 38:1, 38:3, 41:4, 59:28, 72:13, 78:16, 89:1, 93:23, 94:15, 116:13, 118:4, 118:5, 118:21, 118:26, 133:16, 138:18, 138:23, 149:20, 150:9, 151:9, 151:13, 153:14, 154:29, 156:13, 160:19, 162:9, 162:27, 163:3, 163:4, 163:7, 166:28, 177:25, 180:1, 183:27, 184:7, 187:2, 194:5</p> <p>awful [1] - 133:1</p>
B				
<p>B&H [11] - 16:1, 19:3, 19:7, 21:4, 22:16, 30:20, 31:27, 32:6, 33:10, 35:18, 78:18</p> <p>bad [1] - 33:28</p> <p>badly [3] - 54:10, 54:17, 80:4</p> <p>BAR [1] - 2:31</p> <p>Barrett [62] - 11:1, 12:17, 13:4, 13:11, 14:7, 16:18, 17:8, 17:12, 17:23, 19:22, 21:26, 22:29, 25:27, 26:6, 29:28, 41:12, 41:16, 41:19, 52:1, 52:3, 125:5, 134:21, 139:10, 139:13, 161:27, 162:1, 163:23, 164:10, 164:22, 166:13, 169:6, 169:11, 169:16, 170:15, 170:29, 171:29, 172:16, 173:2, 175:16, 176:5, 176:17, 178:9, 181:8, 181:18, 182:6,</p>				

<p>187:28, 188:17, 188:18, 188:22, 190:20, 194:18, 194:23, 195:13, 195:15, 196:17, 198:4, 198:11, 198:14, 199:4, 199:21, 200:3, 200:9 Barrett's [5] - 25:21, 167:13, 168:8, 189:27, 193:8 base [2] - 20:4, 147:18 based [6] - 35:14, 105:2, 106:20, 112:27, 132:7, 149:14 basic [2] - 102:3, 192:5 basis [9] - 26:5, 64:16, 75:24, 82:1, 95:26, 147:7, 155:4, 186:13, 189:5 BASTION [1] - 4:2 BE [1] - 6:10 bearing [1] - 33:6 became [1] - 86:28 become [6] - 56:26, 57:3, 98:21, 100:7, 128:15, 138:18 becomes [1] - 37:27 bed [1] - 131:19 BEEN [1] - 136:14 beforehand [1] - 177:8 beginning [3] - 47:20, 196:21, 198:9 behalf [5] - 27:24, 50:29, 122:14, 123:4, 126:16 behaviour [1] - 150:26 behaviours [2] - 161:23 believes [3] - 128:9, 148:10, 148:12 below [4] - 75:11, 75:18, 85:26, 86:16 benefit [5] - 103:18, 108:6, 136:27, 171:25, 178:19 beside [1] - 159:28 best [9] - 12:10, 15:26, 16:6, 27:11, 118:29, 142:1, 148:16, 164:11, 201:22 better [6] - 12:11, 33:29, 41:13, 42:6, 81:2, 103:21 between [31] - 13:9,</p>	<p>22:29, 25:16, 29:17, 37:23, 46:1, 50:17, 61:28, 71:3, 78:9, 81:24, 88:2, 94:3, 94:7, 95:18, 96:11, 98:15, 98:19, 113:28, 114:10, 118:24, 118:25, 122:13, 124:9, 133:23, 134:14, 163:15, 177:6, 189:21, 191:1, 191:13 beyond [3] - 12:22, 14:11, 14:13 bid [1] - 167:18 big [2] - 154:29, 189:13 bigger [4] - 121:25, 128:4, 128:10, 195:21 bit [9] - 29:16, 33:23, 42:18, 43:9, 57:12, 64:1, 89:8, 146:26, 197:21 bits [1] - 187:28 BL [13] - 2:7, 2:10, 2:11, 2:16, 2:21, 2:28, 2:29, 3:24, 3:25, 3:25, 4:1, 4:7, 4:10 black [2] - 31:3, 66:13 blame [2] - 80:19, 134:4 blank [1] - 174:25 blanket [1] - 103:12 block [2] - 48:9, 108:3 board [1] - 69:15 body [1] - 172:14 bonfires [1] - 157:23 booklet [1] - 63:22 books [1] - 66:22 bottom [3] - 125:11, 196:7, 198:13 bound [1] - 35:18 box [2] - 22:5, 31:19 Bray [2] - 160:17, 160:18 breach [3] - 117:8, 117:12, 161:18 breadth [2] - 24:26, 114:11 breath [1] - 49:13 BRIAN [2] - 3:15, 3:16 brief [3] - 41:25, 46:17, 124:13 briefed [3] - 142:16, 179:11, 180:15 briefing [1] - 179:14 briefly [6] - 37:14,</p>	<p>83:23, 113:26, 117:21, 178:8, 195:20 briefs [1] - 35:27 bring [14] - 12:19, 24:10, 63:28, 66:20, 66:21, 71:3, 94:17, 133:4, 154:14, 166:17, 167:19, 167:21, 177:11, 180:3 bringing [3] - 106:14, 143:13, 179:15 brings [1] - 87:29 broad [6] - 18:7, 25:13, 27:9, 67:9, 86:14, 91:29 broader [3] - 7:23, 53:1, 115:19 Broderick [1] - 13:12 broken [1] - 21:19 brought [5] - 9:12, 82:7, 82:20, 106:15, 134:20 bubbling [1] - 44:5 building [1] - 76:26 bullet [1] - 26:16 bullied [1] - 81:8 bullying [129] - 12:23, 12:26, 14:11, 14:22, 16:11, 16:25, 17:9, 18:22, 20:13, 20:15, 20:27, 21:2, 21:13, 21:16, 21:20, 21:24, 22:9, 22:27, 23:6, 30:21, 36:16, 36:27, 38:28, 39:12, 43:21, 44:20, 45:14, 45:17, 45:21, 46:8, 52:5, 52:16, 52:23, 53:4, 55:26, 57:16, 58:10, 58:28, 59:10, 59:17, 65:20, 65:25, 65:28, 66:8, 66:16, 67:4, 67:27, 68:8, 69:17, 70:18, 71:12, 71:19, 75:16, 75:27, 81:3, 82:5, 83:8, 84:27, 86:14, 87:10, 87:24, 96:26, 97:3, 98:29, 112:6, 112:8, 112:17, 112:24, 113:9, 114:5, 117:1, 117:4, 117:8, 117:29, 118:7, 118:28, 119:4, 119:8, 119:15, 120:16, 121:8, 121:25, 122:28, 123:26, 126:11, 127:27, 128:4, 128:7, 128:10, 128:26,</p>	<p>129:1, 130:4, 131:20, 131:26, 133:21, 171:7, 172:25, 173:9, 174:13, 177:4, 177:5, 177:15, 177:23, 184:20, 185:9, 186:3, 186:17, 188:10, 188:23, 188:25, 189:1, 189:4, 190:18, 190:25, 190:29, 191:10, 191:15, 191:27, 192:3, 192:22, 196:25, 196:29, 197:9, 197:20, 197:24, 197:29, 199:22, 200:6 BURKE [1] - 4:11 Burke [3] - 8:5, 8:9, 8:21 business [2] - 146:26, 160:24 busy [4] - 146:3, 187:16, 187:22, 193:20 BY [23] - 1:4, 1:7, 2:11, 2:17, 2:22, 2:29, 3:26, 4:1, 4:8, 4:10, 5:5, 5:6, 5:7, 5:8, 5:9, 5:13, 6:10, 95:8, 113:22, 115:5, 132:27, 136:14 Byrne/McGinn [24] - 15:24, 16:20, 20:29, 21:3, 114:13, 127:29, 177:8, 177:13, 186:8, 188:3, 188:6, 188:13, 188:23, 190:21, 191:5, 191:8, 191:18, 196:5, 196:27, 198:1, 198:8, 199:11, 199:15, 199:25</p>	<p>193:22 CAO's [1] - 65:5 Caomhghin [1] - 125:5 Caoláin [1] - 125:6 capacity [1] - 139:22 caption [1] - 176:21 care [2] - 156:9, 158:25 career [5] - 28:17, 73:20, 102:12, 105:19, 137:5 careful [1] - 187:24 carefully [2] - 72:8, 164:11 CARR [1] - 3:15 CARRIAGE [1] - 128:9 CARRICK [1] - 2:13 CARRICK-ON- SHANNON [1] - 2:13 carried [2] - 58:11, 129:28 CARROLL [1] - 2:16 carry [1] - 196:11 CARTHAGE [1] - 2:17 case [58] - 8:1, 9:14, 9:16, 9:17, 12:17, 15:15, 16:29, 20:7, 21:7, 21:28, 25:4, 25:14, 28:12, 28:19, 28:22, 29:12, 38:5, 38:8, 38:11, 43:3, 44:4, 45:29, 50:17, 64:6, 80:29, 81:20, 81:27, 82:5, 82:7, 98:2, 98:4, 99:15, 106:9, 106:12, 106:26, 107:1, 114:20, 133:11, 133:12, 142:8, 151:13, 153:4, 165:16, 168:15, 177:7, 184:23, 186:6, 186:13, 191:23, 193:7, 193:10, 193:12, 193:15, 193:26, 193:29, 194:1, 195:20, 203:17 cases [2] - 132:10, 146:12 CASTLE [1] - 1:17 caught [3] - 52:12, 53:17, 61:28 caused [1] - 148:1 cc'd [1] - 125:4 CCTV [1] - 159:26 central [2] - 10:17, 12:4 certain [10] - 12:8,</p>
C				
<p>CAGNEY [1] - 3:17 cameras [1] - 159:27 camouflaged [1] - 123:27 cancelled [1] - 170:15 candidate [8] - 41:25, 43:16, 43:24, 59:29, 65:21, 92:29, 125:28, 126:3 candidate's [1] - 93:2 cannot [3] - 32:6, 152:13, 167:26 CAO [5] - 8:24, 15:27, 47:12, 95:17,</p>				

<p>12:18, 26:1, 50:14, 63:21, 139:5, 149:9, 151:18, 202:24, 202:25</p> <p>CERTAIN [1] - 1:3</p> <p>certainly [40] - 10:7, 12:3, 12:12, 15:13, 19:28, 21:11, 28:19, 29:21, 33:29, 38:7, 41:13, 49:27, 53:9, 53:13, 55:16, 57:25, 64:21, 72:18, 72:25, 73:8, 80:11, 82:29, 91:1, 91:6, 91:14, 95:27, 99:5, 105:16, 107:16, 115:17, 116:7, 117:14, 129:4, 131:27, 145:18, 147:2, 158:4, 170:29, 175:11, 199:18</p> <p>certify [1] - 1:24</p> <p>certs [1] - 155:10</p> <p>chair [5] - 41:10, 50:2, 93:5, 135:7</p> <p>Chair [2] - 25:19, 69:27</p> <p>CHAIRMAN [84] - 1:12, 6:6, 60:17, 73:24, 73:26, 73:28, 95:6, 99:19, 99:23, 99:25, 99:27, 108:24, 108:27, 110:18, 110:21, 110:23, 111:11, 111:17, 113:16, 113:18, 115:2, 126:25, 126:28, 129:16, 129:18, 130:25, 130:29, 131:12, 131:24, 132:14, 132:16, 132:25, 133:25, 135:10, 135:14, 135:18, 135:20, 135:23, 135:27, 136:1, 136:11, 136:18, 136:24, 137:1, 137:3, 188:11, 188:16, 188:18, 188:20, 188:27, 189:1, 189:9, 189:13, 189:15, 189:17, 189:21, 189:24, 189:27, 190:4, 190:9, 190:11, 190:13, 191:18, 191:21, 191:26, 192:1, 192:7, 192:12, 195:8, 198:14, 198:18, 198:21, 200:17, 200:23,</p>	<p>200:25, 201:3, 201:6, 201:9, 201:13, 201:20, 202:29, 203:4, 203:8, 203:16</p> <p>Chairman [46] - 6:4, 25:23, 42:16, 62:26, 72:3, 78:5, 97:9, 98:8, 99:10, 100:26, 100:29, 101:12, 101:19, 103:29, 105:3, 106:1, 106:5, 106:13, 108:25, 109:2, 110:15, 110:20, 110:22, 110:24, 112:28, 113:17, 115:28, 127:1, 129:19, 131:10, 131:16, 132:15, 136:9, 136:21, 137:6, 140:16, 142:1, 156:17, 189:5, 190:12, 190:14, 192:13, 193:17, 196:22, 202:27, 203:7</p> <p>chairman [1] - 132:23</p> <p>Chairman's [1] - 190:15</p> <p>Chairperson [1] - 75:12</p> <p>challenges [2] - 52:28, 132:8</p> <p>change [4] - 88:18, 114:21, 148:7</p> <p>changed [2] - 129:8, 196:26</p> <p>changes [2] - 99:6, 99:7</p> <p>character [6] - 56:27, 72:9, 92:26, 109:28, 110:2, 110:9</p> <p>charge [4] - 22:7, 43:10, 44:4, 139:20</p> <p>Charleton [1] - 81:19</p> <p>Charleton's [1] - 82:6</p> <p>CHARLTON [1] - 4:8</p> <p>chart [3] - 18:25, 18:28, 114:7</p> <p>chat [1] - 158:16</p> <p>CHEALLACHÁIN [1] - 2:30</p> <p>check [3] - 75:2, 135:21, 147:12</p> <p>checked [1] - 156:6</p> <p>checking [1] - 178:23</p> <p>CHIEF [14] - 3:3, 3:3, 3:4, 3:6, 3:8, 3:11,</p>	<p>3:13, 3:14, 3:14, 3:17, 3:19, 3:19, 3:21, 3:27</p> <p>chief [41] - 15:14, 19:17, 42:17, 47:14, 47:18, 49:2, 49:27, 50:4, 50:13, 50:14, 50:17, 50:22, 54:16, 55:1, 92:28, 93:1, 101:21, 101:26, 105:20, 107:10, 110:26, 121:4, 123:29, 137:19, 137:22, 141:20, 144:6, 145:16, 145:21, 147:4, 148:15, 153:20, 155:15, 167:1, 167:28, 168:22, 172:6, 175:25, 178:22, 186:23, 193:7</p> <p>Chief [47] - 17:14, 19:4, 29:14, 29:27, 45:3, 55:21, 58:22, 108:21, 117:25, 119:5, 127:10, 139:27, 143:18, 145:18, 146:17, 162:2, 163:9, 163:27, 164:13, 164:17, 165:11, 165:25, 166:8, 166:23, 168:7, 168:20, 169:11, 169:25, 170:7, 170:15, 170:19, 170:20, 170:27, 171:12, 172:21, 173:24, 174:7, 178:11, 183:12, 183:13, 184:10, 184:13, 184:15, 185:7, 185:13, 194:24, 197:12</p> <p>CHIS [3] - 143:2, 143:7, 143:14</p> <p>choice [2] - 125:27, 126:2</p> <p>chose [1] - 188:27</p> <p>Christmas [2] - 79:14, 167:16</p> <p>chronologies [1] - 38:26</p> <p>chronology [3] - 29:14, 70:12, 98:18</p> <p>circles [1] - 23:2</p> <p>circular [1] - 155:11</p> <p>circulated [1] - 18:28</p> <p>circumstance [2] - 28:22, 53:20</p> <p>circumstances [9] - 28:12, 50:15, 102:5,</p>	<p>106:22, 106:23, 117:15, 138:23, 145:29, 184:17</p> <p>civil [33] - 27:24, 28:13, 44:26, 45:6, 46:3, 46:7, 52:5, 52:15, 52:23, 52:28, 55:22, 55:27, 57:15, 59:13, 59:16, 63:9, 63:16, 63:24, 64:20, 65:16, 66:7, 70:26, 71:9, 71:19, 72:22, 73:20, 78:18, 101:6, 101:24, 102:11, 102:14, 103:20, 105:12</p> <p>civilian [2] - 139:14, 165:21</p> <p>civilians [1] - 186:28</p> <p>civilisation [1] - 139:17</p> <p>claim [13] - 17:9, 17:10, 46:8, 52:5, 52:15, 52:16, 52:23, 55:22, 55:26, 55:27, 113:9</p> <p>claims [2] - 8:26, 36:27</p> <p>Claims [4] - 45:2, 45:10, 52:8, 70:27</p> <p>clandestinely [2] - 123:12, 123:20</p> <p>Clare [2] - 125:5, 150:8</p> <p>clarification [7] - 13:22, 77:7, 85:17, 86:17, 135:26, 167:17, 180:29</p> <p>clarified [1] - 134:12</p> <p>clarify [10] - 28:28, 43:16, 69:11, 69:13, 89:9, 98:22, 99:3, 109:7, 111:3, 202:29</p> <p>clarifying [2] - 108:25, 143:29</p> <p>clarity [2] - 68:20, 74:9</p> <p>classification [2] - 154:22, 195:29</p> <p>classroom [1] - 159:22</p> <p>Clavin [1] - 139:28</p> <p>cleaner [3] - 57:25, 57:26</p> <p>clear [38] - 9:5, 15:4, 18:12, 21:11, 21:12, 21:22, 24:26, 27:9, 27:12, 30:23, 32:15, 50:16, 52:19, 56:7, 56:11, 63:20, 73:3,</p>	<p>73:22, 75:24, 93:18, 95:12, 99:9, 101:2, 101:12, 102:7, 102:22, 105:7, 109:23, 110:19, 113:3, 130:9, 146:26, 159:16, 161:7, 164:19, 165:8, 178:29, 184:2</p> <p>clearance [15] - 42:24, 42:28, 43:14, 43:17, 56:12, 58:4, 60:2, 60:7, 75:14, 85:5, 86:1, 87:9, 87:22, 88:26, 107:5</p> <p>clearly [13] - 21:18, 29:18, 50:27, 60:5, 60:6, 69:25, 97:16, 100:17, 106:22, 115:27, 116:17, 169:29, 176:4</p> <p>clock [1] - 134:6</p> <p>close [5] - 30:10, 94:20, 144:12, 153:24, 197:26</p> <p>closed [3] - 144:6, 145:20, 147:14</p> <p>closely [2] - 90:16, 151:11</p> <p>closure [3] - 146:7, 146:10, 147:2</p> <p>Club [1] - 13:20</p> <p>CMO [2] - 155:8, 150:8</p> <p>CO [2] - 2:13, 4:4</p> <p>code [1] - 152:24</p> <p>cognisance [1] - 70:5</p> <p>collation [1] - 42:28</p> <p>collectively [1] - 88:23</p> <p>college [1] - 71:5</p> <p>comfort [1] - 29:16</p> <p>comfortably [1] - 189:4</p> <p>comforted [1] - 98:14</p> <p>coming [12] - 38:7, 52:14, 53:1, 57:19, 60:15, 60:29, 66:16, 71:2, 72:27, 85:11, 94:21, 179:22</p> <p>commander [1] - 145:27</p> <p>commence [1] - 17:17</p> <p>commenced [4] - 14:29, 16:12, 21:21, 174:12</p> <p>commencement [1]</p>
---	--	---	--	--

<p>- 76:8 commencing [1] - 75:25 comment [6] - 34:18, 99:18, 99:21, 105:14, 112:26, 158:25 commentary [4] - 9:20, 63:4, 109:13, 109:20 comments [4] - 30:4, 32:19, 67:2, 117:1 Commissioner [124] - 6:27, 7:24, 9:18, 9:23, 10:19, 11:25, 12:5, 12:9, 17:17, 17:22, 17:24, 17:29, 18:25, 23:17, 25:8, 25:26, 30:23, 31:5, 31:29, 33:8, 33:26, 34:3, 36:2, 37:23, 37:28, 38:20, 39:10, 39:11, 40:12, 43:1, 43:2, 43:11, 43:14, 46:23, 47:3, 48:8, 50:11, 64:9, 64:13, 67:18, 67:20, 68:3, 68:13, 68:19, 70:9, 75:20, 78:10, 78:13, 78:17, 78:22, 78:23, 79:7, 82:8, 83:20, 83:25, 84:6, 85:13, 88:28, 90:20, 90:22, 91:3, 91:16, 94:20, 94:23, 94:25, 95:13, 99:17, 103:1, 108:1, 108:2, 111:15, 111:28, 113:19, 119:24, 120:26, 122:14, 125:3, 129:21, 129:22, 129:25, 129:27, 131:3, 131:7, 132:5, 133:3, 136:10, 138:25, 138:29, 140:26, 141:1, 141:22, 142:10, 142:19, 144:25, 162:7, 162:10, 162:28, 163:1, 163:16, 177:7, 184:19, 186:21, 187:12, 191:1, 191:2, 191:21, 192:9, 192:11, 193:14, 193:19, 194:9, 194:12, 196:12, 197:22, 197:23, 198:9, 198:23, 199:2, 200:22, 202:5, 203:11, 203:12,</p>	<p>203:13 COMMISSIONER [11] - 2:20, 3:2, 3:5, 3:6, 3:7, 3:7, 3:8, 3:18, 3:20, 5:11, 136:13 commissioner [62] - 10:15, 10:20, 10:26, 19:15, 22:9, 31:13, 32:7, 40:21, 42:20, 44:1, 45:26, 47:26, 65:22, 95:29, 103:17, 104:21, 105:5, 105:6, 105:10, 105:29, 106:4, 114:11, 114:24, 134:14, 136:19, 137:25, 138:8, 140:5, 140:6, 140:8, 140:14, 140:20, 140:28, 141:17, 146:16, 148:3, 149:15, 150:10, 151:26, 152:14, 153:29, 155:3, 156:20, 158:5, 158:13, 159:18, 161:12, 175:20, 175:29, 177:17, 177:19, 186:17, 186:27, 187:22, 188:11, 198:5, 198:15, 198:17, 198:20, 200:17, 202:1, 203:11 commissioner's [1] - 48:1 Commissioner's [6] - 51:18, 56:25, 57:3, 133:19, 190:26, 193:5 commissioners [4] - 143:16, 186:26, 186:27, 200:4 commitment [1] - 75:29 communicate [2] - 121:11, 192:28 communicated [3] - 19:9, 91:22, 178:4 communicating [2] - 49:25, 194:12 communication [6] - 60:25, 62:6, 98:18, 120:25, 121:14, 126:15 communications [4] - 31:10, 46:7, 50:16, 124:9 COMPANY [1] - 2:22 company [1] - 161:13</p>	<p>competent [3] - 151:17, 160:2, 164:16 competition [4] - 52:6, 52:24, 53:12, 60:7 complainant [3] - 70:6, 74:27, 76:6 complained [15] - 25:12, 35:17, 38:3, 68:12, 70:7, 75:20, 154:13, 165:20, 169:2, 169:5, 169:13, 169:24, 170:1, 170:11, 177:18 complaining [4] - 34:20, 37:29, 158:1, 177:1 complaint [108] - 12:26, 17:2, 18:22, 19:8, 22:16, 22:27, 23:22, 32:9, 34:11, 35:29, 36:17, 38:28, 39:13, 43:22, 44:19, 45:18, 58:29, 65:23, 65:25, 65:28, 66:3, 66:4, 67:3, 67:7, 67:25, 69:7, 69:18, 69:20, 69:22, 70:18, 71:13, 71:19, 74:20, 75:16, 82:20, 84:27, 85:12, 87:2, 87:4, 87:10, 87:25, 97:4, 116:6, 117:2, 117:5, 117:29, 118:4, 118:7, 118:12, 118:13, 118:19, 118:28, 119:4, 119:16, 119:26, 120:17, 120:20, 122:29, 125:26, 126:11, 126:18, 127:9, 128:27, 129:2, 131:18, 131:26, 132:3, 133:14, 133:16, 133:21, 133:22, 134:27, 144:9, 144:10, 145:24, 146:20, 147:15, 148:13, 148:25, 150:2, 150:21, 151:1, 151:5, 157:26, 162:3, 163:12, 163:17, 164:26, 165:9, 165:13, 165:24, 166:4, 166:24, 167:27, 168:20, 169:3, 169:4, 169:23, 169:28, 170:3, 171:6, 181:22, 185:8, 186:2,</p>	<p>186:19, 186:20, 197:16 complaints [12] - 28:7, 32:24, 32:28, 58:10, 67:9, 107:11, 110:6, 123:11, 123:20, 128:23, 182:7 complete [8] - 30:11, 58:26, 74:7, 74:19, 84:11, 94:23, 109:13, 173:13 completed [8] - 43:15, 55:10, 68:4, 102:9, 103:16, 119:5, 119:26, 162:8 completely [4] - 49:1, 123:14, 153:25, 177:28 completeness [3] - 107:24, 121:29, 126:6 completing [1] - 66:5 complex [4] - 25:4, 27:9, 114:22, 114:25 complicating [1] - 98:17 complied [3] - 142:28, 143:7, 202:26 complimented [1] - 49:18 components [1] - 16:22 composed [1] - 66:28 comprehensive [4] - 55:26, 184:21, 185:29, 199:11 compromised [1] - 47:27 computer [2] - 137:17, 140:18 conceivable [1] - 161:13 concept [3] - 98:24, 98:25, 102:24 concern [25] - 7:23, 12:25, 16:23, 20:25, 21:19, 24:5, 26:26, 30:28, 47:5, 50:29, 53:11, 53:15, 55:13, 114:12, 115:19, 119:9, 139:8, 144:2, 146:24, 147:21, 148:23, 151:16, 170:22, 183:21, 194:20 concerned [25] - 8:16, 17:13, 19:29, 20:22, 31:26, 36:15, 45:20, 48:8, 94:13, 108:2, 114:14,</p>	<p>117:10, 127:27, 128:3, 128:23, 129:28, 133:27, 138:22, 155:2, 170:27, 183:18, 186:20, 191:3, 195:28, 197:4 concerning [3] - 42:15, 132:18, 186:6 concerns [11] - 9:18, 28:11, 29:11, 29:24, 37:8, 37:9, 53:14, 72:19, 109:9, 114:7, 163:10 conclude [1] - 174:16 concluded [7] - 20:15, 68:14, 70:26, 73:11, 75:22, 77:26, 167:23 conclusion [2] - 30:9, 117:6 concrete [2] - 23:4, 23:5 conduct [1] - 40:12 conducted [1] - 70:9 conducting [2] - 8:29, 45:4 conduit [1] - 116:18 conference [23] - 6:17, 7:16, 8:3, 8:7, 9:17, 9:18, 12:18, 16:29, 29:12, 36:29, 38:8, 38:11, 44:4, 98:2, 98:4, 99:15, 193:8, 193:10, 193:13, 193:15, 193:26, 193:29, 194:1 conferences [1] - 28:23 confident [5] - 41:16, 83:11, 108:13, 108:15, 108:28 confidential [1] - 24:4 confidentiality [5] - 18:6, 18:11, 18:13, 18:17, 31:26 confidentially [1] - 134:29 confirm [23] - 9:24, 17:26, 44:18, 44:28, 45:1, 45:2, 58:21, 63:12, 67:5, 67:17, 67:25, 68:6, 68:13, 74:18, 75:21, 86:12, 97:8, 100:29, 108:15, 110:1, 110:8, 111:22, 201:16 confirmation [2] -</p>
---	---	--	---	--

<p>119:21, 144:24 confirmed [5] - 38:7, 38:13, 92:13, 121:19, 178:16 confirming [1] - 179:6 confirms [3] - 19:1, 68:11, 75:19 conflict [5] - 43:4, 95:14, 166:12, 177:24, 184:26 conflicted [1] - 186:14 confusion [1] - 179:26 conjunction [1] - 19:22 CONLON [1] - 2:17 CONNAUGHT [1] - 4:3 connection [1] - 118:22 CONNELLAN [2] - 4:1, 4:1 CONOR [1] - 3:24 conscious [6] - 28:17, 54:27, 139:4, 150:25, 161:10, 187:1 consensus [1] - 200:26 consent [1] - 191:16 consequences [2] - 117:9, 117:12 consider [13] - 24:2, 58:22, 75:14, 101:28, 116:2, 149:24, 150:11, 153:4, 166:7, 179:3, 186:12, 188:7, 200:9 considerable [3] - 10:7, 74:22, 202:27 consideration [9] - 45:12, 116:5, 121:8, 176:1, 178:25, 178:26, 187:25, 192:22, 201:18 considered [11] - 15:6, 17:3, 58:1, 91:16, 101:27, 102:20, 114:19, 115:15, 164:11, 173:13, 193:12 considers [1] - 35:28 consistent [2] - 8:28, 124:5 constant [1] - 193:4 constituted [1] - 146:21 constitutes [1] - 172:15</p>	<p>consulted [2] - 58:24, 194:8 consulting [2] - 45:13, 166:25 contact [36] - 39:16, 47:26, 49:28, 50:4, 63:6, 78:14, 78:21, 79:11, 79:17, 84:19, 87:7, 88:18, 92:4, 96:10, 97:6, 97:9, 97:15, 97:27, 98:15, 98:19, 98:27, 99:2, 99:6, 99:14, 99:24, 100:23, 104:19, 108:1, 115:10, 115:12, 115:18, 116:21, 116:27, 153:5, 153:12, 157:24 contacted [4] - 49:11, 96:7, 99:11, 121:18 contacting [1] - 62:16 contacts [4] - 49:24, 49:26, 97:12, 129:21 contained [6] - 45:24, 58:1, 65:4, 66:3, 173:25, 180:6 contains [1] - 75:28 contemplated [1] - 43:24 content [3] - 65:5, 141:28, 169:3 contents [3] - 47:22, 176:22, 179:6 context [12] - 16:16, 27:26, 28:3, 29:3, 29:4, 80:28, 81:29, 91:29, 102:11, 116:14, 134:2, 171:20 continually [1] - 101:24 continue [1] - 126:28 CONTINUED [1] - 6:10 continues [4] - 29:29, 72:7, 124:14, 130:19 continuing [1] - 136:26 contrasted [1] - 99:29 contrived [3] - 58:10, 62:24, 109:4 control [8] - 32:17, 64:10, 64:14, 134:5, 147:5, 192:10, 192:11, 193:20 convene [1] - 193:7 convenience [1] -</p>	<p>136:21 conversation [15] - 26:6, 47:17, 51:21, 61:26, 74:17, 81:23, 88:4, 89:25, 89:27, 90:1, 90:25, 112:7, 160:20, 166:9, 179:7 conversations [9] - 46:21, 46:22, 46:24, 50:1, 50:12, 84:24, 104:23, 115:24, 116:15 conveyed [1] - 30:5 coordination [1] - 27:11 copied [4] - 13:12, 13:15, 17:22, 193:17 copies [3] - 57:26, 139:25 copies... [1] - 160:9 COPPINGER [1] - 3:4 copy [12] - 57:25, 66:4, 66:12, 69:5, 139:23, 165:1, 171:5, 171:6, 171:13, 182:22, 202:3, 202:13 copying [2] - 195:5, 195:6 Corcoran [8] - 14:27, 51:8, 51:11, 51:13, 51:21, 52:26, 56:23, 111:28 corporate [1] - 30:10 correct [11] - 6:19, 7:2, 7:9, 7:14, 9:7, 10:21, 13:2, 16:3, 18:2, 18:9, 18:29, 22:21, 31:21, 31:24, 35:7, 35:23, 36:1, 36:4, 36:14, 38:15, 39:1, 39:28, 40:29, 42:23, 42:27, 46:10, 48:3, 49:16, 54:8, 56:6, 59:25, 60:10, 61:3, 61:8, 61:12, 61:23, 66:25, 68:24, 70:19, 71:11, 72:10, 76:20, 77:12, 77:14, 78:20, 78:22, 82:11, 82:12, 82:28, 83:14, 84:17, 85:15, 85:19, 87:15, 88:20, 90:18, 92:8, 92:18, 93:22, 94:27, 95:15, 101:21, 101:23, 104:7, 115:28, 116:3, 116:12, 117:13, 117:14, 123:1, 123:15, 123:16,</p>	<p>124:26, 126:20, 126:21, 127:21, 128:18, 128:28, 129:7, 129:23, 129:24, 130:2, 130:5, 130:6, 130:11, 130:20, 131:21, 131:22, 134:18, 138:6, 138:15, 139:11, 139:12, 140:16, 143:27, 151:24, 153:11, 155:24, 159:10, 161:4, 162:4, 164:28, 165:10, 178:3, 181:5, 181:19, 182:14, 188:24, 191:26, 198:8, 200:20 corresponded [4] - 38:19, 163:26, 182:21, 185:1 correspondence [49] - 10:29, 11:1, 21:25, 24:16, 26:23, 32:16, 38:2, 40:5, 40:10, 40:20, 46:13, 51:17, 58:2, 65:4, 69:5, 104:4, 104:23, 121:19, 122:23, 130:10, 134:13, 141:18, 142:2, 143:26, 148:27, 154:17, 161:26, 164:22, 165:18, 169:12, 171:15, 172:6, 173:23, 175:21, 176:20, 178:9, 178:10, 179:19, 180:7, 181:13, 182:3, 182:9, 182:17, 184:27, 185:6, 187:17, 193:18, 193:24, 200:11 COSTELLO [1] - 2:22 counsel [1] - 115:13 counties [5] - 138:2, 146:2, 156:18, 156:21, 161:12 couple [11] - 13:10, 33:13, 62:15, 65:10, 66:21, 71:2, 82:16, 83:19, 88:5, 88:29, 91:24 course [16] - 11:4, 16:6, 25:5, 50:19, 50:20, 50:24, 92:5, 94:29, 97:26, 108:18, 135:26, 157:3,</p>	<p>164:10, 176:2, 176:24, 181:16 court [2] - 19:19, 25:21 COURT [3] - 1:13, 2:3, 4:2 Court [3] - 44:22, 58:6, 82:6 courteous [1] - 179:28 courts [1] - 20:6 cover [1] - 74:27 coverage [3] - 7:25, 9:17, 10:8 covered [8] - 67:11, 67:13, 67:27, 114:25, 123:12, 123:21, 196:2, 197:23 covering [3] - 71:24, 140:29, 174:5 covers [2] - 177:2, 186:22 covertly [1] - 124:1 created [7] - 139:23, 141:24, 142:11, 146:27, 147:6, 147:28, 147:29 creation [2] - 144:26, 147:26 Crime [5] - 140:7, 140:20, 143:20, 146:16, 148:4 criminal [2] - 184:18, 197:6 criteria [2] - 52:6, 52:24 critical [4] - 27:29, 72:21, 96:29, 131:19 critically [1] - 87:8 criticise [1] - 73:4 criticism [4] - 33:3, 115:12, 130:29, 201:6 criticisms [1] - 201:9 cropped [1] - 88:18 cross [3] - 19:7, 94:19, 203:5 CROSS [4] - 5:6, 5:7, 95:8, 113:22 cross-examine [1] - 203:5 cross-examined [1] - 94:19 CROSS-EXAMINED [4] - 5:6, 5:7, 95:8, 113:22 crossed [1] - 65:6 crosses [1] - 28:3 CS [1] - 56:23 CSSO [1] - 135:25 CUALÁIN [1] - 3:7</p>
--	---	---	--	--

<p>Cualáin [20] - 7:24, 9:19, 9:23, 10:19, 31:13, 43:2, 43:11, 47:3, 95:13, 125:3, 129:12, 138:25, 139:1, 141:23, 142:19, 144:25, 162:10, 187:12, 203:11, 203:14</p> <p>Cualáin's [4] - 118:15, 142:10, 162:7, 163:1</p> <p>Cullen [11] - 24:28, 26:19, 26:21, 123:4, 124:28, 124:29, 131:14, 195:5, 195:6, 195:7, 195:8</p> <p>CULLEN [1] - 2:11</p> <p>Cullen's [1] - 164:23</p> <p>culture [2] - 37:15, 37:16</p> <p>CURLEY [1] - 3:10</p> <p>Curran [2] - 143:19, 146:18</p> <p>CURRAN [1] - 3:3</p> <p>current [7] - 15:18, 91:18, 120:28, 150:6, 178:5, 184:3, 194:28</p> <p>cuts [1] - 102:8</p>	<p>185:6, 202:6</p> <p>dates [6] - 59:14, 104:13, 142:4, 169:24, 170:14, 180:5</p> <p>DAVID [2] - 2:28, 3:18</p> <p>DAY [1] - 1:18</p> <p>day.. [1] - 183:6</p> <p>days [13] - 11:20, 33:27, 34:25, 36:8, 62:15, 65:10, 71:18, 76:2, 83:19, 88:2, 88:5, 88:29, 104:18</p> <p>deal [22] - 6:27, 23:26, 30:26, 42:14, 42:24, 44:1, 44:26, 46:24, 55:26, 61:1, 82:21, 96:5, 107:22, 115:9, 128:5, 128:10, 135:28, 146:15, 149:21, 160:14, 161:3, 200:11</p> <p>dealing [17] - 14:7, 14:22, 18:26, 45:2, 50:21, 50:23, 91:20, 92:20, 96:2, 96:25, 100:6, 103:5, 106:29, 107:1, 107:5, 114:17, 119:8</p> <p>dealings [1] - 81:18</p> <p>deals [3] - 74:19, 146:12, 155:11</p> <p>dealt [15] - 7:26, 9:26, 14:4, 55:14, 76:7, 80:21, 107:4, 128:23, 146:6, 147:1, 154:20, 161:17, 162:10, 167:16, 169:9</p> <p>Dear [2] - 66:23, 75:11</p> <p>dear [1] - 43:14</p> <p>debate [1] - 187:27</p> <p>DECEMBER [1] - 1:9</p> <p>December [23] - 38:23, 40:5, 66:18, 66:19, 67:21, 72:28, 74:4, 74:5, 74:14, 75:8, 75:28, 76:14, 76:23, 77:4, 85:14, 87:14, 143:19, 155:5, 161:25, 161:29, 164:21, 185:6, 187:9</p> <p>decide [6] - 184:22, 188:12, 188:13, 188:22, 188:23, 197:16</p> <p>decided [5] - 98:6, 188:12, 199:12, 201:3, 201:11</p> <p>decides [3] - 130:4,</p>	<p>130:7, 130:8</p> <p>decision [44] - 19:10, 20:4, 20:5, 20:7, 20:11, 21:7, 21:10, 21:12, 21:22, 21:23, 22:5, 22:6, 22:7, 22:11, 23:4, 23:5, 32:5, 41:5, 62:4, 72:6, 77:24, 77:27, 88:24, 91:13, 97:27, 116:10, 121:10, 170:2, 173:8, 173:14, 175:15, 177:13, 177:25, 184:22, 185:15, 187:13, 187:29, 190:7, 192:24, 192:28, 194:21, 200:19, 201:4</p> <p>decision-maker [1] - 20:4</p> <p>decision-making [2] - 177:25, 185:15</p> <p>decisions [4] - 60:26, 72:17, 105:22, 189:26</p> <p>DECLAN [1] - 3:5</p> <p>declaration [3] - 92:22, 93:9, 93:13</p> <p>declare [2] - 92:25, 92:29</p> <p>declined [1] - 175:2</p> <p>default [10] - 177:14, 186:16, 188:25, 191:29, 192:1, 196:5, 196:24, 197:19, 199:14, 199:28</p> <p>defence [1] - 89:18</p> <p>defendant [3] - 44:29, 58:7, 58:13</p> <p>defendants [1] - 58:12</p> <p>defer [1] - 54:24</p> <p>deferred [2] - 73:10, 102:25</p> <p>deficit [1] - 20:3</p> <p>defined [1] - 115:27</p> <p>definitely [3] - 57:22, 154:24, 199:14</p> <p>degree [1] - 41:8</p> <p>delay [17] - 7:12, 21:1, 28:27, 29:5, 32:8, 33:22, 34:4, 34:7, 34:8, 34:21, 49:13, 73:18, 75:25, 124:18, 124:24, 194:19, 195:4</p> <p>delayed [4] - 55:9, 74:23, 97:17, 131:28</p> <p>delays [7] - 85:5, 86:1, 117:19, 118:24,</p>	<p>118:25, 118:27, 119:8</p> <p>delegate [1] - 105:8</p> <p>deliberate [1] - 58:9</p> <p>deliberately [2] - 126:19, 167:5</p> <p>delivered [2] - 178:14, 202:4</p> <p>demand [1] - 64:16</p> <p>demotion [1] - 117:13</p> <p>deny [1] - 97:8</p> <p>department [1] - 40:19</p> <p>Department [8] - 7:18, 7:28, 11:6, 11:13, 38:19, 38:23, 39:22, 40:2</p> <p>depicted [1] - 73:27</p> <p>deputies [1] - 150:24</p> <p>Deputy [1] - 150:25</p> <p>deputy [2] - 151:26, 186:27</p> <p>descend [1] - 27:12</p> <p>describe [4] - 96:10, 105:11, 181:2, 183:17</p> <p>described [8] - 12:21, 17:8, 50:9, 57:15, 64:17, 82:1, 83:7, 115:13</p> <p>describes [1] - 81:27</p> <p>describing [2] - 101:3, 113:28</p> <p>desire [2] - 73:3, 194:25</p> <p>desk [3] - 133:26, 134:7, 134:9</p> <p>DESMOND [1] - 4:6</p> <p>detail [17] - 10:12, 14:8, 18:15, 18:19, 41:14, 42:1, 44:27, 45:24, 46:5, 49:29, 59:23, 74:21, 80:26, 91:6, 127:20, 128:14, 163:4</p> <p>detailed [3] - 49:23, 68:28, 171:19</p> <p>details [17] - 27:13, 28:2, 52:4, 58:29, 59:2, 59:7, 65:27, 66:2, 69:7, 94:10, 149:24, 157:22, 169:13, 169:14, 169:15, 169:24, 171:12</p> <p>DETECTIVE [5] - 3:4, 3:5, 3:12, 3:13, 3:17</p> <p>Detective [1] - 175:6</p> <p>detective [2] - 175:7, 178:22</p> <p>determination [6] -</p>	<p>51:2, 53:8, 53:21, 60:15, 107:9, 119:20</p> <p>determine [6] - 19:7, 164:26, 166:3, 168:29, 177:21, 189:8</p> <p>developed [1] - 118:6</p> <p>developing [1] - 80:6</p> <p>development [2] - 140:9, 152:28</p> <p>DEVELOPMENT [1] - 3:16</p> <p>Development [2] - 26:21, 127:16</p> <p>dialogue [1] - 64:22</p> <p>DIARMAID [1] - 2:6</p> <p>diary [3] - 110:25, 156:2, 158:18</p> <p>differ [1] - 49:5</p> <p>difference [3] - 37:22, 50:9, 105:7</p> <p>differences [1] - 56:17</p> <p>different [21] - 33:2, 34:27, 49:5, 50:8, 50:25, 50:28, 80:27, 101:27, 101:28, 106:21, 111:29, 115:16, 128:29, 151:10, 154:12, 158:17, 164:14, 165:22, 179:13, 187:18, 187:27</p> <p>differently [2] - 43:3, 106:24</p> <p>difficult [1] - 177:7</p> <p>difficulties [3] - 67:6, 67:8, 69:21</p> <p>difficulty [4] - 30:7, 64:1, 64:29, 197:22</p> <p>digging [1] - 83:2</p> <p>DIGNAM [1] - 3:24</p> <p>diligent [1] - 170:27</p> <p>direct [7] - 39:15, 145:14, 180:7, 190:10, 192:9, 192:11, 193:21</p> <p>directed [7] - 14:18, 139:28, 145:17, 168:14, 175:20, 187:8, 202:1</p> <p>directing [1] - 141:27</p> <p>Directive [1] - 142:28</p> <p>directive [2] - 143:3, 143:14</p> <p>DIRECTLY [4] - 5:5, 5:13, 6:10, 136:14</p> <p>directly [10] - 57:11, 74:26, 79:27, 96:1, 96:2, 139:20, 143:29,</p>
D				
<p>Daly [2] - 125:5, 150:8</p> <p>danger [1] - 186:29</p> <p>data [15] - 140:9, 140:18, 140:19, 140:21, 140:22, 143:24, 144:22, 146:15, 146:28, 147:18, 148:2, 148:7, 148:8, 184:8</p> <p>date [23] - 26:12, 27:16, 33:5, 33:14, 33:15, 33:17, 39:24, 59:15, 61:2, 62:17, 71:4, 71:6, 76:13, 83:17, 85:1, 85:18, 88:20, 127:11, 135:10, 142:16, 147:20, 149:29, 202:2</p> <p>dated [21] - 40:5, 62:7, 68:29, 84:27, 121:20, 125:7, 171:17, 171:18, 172:6, 173:24, 173:25, 175:21, 175:24, 175:26, 176:21, 182:3, 182:9, 182:17, 183:22,</p>				

<p>148:28, 183:13, 185:12 DIRECTLY-EXAMINED [4] - 5:5, 5:13, 6:10, 136:14 DIRECTOR [1] - 3:13 Director [3] - 122:2, 196:13, 196:15 director [19] - 11:24, 21:26, 26:20, 27:2, 30:15, 40:11, 79:4, 127:15, 134:15, 152:27, 164:5, 164:9, 181:9, 188:14, 192:26, 194:17, 195:3, 199:4, 200:3 director's [2] - 201:27, 202:11 DIRECTORATE [1] - 3:15 disagree [7] - 34:17, 34:19, 73:29, 103:23, 103:24, 105:25, 132:15 disagreement [9] - 22:28, 37:20, 113:27, 114:3, 114:10, 114:16, 114:18, 129:5, 131:8 disciplinary [5] - 145:11, 145:12, 161:17, 162:26, 163:6 discipline [9] - 20:2, 20:5, 117:9, 145:3, 145:4, 146:12, 161:3, 161:18, 162:29 disciplined [1] - 149:18 discloser [4] - 149:9, 151:7, 184:4, 184:20 disclosing [1] - 162:11 disclosure [13] - 6:28, 24:3, 34:10, 63:23, 93:27, 94:1, 138:17, 139:5, 150:15, 183:28, 184:5, 184:7, 197:7 disclosures [6] - 30:1, 138:20, 138:26, 183:23, 184:2, 187:3 DISCLOSURES [2] - 1:2, 1:3 discovered [1] - 40:18 discrediting [2] - 107:13, 107:15 discuss [5] - 18:21, 80:28, 107:12, 156:11, 180:16</p>	<p>discussed [8] - 18:23, 27:25, 80:2, 127:9, 156:12, 179:17, 180:12, 198:23 discussing [2] - 101:1, 152:19 discussion [15] - 12:21, 62:28, 78:26, 79:1, 91:2, 111:18, 134:17, 180:4, 181:3, 183:2, 199:16, 201:13, 201:14, 201:17, 201:23 discussion.. [1] - 24:22 discussions [4] - 16:29, 116:8, 118:19, 121:15 dismiss [1] - 153:24 disparaging [1] - 199:7 disparity [1] - 158:10 dispute [15] - 23:12, 23:20, 30:27, 49:3, 49:22, 54:16, 60:12, 63:18, 71:8, 79:26, 89:29, 96:11, 104:5, 130:22, 132:17 disputing [3] - 47:17, 47:19, 47:22 disrespectful [1] - 96:21 distinction [1] - 103:11 district [5] - 142:23, 150:3, 150:22, 154:19, 155:13 DIVISION [1] - 1:12 division [4] - 150:6, 150:7, 151:8, 164:14 divisional [4] - 76:3, 142:26, 145:16, 146:11 DOCKERY [1] - 4:6 document [36] - 7:1, 7:2, 30:2, 37:26, 55:21, 61:10, 63:9, 63:10, 64:10, 64:13, 71:10, 74:19, 74:24, 89:19, 120:24, 121:13, 122:3, 122:4, 122:9, 122:10, 122:11, 122:12, 124:12, 124:13, 125:8, 131:13, 131:14, 131:15, 131:17, 133:3, 133:14, 134:20, 175:26, 178:20,</p>	<p>189:19 documentation [4] - 35:27, 39:21, 136:25, 139:26 documented [2] - 45:23, 127:10 documents [8] - 27:4, 65:24, 110:28, 120:22, 126:5, 133:16, 189:11, 193:4 domain [4] - 43:21, 53:12, 65:19, 67:3 DONAL [12] - 3:7, 3:24, 5:8, 115:5, 115:8, 126:26, 127:1, 129:17, 129:19, 130:27, 131:10, 131:13 Donal [5] - 31:13, 43:11, 118:15, 129:11, 134:24 done [16] - 43:2, 50:25, 57:2, 76:1, 83:11, 97:8, 98:26, 141:11, 144:1, 156:23, 179:8, 189:29, 197:9, 197:29, 198:1 Donegal [1] - 137:7 door [1] - 153:17 doubt [3] - 108:27, 161:5, 162:24 down [34] - 8:8, 8:15, 12:2, 15:19, 17:20, 18:24, 19:10, 22:23, 23:4, 34:28, 39:6, 51:25, 55:19, 71:7, 71:17, 74:12, 76:18, 88:9, 88:28, 91:24, 126:8, 131:2, 133:23, 134:26, 135:12, 153:25, 156:28, 173:28, 179:19, 186:20, 191:5, 193:23, 193:25, 198:6 DOWNEY [2] - 3:15, 3:20 DR [1] - 3:11 draft [8] - 30:4, 149:8, 149:10, 149:11, 152:8, 171:28, 172:2, 172:15 drafted [1] - 51:8 drag [1] - 80:25 draw [1] - 103:11 drawn [1] - 10:14 driven [5] - 7:17, 8:3, 9:17, 9:18, 112:9 drop [1] - 179:29 dropping [1] -</p>	<p>179:25 Dublin [3] - 137:7, 146:2, 181:6 DUBLIN [7] - 1:17, 2:19, 2:25, 2:32, 3:28, 4:9, 4:13 due [10] - 11:4, 40:19, 55:7, 73:11, 97:18, 97:25, 100:29, 101:3, 181:16 Duff [1] - 145:19 Dunne [2] - 175:7 during [5] - 79:7, 134:7, 135:26, 155:29, 173:16 duties [2] - 56:27, 157:14 duty [5] - 156:13, 157:27, 160:18, 161:9, 176:14 DÁIL [1] - 1:4 Dáil [2] - 138:18, 150:27</p> <p style="text-align: center;">E</p> <p>e-mail [34] - 8:5, 8:9, 8:15, 13:11, 13:17, 16:17, 16:18, 17:6, 18:1, 22:13, 24:16, 30:22, 31:7, 32:13, 51:5, 56:20, 63:15, 63:23, 64:2, 64:17, 65:5, 65:11, 65:13, 66:18, 66:19, 70:20, 70:24, 74:15, 75:11, 75:18, 77:6, 85:10, 85:26, 181:14 e-mailed [1] - 62:8 e-mails [8] - 17:16, 18:6, 56:22, 71:2, 76:22, 83:17, 157:10, 157:11 EAMON [1] - 3:10 early [3] - 172:24, 176:2, 203:9 EAS [2] - 156:10, 157:19 easier [3] - 39:5, 158:11, 159:4 easiest [1] - 197:24 Eastern [12] - 45:26, 127:14, 138:1, 138:8, 140:5, 140:14, 140:27, 140:29, 141:17, 175:20, 175:29, 202:1 easy [5] - 149:13, 149:14, 152:13,</p>	<p>153:29, 187:6 effect [3] - 106:27, 107:13, 107:14 effectively [10] - 24:7, 37:28, 55:23, 68:21, 87:16, 93:25, 123:11, 123:20, 139:18, 184:5 efforts [1] - 30:12 EGAN [1] - 3:25 eight [3] - 20:6, 200:12, 200:14 either [9] - 53:25, 95:17, 114:17, 132:9, 153:19, 168:13, 179:2, 190:9, 196:24 element [6] - 21:2, 21:16, 21:21, 25:15, 69:19, 74:24 elements [7] - 13:28, 14:3, 17:2, 32:23, 40:13, 41:15, 163:21 ELIZABETH [1] - 2:29 elsewhere [2] - 73:9, 151:17 embrace [1] - 188:1 EMMA [1] - 3:26 emphatic [1] - 133:15 employer [1] - 148:24 employment [1] - 41:6 enable [5] - 72:6, 77:23, 116:10, 173:8, 175:14 enclose [2] - 92:22, 185:20 enclosed [1] - 175:26 encloses [2] - 124:29, 125:6 encompasses [1] - 127:29 encounter [1] - 179:12 encountered [1] - 183:24 end [14] - 21:29, 35:21, 59:26, 93:27, 94:12, 94:14, 94:21, 119:26, 125:18, 135:13, 155:5, 169:16, 178:5, 179:29 END [5] - 95:4, 113:14, 114:29, 132:21, 135:16 ended [6] - 87:17, 87:25, 87:26, 93:25,</p>
---	--	--	--	--

<p>200:17, 200:18 engage [4] - 26:21, 41:25, 116:4, 130:4 engagement [6] - 42:4, 96:27, 99:29, 100:15, 100:25, 115:29 engagements [1] - 29:17 engaging [1] - 96:23 Enniscorthy [2] - 137:8, 137:14 enquire [2] - 182:26, 186:16 enquired [1] - 142:9 enquiries [3] - 58:2, 148:2, 148:15 enquiring [5] - 139:8, 152:4, 171:1, 193:5, 203:20 enquiry [2] - 68:29, 141:22 ensure [13] - 12:25, 15:2, 15:5, 16:6, 25:15, 29:10, 30:10, 32:28, 84:29, 100:19, 128:22, 156:10, 165:1 ensuring [1] - 25:3 entered [1] - 107:19 entire [2] - 27:8, 29:8 entirely [5] - 86:13, 101:2, 103:21, 112:9, 112:17 entirety [1] - 17:10 entitled [5] - 40:4, 52:5, 52:23, 53:2, 187:29 entries [1] - 160:7 entry [7] - 139:23, 141:28, 141:29, 142:20, 147:6, 147:24, 156:2 environment [1] - 154:4 envisage [2] - 90:27, 109:1 EOIN [1] - 2:29 EQUALITY [1] - 1:8 equality [6] - 165:5, 165:6, 165:28, 165:29, 168:14, 168:17 equally [8] - 28:19, 37:19, 50:1, 96:29, 97:11, 97:16, 97:21, 98:14 error [3] - 40:24, 40:26, 41:4 erupts [2] - 36:27, 37:6</p>	<p>especially [1] - 126:11 essence [1] - 85:10 essential [3] - 25:14, 25:15, 131:24 essentially [15] - 33:24, 63:24, 80:15, 119:13, 119:14, 120:1, 121:24, 121:26, 123:3, 128:8, 128:16, 132:12, 132:16, 132:17, 155:5 establish [12] - 20:1, 61:13, 133:19, 133:22, 141:23, 142:11, 144:8, 145:24, 165:13, 165:27, 181:28, 201:10 established [3] - 177:1, 199:26, 199:27 ESTABLISHED [1] - 1:7 estimated [1] - 59:16 Etcetera [1] - 24:24 etcetera [3] - 39:16, 47:6, 66:15 evening [4] - 6:15, 7:15, 13:6, 178:15 event [10] - 6:29, 28:2, 31:14, 64:25, 138:11, 141:16, 145:14, 173:23, 192:14, 194:16 events [1] - 50:24 eventually [2] - 145:15, 148:1 evidence [38] - 13:5, 14:8, 14:21, 15:29, 18:18, 18:26, 23:6, 27:15, 30:19, 35:14, 38:7, 38:18, 41:18, 52:11, 53:5, 57:26, 67:20, 78:5, 99:1, 99:10, 103:29, 105:3, 105:28, 106:5, 106:13, 107:16, 110:3, 114:3, 115:20, 117:20, 124:6, 128:19, 129:3, 131:3, 133:15, 135:26, 142:8, 200:18 EVIDENCE [1] - 1:8 evident [1] - 86:28 ex [1] - 82:7 exact [3] - 63:19, 67:25, 171:26 exactly [10] - 139:19, 144:16, 164:7, 179:24, 188:19,</p>	<p>188:29, 189:23, 192:5, 198:19, 201:12 exaggerating [1] - 34:8 EXAMINATION [5] - 95:4, 113:14, 114:29, 132:21, 135:16 examination [2] - 9:1, 45:11 examine [3] - 8:26, 25:11, 203:5 EXAMINED [12] - 5:5, 5:6, 5:7, 5:8, 5:9, 5:13, 6:10, 95:8, 113:22, 115:5, 132:27, 136:14 examined [1] - 94:19 examining [2] - 147:24, 172:24 example [3] - 20:2, 68:27, 127:3 examples [1] - 95:21 exception [2] - 155:15, 174:24 exceptional [1] - 154:6 excessive [2] - 80:17, 88:27 exchange [1] - 17:28 exchanges [2] - 13:9, 88:6 exclamation [1] - 126:1 excluded [1] - 133:8 excluding [1] - 24:3 exclusion [3] - 45:21, 58:9, 183:24 excuse [1] - 102:18 Executive [1] - 122:2 executive [29] - 11:24, 21:26, 26:20, 27:2, 30:15, 40:11, 50:5, 50:13, 50:18, 50:22, 55:5, 72:29, 78:2, 79:4, 121:4, 127:15, 134:14, 152:27, 164:4, 164:9, 181:9, 188:14, 192:26, 194:17, 195:3, 199:4, 200:3, 201:27, 202:11 EXECUTIVE [1] - 3:13 exercise [2] - 12:21, 17:8 exercised [1] - 34:3 Exhibit [1] - 174:25 exhibits [1] - 174:27 existed [1] - 167:6 expect [8] - 68:14,</p>	<p>75:21, 145:27, 147:4, 155:6, 194:7, 194:8, 199:29 expected [7] - 45:10, 49:12, 49:17, 88:17, 153:19, 154:9, 187:24 expecting [1] - 199:20 expects [1] - 68:3 expeditiously [2] - 76:7, 91:21 experience [6] - 28:20, 54:20, 54:25, 72:22, 101:7, 105:12 experienced [4] - 67:6, 67:9, 164:15, 170:21 expert [2] - 149:10, 158:29 explain [5] - 13:3, 13:4, 66:25, 79:3, 106:3 explained [8] - 7:22, 20:20, 43:1, 48:23, 70:24, 75:13, 82:8, 159:19 explaining [1] - 83:4 explains [1] - 56:17 explicitly [2] - 9:11, 15:13 exposure [1] - 7:11 express [3] - 80:11, 124:15, 194:20 expressed [2] - 72:19, 80:10 expressing [1] - 47:5 extended [1] - 67:10 extensive [2] - 96:10, 98:27 extent [6] - 7:17, 8:2, 9:8, 9:16, 12:20, 187:5 external [3] - 14:5, 19:15, 41:5 extract [1] - 86:21 extracting [1] - 134:23 extraordinary [1] - 105:14 extremely [1] - 12:28 eye [1] - 170:16</p>	<p>131:29 fact [30] - 11:25, 14:4, 19:27, 19:29, 20:4, 20:19, 25:28, 27:29, 37:11, 38:26, 39:9, 40:12, 40:27, 47:19, 62:28, 68:7, 91:2, 96:28, 101:5, 101:8, 109:1, 110:6, 110:10, 114:4, 118:20, 119:15, 122:5, 123:9, 198:25, 200:25 fact-finding [9] - 11:25, 19:27, 19:29, 20:4, 20:19, 39:9, 40:12, 198:25, 200:25 factors [1] - 29:6 facts [6] - 20:1, 103:12, 181:4, 181:18, 183:3 factual [2] - 138:28, 201:10 factually [2] - 22:20, 167:12 fair [21] - 14:28, 15:2, 21:17, 49:6, 49:19, 59:3, 70:5, 72:23, 77:2, 83:15, 95:20, 96:3, 96:4, 98:25, 102:7, 102:8, 106:14, 110:21, 132:8, 147:12, 162:9 fairly [3] - 156:7, 161:7, 193:4 fairness [8] - 23:10, 34:24, 72:20, 76:5, 117:4, 124:10, 144:14, 155:1 fait [1] - 180:20 fallen [1] - 12:3 familiar [2] - 89:21, 179:19 family [1] - 115:21 FANNING [3] - 2:21, 5:11, 136:13 fanning [2] - 139:25, 173:20 Fanning [53] - 6:27, 13:27, 17:18, 17:22, 17:29, 18:26, 20:22, 21:21, 22:29, 23:10, 23:17, 28:17, 30:23, 30:27, 31:5, 34:3, 34:19, 37:24, 39:11, 94:23, 113:19, 113:28, 119:12, 119:27, 120:8, 120:26, 121:24, 122:1, 122:8, 124:9,</p>
F				
<p>face [1] - 82:29 faced [1] - 83:5 facial [1] - 159:1 facilitate [1] - 125:27 facilitating [1] -</p>				

<p>124:11, 125:4, 126:16, 127:26, 128:3, 128:29, 129:8, 129:11, 129:20, 130:3, 131:3, 131:7, 133:3, 134:10, 134:12, 136:10, 136:17, 158:5, 158:12, 196:12, 198:10, 202:5 Fanning's [4] - 17:24, 114:4, 122:14, 134:9 fanning's [1] - 136:22 far [12] - 17:12, 36:15, 83:12, 94:13, 129:27, 133:26, 146:27, 153:12, 154:18, 156:18, 160:13, 170:26 FARRELL [1] - 4:5 fashion [2] - 69:20, 77:26 fast [1] - 34:23 feature [3] - 30:21, 37:15, 181:25 FEBRUARY [2] - 1:5, 1:9 February [3] - 39:27, 93:29, 169:8 Feehily [2] - 123:6, 125:4 felt [14] - 15:15, 20:23, 29:19, 48:24, 61:27, 77:24, 80:4, 92:1, 115:22, 134:9, 149:22, 201:1 female [3] - 156:7, 157:13 FERGAL [1] - 2:27 Fergus [1] - 45:4 FERRY [1] - 2:16 Ferry [1] - 176:12 few [5] - 33:12, 46:20, 71:18, 117:20, 149:6 FF [1] - 158:22 file [16] - 14:4, 28:25, 112:7, 127:9, 142:9, 146:24, 171:7, 172:25, 179:16, 179:20, 179:22, 180:18, 180:26, 186:11, 196:15, 202:5 files [3] - 44:6, 146:6, 176:10 filled [1] - 95:28 final [1] - 93:8 finalised [1] - 70:29</p>	<p>finally [2] - 42:13, 137:9 findings [1] - 76:2 fine [10] - 26:14, 27:13, 28:2, 33:3, 46:27, 57:2, 105:25, 107:26, 203:16 finish [8] - 38:18, 38:21, 70:21, 105:18, 126:29, 131:11, 203:10 finished [2] - 6:15, 139:12 finishes [2] - 125:24, 155:13 finishing [1] - 13:7 finn [1] - 111:8 FINN [1] - 3:5 Finn [40] - 23:15, 33:26, 36:3, 39:10, 46:23, 67:18, 68:3, 68:13, 68:19, 70:9, 75:20, 78:10, 78:13, 78:17, 78:22, 78:23, 79:7, 83:20, 83:25, 84:6, 85:13, 86:11, 88:9, 88:11, 88:28, 89:16, 90:20, 91:8, 91:20, 91:26, 111:15, 112:6, 112:13, 112:14, 112:15, 116:21, 116:27, 131:15, 203:12 Finn's [5] - 67:20, 90:22, 91:3, 91:16, 94:21 Fintan [5] - 35:2, 136:10, 136:17, 158:5, 158:12 FINTAN [3] - 2:21, 5:11, 136:13 Fiona [1] - 13:12 firm [1] - 201:4 first [42] - 8:7, 18:14, 18:16, 19:5, 20:17, 26:15, 32:18, 39:29, 54:13, 57:10, 61:14, 61:16, 101:12, 101:14, 115:9, 117:18, 118:18, 123:23, 128:16, 133:1, 137:12, 139:14, 149:1, 151:28, 153:28, 155:29, 159:6, 160:15, 160:16, 160:19, 162:16, 162:25, 163:28, 167:15, 178:12, 183:11, 185:12,</p>	<p>193:25, 193:27, 196:7, 202:9, 202:20 firstly [3] - 50:11, 52:25, 126:2 fit [1] - 186:21 fits [1] - 189:3 FITZWILLIAM [1] - 4:8 five [14] - 126:26, 126:28, 138:9, 156:21, 171:24, 173:25, 173:29, 176:4, 177:2, 177:3, 182:13, 189:19, 190:1 five-page [4] - 173:25, 176:4, 182:13, 189:19 fixed [1] - 170:14 flagged [1] - 18:13 Flanagan [1] - 125:3 flow [1] - 193:4 FLYNN [1] - 3:19 focus [1] - 163:7 focused [2] - 32:22 focusing [1] - 49:12 Folan [2] - 145:14, 145:22 follow [11] - 73:6, 75:12, 139:26, 171:20, 188:27, 189:27, 190:4, 190:14, 197:26, 200:23, 202:25 followed [5] - 143:10, 143:14, 143:17, 181:14, 196:9 following [20] - 1:25, 15:20, 17:18, 18:3, 25:5, 26:18, 32:22, 51:4, 56:18, 58:29, 63:5, 63:7, 86:7, 112:7, 143:26, 151:28, 156:28, 163:25, 172:13, 172:19 FOLLOWING [1] - 1:4 follows [2] - 156:5, 190:7 FOLLOWS [8] - 6:1, 6:11, 95:9, 113:23, 115:6, 132:28, 136:7, 136:15 foot [3] - 153:13, 162:29, 166:14 football [2] - 160:17, 161:9 FOR [11] - 1:7, 2:6, 2:10, 2:15, 2:20, 2:27, 3:2, 4:1, 4:4, 4:10,</p>	<p>136:6 force [3] - 192:10, 192:11, 193:21 form [2] - 43:14, 156:8 formal [14] - 7:5, 22:4, 31:22, 65:20, 67:3, 68:4, 123:10, 134:16, 150:2, 150:21, 151:5, 153:10, 196:22, 196:23 formalise [2] - 16:19, 185:10 formally [1] - 185:19 former [1] - 6:26 Former [1] - 136:9 FORMER [4] - 1:13, 2:3, 5:11, 136:13 forum [1] - 27:13 forward [7] - 85:2, 97:17, 119:28, 133:29, 140:25, 141:6, 202:3 forwarded [10] - 56:22, 75:27, 121:4, 140:4, 141:8, 172:8, 173:3, 173:18, 185:22, 201:26 forwarding [1] - 171:29 four [7] - 89:4, 90:19, 99:11, 163:15, 173:28, 186:10, 186:22 fourth [2] - 107:27 free [2] - 135:20, 166:1 FREEMAN [1] - 2:22 frequent [1] - 7:28 Friday [3] - 74:17, 156:22, 157:8 FRIDAY [1] - 203:23 Friend [2] - 119:7, 134:24 fro [2] - 68:18, 87:17 fro-ing [2] - 68:18, 87:17 froing [1] - 170:13 frustrated [1] - 63:4 frustration [3] - 76:26, 76:28, 88:22 full [11] - 15:2, 30:11, 75:15, 124:17, 124:21, 155:4, 179:14, 185:17, 189:7, 191:23, 196:12 full-time [1] - 155:4 fully [4] - 25:4, 25:16, 75:14, 176:1</p>	<p>function [3] - 105:9, 132:18, 140:24 functioning [1] - 103:19 functions [3] - 14:5, 180:25, 200:13 furnished [1] - 139:22 furtively [1] - 124:2</p>
G				
<p>G's [1] - 87:6 Gallagher [3] - 7:6, 7:13, 30:5 gallagher [1] - 7:13 Galway [3] - 156:3, 157:3, 157:4 gap [1] - 141:3 garda [21] - 117:9, 144:23, 146:8, 147:29, 148:10, 149:15, 153:29, 156:7, 157:13, 157:15, 159:17, 159:29, 161:3, 176:29, 178:4, 184:8, 186:2, 186:17, 186:28 Garda [298] - 7:13, 7:25, 8:12, 8:25, 8:26, 9:20, 9:25, 9:29, 14:10, 17:2, 19:5, 20:27, 23:22, 24:27, 25:12, 26:19, 26:21, 26:22, 27:21, 27:24, 27:28, 28:6, 28:21, 28:25, 29:4, 29:10, 29:17, 29:18, 29:19, 32:9, 32:24, 32:29, 34:9, 34:12, 34:13, 37:15, 37:26, 37:28, 38:6, 38:20, 39:13, 39:14, 39:15, 40:14, 41:7, 41:23, 42:22, 44:6, 44:19, 45:20, 52:2, 52:15, 58:11, 59:12, 59:20, 64:9, 64:11, 64:12, 64:15, 67:4, 67:10, 67:12, 67:19, 67:24, 68:11, 69:6, 71:5, 72:29, 75:19, 81:8, 82:7, 82:20, 84:26, 85:13, 86:23, 86:26, 86:28, 86:29, 87:1, 87:3, 87:6, 87:7, 87:13, 92:25, 96:1, 96:8, 96:14, 96:27, 97:2, 97:27, 98:10, 98:15, 98:20, 99:2, 99:12,</p>				

<p>99:25, 99:27, 99:28, 100:3, 100:4, 102:6, 102:17, 102:21, 102:23, 102:27, 103:27, 104:29, 106:1, 106:6, 107:4, 107:8, 107:11, 107:13, 107:15, 109:11, 109:17, 112:29, 115:12, 116:5, 117:7, 117:22, 118:1, 118:6, 119:5, 119:12, 119:13, 119:28, 120:6, 120:11, 120:15, 120:19, 120:26, 121:15, 121:18, 121:25, 122:4, 122:5, 122:10, 122:21, 123:4, 123:9, 123:10, 124:9, 125:1, 125:7, 125:11, 125:27, 126:2, 126:9, 127:4, 127:5, 128:21, 128:23, 130:13, 130:16, 131:25, 134:23, 137:5, 137:8, 137:18, 137:20, 138:16, 139:23, 140:2, 142:22, 143:16, 144:4, 144:7, 144:14, 145:15, 145:20, 145:22, 146:19, 146:21, 146:28, 147:13, 147:15, 147:21, 147:29, 148:10, 148:27, 149:5, 149:27, 150:2, 150:5, 150:21, 151:4, 152:9, 152:17, 153:12, 154:13, 155:1, 155:4, 155:20, 155:21, 156:1, 156:3, 156:6, 156:7, 157:2, 157:9, 158:26, 160:15, 160:29, 161:2, 161:20, 163:15, 163:16, 164:1, 164:6, 164:12, 164:26, 165:1, 165:2, 165:5, 165:13, 165:14, 165:19, 165:20, 165:23, 166:5, 166:9, 166:12, 166:18, 166:22, 167:20, 167:27, 168:3, 168:4, 168:12, 168:20, 168:25, 168:29, 169:2, 169:9, 169:15, 169:21, 169:28,</p>	<p>170:11, 170:26, 171:1, 171:5, 171:13, 171:16, 171:22, 172:8, 172:22, 174:11, 174:17, 174:26, 175:1, 175:8, 175:26, 176:11, 177:6, 177:26, 178:3, 178:15, 178:22, 179:5, 179:13, 179:23, 180:9, 180:13, 180:16, 180:29, 181:6, 181:22, 182:21, 182:28, 183:11, 183:22, 184:16, 184:19, 184:28, 184:29, 185:11, 186:3, 188:9, 191:22, 192:16, 194:21, 194:22, 194:28, 195:8, 195:17, 196:9, 197:1, 197:5, 201:26, 202:3 GARDA [10] - 2:10, 2:27, 2:27, 2:28, 3:2, 3:10, 3:11, 3:12, 3:21, 4:10 gardaí [2] - 176:29, 200:15 gathered [1] - 111:8 gathers [1] - 35:14 general [19] - 11:6, 28:26, 38:22, 39:21, 40:1, 64:10, 69:16, 69:19, 96:14, 102:27, 105:12, 106:17, 106:25, 114:14, 132:10, 145:7, 162:17, 195:21 generality [5] - 73:16, 88:25, 102:23, 104:9, 107:4 generally [3] - 7:29, 106:13, 159:3 generated [1] - 38:27 GERAGHTY [1] - 2:17 Gerard [2] - 26:19, 131:14 GERARD [1] - 2:11 GERRY [1] - 3:11 given [21] - 9:13, 16:7, 20:6, 27:16, 28:26, 29:4, 33:29, 72:9, 77:8, 78:5, 98:29, 106:5, 106:16, 109:27, 111:14, 111:20, 111:23, 112:27, 153:9, 168:8,</p>	<p>180:21 GLEESON [1] - 4:7 GOODE [1] - 3:22 GRALTON [1] - 3:14 Gralton [1] - 184:10 granted [1] - 158:7 grateful [3] - 43:16, 43:21, 83:27 grave [1] - 123:26 great [2] - 10:12, 163:4 greatest [1] - 183:21 GREENE [1] - 2:27 GRIFFIN [1] - 3:26 gross [1] - 58:9 ground [2] - 12:6, 20:20 grounded [1] - 184:3 grounds [2] - 92:25, 135:6 GS [1] - 156:6 guard [1] - 165:26 Guards [8] - 52:7, 92:14, 137:6, 140:18, 146:13, 147:11, 151:12, 160:18 guards [1] - 165:21 guide [1] - 41:6 guided [1] - 50:1 guidelines [1] - 20:6 guilty [1] - 117:7 Gwen [1] - 1:24 GWEN [1] - 1:29</p>	<p>handwriting [9] - 57:22, 57:23, 57:24, 57:27, 65:2, 65:9, 172:11, 172:12 handwritten [8] - 7:8, 7:10, 57:20, 64:29, 134:26, 149:28, 156:5, 172:15 happily [2] - 69:27, 111:3 happy [9] - 49:4, 69:15, 104:11, 110:1, 121:26, 139:26, 144:23, 177:28 HARAN [1] - 4:5 harassment [92] - 12:24, 12:26, 14:12, 14:22, 16:25, 17:9, 20:13, 20:15, 20:28, 21:2, 21:13, 21:16, 21:21, 21:24, 22:9, 22:27, 23:6, 30:21, 36:16, 39:13, 43:22, 44:20, 45:14, 45:17, 45:21, 46:8, 53:4, 57:16, 58:9, 58:28, 59:11, 59:17, 65:20, 65:25, 65:28, 66:8, 66:17, 67:4, 67:27, 68:8, 69:18, 75:16, 75:27, 84:27, 96:26, 98:29, 103:3, 112:24, 113:9, 114:5, 117:1, 117:5, 117:8, 117:29, 118:7, 118:28, 119:4, 119:8, 119:16, 120:17, 121:8, 121:25, 122:29, 126:11, 127:28, 128:4, 128:8, 128:11, 128:27, 129:2, 130:4, 131:20, 131:26, 171:7, 172:26, 174:13, 183:24, 185:9, 188:10, 188:24, 188:26, 189:1, 189:4, 190:18, 190:25, 191:11, 191:27, 192:4, 192:23, 196:25 Harrison [1] - 81:19 hat [1] - 103:20 HAVING [1] - 136:13 he.. [1] - 82:21 HEAD [1] - 3:15 Head [1] - 61:6 head [2] - 177:10, 193:21 headquarters [6] - 120:21, 138:16,</p>	<p>143:21, 151:6, 168:14, 191:22 Headquarters [7] - 137:8, 137:18, 137:20, 165:6, 176:11, 181:6, 197:1 health [1] - 92:26 healthy [2] - 37:16, 37:20 Healy [5] - 45:4, 55:22, 58:22, 74:7, 89:18 hear [5] - 36:20, 94:5, 115:23, 130:21, 131:7 heard [9] - 42:18, 87:1, 95:18, 118:11, 130:19, 138:24, 154:11, 154:24, 194:16 HEARING [3] - 6:1, 136:6, 203:23 hearing [2] - 51:28, 67:19 heart [2] - 36:10, 114:21 held [5] - 28:23, 50:12, 137:12, 183:2, 194:2 HELD [1] - 1:17 Helen [9] - 54:3, 56:21, 60:25, 62:6, 66:23, 74:17, 80:27, 83:29, 90:9 hello [1] - 158:12 help [6] - 52:4, 62:26, 69:14, 74:29, 135:27, 165:27 helpful [2] - 75:3, 109:21 hierarchical [2] - 147:9, 154:1 hierarchy [1] - 99:6 HIGGINS [1] - 4:10 High [2] - 44:22, 58:6 high [2] - 12:28, 151:9 higher [1] - 105:13 highlighted [1] - 40:14 highly [2] - 72:2, 109:25 himself [6] - 99:13, 115:13, 115:14, 115:21, 130:11, 158:3 his/her [1] - 20:4 history [1] - 178:8 hold [3] - 83:9, 103:18, 123:28 holder [2] - 178:1,</p>
H				
<p>half [5] - 28:20, 89:4, 90:19, 190:1, 203:15 HALIDAY [1] - 2:23 Hall [7] - 54:3, 56:21, 60:25, 62:6, 80:27, 83:29, 90:9 hall [8] - 61:3, 65:11, 68:22, 75:8, 76:22, 84:15, 93:8, 110:29 Halloween [4] - 156:12, 156:23, 157:22, 159:20 hand [10] - 53:22, 111:19, 123:25, 123:28, 149:16, 152:14, 152:25, 158:19, 178:14, 202:4 hand-delivered [1] - 178:14 handed [6] - 85:12, 87:14, 111:15, 117:27, 132:5, 184:15 hands [1] - 109:17</p>				

<p>194:12 holding [1] - 27:22 holidays [1] - 200:10 home [2] - 122:20, 127:8 honest [2] - 105:21, 151:16 honestly [1] - 42:3 hope [1] - 46:16 HORAN [1] - 3:25 hour [4] - 89:4, 90:19, 203:3, 203:15 HOUSE [3] - 2:23, 3:27, 4:11 HQ [2] - 142:28, 155:12 HR [14] - 28:8, 28:18, 29:26, 41:6, 42:6, 96:8, 97:29, 98:7, 98:15, 108:13, 108:15, 108:28, 139:12, 193:22 HRM [9] - 138:11, 154:20, 167:1, 167:29, 168:23, 183:14, 184:23, 187:22, 202:4 HRPD [13] - 11:24, 27:2, 30:15, 40:11, 40:19, 122:2, 164:5, 164:9, 181:9, 183:3, 185:13, 188:15, 195:12 huge [2] - 104:19, 187:17 HUGHES [2] - 2:29, 2:30 human [1] - 152:25 Human [6] - 26:20, 118:1, 121:4, 127:15, 137:28, 152:27 HUMAN [1] - 3:15 humiliation [1] - 58:10 hypothetical [1] - 103:7 hypotheticals [1] - 106:15</p>	<p>identifies [1] - 107:28 identify [2] - 104:12, 170:10 identifying [1] - 169:29 identity [8] - 14:18, 32:7, 68:12, 75:19, 168:2, 168:24, 169:5, 169:23 illness [1] - 154:22 imagine [1] - 187:21 immediate [4] - 25:22, 152:5, 152:24, 192:15 immediately [2] - 16:11, 149:6 impact [1] - 115:21 impacting [1] - 34:9 impartial [1] - 184:29 impetus [1] - 7:16 implicitly [1] - 170:22 implying [1] - 201:6 importance [2] - 99:6, 181:20 important [12] - 35:2, 35:5, 35:7, 37:21, 102:10, 143:9, 144:5, 144:15, 148:22, 153:25, 159:16, 189:18 importantly [1] - 37:19 impression [2] - 52:2, 134:11 IN [1] - 1:17 in-region [1] - 30:13 inappropriate [3] - 20:24, 95:23, 100:8 incident [4] - 146:27, 156:26, 156:27, 184:7 incidents [2] - 169:25, 170:1 include [8] - 27:23, 45:13, 103:2, 169:23, 178:24, 184:18, 184:21, 188:5 included [6] - 74:21, 120:12, 121:3, 138:2, 180:10, 184:6 including [3] - 52:22, 186:23, 191:10 inclusion [1] - 171:6 incomplete [2] - 175:1, 175:3 inconsistent [2] - 124:7, 124:8 incorrect [2] - 39:24, 112:21</p>	<p>indeed [4] - 65:21, 66:27, 143:26, 165:6 independence [1] - 41:8 independent [2] - 63:2, 165:29 Independent [4] - 36:24, 130:23, 131:9, 150:8 independently [2] - 16:11, 126:3 INDEX [1] - 5:1 indicate [2] - 119:29, 124:21 indicated [3] - 119:9, 120:11, 121:24 indicated.. [1] - 120:6 indicating [1] - 119:27 indication [1] - 70:25 individual [6] - 12:23, 16:22, 55:8, 55:12, 102:24, 103:11 individual's [1] - 55:9 individuals [6] - 23:21, 42:5, 45:13, 45:14, 86:14, 117:15 influence [1] - 53:25 inform [5] - 27:21, 127:14, 152:19, 165:12, 194:21 information [75] - 12:19, 20:3, 38:6, 41:11, 42:7, 51:1, 53:3, 53:6, 53:15, 58:1, 58:3, 58:17, 59:19, 60:8, 60:13, 60:14, 62:1, 62:3, 65:19, 66:12, 66:13, 73:7, 74:1, 74:11, 75:7, 75:15, 75:24, 76:21, 76:24, 77:1, 77:9, 77:14, 77:23, 78:24, 82:1, 82:2, 85:1, 86:2, 86:11, 87:18, 87:24, 87:27, 91:22, 92:3, 97:2, 100:2, 112:28, 113:6, 113:8, 113:9, 116:1, 116:9, 116:14, 116:22, 135:3, 140:3, 140:5, 141:8, 163:19, 163:21, 164:7, 166:3, 167:21, 173:7, 175:14, 176:28, 177:11, 185:14, 186:13, 189:5, 189:7, 189:9, 197:15, 199:8</p>	<p>informed [6] - 29:7, 40:27, 153:19, 155:7, 169:22, 185:11 informing [9] - 28:26, 29:2, 40:20, 169:11, 194:24, 194:28, 195:7, 195:10, 195:17 ing [4] - 68:18, 87:16, 87:17 inherited [1] - 146:25 initial [4] - 45:4, 97:28, 98:1, 170:8 initiate [1] - 173:8 initiated [4] - 17:27, 17:28, 20:17, 115:18 initiating [1] - 145:4 injury [3] - 44:22, 45:12, 58:6 innocence [2] - 101:2, 101:4 inquiry [3] - 114:13, 162:26, 191:23 INQUIRY [2] - 1:2, 1:8 inside [1] - 124:1 insofar [2] - 115:14, 116:12 inspecting [1] - 159:22 INSPECTOR [7] - 3:4, 3:10, 3:15, 3:17, 3:18, 3:22, 4:5 Inspector [28] - 120:8, 121:1, 121:14, 122:13, 126:15, 127:3, 145:14, 145:22, 153:13, 175:6, 175:7, 176:13, 178:13, 179:5, 179:10, 179:15, 179:27, 180:5, 180:11, 180:16, 180:17, 180:29, 181:26, 183:8, 184:1, 185:11, 201:26 inspector [6] - 153:6, 154:8, 159:22, 176:12, 178:22, 180:23 inst [1] - 176:21 instance [5] - 61:14, 61:17, 118:18, 155:8, 197:21 instances [1] - 100:20 instructed [1] - 90:3 INSTRUCTED [8] - 2:11, 2:17, 2:22, 2:29, 3:26, 4:1, 4:8, 4:10</p>	<p>instructing [1] - 193:6 instruction [2] - 164:17, 180:3 INSTRUMENT [1] - 1:7 integrity [1] - 34:12 intelligence [5] - 140:7, 141:24, 144:3, 144:26, 184:9 intend [1] - 14:19 intending [1] - 176:26 intention [1] - 152:3 interacting [1] - 21:25 interaction [4] - 18:23, 87:19, 134:13, 183:8 interactions [1] - 100:18 interest [4] - 9:9, 9:28, 177:24, 184:26 interests [2] - 60:6, 76:5 interfering [1] - 109:14 interim [9] - 31:10, 35:26, 36:12, 36:14, 36:23, 61:21, 144:24, 172:19, 178:2 internal [4] - 14:5, 28:8, 44:20 interpretation [3] - 14:24, 19:20, 141:10 interpreted [1] - 192:9 interrelationship [1] - 25:16 interview [1] - 174:23 INTO [1] - 1:2 introduce [2] - 158:3, 159:2 introduced [2] - 157:12, 158:4 investigate [9] - 39:12, 66:4, 138:26, 141:12, 162:2, 162:29, 163:11, 165:9, 185:8 investigated [10] - 23:26, 145:28, 150:22, 151:2, 151:17, 152:20, 152:21, 187:2, 188:2, 197:17 investigating [8] - 59:2, 73:14, 125:14, 139:1, 144:26,</p>
I				
<p>ICELAND [1] - 4:11 idea [4] - 35:12, 55:7, 101:1, 101:24 idem [1] - 25:1 identified [8] - 21:15, 41:23, 95:14, 98:8, 100:27, 100:28, 105:29, 176:29</p>				

<p>162:18, 188:4, 191:8 investigation [81] - 9:1, 11:26, 15:24, 20:13, 21:1, 22:2, 22:10, 23:16, 32:9, 39:9, 40:13, 43:23, 45:5, 59:17, 65:23, 66:6, 67:7, 68:4, 68:14, 70:8, 75:22, 75:26, 76:9, 79:9, 79:10, 84:8, 84:11, 86:12, 91:4, 91:17, 91:18, 91:26, 112:8, 112:17, 112:24, 116:25, 123:26, 124:17, 124:22, 127:28, 128:1, 129:28, 140:6, 141:25, 142:10, 142:13, 145:11, 145:12, 147:26, 150:4, 151:3, 152:18, 162:7, 162:23, 163:6, 163:7, 168:13, 168:17, 183:28, 184:18, 184:22, 185:17, 186:1, 186:7, 186:18, 188:8, 188:9, 188:28, 189:7, 191:10, 193:6, 195:21, 196:11, 196:23, 196:24, 197:20, 198:5, 199:12, 199:15, 200:19, 200:28 investigations [1] - 163:2 investigator [10] - 8:25, 19:15, 35:13, 75:29, 76:1, 164:15, 164:28, 165:17, 170:3, 170:21 invited [2] - 133:8, 175:1 involve [1] - 129:21 involved [17] - 28:8, 49:23, 56:26, 57:3, 87:9, 94:22, 98:21, 100:7, 128:15, 130:1, 130:14, 141:17, 151:10, 165:4, 177:3, 177:16, 187:26 involvement [8] - 29:22, 82:6, 94:18, 94:20, 109:9, 139:3, 184:27, 186:15 Ireland [1] - 156:25 Irish [2] - 36:23, 131:9 irrespective [6] -</p>	<p>103:26, 106:7, 106:27, 107:7, 107:8, 107:10 issue [84] - 14:27, 18:5, 18:14, 25:28, 34:20, 35:5, 36:16, 38:17, 41:18, 42:1, 42:13, 42:15, 42:24, 43:5, 47:21, 52:17, 52:27, 52:29, 55:2, 61:6, 63:27, 73:1, 74:6, 74:22, 80:15, 81:2, 82:25, 83:12, 85:18, 92:20, 96:5, 97:25, 98:28, 99:5, 100:27, 103:24, 107:1, 108:25, 109:3, 109:5, 114:5, 114:26, 115:9, 117:4, 117:18, 119:9, 119:28, 120:9, 130:22, 131:21, 133:14, 141:18, 142:24, 144:3, 144:5, 144:6, 144:15, 145:3, 145:4, 146:28, 147:13, 147:21, 147:24, 147:29, 150:26, 153:23, 154:29, 162:26, 163:13, 164:1, 164:8, 165:26, 166:12, 166:20, 167:26, 168:19, 179:3, 180:8, 183:17, 185:12, 194:7, 195:22, 199:25 issued [1] - 185:1 issues [74] - 8:26, 9:19, 9:29, 14:13, 14:15, 18:19, 19:24, 20:26, 21:18, 21:26, 23:26, 26:22, 27:23, 28:5, 28:15, 29:20, 30:4, 35:2, 35:7, 40:13, 41:7, 44:5, 45:11, 45:22, 52:7, 53:14, 65:4, 68:5, 69:7, 69:26, 72:13, 78:15, 78:17, 78:26, 78:27, 78:29, 79:1, 79:2, 81:19, 83:29, 89:19, 89:21, 94:11, 94:15, 100:6, 100:11, 104:3, 107:18, 114:6, 114:11, 114:14, 114:22, 117:16, 120:12, 121:2, 121:3, 134:1, 134:11, 149:3, 149:21, 152:26, 153:18, 153:21, 154:12, 177:15, 179:14, 179:22,</p>	<p>180:6, 180:12, 183:12, 183:21, 183:27, 184:8, 184:13 IT [1] - 137:17 it'll [1] - 48:28 italicised [1] - 107:26 item [2] - 195:25 itself [4] - 18:18, 23:26, 60:17, 173:3</p>	<p>156:3 JUDGE [1] - 3:12 Judge [4] - 54:27, 81:19, 82:6, 126:24 June [10] - 121:14, 121:18, 121:27, 122:1, 122:6, 183:14, 185:13, 194:18, 194:22, 194:24 jurisdiction [1] - 191:24 JUSTICE [3] - 1:7, 1:12, 2:2 Justice [9] - 7:18, 7:28, 11:6, 11:14, 38:19, 38:23, 39:22, 40:2, 123:5 justice [3] - 15:2, 70:6, 98:25 justifiable [1] - 75:26</p>	<p>29:18, 29:19, 32:29, 37:26, 38:6, 39:13, 39:15, 40:14, 41:7, 42:22, 44:6, 67:19, 81:8, 85:13, 86:26, 87:13, 96:1, 96:8, 96:14, 96:27, 97:2, 97:27, 98:10, 98:15, 98:20, 99:2, 99:12, 99:25, 99:27, 99:28, 100:4, 102:6, 102:17, 102:21, 102:23, 102:27, 107:5, 107:8, 107:11, 107:13, 107:15, 117:22, 118:6, 119:6, 119:12, 119:13, 119:28, 120:6, 120:11, 120:15, 120:20, 120:26, 121:15, 121:18, 121:26, 122:4, 122:5, 122:10, 123:4, 123:9, 124:9, 125:1, 125:7, 125:11, 126:9, 127:4, 127:5, 128:21, 128:23, 130:13, 130:16, 131:25, 138:16, 139:23, 140:3, 142:22, 146:22, 148:27, 149:5, 151:4, 152:9, 153:12, 154:13, 155:1, 155:4, 155:21, 156:6, 156:7, 158:26, 160:15, 160:29, 164:7, 164:12, 165:2, 166:9, 166:12, 166:18, 166:22, 167:20, 168:3, 169:15, 169:21, 169:29, 170:26, 171:1, 171:17, 171:22, 172:8, 172:22, 174:11, 174:18, 174:26, 175:1, 175:9, 175:26, 177:26, 178:3, 178:15, 178:23, 179:5, 179:13, 179:23, 180:9, 180:13, 180:16, 181:1, 182:22, 182:28, 183:11, 183:22, 184:16, 184:28, 184:29, 185:11, 192:16, 194:21, 194:22, 194:28, 195:17, 196:9, 197:6, 202:3 KEOGH [1] - 2:10</p>
		J		
		<p>Jack [2] - 162:28, 163:5 JACK [1] - 3:6 James [2] - 17:23, 122:13 JAMES [1] - 2:28 January [23] - 40:18, 76:10, 76:18, 79:17, 83:18, 83:21, 84:18, 84:20, 85:8, 85:16, 85:24, 85:26, 87:29, 88:1, 89:1, 92:5, 92:21, 93:26, 93:27, 94:25, 136:28, 155:19 Jimmy [2] - 153:6, 181:26 job [9] - 23:12, 25:27, 48:25, 60:13, 73:6, 107:21, 139:15, 170:23, 189:29 Joe [16] - 35:3, 47:12, 49:11, 51:19, 51:28, 54:3, 60:24, 62:19, 75:11, 77:6, 78:14, 79:20, 89:25, 90:3, 91:26, 107:28 JOE [1] - 3:14 job [1] - 74:29 John [15] - 8:5, 19:4, 26:19, 52:1, 117:26, 125:4, 131:14, 134:21, 164:10, 164:13, 171:19, 181:8, 188:17, 199:4, 200:3 JOHN [4] - 2:11, 2:16, 3:8, 4:1 joined [1] - 137:6 joints [1] - 131:18 JOSEPH [6] - 5:3, 6:10, 95:8, 113:22, 115:5, 132:27 Josephine [2] - 123:5, 125:4 journals [1] - 46:17 journey [2] - 148:24,</p>		
		K		
		<p>KANE [1] - 2:28 KATE [1] - 3:25 KAVANAGH [1] - 2:5 kavanagh [1] - 34:28 Kavanagh [14] - 8:8, 8:15, 17:20, 26:16, 51:14, 51:25, 55:19, 70:14, 107:23, 125:18, 127:2, 134:26, 135:12, 173:28 KEANE [1] - 4:6 keen [5] - 72:5, 144:12, 168:4, 194:20, 195:4 keep [12] - 20:25, 29:23, 39:5, 69:28, 124:24, 127:4, 147:18, 147:20, 176:10, 192:17, 194:19 keeping [2] - 126:16, 170:16 Kelly [1] - 203:1 KELLY [2] - 2:10, 3:12 Ken [4] - 13:11, 61:6, 64:5, 111:25 Kenny [1] - 140:26 Keogh [162] - 8:13, 8:27, 9:20, 9:29, 14:11, 17:2, 19:5, 20:27, 23:22, 24:27, 25:13, 26:22, 27:22, 27:24, 27:28, 28:6, 28:25, 29:4, 29:10,</p>		

<p>Keogh's [25] - 7:26, 9:26, 26:19, 26:23, 32:9, 32:24, 82:7, 82:20, 115:12, 116:6, 134:23, 146:19, 149:27, 164:26, 165:13, 167:27, 168:3, 168:20, 168:25, 169:9, 171:5, 171:13, 181:22, 195:8, 201:26</p> <p>kept [6] - 46:17, 47:1, 88:3, 122:25, 124:18, 142:16</p> <p>KEVIN [1] - 3:14</p> <p>key [2] - 14:27, 59:14</p> <p>kick [1] - 23:25</p> <p>kicked [1] - 128:8</p> <p>kicks [1] - 130:12</p> <p>KIERAN [1] - 3:20</p> <p>Kildare [2] - 138:2, 156:25</p> <p>Kilkenny [2] - 137:8, 137:26</p> <p>kind [2] - 111:17, 200:19</p> <p>KIRWAN [1] - 3:13</p> <p>knowing [1] - 187:21</p> <p>knowledge [10] - 9:9, 12:10, 25:22, 42:9, 119:1, 138:27, 138:28, 162:5, 180:17, 201:22</p> <p>known [2] - 10:3, 92:25</p>	<p>LAWLOR [1] - 2:29</p> <p>lawyers [1] - 8:29</p> <p>lead [1] - 79:5</p> <p>leadership [2] - 30:13, 93:7</p> <p>leaking [1] - 37:17</p> <p>least [2] - 76:19, 128:7</p> <p>leave [14] - 8:12, 8:17, 93:2, 93:3, 119:17, 153:17, 161:5, 173:16, 176:7, 178:13, 178:27, 181:10, 194:25, 203:18</p> <p>leaves [1] - 159:4</p> <p>leaving [1] - 21:3</p> <p>led [1] - 147:23</p> <p>left [4] - 32:23, 89:14, 200:1, 200:27</p> <p>legal [28] - 27:23, 29:3, 53:14, 56:12, 56:16, 61:13, 61:21, 62:12, 64:4, 66:26, 78:14, 78:26, 79:1, 79:2, 79:3, 79:4, 89:19, 93:17, 93:19, 111:22, 111:24, 149:10, 151:21, 171:25, 178:20, 187:15, 191:13</p> <p>Legal [1] - 61:7</p> <p>legally [3] - 27:26, 28:3, 68:21</p> <p>LEITRIM [1] - 2:13</p> <p>length [3] - 80:20, 117:19, 119:7</p> <p>lest [1] - 19:3</p> <p>letter [80] - 11:3, 11:5, 17:12, 17:15, 26:9, 26:18, 29:29, 31:1, 31:4, 31:8, 32:12, 39:20, 40:8, 41:29, 43:7, 44:2, 44:11, 49:18, 57:9, 57:11, 60:17, 63:29, 65:23, 65:26, 65:29, 66:9, 66:27, 68:29, 70:2, 114:1, 114:22, 119:11, 120:4, 123:3, 123:6, 124:20, 124:28, 124:29, 125:2, 134:20, 134:23, 134:26, 135:1, 135:7, 135:10, 142:18, 144:29, 148:29, 149:3, 149:5, 149:7, 149:11, 149:27, 149:28, 151:20, 151:25,</p>	<p>151:29, 152:4, 161:28, 164:17, 164:23, 167:15, 172:2, 172:12, 174:5, 174:6, 177:26, 178:6, 178:15, 179:23, 180:3, 181:18, 181:20, 182:6, 185:22, 186:15, 192:15, 202:8</p> <p>letters [3] - 99:14, 179:18, 180:4</p> <p>level [23] - 12:28, 49:24, 50:12, 50:25, 50:26, 52:15, 55:5, 59:3, 97:6, 98:10, 98:14, 99:6, 105:13, 115:10, 115:12, 146:10, 148:1, 155:8, 155:14, 167:22, 198:5, 198:15</p> <p>levelled [1] - 96:26</p> <p>liaise [3] - 27:3, 100:9, 135:27</p> <p>LIAM [1] - 3:18</p> <p>life [2] - 149:5, 150:18</p> <p>light [4] - 34:15, 40:26, 126:15, 140:2</p> <p>likely [2] - 9:12, 58:25</p> <p>limitations [1] - 64:22</p> <p>limited [2] - 114:12, 116:14</p> <p>limits [1] - 20:5</p> <p>line [15] - 51:11, 69:27, 80:3, 80:9, 107:27, 126:7, 152:5, 152:24, 171:3, 174:22, 181:29, 183:22, 198:9</p> <p>line-by-line [1] - 181:29</p> <p>lines [3] - 51:15, 91:24, 98:18</p> <p>linked [1] - 98:28</p> <p>list [9] - 87:6, 118:16, 174:3, 174:27, 184:14, 195:25, 199:1, 199:3, 199:9</p> <p>listed [1] - 174:25</p> <p>listen [1] - 148:23</p> <p>listening [1] - 9:22</p> <p>literally [2] - 63:16, 116:18</p> <p>litigation [8] - 27:24, 28:13, 52:29, 59:16, 65:17, 66:7, 70:26, 78:19</p>	<p>LITTLE [1] - 3:28</p> <p>live [1] - 28:13</p> <p>local [2] - 142:21, 153:20</p> <p>locate [3] - 63:22, 64:3, 69:28</p> <p>lodged [1] - 67:5</p> <p>look [74] - 6:21, 8:5, 11:15, 12:12, 13:10, 20:26, 22:13, 24:14, 25:29, 31:28, 39:4, 39:19, 39:23, 43:6, 46:16, 62:11, 64:28, 66:22, 70:5, 72:7, 89:7, 96:13, 97:26, 106:23, 106:24, 117:21, 119:3, 119:11, 120:24, 124:13, 127:24, 127:25, 129:13, 130:29, 131:25, 139:24, 140:25, 141:19, 142:18, 149:27, 151:25, 152:10, 157:4, 158:19, 161:28, 163:23, 164:19, 166:14, 169:8, 169:17, 171:14, 172:1, 172:14, 173:26, 173:27, 174:5, 174:7, 175:17, 176:17, 178:7, 181:12, 181:19, 189:3, 189:22, 190:6, 192:18, 194:19, 194:29, 195:4, 195:16, 195:19, 200:8, 201:28</p> <p>looked [17] - 6:20, 6:28, 10:11, 10:12, 10:13, 22:3, 24:19, 31:9, 31:19, 40:8, 69:12, 69:23, 114:15, 182:14, 182:24, 187:5, 196:17</p> <p>looking [18] - 42:21, 59:6, 60:13, 66:16, 69:28, 71:12, 77:7, 77:14, 85:17, 103:5, 116:19, 133:29, 146:1, 177:29, 185:29, 186:19, 193:26, 193:29</p> <p>loop [4] - 120:15, 122:6, 122:25, 126:17</p> <p>Lord [1] - 161:4</p> <p>LORRAINE [1] - 3:4</p> <p>Lorraine [1] - 51:29</p> <p>lost [7] - 24:1,</p>	<p>122:28, 126:5, 126:18, 133:14, 133:16, 134:28</p> <p>lower [1] - 50:26</p> <p>ludicrous [1] - 82:9</p> <p>lunch [2] - 195:27, 196:3</p> <p>LUNCH [1] - 136:6</p> <p>luncheon [1] - 199:17</p> <p>lunchtime [2] - 75:3, 111:4</p> <p>lying [1] - 34:1</p> <p>LYONS [1] - 4:6</p>
L				
<p>landed [1] - 102:26</p> <p>language [2] - 80:9, 133:5</p> <p>Laois [1] - 138:2</p> <p>large [2] - 105:19, 190:20</p> <p>largely [2] - 96:10, 98:28</p> <p>larger [2] - 178:11, 198:7</p> <p>last [21] - 8:21, 11:14, 22:4, 39:5, 42:13, 51:15, 52:18, 74:18, 77:28, 85:29, 106:3, 126:4, 126:7, 134:19, 137:9, 138:5, 139:20, 150:4, 152:1, 171:3, 183:9</p> <p>lasted [1] - 47:11</p> <p>late [1] - 70:18</p> <p>law [1] - 15:6</p>				<p>M</p> <p>MADE [2] - 1:2, 1:7</p> <p>Mahon [4] - 11:13, 17:14, 38:21, 133:20</p> <p>Mahon's [2] - 17:12, 40:8</p> <p>mail [35] - 8:5, 8:9, 8:15, 13:11, 13:17, 16:17, 16:18, 17:6, 18:1, 22:13, 24:16, 30:22, 31:7, 32:13, 51:5, 56:20, 63:15, 63:23, 64:2, 64:17, 65:5, 65:11, 65:13, 66:18, 66:19, 70:20, 70:24, 74:15, 75:11, 75:18, 77:6, 85:10, 85:26, 156:6, 181:14</p> <p>mailed [1] - 62:8</p> <p>mails [8] - 17:16, 18:6, 56:22, 71:2, 76:22, 83:17, 157:10, 157:11</p> <p>main [1] - 192:19</p> <p>MAIN [1] - 2:12</p> <p>major [1] - 202:10</p> <p>maker [1] - 20:4</p> <p>Malone [1] - 1:24</p> <p>MALONE [1] - 1:29</p> <p>malpractice [3] - 150:3, 150:21, 152:18</p> <p>man [6] - 156:12, 157:25, 157:28, 162:16, 162:25, 164:16</p> <p>manage [1] - 192:6</p> <p>managed [1] - 42:29</p> <p>Management [1] - 137:28</p> <p>management [14] - 8:25, 28:9, 29:22, 125:27, 142:22, 145:7, 146:13,</p>

<p>147:10, 149:17, 149:21, 152:6, 152:24, 156:11, 192:6</p> <p>manager [2] - 105:18, 180:22</p> <p>managerial [1] - 81:18</p> <p>manner [1] - 8:18</p> <p>manoeuvre [1] - 52:3</p> <p>March [39] - 23:14, 23:23, 28:27, 33:24, 34:1, 34:21, 42:8, 65:21, 67:5, 84:27, 92:1, 117:26, 119:6, 119:26, 133:23, 150:27, 170:29, 171:14, 171:17, 171:18, 172:5, 172:6, 172:18, 173:25, 174:10, 174:19, 174:23, 175:2, 175:4, 175:8, 175:26, 182:4, 183:22, 189:13, 189:18, 193:11, 201:27, 202:4</p> <p>MARCH [3] - 1:18, 6:1, 203:23</p> <p>MARGARET [1] - 3:21</p> <p>MARIE [2] - 3:8, 3:17</p> <p>mark [2] - 126:1</p> <p>MARK [1] - 3:3</p> <p>marker [1] - 66:13</p> <p>Marrinan [1] - 203:14</p> <p>MARRINAN [1] - 2:7</p> <p>match [2] - 160:17, 161:9</p> <p>material [44] - 6:29, 11:10, 21:28, 42:29, 49:3, 52:29, 53:23, 61:15, 63:13, 63:17, 63:20, 64:20, 66:17, 71:17, 72:5, 74:7, 74:18, 75:12, 76:27, 77:7, 80:22, 86:13, 90:28, 90:29, 91:12, 97:22, 100:21, 111:7, 111:13, 113:1, 116:16, 119:22, 166:22, 167:3, 167:4, 167:6, 167:28, 168:7, 168:9, 181:6, 182:26, 182:28, 187:23</p> <p>materials [3] - 63:25, 63:26, 100:19</p> <p>MATT [1] - 3:19</p> <p>matter [102] - 8:24, 13:28, 14:1, 18:16, 19:3, 20:16, 23:21, 23:24, 27:9, 30:18,</p>	<p>33:23, 33:27, 34:1, 34:25, 35:6, 35:29, 36:8, 36:9, 36:15, 41:4, 43:17, 43:20, 50:21, 55:13, 59:3, 70:27, 76:6, 78:25, 80:12, 80:13, 81:26, 83:3, 84:25, 85:2, 88:26, 91:21, 91:29, 92:1, 94:11, 94:13, 96:8, 96:18, 96:22, 96:24, 97:18, 97:29, 106:15, 113:25, 114:18, 118:6, 119:10, 119:18, 119:22, 121:21, 127:17, 131:4, 134:6, 140:22, 141:8, 141:14, 141:26, 142:7, 142:17, 142:27, 143:6, 143:12, 145:5, 145:20, 145:28, 146:7, 146:11, 146:18, 147:2, 147:10, 148:26, 150:3, 150:29, 152:20, 152:22, 152:23, 161:18, 162:10, 168:5, 169:19, 169:21, 172:26, 176:1, 176:16, 178:25, 178:26, 183:4, 184:11, 184:25, 187:24, 188:22, 192:10, 193:15, 195:2, 199:24, 202:28</p> <p>matters [60] - 7:7, 7:26, 7:29, 8:3, 9:26, 14:10, 16:2, 18:13, 24:3, 24:27, 25:12, 26:22, 27:3, 28:8, 28:9, 28:22, 34:6, 34:21, 34:23, 34:24, 45:27, 46:3, 50:6, 50:10, 52:28, 59:15, 60:3, 67:2, 67:12, 67:25, 70:26, 93:25, 97:14, 98:17, 101:8, 107:4, 121:7, 122:20, 124:10, 124:17, 141:23, 142:11, 143:5, 143:29, 152:17, 161:3, 162:29, 174:13, 180:16, 180:20, 181:7, 183:28, 185:17, 186:1, 187:2, 187:5, 192:22, 193:2, 196:16</p>	<p>MATTERS [1] - 1:4</p> <p>MATTHIAS [1] - 2:10</p> <p>McBrien [3] - 2:16, 141:21, 142:9</p> <p>McCabe [1] - 184:23</p> <p>McCARTAN [2] - 4:10, 4:11</p> <p>McCarthy [25] - 17:23, 120:8, 120:19, 121:1, 121:15, 122:13, 126:16, 127:3, 153:6, 153:13, 178:14, 179:5, 179:10, 179:15, 179:16, 179:27, 180:5, 180:11, 180:16, 180:29, 181:26, 184:1, 185:12, 201:26</p> <p>McCarthy's [3] - 176:13, 180:17, 183:8</p> <p>McCOURT [1] - 2:17</p> <p>McGarry [7] - 2:21, 5:7, 113:17, 113:18, 113:20, 113:22, 113:25</p> <p>McGrath [34] - 2:7, 2:28, 5:5, 5:9, 6:4, 6:11, 6:13, 6:14, 6:25, 9:15, 17:26, 28:29, 33:21, 41:14, 48:28, 52:20, 57:23, 60:19, 63:18, 74:3, 75:2, 104:4, 109:6, 110:27, 119:7, 132:23, 132:25, 132:27, 133:1, 133:26, 135:11, 135:25, 135:28</p> <p>McGuinness [1] - 126:29</p> <p>McGuinness [33] - 2:6, 3:24, 5:8, 5:13, 115:3, 115:5, 115:8, 126:26, 127:1, 129:17, 129:19, 130:26, 130:27, 131:10, 131:13, 133:17, 134:24, 136:9, 136:14, 136:21, 136:25, 137:2, 137:4, 189:9, 190:13, 190:14, 192:14, 195:10, 198:22, 201:15, 201:21, 203:3, 203:13</p> <p>MCLOUGHLIN [1] - 3:6</p> <p>McLoughlin [13] - 29:15, 29:27, 51:29,</p>	<p>108:20, 108:22, 108:28, 166:23, 168:8, 169:11, 170:16, 183:14, 185:13, 194:24</p> <p>McLYNN [1] - 4:2</p> <p>MCAHON [1] - 3:8</p> <p>McPartlin [17] - 10:26, 11:25, 12:5, 12:9, 16:7, 16:16, 16:27, 17:5, 25:8, 25:21, 25:26, 32:1, 33:8, 39:8, 40:12, 198:23, 200:22</p> <p>MCPARTLIN [1] - 3:20</p> <p>McPartlin's [1] - 199:2</p> <p>mean [53] - 10:4, 12:27, 15:9, 18:22, 23:27, 47:14, 53:13, 60:12, 61:25, 73:2, 73:13, 78:28, 80:11, 91:28, 94:18, 96:17, 96:21, 112:23, 131:24, 140:20, 143:12, 144:19, 146:10, 146:23, 147:4, 149:13, 150:16, 150:28, 151:15, 154:11, 154:17, 154:24, 158:29, 159:14, 162:21, 167:10, 170:26, 178:18, 178:21, 180:2, 180:18, 187:16, 188:20, 191:7, 191:13, 193:18, 194:7, 199:3, 199:6, 200:8, 200:10, 200:11, 202:15</p> <p>meaningful [1] - 80:28</p> <p>means [3] - 44:21, 83:28, 102:8</p> <p>meant [2] - 33:1, 141:11</p> <p>meantime [2] - 88:1, 125:26</p> <p>meantime.. [1] - 125:21</p> <p>Meath [1] - 138:3</p> <p>media [14] - 7:25, 8:4, 9:9, 9:17, 9:20, 9:25, 9:28, 37:12, 62:29, 63:4, 109:4, 109:9, 109:13, 109:20</p> <p>mediation [2] - 130:13, 130:16</p>	<p>MEDICAL [1] - 3:11</p> <p>meet [10] - 54:3, 112:6, 145:15, 145:22, 152:5, 153:5, 156:16, 164:12, 170:26, 174:17</p> <p>meeting [121] - 6:22, 7:12, 9:10, 10:4, 10:13, 10:24, 11:21, 12:12, 12:15, 12:20, 12:28, 13:7, 13:19, 13:26, 14:3, 14:28, 18:7, 18:11, 18:14, 18:17, 18:27, 18:28, 21:11, 21:13, 21:14, 21:17, 22:8, 22:12, 23:3, 23:5, 23:24, 26:26, 27:4, 27:10, 27:12, 27:22, 28:2, 28:13, 29:22, 31:15, 33:19, 33:25, 36:17, 37:9, 37:11, 38:8, 60:26, 60:29, 62:23, 67:21, 67:24, 68:19, 72:25, 72:27, 76:10, 76:17, 80:27, 89:4, 90:12, 90:19, 93:6, 93:12, 93:23, 97:28, 98:1, 99:14, 113:29, 119:10, 122:13, 122:16, 122:18, 127:5, 127:7, 127:26, 128:17, 129:4, 129:11, 130:9, 133:7, 134:12, 134:16, 150:11, 154:21, 154:25, 155:17, 155:20, 156:3, 160:21, 160:23, 160:25, 160:29, 166:10, 171:12, 175:4, 177:29, 179:7, 181:1, 181:17, 190:16, 194:26, 195:16, 195:18, 195:22, 195:23, 195:25, 195:29, 199:1, 199:13, 200:7, 200:8, 200:17, 200:27, 201:11, 201:16, 201:20, 201:21, 201:25, 202:2, 202:13, 202:24, 202:26</p> <p>meetings [6] - 27:25, 37:27, 38:1, 38:4, 97:13, 127:19</p> <p>meets [1] - 54:5</p> <p>MEMBER [1] - 2:2</p> <p>member [15] - 34:9,</p>
---	---	---	---	--

<p>44:19, 45:20, 45:25, 46:2, 103:27, 104:20, 104:29, 147:6, 153:3, 163:29, 165:19, 168:4, 168:24, 169:2 member's [1] - 196:1 member/person [1] - 168:2 members [7] - 34:11, 35:28, 58:11, 67:10, 109:10, 122:21, 150:5 memory [13] - 12:8, 25:25, 69:23, 74:10, 74:29, 101:17, 148:11, 149:11, 149:12, 155:11, 156:22, 171:21 mention [1] - 160:11 mentioned [6] - 46:23, 49:15, 81:3, 109:6, 181:12, 200:23 mentioning [2] - 8:19, 8:20 merely [1] - 91:4 merit [3] - 121:7, 184:17, 192:22 message [3] - 9:11, 56:25, 89:14 messages [3] - 93:28, 94:3, 94:7 met [21] - 33:6, 67:18, 67:20, 71:5, 71:8, 85:13, 86:23, 144:8, 149:4, 150:17, 156:6, 158:23, 160:15, 160:20, 161:1, 161:6, 161:11, 166:4, 170:28, 181:10, 197:17 Michael [3] - 39:10, 125:5, 131:14 MICHAEL [4] - 3:4, 3:5, 3:10, 3:19 Mick [7] - 39:16, 112:13, 112:14, 112:15, 150:8, 156:9, 157:19 mid [1] - 40:18 middle [7] - 31:16, 52:13, 53:18, 61:28, 192:19, 193:10, 198:6 midway [1] - 88:9 might [30] - 8:3, 13:3, 37:13, 47:16, 47:27, 49:5, 50:20, 54:18, 64:22, 70:14, 70:26, 83:28, 93:28, 96:13, 99:4, 106:24, 108:23, 109:8, 125:2, 125:8, 126:26,</p>	<p>129:13, 131:10, 142:27, 147:7, 148:12, 161:6, 179:11, 181:14, 181:15 mind [2] - 33:6, 114:21 mindful [2] - 100:26, 177:4 mine [1] - 200:16 minimum [4] - 59:10, 124:18, 124:25, 194:20 MINISTER [1] - 1:7 Minister [4] - 39:7, 39:9, 123:5, 125:3 MINNOCK [1] - 3:9 minute [8] - 24:10, 31:7, 31:28, 97:26, 141:12, 166:8, 172:5, 172:18 minutes [25] - 6:16, 6:22, 7:3, 7:4, 7:5, 7:6, 7:8, 7:10, 10:12, 12:12, 18:12, 22:4, 30:5, 31:18, 31:23, 47:12, 67:21, 126:27, 126:28, 134:16, 160:5, 193:4, 195:19, 195:23, 198:29 mirror [1] - 55:27 mirrored [1] - 46:9 mirrors [1] - 71:19 misrecording [1] - 8:28 miss [1] - 179:1 missing [12] - 13:1, 32:11, 87:4, 117:28, 118:4, 118:13, 118:20, 118:24, 126:12, 133:14, 133:17 mistaken [2] - 33:26, 38:4 misunderstanding [1] - 19:3 model [14] - 127:29, 177:8, 186:8, 188:3, 188:6, 188:13, 191:6, 196:5, 196:28, 198:2, 198:8, 199:26 moment [14] - 11:5, 11:12, 35:25, 53:10, 62:12, 62:14, 87:21, 94:28, 101:5, 112:22, 119:14, 134:25, 173:10, 203:1 Monday [3] - 54:4, 90:9, 156:27 MONICA [1] - 3:15</p>	<p>month [3] - 23:15, 155:6, 163:27 months [12] - 11:6, 20:8, 20:12, 21:7, 70:29, 80:16, 99:12, 117:28, 123:25, 134:8, 143:25, 183:15 morning [8] - 6:4, 6:6, 6:8, 6:13, 6:14, 69:29, 157:1, 194:16 MORONEY [1] - 3:18 MORRISSEY [1] - 3:26 most [8] - 28:11, 40:5, 51:17, 85:1, 96:28, 146:12, 162:17, 184:16 move [14] - 23:13, 34:22, 34:23, 38:16, 51:14, 79:12, 119:10, 119:28, 126:22, 133:29, 160:2, 167:18, 167:21 moved [3] - 37:25, 137:22, 151:6 movement [1] - 70:18 moving [7] - 65:10, 92:3, 117:18, 134:2, 134:6, 176:10, 176:16 MR [63] - 1:12, 2:2, 2:5, 2:6, 2:7, 2:10, 2:10, 2:16, 2:16, 2:21, 2:21, 2:22, 2:28, 2:28, 2:29, 3:13, 3:14, 3:16, 3:23, 3:23, 3:24, 3:24, 4:1, 4:1, 4:6, 4:10, 4:10, 5:3, 5:7, 5:8, 5:13, 6:10, 95:8, 113:17, 113:20, 113:22, 113:25, 115:5, 115:8, 126:26, 127:1, 129:17, 129:19, 130:27, 131:10, 131:13, 132:27, 136:9, 136:14, 136:21, 136:25, 137:2, 137:4, 190:14, 192:14, 195:10, 198:22, 201:15, 201:21, 203:3, 203:13 MS [40] - 2:7, 2:11, 2:29, 2:30, 3:25, 3:25, 3:26, 3:26, 4:1, 4:7, 4:7, 5:5, 5:6, 5:9, 6:4, 6:11, 6:13, 60:19, 74:3, 95:9, 95:11, 99:20, 99:24, 99:26, 100:9, 108:25, 109:2,</p>	<p>110:20, 110:22, 110:24, 111:13, 111:19, 132:23, 132:27, 133:1, 133:26, 135:11, 135:25, 135:28, 203:6 MULCAHY [1] - 3:5 Mulkerrins [5] - 78:14, 79:3, 93:11, 111:26, 112:2 Mulligan [10] - 95:6, 99:19, 132:8, 167:13, 181:2, 181:11, 181:17, 183:3, 193:9, 203:4 mulligan [1] - 111:12 MULLIGAN [17] - 2:11, 3:13, 5:6, 95:9, 95:11, 99:20, 99:24, 99:26, 100:9, 108:25, 109:2, 110:20, 110:22, 110:24, 111:13, 111:19, 203:6 Mullingar [8] - 137:9, 138:1, 141:21, 142:4, 142:26, 144:7, 151:6, 161:2 multiple [2] - 106:20, 114:25 MURPHY [2] - 2:30, 3:23 Murray [116] - 15:12, 15:14, 42:17, 42:25, 44:18, 44:28, 45:23, 45:28, 46:17, 47:1, 47:15, 47:18, 48:27, 49:27, 51:24, 52:11, 53:17, 53:20, 53:25, 54:17, 55:1, 56:20, 58:4, 58:7, 58:13, 58:19, 58:23, 58:24, 59:2, 59:11, 59:14, 61:4, 61:14, 61:17, 61:27, 62:29, 67:11, 67:26, 68:9, 68:10, 69:22, 71:4, 72:14, 73:16, 75:15, 76:5, 76:23, 76:29, 77:3, 77:25, 78:10, 78:16, 78:28, 79:17, 80:8, 80:18, 80:25, 81:24, 83:4, 84:29, 86:15, 86:16, 86:18, 87:5, 87:9, 88:3, 88:29, 89:5, 89:29, 90:15, 91:7, 92:9, 92:23, 92:27, 94:12, 96:2, 96:12, 96:17, 96:19, 96:22, 96:28, 97:7, 97:24, 98:27, 99:10,</p>	<p>100:1, 100:10, 100:14, 100:16, 100:20, 100:23, 101:6, 102:2, 104:6, 104:14, 107:2, 107:6, 107:9, 107:19, 107:28, 110:7, 110:26, 111:14, 112:21, 115:11, 115:13, 115:18, 115:25, 116:15, 118:14, 118:21, 118:25, 118:29, 123:29, 132:19 MURRAY [2] - 3:3, 3:9 Murray's [12] - 38:17, 49:2, 60:21, 93:10, 97:20, 98:8, 100:3, 100:19, 100:25, 131:29, 201:17, 201:24 must [9] - 16:14, 44:13, 51:18, 107:14, 132:10, 142:8, 165:24, 180:12, 180:14 MÍCHEÁL [1] - 3:23</p>
N				
<p>Naas [1] - 185:7 name [7] - 13:15, 158:12, 158:28, 158:29, 159:6, 197:1, 199:2 named [9] - 1:26, 44:21, 44:29, 58:7, 58:12, 58:13, 148:11, 148:17, 148:18 names [2] - 35:17, 148:16 narrative [2] - 129:12, 173:29 nation [1] - 103:19 natural [4] - 15:2, 70:6, 102:3, 131:18 naturally [1] - 97:15 nature [15] - 18:22, 58:18, 59:1, 67:9, 68:7, 69:21, 73:9, 74:19, 79:10, 86:10, 91:15, 115:23, 132:11, 155:10, 169:4 necessarily [2] - 120:23, 134:10 necessary [8] - 41:8, 72:5, 135:28, 141:15, 145:11, 145:12, 153:6, 164:29</p>				

<p>necessitated [1] - 9:2</p> <p>necessity [3] - 29:10, 35:5, 100:18</p> <p>need [32] - 14:15, 18:16, 19:14, 27:21, 28:1, 29:12, 32:25, 32:26, 34:6, 51:1, 79:3, 85:20, 97:11, 98:8, 100:29, 103:6, 103:15, 120:23, 122:2, 130:21, 130:25, 143:14, 143:20, 145:8, 146:9, 153:5, 162:13, 163:25, 166:24, 177:16, 194:18, 203:9</p> <p>needed [15] - 34:21, 56:8, 60:14, 61:16, 62:1, 62:3, 91:12, 92:2, 116:1, 119:10, 162:15, 162:21, 162:22, 177:11, 203:20</p> <p>needs [4] - 128:11, 152:5, 196:8, 196:11</p> <p>neutral [3] - 15:26, 164:14, 196:11</p> <p>never [11] - 54:25, 133:12, 148:13, 149:4, 149:25, 150:17, 153:9, 158:23, 162:21, 162:22, 180:1</p> <p>new [2] - 15:27, 96:3</p> <p>news [2] - 166:27, 166:29</p> <p>newspaper [1] - 150:29</p> <p>next [42] - 8:18, 11:15, 19:25, 22:14, 26:12, 26:16, 27:18, 30:2, 31:25, 31:27, 34:2, 34:27, 35:10, 51:3, 51:11, 57:8, 59:6, 64:28, 76:10, 84:19, 93:23, 121:9, 125:18, 126:7, 128:15, 130:3, 136:9, 142:23, 157:1, 167:2, 167:16, 167:22, 169:17, 172:28, 181:16, 183:18, 192:23, 194:23, 200:28, 202:18, 202:26</p> <p>NICHOLAS [2] - 2:10, 4:5</p> <p>Nicholas [4] - 8:12, 172:8, 175:8, 182:22</p>	<p>Nick [1] - 202:3</p> <p>night [2] - 156:29, 157:7</p> <p>NK [1] - 118:1</p> <p>nobody [4] - 21:14, 21:15, 23:14, 194:5</p> <p>NOEL [1] - 4:10</p> <p>NOLAN [1] - 3:6</p> <p>Nolan [2] - 162:28, 163:5</p> <p>nominate [4] - 162:2, 163:9, 198:20, 200:4</p> <p>nominated [1] - 185:8</p> <p>nomination [1] - 199:20</p> <p>non [1] - 71:23</p> <p>non-specific [1] - 71:23</p> <p>none [1] - 18:23</p> <p>nonetheless [1] - 105:24</p> <p>NOREEN [1] - 2:16</p> <p>norm [2] - 28:25, 29:6</p> <p>normal [9] - 34:16, 42:27, 50:19, 50:20, 63:5, 81:18, 102:3, 145:28, 152:22</p> <p>normally [2] - 19:29, 154:17</p> <p>Northern [1] - 140:28</p> <p>NORTHUMBERLAN D [1] - 2:18</p> <p>note [24] - 46:12, 46:29, 49:8, 53:28, 55:19, 56:19, 57:1, 62:7, 64:8, 64:29, 66:11, 67:2, 71:3, 75:18, 75:28, 78:8, 90:1, 92:9, 108:21, 110:25, 111:5, 156:5, 158:17, 158:18</p> <p>noted [2] - 121:1, 176:22</p> <p>notes [20] - 1:26, 46:17, 48:29, 49:2, 54:16, 57:20, 57:21, 60:22, 65:16, 79:16, 88:2, 89:29, 104:6, 104:22, 104:25, 157:17, 157:28, 158:16, 169:13</p> <p>nothing [12] - 21:1, 83:11, 87:2, 92:14, 96:20, 102:2, 110:5, 118:11, 129:16, 147:16, 178:16, 181:1</p> <p>notice [1] - 161:16</p> <p>notified [1] - 59:13</p>	<p>noting [1] - 141:21</p> <p>notwithstanding [1] - 115:25</p> <p>novel [1] - 15:27</p> <p>November [55] - 11:7, 24:14, 26:7, 26:9, 31:6, 31:8, 31:29, 32:12, 32:13, 33:6, 33:18, 33:20, 35:24, 35:26, 36:3, 36:5, 36:24, 39:12, 49:8, 51:3, 51:4, 53:29, 54:14, 56:2, 56:19, 57:8, 60:19, 60:20, 61:19, 62:15, 63:23, 64:2, 64:17, 65:10, 65:12, 65:13, 65:24, 66:9, 69:1, 70:24, 72:25, 78:11, 104:14, 104:15, 104:16, 114:2, 114:23, 118:8, 130:12, 130:17, 144:29, 168:9, 197:3</p> <p>nub [1] - 86:20</p> <p>Nugent [31] - 6:4, 6:6, 6:13, 17:4, 25:7, 33:5, 39:24, 42:14, 47:12, 49:11, 51:19, 51:28, 54:3, 60:24, 62:19, 77:6, 78:14, 79:20, 89:25, 90:3, 91:26, 94:28, 95:1, 107:28, 112:7, 113:25, 115:8, 129:14, 133:2, 135:9</p> <p>nugent [2] - 65:3, 95:11</p> <p>NUGENT [8] - 3:14, 3:21, 5:3, 6:10, 95:8, 113:22, 115:5, 132:27</p> <p>Nugent's [1] - 131:5</p> <p>number [28] - 7:29, 13:8, 18:7, 27:3, 34:6, 41:23, 42:15, 47:11, 47:14, 55:20, 58:2, 68:10, 70:22, 71:24, 84:8, 84:10, 99:13, 115:15, 122:4, 122:9, 124:12, 143:25, 153:9, 154:11, 174:17, 176:29, 181:21, 185:20</p> <p>numbers [1] - 157:24</p> <p>NYLAND [1] - 3:19</p> <p>NÍ [1] - 2:30</p> <p>NÓIRÍN [1] - 3:7</p> <p>Nóirín [1] - 123:5</p>	<p style="text-align: center;">O</p> <p>O'Brien [1] - 94:25</p> <p>O'BRIEN [1] - 2:10</p> <p>O'CONNOR [1] - 2:21</p> <p>O'HIGGINS [1] - 3:23</p> <p>O'MARA [1] - 2:17</p> <p>O'NEILL [1] - 4:1</p> <p>O'REARDON [1] - 3:17</p> <p>O'ROURKE [1] - 4:7</p> <p>O'Sullivan [2] - 82:8, 123:5</p> <p>O'SULLIVAN [1] - 3:7</p> <p>objection [3] - 61:9, 61:15, 61:18</p> <p>objectionable [1] - 105:21</p> <p>obligation [3] - 147:11, 147:17, 177:23</p> <p>obligations [2] - 15:4, 35:11</p> <p>obliged [3] - 58:21, 65:26, 150:10</p> <p>observation [1] - 14:12</p> <p>obtain [1] - 78:24</p> <p>obviate [1] - 14:14</p> <p>obviously [11] - 138:24, 139:10, 144:24, 146:17, 150:13, 151:24, 154:13, 162:13, 173:12, 186:19, 193:12</p> <p>occasion [9] - 13:26, 19:6, 155:29, 160:22, 161:1, 161:6, 161:15, 179:10, 202:9</p> <p>occur [1] - 200:1</p> <p>occurring [1] - 97:12</p> <p>October [69] - 6:17, 8:6, 8:10, 9:10, 10:13, 10:18, 10:25, 11:2, 11:16, 11:18, 11:21, 12:2, 12:29, 13:8, 13:17, 17:13, 17:18, 17:21, 21:29, 24:16, 26:18, 27:10, 30:22, 32:8, 33:7, 33:19, 37:1, 39:7, 42:19, 43:9, 43:11, 43:29, 44:3, 44:11, 46:14, 46:28, 49:7, 57:12, 65:26, 80:14, 104:14, 113:29, 119:9,</p>	<p>127:22, 128:7, 128:16, 128:17, 129:8, 129:20, 133:10, 133:18, 133:24, 133:25, 133:28, 134:22, 135:11, 135:12, 139:14, 142:18, 154:21, 155:17, 155:22, 155:23, 155:25, 156:1, 158:18, 193:27, 195:19</p> <p>odd [1] - 126:15</p> <p>odds [3] - 73:22, 73:25</p> <p>OF [14] - 1:2, 1:8, 1:12, 1:13, 2:3, 3:2, 3:15, 95:4, 113:14, 114:29, 132:21, 135:16</p> <p>Offaly [1] - 138:3</p> <p>offer [7] - 81:11, 116:29, 119:22, 130:13, 130:16, 182:26, 182:28</p> <p>offered [3] - 61:19, 81:3, 82:25</p> <p>offering [4] - 55:16, 55:22, 73:8, 83:5</p> <p>OFFICE [1] - 3:27</p> <p>office [34] - 9:6, 9:14, 10:2, 13:26, 17:24, 42:5, 42:29, 50:10, 51:18, 56:25, 57:3, 76:3, 133:19, 142:6, 155:13, 155:14, 156:8, 157:27, 159:13, 159:28, 167:13, 168:9, 171:6, 175:21, 175:24, 178:29, 180:22, 180:26, 182:9, 182:27, 193:5, 193:9, 201:27, 202:11</p> <p>Office [1] - 9:13</p> <p>OFFICER [2] - 3:11, 3:14</p> <p>officer [18] - 15:3, 15:11, 50:14, 50:18, 105:21, 142:23, 142:26, 145:16, 146:12, 147:11, 154:19, 155:13, 165:5, 165:28, 166:11, 168:15, 168:17, 193:7</p> <p>Officers [1] - 13:19</p> <p>officers [2] - 68:11, 191:24</p>
---	---	--	--	---

<p>officially [1] - 123:27 often [1] - 32:25 OGHUVBU [1] - 3:11 OLIVIA [2] - 3:12, 4:1 omission [1] - 30:19 ON [6] - 1:5, 1:9, 1:18, 2:13, 6:1 once [10] - 35:14, 102:19, 120:25, 121:10, 127:15, 151:2, 191:20, 192:28, 193:15 one [78] - 6:20, 7:5, 10:10, 10:15, 16:22, 17:19, 20:28, 23:27, 24:7, 33:1, 36:18, 36:21, 38:8, 39:2, 42:20, 42:24, 47:16, 51:13, 53:22, 60:21, 66:23, 86:15, 86:17, 87:19, 88:3, 92:19, 93:8, 96:22, 104:20, 113:25, 117:5, 117:12, 119:14, 123:25, 124:20, 128:21, 128:26, 133:13, 146:5, 149:3, 154:27, 155:16, 160:23, 161:1, 161:11, 161:19, 162:1, 168:16, 171:18, 171:24, 171:25, 172:22, 177:16, 177:21, 178:12, 179:22, 180:26, 181:7, 182:12, 183:21, 184:7, 186:6, 186:11, 187:19, 188:27, 189:12, 189:13, 194:3, 196:27, 197:21, 198:18, 198:19, 198:28, 200:4, 200:16, 201:2 ongoing [7] - 27:23, 30:12, 94:11, 94:15, 151:3, 152:21, 154:12 onwards [1] - 38:29 open [12] - 11:3, 11:4, 52:10, 70:13, 76:25, 98:18, 120:24, 131:16, 143:21, 143:27, 153:17, 187:14 opened [10] - 7:4, 9:15, 10:10, 17:11, 17:19, 39:2, 39:6, 57:12, 112:4, 134:25 opening [2] - 51:12, 183:22</p>	<p>operation [1] - 157:21 Operation [2] - 159:16, 159:20 operational [7] - 156:12, 156:26, 157:8, 157:21, 159:20, 180:23, 180:27 operations [1] - 151:26 opinion [13] - 12:8, 14:16, 20:25, 23:25, 36:18, 54:28, 73:19, 81:4, 81:11, 100:8, 112:22, 189:22, 189:23 opinions [1] - 117:1 opportunity [12] - 46:16, 46:18, 99:3, 99:18, 99:20, 101:11, 103:10, 109:7, 110:16, 112:16, 112:26, 159:19 opposed [4] - 63:4, 88:24, 102:17, 110:10 order [7] - 84:29, 101:23, 110:8, 116:2, 119:20, 149:26, 164:26 ordinarily [1] - 95:28 ordinary [2] - 50:24, 95:17 organisation [32] - 15:1, 15:5, 29:13, 29:18, 30:12, 50:26, 53:24, 54:10, 55:5, 55:6, 55:7, 55:17, 55:18, 61:5, 61:24, 62:2, 68:7, 80:7, 93:9, 93:16, 93:18, 93:19, 96:20, 97:1, 98:9, 98:11, 98:19, 147:8, 149:14, 149:18, 154:1, 187:18 organisation's [2] - 55:4, 67:27 organisational [3] - 95:16, 96:12, 140:8 organisationally [2] - 23:22, 23:23 organisations [1] - 106:21 organised [2] - 12:17, 38:9 original [2] - 174:23, 174:25 originally [1] - 167:15 ORLA [1] - 3:20</p>	<p>Orla [5] - 10:26, 11:25, 25:20, 39:8, 40:12 OSMOND [1] - 3:27 OTHER [1] - 1:3 otherwise [3] - 92:26, 102:4, 131:6 ought [1] - 143:29 ourselves [4] - 61:29, 74:12, 88:22, 103:25 outcome [8] - 35:12, 35:19, 60:2, 67:24, 88:17, 102:9, 107:11, 197:26 outlined [2] - 183:12, 196:14 outlines [1] - 39:16 outset [3] - 18:12, 27:10, 53:10 outside [6] - 52:6, 52:16, 52:24, 121:8, 191:11, 192:22 outstanding [3] - 92:14, 131:28, 132:3 overarching [1] - 199:11 overlap [1] - 46:1 overnight [1] - 6:20 oversight [2] - 40:19, 45:25 overtaken [1] - 65:5 overtime [1] - 82:20 overview [2] - 25:14, 137:4 OVO [2] - 156:9, 157:19 own [8] - 14:21, 45:11, 48:1, 54:26, 104:13, 129:2, 143:24, 159:5 owner [33] - 14:17, 19:9, 140:7, 140:17, 140:19, 140:22, 143:22, 144:22, 148:3, 148:8, 177:11, 177:12, 177:19, 177:20, 177:28, 178:1, 186:5, 186:12, 187:9, 187:10, 187:11, 187:13, 187:15, 187:16, 187:27, 188:7, 188:14, 188:18, 194:10, 194:13, 196:26, 197:20, 199:23 owner's [1] - 177:12 ownership [2] - 130:7, 146:15</p>	<p>owns [1] - 188:19</p> <p style="text-align: center;">P</p> <p>PA [22] - 49:11, 49:18, 49:24, 49:25, 49:26, 49:28, 52:3, 52:4, 52:8, 52:22, 55:25, 56:26, 60:25, 63:9, 71:18, 72:8, 72:15, 77:7, 77:17, 88:16, 89:19, 92:13 PAGE [1] - 5:2 page [97] - 6:21, 8:18, 11:14, 11:15, 13:10, 22:4, 24:15, 26:12, 26:15, 27:18, 31:27, 34:27, 39:5, 39:6, 39:24, 39:29, 47:1, 51:25, 52:11, 53:29, 59:6, 64:28, 91:8, 107:24, 108:10, 109:3, 109:22, 110:25, 110:27, 110:29, 112:3, 114:1, 117:21, 118:8, 119:3, 123:3, 123:18, 123:23, 124:27, 125:8, 125:18, 126:7, 126:23, 127:2, 127:24, 129:14, 134:25, 136:23, 136:28, 139:24, 140:25, 141:19, 142:18, 142:23, 145:2, 149:1, 149:28, 151:25, 152:9, 155:20, 158:19, 160:27, 161:29, 163:24, 164:18, 166:14, 167:23, 169:8, 169:17, 171:3, 171:14, 171:24, 172:2, 172:14, 173:25, 173:27, 174:3, 174:6, 174:24, 175:17, 176:4, 176:18, 179:8, 181:19, 182:13, 183:19, 189:19, 192:18, 194:22, 194:23, 195:20, 196:7, 198:3, 198:6, 199:9, 201:28 pages [5] - 6:20, 63:10, 63:11, 74:23, 173:29 paper [2] - 139:25, 200:14 papers [4] - 89:2,</p>	<p>134:22, 138:21 paragraph [37] - 8:20, 8:21, 19:25, 23:28, 24:20, 30:2, 31:16, 31:18, 31:25, 34:2, 48:20, 59:7, 59:26, 120:4, 121:16, 123:17, 123:23, 125:11, 125:17, 125:19, 125:24, 126:8, 134:23, 134:27, 151:29, 152:1, 152:11, 164:24, 166:15, 166:20, 167:2, 169:9, 169:10, 178:9, 183:9, 192:19 paragraphs [1] - 167:24 parallel [2] - 7:27, 78:18 park [1] - 73:15 part [29] - 20:17, 20:19, 32:6, 32:18, 32:19, 38:18, 45:3, 45:11, 52:18, 53:16, 58:25, 86:11, 91:21, 112:1, 114:12, 114:21, 126:4, 130:15, 139:17, 157:3, 160:18, 172:22, 185:15, 193:23, 194:3, 194:4, 194:11, 202:10 particular [24] - 8:1, 8:4, 8:25, 38:27, 41:29, 43:5, 46:21, 54:13, 66:2, 72:11, 79:25, 80:12, 90:6, 96:14, 106:9, 106:12, 106:15, 132:9, 151:13, 156:16, 174:1, 186:6, 187:19, 203:17 particularly [4] - 27:23, 28:12, 60:27, 165:28 parties [8] - 19:16, 53:26, 76:28, 94:19, 130:14, 136:22, 184:29, 192:2 parts [3] - 173:12, 175:12, 187:18 party [3] - 32:5, 66:12, 66:13 pass [1] - 140:13 passed [8] - 29:5, 47:5, 72:26, 74:25, 76:13, 80:2, 116:16, 193:8</p>
---	---	--	--	--

<p>PASSED [1] - 1:4 passing [3] - 91:8, 148:26, 201:15 Pat [10] - 87:5, 92:27, 96:11, 104:14, 107:28, 111:14, 116:15, 118:21, 118:25, 118:29 PATRICK [4] - 2:7, 2:10, 2:28, 3:3 PAUL [3] - 2:16, 2:21, 4:1 Pearse [2] - 137:22, 137:25 peer [1] - 177:20 PEGGY [1] - 4:7 penalisation [1] - 45:22 penalisation.. [1] - 183:25 penalised [1] - 48:24 pending [1] - 132:3 PEOPLE [1] - 3:16 people [18] - 18:7, 55:7, 55:17, 71:24, 103:18, 138:19, 147:1, 152:28, 159:3, 168:13, 177:3, 188:15, 189:26, 190:2, 191:3, 191:17, 196:3, 200:27 People [2] - 26:20, 127:16 per [4] - 24:22, 65:28, 77:25, 202:5 perceived [1] - 115:22 perception [2] - 43:4, 184:28 perfect [1] - 7:3 perfectly [3] - 143:6, 200:9, 201:5 perform [1] - 95:17 performed [1] - 176:14 perhaps [21] - 9:23, 12:11, 13:4, 22:28, 22:29, 53:2, 54:19, 63:3, 103:20, 105:13, 114:20, 126:26, 131:26, 149:27, 158:20, 164:18, 175:17, 178:7, 195:19, 202:9, 203:3 period [8] - 29:5, 38:22, 71:25, 79:14, 99:12, 155:2, 155:6, 173:16 periods [2] - 10:8, 67:11</p>	<p>persistent [1] - 8:27 persists [1] - 126:17 person [26] - 19:4, 69:24, 70:7, 94:24, 96:25, 103:26, 128:9, 147:28, 150:14, 151:9, 151:10, 151:17, 151:18, 163:14, 163:19, 164:8, 164:12, 168:25, 169:5, 169:23, 169:29, 170:10, 181:11, 187:17, 193:20, 197:1 personal [6] - 44:22, 45:12, 58:6, 73:8, 83:5, 83:6 personally [6] - 35:12, 50:22, 50:23, 100:1, 100:9, 100:11 personnel [1] - 13:9 persons [4] - 68:12, 75:20, 169:5, 170:10 perspective [1] - 20:21 persuasive [1] - 51:17 pertaining [1] - 41:7 perusal [2] - 51:9, 172:24 PETER [2] - 2:5, 3:13 phase [2] - 147:23, 172:28 Phillips [1] - 141:1 phone [9] - 53:28, 78:9, 90:5, 93:7, 99:15, 121:18, 161:19, 161:22, 161:24 phoned [10] - 49:11, 51:12, 62:19, 63:8, 79:20, 89:9, 90:3, 99:25, 99:27, 99:28 photograph [1] - 161:9 phrase [3] - 28:10, 52:18, 80:8 physical [1] - 133:22 physically [1] - 117:27 pick [3] - 99:15, 177:18, 177:20 picture [1] - 173:14 pie [3] - 18:25, 18:28, 114:7 piece [21] - 12:29, 16:25, 21:24, 25:11, 26:2, 32:1, 32:11, 32:20, 51:17, 90:26, 93:8, 106:3, 107:27,</p>	<p>109:6, 111:13, 148:22, 166:2, 166:28, 166:29, 192:8, 194:10 pieces [1] - 95:29 pin [1] - 23:4 PLACE [1] - 4:8 place [23] - 10:18, 11:2, 11:20, 17:13, 27:25, 33:9, 33:25, 39:8, 40:28, 42:20, 43:10, 48:2, 53:27, 59:21, 78:11, 94:25, 109:15, 109:16, 145:15, 149:17, 187:23, 195:18, 200:20 placed [4] - 12:11, 41:17, 42:7, 123:27 plaintiff [1] - 58:8 plan [2] - 157:21, 159:20 planning [1] - 140:9 play [3] - 28:5, 29:20, 55:15 pleased [1] - 36:20 point [66] - 14:10, 23:2, 23:3, 23:20, 26:16, 28:13, 28:16, 33:11, 33:21, 33:22, 38:21, 38:27, 43:6, 54:22, 54:23, 60:15, 63:20, 64:24, 66:8, 68:29, 70:2, 70:11, 72:12, 72:14, 73:18, 80:14, 83:1, 83:7, 87:7, 95:16, 95:24, 96:12, 102:1, 102:26, 109:18, 110:5, 113:27, 114:3, 114:16, 116:20, 117:6, 119:17, 120:16, 129:9, 129:10, 131:19, 133:4, 140:10, 141:26, 143:5, 145:26, 162:6, 166:27, 168:28, 173:3, 174:1, 176:5, 176:26, 185:27, 189:2, 193:3, 194:25, 195:22, 197:5, 197:19 points [4] - 65:28, 169:7, 195:26, 196:5 police [1] - 191:24 policies [4] - 93:3, 143:9, 143:17, 196:17 Policing [90] - 42:25, 43:7, 43:8, 43:12, 46:5, 46:29, 48:20,</p>	<p>50:3, 50:5, 50:13, 50:18, 50:22, 50:29, 51:5, 53:7, 53:22, 54:26, 56:5, 56:15, 57:9, 57:19, 60:5, 60:9, 61:10, 61:28, 62:3, 62:7, 71:29, 72:5, 72:19, 73:1, 73:4, 73:5, 73:14, 73:23, 73:25, 74:4, 74:8, 74:26, 75:5, 76:16, 76:17, 76:29, 77:13, 77:22, 80:22, 87:8, 87:10, 87:17, 88:6, 88:10, 90:29, 91:13, 91:23, 92:4, 92:20, 93:14, 94:4, 94:8, 96:24, 97:13, 97:22, 100:2, 100:10, 100:13, 100:25, 101:18, 107:20, 109:15, 109:19, 109:26, 111:9, 111:16, 112:9, 112:18, 113:1, 115:9, 115:29, 116:8, 116:23, 116:24, 116:29, 123:6, 125:23, 126:3, 132:1, 134:21, 134:29, 135:2, 201:18 policing [1] - 64:14 policy [114] - 14:12, 14:16, 14:17, 14:23, 15:1, 30:1, 30:24, 31:27, 32:4, 32:16, 32:20, 32:21, 32:22, 32:23, 32:26, 33:10, 35:12, 35:18, 67:4, 67:8, 67:13, 67:28, 68:8, 70:5, 70:8, 75:27, 75:28, 121:9, 130:5, 130:15, 143:22, 163:15, 163:20, 163:25, 163:29, 164:27, 165:1, 165:14, 165:21, 165:22, 165:23, 165:24, 166:5, 166:17, 167:19, 168:12, 169:1, 169:10, 170:2, 170:11, 173:9, 174:14, 176:28, 177:1, 177:5, 177:9, 177:11, 177:12, 177:15, 177:19, 177:20, 177:23, 177:28, 177:29, 178:1, 184:2, 184:20, 185:9, 186:3, 186:5,</p>	<p>186:12, 186:17, 186:21, 186:22, 187:8, 187:10, 187:11, 187:13, 187:14, 187:16, 188:7, 188:9, 188:14, 188:18, 190:24, 190:27, 190:29, 191:9, 191:11, 191:12, 191:15, 191:27, 192:4, 192:23, 194:10, 194:12, 194:13, 196:6, 196:25, 196:26, 196:29, 197:10, 197:20, 197:24, 197:29, 199:6, 199:22, 199:23, 200:6 poly [1] - 171:8 poor [1] - 159:1 portal [1] - 165:2 portion [1] - 105:19 Portlaoise [6] - 127:11, 161:20, 172:7, 172:21, 174:11, 175:25 position [73] - 16:15, 16:19, 28:9, 29:2, 33:16, 41:25, 53:25, 54:19, 56:8, 60:9, 68:6, 68:13, 70:25, 75:21, 81:25, 91:19, 92:28, 99:4, 102:3, 102:28, 103:13, 105:20, 105:26, 106:10, 106:17, 106:22, 107:16, 109:8, 109:12, 110:23, 114:9, 120:28, 121:27, 121:28, 127:19, 128:25, 129:3, 132:4, 132:6, 138:7, 140:14, 140:17, 144:16, 147:27, 153:4, 160:14, 161:27, 162:23, 169:17, 174:16, 174:18, 177:14, 178:5, 185:27, 186:2, 186:16, 188:25, 190:16, 191:29, 192:1, 192:17, 194:27, 194:28, 195:7, 196:6, 196:25, 197:19, 199:14, 199:28, 200:1, 201:1 positions [2] - 102:13, 105:19</p>
--	--	--	--	---

<p>positive [1] - 88:17 possession [5] - 14:17, 119:16, 133:19, 133:21, 167:28 possible [14] - 15:19, 17:1, 28:14, 43:4, 75:13, 85:4, 100:16, 100:22, 125:28, 168:5, 169:26, 170:1, 170:9, 198:7 possibly [2] - 33:28, 200:25 post [5] - 93:1, 103:17, 107:26, 133:10, 149:4 potential [2] - 52:29, 79:2 potentially [1] - 41:24 power [3] - 64:10, 64:14, 165:22 POWER [1] - 4:10 powers [1] - 168:15 practice [2] - 42:27, 151:11 pre [1] - 15:6 pre-steps [1] - 15:6 precaution [1] - 178:2 precedence [1] - 199:27 precedent [1] - 186:5 precisely [2] - 159:24, 200:27 precluded [1] - 152:19 predate [1] - 142:4 predecessor [1] - 177:7 prefer [1] - 175:21 preferred [1] - 124:1 preliminary [2] - 181:3, 183:2 premise [2] - 29:8, 113:11 prepared [7] - 55:21, 71:17, 171:28, 174:19, 179:16, 181:26, 181:27 presence [1] - 161:2 present [1] - 174:28 presented [4] - 18:27, 174:19, 174:21, 174:27 presently [1] - 122:22 PRESIDENT [2] - 1:13, 2:3 Press [1] - 9:13</p>	<p>press [1] - 37:17 pressing [1] - 194:27 pressure [3] - 115:14, 115:24, 203:17 presumably [2] - 151:5, 180:13 presume [1] - 102:9 presumption [3] - 101:1, 101:4, 101:25 prevented [1] - 101:9 previous [15] - 32:16, 40:4, 72:25, 82:15, 85:3, 85:28, 122:23, 140:25, 142:2, 150:6, 172:15, 175:21, 182:3, 184:27, 187:9 previously [5] - 34:16, 84:28, 122:22, 129:28, 152:20 primarily [1] - 8:16 primary [10] - 12:25, 16:23, 20:25, 21:19, 36:16, 74:24, 116:19, 133:28, 134:1, 144:2 principle [1] - 192:5 printed [1] - 160:9 printout [1] - 140:4 privilege [1] - 64:4 privileged [2] - 27:26, 28:3 probation [1] - 55:13 problem [3] - 9:23, 61:11, 194:6 problems [1] - 157:24 procedural [2] - 14:29, 15:2 procedurally [1] - 34:6 procedures [9] - 30:1, 59:3, 66:5, 70:6, 98:25, 107:21, 110:21, 132:8, 165:4 proceed [8] - 14:19, 16:1, 16:21, 68:5, 111:21, 119:18, 119:21, 129:2 proceeded [1] - 132:2 proceeding [4] - 121:9, 131:20, 166:24, 192:23 proceedings [8] - 44:26, 45:6, 46:3, 46:8, 57:16, 57:17, 59:13, 59:23 proceeds [1] - 35:26 process [67] - 16:12,</p>	<p>19:9, 19:28, 21:19, 22:16, 22:17, 23:25, 24:1, 24:4, 35:11, 43:18, 45:3, 53:1, 55:8, 55:10, 55:18, 56:11, 56:12, 58:4, 59:2, 60:2, 60:7, 63:2, 72:20, 73:6, 73:9, 73:11, 73:14, 73:16, 73:29, 74:1, 77:26, 79:7, 85:6, 86:2, 88:23, 97:18, 97:25, 100:5, 100:29, 101:3, 102:7, 102:8, 102:9, 107:19, 109:12, 109:14, 109:16, 111:29, 112:25, 126:4, 129:22, 130:1, 130:12, 130:19, 141:27, 152:21, 163:25, 165:12, 185:15, 187:9, 188:19, 193:14, 196:9, 196:20, 196:22 processes [7] - 34:12, 43:25, 44:21, 50:2, 54:27, 73:5, 165:4 processing [3] - 87:2, 118:11, 118:27 procrustean [1] - 131:19 produce [1] - 35:18 produced [1] - 136:26 productive [1] - 195:23 profess [1] - 25:22 professional [6] - 37:20, 62:13, 64:4, 141:13, 164:16, 179:28 profile [1] - 151:9 progress [20] - 20:16, 22:27, 25:27, 28:14, 30:10, 30:20, 33:7, 34:7, 34:24, 35:6, 58:3, 63:5, 76:8, 121:22, 124:10, 167:26, 168:5, 168:19, 169:19, 169:21 progressed [10] - 12:26, 16:25, 20:28, 23:24, 32:25, 36:15, 36:19, 92:2, 116:27, 142:27 progressing [7] - 27:3, 28:10, 29:23, 67:6, 101:9, 121:21,</p>	<p>193:6 progression [1] - 20:12 promote [1] - 77:18 promoted [8] - 72:26, 80:18, 93:21, 103:27, 117:16, 125:28, 137:19, 137:25 promotion [34] - 38:17, 42:16, 54:24, 55:9, 73:10, 82:26, 87:6, 87:11, 93:11, 96:6, 96:9, 96:19, 97:17, 98:28, 100:3, 101:10, 102:11, 102:25, 105:1, 106:18, 107:2, 116:2, 118:15, 118:21, 118:25, 118:29, 123:28, 126:19, 132:1, 132:7, 132:11, 132:18, 201:17, 201:24 promotional [1] - 112:25 promotions [2] - 52:17, 61:2 proofs [1] - 178:21 proper [1] - 9:1 properly [3] - 25:4, 29:11, 128:24 propose [2] - 45:28, 104:3 proposed [3] - 28:15, 149:8, 167:18 proposing [3] - 61:1, 186:29, 203:4 Prosecutions [2] - 196:14, 196:16 protected [19] - 24:3, 30:1, 34:10, 124:1, 138:17, 138:20, 138:26, 139:5, 149:9, 150:14, 151:7, 183:23, 183:27, 184:1, 184:3, 184:5, 184:19, 187:3, 197:7 PROTECTED [2] - 1:2, 1:3 protection [2] - 139:5, 140:10 protocol [1] - 187:27 proud [1] - 168:4 proven [14] - 48:18, 54:23, 72:13, 83:8, 103:26, 106:2, 106:7, 110:6, 110:10, 110:12, 113:2, 113:7, 113:10, 117:16</p>	<p>provide [20] - 29:13, 42:7, 60:13, 61:16, 62:1, 62:2, 64:9, 64:13, 64:16, 65:27, 70:25, 72:5, 73:6, 74:1, 112:29, 113:6, 137:4, 139:25, 169:15, 169:22 provided [39] - 13:8, 19:28, 29:15, 29:16, 38:6, 41:11, 53:5, 53:6, 56:15, 61:15, 61:18, 64:23, 74:11, 74:18, 75:6, 75:25, 76:9, 80:22, 85:1, 86:3, 86:11, 86:13, 91:14, 91:20, 93:28, 97:23, 100:21, 111:8, 112:28, 113:8, 165:2, 167:8, 167:26, 168:19, 169:14, 169:28, 171:1, 185:14 provides [2] - 32:16, 59:28 providing [9] - 52:28, 68:28, 88:10, 97:1, 100:2, 116:22, 164:21, 164:22, 169:12 provision [9] - 53:3, 53:15, 56:4, 56:8, 64:11, 64:20, 76:26, 77:1, 90:28 provisions [2] - 152:25, 163:24 précis [2] - 66:12, 69:17 Public [1] - 196:16 public [17] - 33:28, 34:17, 43:20, 54:20, 65:19, 67:3, 73:19, 96:14, 102:13, 102:14, 103:17, 106:21, 109:18, 156:8, 157:27, 159:13, 159:28 publication [1] - 109:10 publicity [1] - 138:17 pull [1] - 50:3 Pulse [13] - 139:23, 140:4, 140:7, 140:17, 140:19, 143:24, 146:9, 146:29, 147:28, 157:10, 160:9, 160:11, 184:8 purely [1] - 116:27 purpose [15] - 68:27, 86:23, 105:11, 112:17, 116:22,</p>
---	---	---	---	--

<p>121:7, 128:20, 131:29, 148:14, 156:15, 165:25, 166:17, 173:7, 179:24, 192:21 purposes [6] - 43:3, 87:11, 124:20, 128:22, 166:10, 186:10 pursuant [1] - 174:13 pursued [1] - 143:25 put [22] - 10:18, 11:20, 16:20, 25:21, 25:27, 31:22, 33:9, 39:8, 43:10, 44:3, 59:21, 78:11, 86:20, 94:24, 97:17, 109:15, 109:16, 131:18, 133:4, 154:9, 178:17 puts [1] - 42:20 putting [8] - 11:2, 19:19, 48:1, 56:4, 80:19, 81:25, 107:14, 158:20 puzzled [1] - 113:10</p>	<p>24:27, 32:29, 35:7, 46:2, 83:29, 104:3, 121:2, 144:4, 144:14, 146:28, 147:13, 147:29, 150:25, 166:11, 166:13, 166:20, 183:11, 183:27, 183:29, 184:8, 185:12 raises [1] - 18:5 raising [3] - 78:16, 142:24, 145:3 rang [4] - 54:3, 77:3, 77:6, 157:23 range [1] - 114:6 rank [5] - 60:1, 149:14, 166:6, 170:2, 186:23 rank/grade [1] - 164:28 ranks [7] - 35:18, 103:28, 109:17, 137:11, 158:11, 177:2, 177:17 rather [3] - 18:20, 152:5, 194:3 RE [2] - 5:9, 132:27 re [9] - 56:27, 60:26, 72:8, 77:6, 78:14, 82:7, 82:20, 89:18, 160:9 RE-EXAMINED [2] - 5:9, 132:27 reach [2] - 98:12, 119:23 reached [1] - 101:8 reaction [1] - 74:23 read [15] - 17:5, 22:5, 22:6, 46:19, 57:23, 65:9, 108:17, 118:9, 131:16, 138:21, 146:24, 149:5, 150:28, 174:20, 175:5 reading [3] - 15:20, 64:29, 178:6 real [4] - 33:5, 33:7, 33:8, 133:22 realisation [1] - 78:3 realise [4] - 87:3, 89:19, 118:12, 126:24 realised [1] - 88:16 reality [4] - 10:6, 33:11, 33:12, 131:1 really [14] - 10:17, 12:6, 22:23, 64:19, 85:10, 85:11, 92:1, 94:17, 97:23, 149:21, 155:2, 159:11, 162:17, 195:28 reason [12] - 11:5,</p>	<p>39:19, 48:2, 51:12, 78:12, 93:26, 128:1, 149:19, 151:19, 151:20, 193:12, 194:1 reasonable [4] - 49:19, 143:6, 200:9, 201:5 reasons [4] - 42:20, 62:13, 167:10, 170:25 reassurance [2] - 98:10, 98:24 reassure [1] - 99:16 reassured [2] - 77:28, 98:9 reassuring [1] - 56:26 recalled [1] - 84:6 receipt [4] - 172:28, 175:11, 175:24, 176:20 receive [3] - 129:18, 143:18, 148:27 received [19] - 43:22, 47:11, 56:21, 59:12, 60:24, 69:6, 75:12, 76:2, 84:26, 84:28, 121:19, 127:11, 151:29, 161:26, 161:28, 167:12, 173:23, 174:23, 193:16 receiving [1] - 178:10 recent [1] - 140:2 recently [3] - 40:5, 84:26, 195:24 recipient [1] - 24:4 recital [1] - 142:21 recites [1] - 169:9 reclassifications [1] - 160:9 reclassified [1] - 196:2 recognise [8] - 6:22, 7:1, 7:2, 70:14, 70:15, 74:15, 149:13, 149:16 recognised [1] - 157:16 recognising [1] - 88:23 recognition [1] - 159:1 recollect [1] - 198:22 recollection [12] - 41:20, 61:12, 64:21, 91:1, 142:1, 144:9, 144:27, 148:16, 155:18, 167:14, 168:11, 201:23 recommend [4] -</p>	<p>19:29, 124:17, 140:3, 185:17 recommendation [1] - 187:28 reconsidered [1] - 41:5 record [15] - 6:24, 8:20, 21:19, 93:2, 104:13, 120:22, 121:29, 122:3, 123:17, 147:28, 147:29, 153:16, 175:4, 181:15, 184:9 recorded [6] - 7:13, 8:19, 51:13, 78:13, 89:29, 140:4 recording [2] - 8:12, 8:17 records [10] - 25:28, 46:21, 46:22, 47:3, 47:8, 49:8, 51:24, 64:17, 72:15, 160:11 recounts [1] - 183:8 redact [1] - 66:11 redacted [3] - 62:12, 69:5, 69:20 redacting [1] - 69:25 REDDY [1] - 4:8 Reddy [1] - 82:6 refer [21] - 40:4, 44:11, 70:11, 70:12, 75:11, 84:24, 86:10, 114:22, 122:23, 125:2, 152:8, 155:20, 171:15, 172:5, 172:18, 173:5, 182:3, 182:9, 202:2, 202:8 reference [24] - 9:5, 9:13, 11:1, 12:13, 15:23, 16:26, 30:20, 39:4, 48:11, 48:13, 62:5, 64:8, 85:11, 85:26, 86:15, 97:12, 112:16, 117:23, 123:7, 150:24, 156:2, 174:10, 185:4, 194:16 referenced [10] - 27:4, 62:26, 65:25, 69:26, 72:4, 74:20, 78:27, 89:4, 115:20, 134:13 references [4] - 30:1, 31:26, 39:14, 91:9 referencing [7] - 13:19, 16:16, 16:28, 29:3, 36:29, 118:18, 128:2 referred [13] - 7:11, 85:28, 114:7, 117:20, 130:22, 130:23,</p>	<p>141:23, 142:20, 148:28, 149:1, 155:7, 163:24, 166:9 referring [12] - 12:14, 24:15, 31:7, 31:14, 57:11, 63:11, 64:2, 65:12, 70:2, 142:1, 178:8, 178:10 refers [10] - 31:15, 48:1, 76:24, 118:1, 121:15, 127:5, 129:14, 129:25, 131:17, 169:10 refinement [3] - 84:26, 85:3, 85:28 reflect [4] - 50:21, 80:12, 134:17, 180:4 reflected [5] - 26:25, 31:1, 31:19, 47:29, 115:19 reflecting [3] - 46:11, 46:13, 55:2 refresh [1] - 83:18 refute [1] - 104:25 regard [25] - 10:25, 23:28, 28:26, 35:3, 43:24, 53:26, 58:28, 66:28, 67:5, 67:22, 69:14, 75:7, 76:26, 77:1, 80:16, 86:17, 93:2, 93:12, 98:6, 107:6, 110:4, 116:18, 132:17, 141:27, 147:27 regarding [13] - 8:27, 9:19, 59:1, 65:27, 66:7, 75:15, 122:21, 127:9, 127:12, 127:17, 183:4, 184:28, 195:2 regards [2] - 87:18, 87:24 region [6] - 30:13, 87:6, 145:27, 150:10, 155:3, 187:19 Region [16] - 45:26, 118:15, 127:14, 138:1, 138:8, 140:6, 140:14, 140:27, 140:29, 141:17, 156:20, 156:22, 175:20, 175:29, 202:1 regional [2] - 147:1, 153:3 regions [3] - 200:12, 200:15 registers [1] - 154:27 REGISTRAR [1] - 2:5 regretted [1] - 40:24 regular [2] - 7:29,</p>
Q				
<p>QUAY [3] - 2:24, 2:31, 4:12 queries [2] - 31:27, 31:28 query [3] - 38:10, 147:5, 166:10 questioned [1] - 117:19 questions [7] - 80:23, 95:2, 113:12, 117:21, 132:24, 141:25, 179:13 quick [1] - 132:23 quickly [3] - 85:4, 91:27, 167:17 quiet [1] - 79:13 QUINN [1] - 3:10 Quinn [3] - 39:16, 156:9, 157:19 quite [10] - 38:26, 39:20, 49:23, 50:7, 59:22, 80:6, 97:10, 146:3, 151:24</p>				
R				
<p>raise [4] - 35:2, 145:3, 147:5, 157:26 raised [25] - 9:19, 14:27, 18:20, 20:27,</p>				

<p>95:25 regularly [1] - 71:7 regulation [2] - 59:20, 60:3 Regulation [2] - 59:28, 161:16 regulations [2] - 59:21, 93:3 reiterate [1] - 66:6 reject [1] - 53:18 rejects [1] - 130:16 relate [9] - 45:27, 65:16, 67:26, 68:9, 108:23, 152:22, 152:26, 159:5, 160:12 related [22] - 7:24, 8:19, 40:5, 52:28, 63:25, 63:26, 67:12, 81:19, 86:14, 86:17, 90:27, 91:17, 96:22, 107:1, 107:17, 112:25, 114:3, 143:2, 152:26, 153:18, 153:21, 154:13 relates [6] - 86:13, 96:18, 108:21, 110:25, 113:26, 161:19 relating [11] - 8:26, 10:14, 43:23, 59:15, 64:14, 65:24, 92:26, 113:9, 141:26, 141:28, 184:8 relation [73] - 6:16, 7:3, 7:28, 8:1, 12:4, 12:6, 16:19, 17:4, 20:19, 21:23, 24:7, 25:19, 28:7, 28:9, 29:2, 32:19, 39:17, 42:22, 44:6, 45:17, 50:6, 53:3, 58:17, 58:23, 59:23, 66:27, 74:6, 76:8, 78:6, 81:25, 84:25, 84:28, 92:14, 93:10, 94:12, 95:12, 96:1, 96:5, 96:9, 96:24, 96:25, 97:2, 97:3, 97:5, 100:1, 100:3, 100:4, 100:24, 101:20, 102:16, 103:17, 106:9, 106:12, 106:25, 107:3, 109:3, 110:6, 110:14, 110:28, 116:28, 117:4, 119:7, 120:1, 120:9, 120:16, 122:25, 128:21, 128:29, 140:13, 141:18, 141:27,</p>	<p>145:4, 179:13 relationship [1] - 194:15 relatively [1] - 195:24 relevant [14] - 45:13, 45:25, 66:4, 66:26, 68:5, 93:3, 103:1, 106:16, 147:20, 169:14, 169:15, 169:24, 175:27, 196:17 relieved [1] - 199:19 reluctant [1] - 184:25 relying [1] - 200:3 remained [3] - 31:25, 77:9, 138:7 remaining [1] - 16:1 remember [26] - 10:26, 13:17, 41:27, 47:13, 48:27, 49:21, 51:21, 54:13, 56:2, 56:29, 57:1, 63:19, 66:19, 69:9, 69:10, 69:16, 71:6, 79:25, 89:5, 89:27, 90:25, 111:1, 154:20, 195:23, 195:27 reminder [5] - 122:1, 122:9, 122:11, 124:11, 124:14 reminders [1] - 194:17 remit [1] - 52:16 reopen [1] - 104:3 repeat [3] - 106:11, 107:7, 113:3 repeated [1] - 76:24 repeats [1] - 126:14 replied [1] - 75:7 replies [1] - 56:15 reply [14] - 24:8, 24:9, 24:10, 24:12, 24:14, 34:29, 44:2, 46:28, 51:5, 51:8, 56:22, 74:13, 163:23, 192:15 report [25] - 20:2, 76:1, 88:10, 89:18, 94:21, 121:22, 127:12, 127:17, 140:17, 141:13, 143:18, 146:17, 146:21, 171:19, 172:19, 172:22, 172:29, 175:24, 176:1, 176:24, 181:27, 187:11, 195:2, 198:3 reported [10] - 40:10,</p>	<p>142:22, 142:23, 143:5, 145:18, 146:19, 149:7, 151:19, 151:20, 187:10 reporting [1] - 146:8 reports [3] - 9:25, 170:18, 180:11 representative [2] - 93:17, 93:19 representatives [1] - 191:14 reputation [1] - 34:12 request [14] - 7:27, 8:16, 58:17, 58:29, 61:13, 64:9, 66:6, 76:6, 80:14, 85:2, 86:10, 146:20, 163:9, 202:24 requested [6] - 57:5, 65:24, 65:27, 169:15, 184:9, 185:10 requesting [2] - 59:19, 66:2 requests [3] - 7:18, 42:28, 76:24 require [6] - 29:13, 58:3, 73:7, 74:2, 98:10, 116:10 required [8] - 13:22, 29:6, 93:8, 97:22, 100:15, 105:13, 124:22, 188:1 requirement [3] - 15:1, 20:3, 29:23 requirements [2] - 166:5, 170:9 requires [4] - 14:28, 64:8, 64:12, 163:17 reserve [1] - 165:19 resolution [3] - 28:10, 164:27, 165:14 RESOLUTIONS [1] - 1:4 resolve [2] - 134:1, 170:3 Resource [1] - 137:28 resource [1] - 152:26 RESOURCES [1] - 3:15 Resources [5] - 26:20, 118:1, 121:4, 127:16, 152:27 respect [18] - 15:18, 28:19, 30:4, 43:15, 44:19, 53:4, 58:2, 59:11, 67:2, 67:7, 86:10, 87:10, 92:23,</p>	<p>102:19, 174:12, 187:6, 192:3, 201:19 respectfully [2] - 103:15, 140:3 respond [3] - 68:22, 179:12, 182:27 responded [1] - 167:17 response [19] - 30:11, 30:13, 30:19, 35:21, 36:9, 61:20, 68:28, 119:23, 143:28, 146:19, 146:21, 149:8, 149:11, 149:25, 152:9, 152:23, 153:10, 154:10, 185:2 responses [1] - 70:11 responsibility [21] - 19:21, 19:23, 23:11, 28:18, 29:25, 30:24, 80:21, 100:7, 105:8, 107:3, 107:17, 130:10, 133:28, 138:19, 146:2, 147:9, 156:17, 190:17, 190:21, 190:24, 193:9 responsible [3] - 137:26, 146:13, 156:21 rest [1] - 51:25 rested [1] - 130:11 resting [1] - 15:5 resubmitted [1] - 117:29 result [1] - 163:28 resulted [1] - 93:13 resume [1] - 136:1 RESUMED [2] - 6:1, 136:6 retired [5] - 17:28, 137:9, 138:3, 138:5, 151:12 RETIRED [7] - 3:5, 3:6, 3:7, 3:7, 3:11, 3:12, 3:13 retirement [2] - 141:2, 160:24 revert [5] - 35:3, 52:25, 172:28, 182:28, 194:21 review [6] - 13:28, 14:15, 58:22, 58:25, 94:24 revisit [1] - 131:5 right-hand [1] - 158:19 rights [3] - 35:24, 149:9, 151:18</p>	<p>ring [2] - 49:18, 94:19 ROAD [1] - 2:18 road [3] - 56:13, 76:18, 191:5 Roche [3] - 162:2, 163:10, 185:7 role [29] - 19:6, 95:12, 95:28, 97:8, 98:21, 98:23, 100:4, 100:24, 101:13, 101:14, 101:16, 101:18, 101:26, 103:16, 104:20, 105:5, 105:6, 105:10, 105:12, 106:5, 115:27, 115:29, 131:4, 131:5, 132:5, 134:1, 140:12, 146:1, 148:7 roles [1] - 95:17 room [2] - 12:2, 159:28 Roscommon [3] - 156:13, 157:1 routes [1] - 63:5 routine [1] - 156:4 row [4] - 36:27, 37:5, 37:6, 37:22 RTÉ [2] - 8:6, 8:9 Ruane [6] - 13:11, 61:6, 61:13, 64:5, 111:25, 112:1 rule [1] - 198:12 ruling [1] - 100:26 run [4] - 78:18, 80:15, 92:5, 126:4 running [4] - 23:13, 35:11, 80:13, 80:16 RYAN [2] - 1:12, 2:2</p>
S				
<p>sad [1] - 37:15 sake [3] - 107:24, 126:6, 129:12 SANDRA [1] - 4:6 sat [2] - 16:14, 133:23 satisfactory [1] - 147:27 satisfied [11] - 60:2, 100:21, 112:12, 120:11, 121:20, 144:22, 148:2, 163:29, 169:1, 178:14, 189:21 satisfy [3] - 112:9, 112:18, 170:9</p>				

<p>SAVAGE [1] - 3:16</p> <p>saw [10] - 7:4, 16:17, 52:13, 88:11, 91:8, 92:5, 94:20, 148:22, 180:18, 181:4</p> <p>SC [11] - 2:6, 2:7, 2:10, 2:16, 2:21, 2:28, 3:23, 3:23, 3:24, 4:6, 4:7</p> <p>scale [1] - 190:21</p> <p>SCANLAN [1] - 3:8</p> <p>Scanlan [26] - 19:4, 117:26, 119:5, 127:10, 163:27, 164:13, 164:18, 165:11, 165:25, 166:8, 168:21, 169:25, 170:8, 170:19, 170:20, 170:27, 171:12, 171:19, 172:21, 173:24, 174:7, 178:11, 183:13, 184:14, 184:16, 197:13</p> <p>scenarios [1] - 110:13</p> <p>scope [3] - 14:11, 16:1, 191:11</p> <p>scoping [2] - 12:21, 17:8</p> <p>screen [4] - 15:21, 51:14, 66:20, 139:27</p> <p>scroll [8] - 15:19, 17:20, 34:28, 51:25, 119:14, 126:8, 134:26, 135:11</p> <p>scrolls [2] - 8:15, 173:28</p> <p>scrutiny [1] - 105:13</p> <p>se [1] - 77:25</p> <p>SEAN [4] - 1:12, 2:2, 2:22, 3:17</p> <p>SEANAD [1] - 1:5</p> <p>search [1] - 157:5</p> <p>second [23] - 7:5, 8:20, 20:19, 24:19, 32:18, 38:11, 39:24, 48:20, 80:2, 123:17, 134:25, 136:27, 152:10, 166:15, 169:8, 173:17, 174:24, 178:12, 183:9, 183:17, 186:13, 198:3</p> <p>secondly [2] - 50:11, 192:8</p> <p>seconds [1] - 47:12</p> <p>secretary [5] - 11:5, 38:22, 39:21, 40:1,</p>	<p>64:10</p> <p>secreted [3] - 123:12, 123:21, 123:27</p> <p>section [5] - 64:8, 64:11, 137:17, 137:20, 139:12</p> <p>Security [5] - 140:7, 140:20, 143:20, 146:16, 148:4</p> <p>see [52] - 8:16, 11:7, 11:16, 11:28, 11:29, 13:13, 13:15, 13:16, 16:9, 24:17, 25:7, 26:12, 31:5, 31:15, 34:2, 38:24, 39:22, 46:7, 47:2, 47:8, 54:1, 55:29, 79:6, 79:13, 79:23, 84:13, 85:8, 88:7, 89:10, 94:1, 94:22, 96:9, 96:13, 96:16, 98:26, 108:10, 111:3, 112:6, 121:12, 143:3, 143:7, 146:23, 157:2, 157:11, 171:18, 181:8, 181:28, 189:2, 193:24, 196:7, 197:4</p> <p>seeing [3] - 9:11, 16:28, 173:27</p> <p>seek [1] - 165:4</p> <p>seeking [6] - 71:29, 77:10, 97:21, 127:16, 195:1, 195:16</p> <p>seem [17] - 23:27, 30:18, 36:29, 65:13, 72:24, 83:16, 104:28, 108:24, 126:14, 134:17, 143:6, 153:17, 156:15, 167:2, 173:2, 180:7, 196:8</p> <p>segments [1] - 14:4</p> <p>select [1] - 75:29</p> <p>selected [3] - 41:25, 59:29, 164:13</p> <p>send [6] - 83:27, 84:15, 152:8, 164:5, 171:28, 182:13</p> <p>sending [5] - 9:21, 19:13, 69:17, 176:4, 176:10</p> <p>sends [2] - 122:8, 124:11</p> <p>senior [14] - 50:12, 52:15, 55:4, 55:17, 68:10, 72:29, 93:6, 102:13, 103:28, 105:18, 109:10, 109:17, 137:11,</p>	<p>181:11</p> <p>sense [14] - 37:21, 64:19, 77:20, 80:7, 81:2, 114:14, 118:27, 134:3, 134:4, 147:2, 151:1, 153:23, 162:22</p> <p>sensitive [1] - 53:1</p> <p>sent [30] - 51:8, 56:21, 63:13, 63:14, 63:19, 63:21, 64:26, 64:27, 71:9, 71:17, 74:12, 93:13, 110:28, 111:18, 122:1, 122:10, 125:7, 143:19, 146:18, 163:23, 171:13, 172:1, 172:13, 172:21, 181:22, 186:11, 194:2, 196:13, 197:11, 202:10</p> <p>sentence [2] - 77:28, 82:15</p> <p>sentiment [2] - 80:9, 80:11</p> <p>separate [6] - 29:21, 45:20, 74:27, 82:2, 108:19, 131:20</p> <p>separately [2] - 44:21, 44:28</p> <p>September [19] - 38:29, 43:15, 118:1, 124:11, 124:28, 125:7, 126:23, 127:8, 127:16, 134:24, 138:10, 138:13, 139:13, 142:3, 193:25, 195:3, 195:15</p> <p>sequence [3] - 11:11, 62:14, 171:26</p> <p>SERGEANT [5] - 3:12, 3:20, 4:5, 4:6, 4:6</p> <p>sergeants [1] - 82:21</p> <p>series [5] - 17:16, 35:7, 63:19, 80:16, 106:14</p> <p>serious [5] - 24:5, 36:9, 117:8, 117:12, 184:16</p> <p>seriousness [3] - 24:2, 24:13, 24:26</p> <p>servant [1] - 101:24</p> <p>served [5] - 27:11, 105:15, 105:17, 105:18, 122:22</p> <p>service [14] - 33:28, 34:17, 44:27, 54:20, 72:22, 73:20, 101:7, 102:12, 102:14,</p>	<p>103:20, 105:12, 106:21</p> <p>SERVICES [1] - 1:29</p> <p>Services [1] - 1:24</p> <p>services [2] - 64:14, 79:4</p> <p>serving [2] - 35:17, 122:22</p> <p>set [17] - 7:5, 14:10, 66:8, 71:24, 72:28, 73:5, 107:20, 114:6, 149:23, 154:5, 170:14, 181:3, 181:12, 181:17, 183:3, 184:13, 184:14</p> <p>sets [4] - 6:16, 7:4, 22:16, 59:23</p> <p>setting [2] - 29:1, 196:20</p> <p>seven [1] - 117:28</p> <p>several [1] - 170:25</p> <p>sexual [4] - 103:2, 103:3, 171:7, 185:9</p> <p>shall [1] - 59:29</p> <p>SHANE [1] - 3:23</p> <p>SHANKEY [1] - 3:21</p> <p>SHANKEY-SMITH [1] - 3:21</p> <p>Shannon [1] - 156:18</p> <p>SHANNON [1] - 2:13</p> <p>share [3] - 27:21, 114:9, 115:17</p> <p>SHEAHAN [1] - 3:18</p> <p>sheet [1] - 10:14</p> <p>SHELLEY [1] - 3:25</p> <p>SHIP [1] - 3:28</p> <p>shoes [5] - 95:13, 97:20, 99:17, 102:29, 104:21</p> <p>short [5] - 81:8, 83:27, 167:24, 171:24, 203:6</p> <p>shortly [7] - 8:6, 30:16, 41:24, 61:27, 68:4, 160:23, 195:18</p> <p>show [2] - 160:3, 161:8</p> <p>showed [5] - 54:5, 156:8, 159:26, 159:27</p> <p>shown [2] - 55:25, 69:20</p> <p>shows [2] - 21:28, 98:18</p> <p>sic [1] - 100:4</p> <p>sick [8] - 8:12, 8:17, 8:20, 93:2, 93:3, 155:4, 155:10, 155:11</p> <p>sickness [2] - 154:18, 165:3</p>	<p>side [3] - 158:19, 190:24, 191:9</p> <p>sides [1] - 191:13</p> <p>sight [1] - 14:3</p> <p>sign [1] - 175:1</p> <p>signals [1] - 9:21</p> <p>signature [1] - 41:29</p> <p>signed [11] - 120:12, 174:1, 174:20, 175:6, 175:9, 178:19, 189:6, 189:11, 189:12, 189:15, 197:11</p> <p>significant [3] - 21:27, 46:1, 156:26</p> <p>signing [1] - 176:12</p> <p>similar [2] - 38:26, 70:17</p> <p>simple [1] - 134:8</p> <p>simply [7] - 114:5, 147:17, 165:11, 167:26, 168:19, 185:24, 199:7</p> <p>single [1] - 185:29</p> <p>singular [1] - 98:4</p> <p>SINÉAD [1] - 4:7</p> <p>SINÉAD [1] - 2:7</p> <p>sit [2] - 12:2, 32:21</p> <p>site [1] - 157:4</p> <p>sits [1] - 32:20</p> <p>sitting [1] - 97:20</p> <p>situation [14] - 32:24, 48:23, 50:8, 50:27, 54:21, 55:8, 83:5, 98:26, 99:13, 103:25, 131:24, 132:12, 151:22, 201:10</p> <p>situations [1] - 101:7</p> <p>six [9] - 20:6, 47:12, 146:2, 156:18, 156:21, 171:24, 200:12, 200:13</p> <p>six-page [1] - 171:24</p> <p>skipping [1] - 171:11</p> <p>slightly [3] - 33:2, 158:17, 177:9</p> <p>small [1] - 86:17</p> <p>SMITH [1] - 3:21</p> <p>SMITHFIELD [2] - 2:24, 4:12</p> <p>so-called [1] - 118:27</p> <p>so.. [2] - 82:14, 150:23</p> <p>SOLE [1] - 2:2</p> <p>solely [1] - 114:12</p> <p>solicitor [11] - 19:6, 24:27, 26:19, 37:27, 69:6, 74:26, 117:28, 161:2, 166:25,</p>
--	--	---	---	---

<p>174:11, 195:8 SOLICITOR'S [1] - 3:27 SOLICITORS [6] - 2:11, 2:18, 2:23, 2:30, 4:8, 4:11 Someone [1] - 196:11 someone [5] - 117:7, 165:8, 190:22, 198:4, 198:14 sometime [1] - 137:19 somewhat [3] - 27:28, 96:13, 126:14 somewhere [2] - 161:14, 181:15 soon [4] - 54:5, 168:5, 169:26, 196:29 sorry [39] - 9:25, 15:20, 17:4, 21:14, 22:20, 28:28, 34:27, 37:4, 39:5, 52:18, 53:6, 57:1, 60:12, 62:2, 73:24, 87:24, 98:1, 99:9, 103:14, 105:17, 106:3, 107:25, 111:11, 111:29, 125:3, 126:22, 126:23, 132:25, 189:9, 190:13, 192:12, 195:6, 195:9, 198:19, 201:6, 203:18 sort [8] - 155:5, 155:12, 159:17, 185:19, 188:21, 190:26, 198:7, 199:11 sorted [1] - 145:9 sorts [1] - 9:21 sought [12] - 43:2, 53:7, 53:23, 53:24, 56:16, 93:11, 93:15, 93:17, 93:18, 149:10, 151:21, 167:17 sound [2] - 82:29, 124:5 sounds [2] - 39:28, 83:15 space [4] - 50:4, 53:2, 79:5, 98:16 speaking [7] - 42:8, 52:26, 79:6, 79:9, 151:4, 158:26, 160:29 speaks [1] - 60:17 special [1] - 203:20 specialist [1] - 41:6 specialists [1] - 41:24 specific [18] - 11:4,</p>	<p>14:15, 18:21, 21:3, 41:14, 41:15, 41:18, 48:17, 59:6, 69:21, 71:23, 103:10, 104:10, 105:9, 106:26, 107:18, 162:5, 200:19 specifically [7] - 8:1, 58:19, 67:8, 67:25, 102:22, 110:13, 131:5 specificity [2] - 22:25, 71:28 specifics [6] - 47:15, 49:1, 91:2, 91:3, 103:5, 162:20 specified [1] - 60:1 speculating [1] - 148:20 speed [1] - 27:10 spent [3] - 137:19, 154:3, 180:25 spike [1] - 97:15 spoken [4] - 7:11, 72:8, 89:16, 109:26 spot [2] - 112:10, 112:19 stack [1] - 20:14 staff [5] - 163:16, 166:2, 186:22, 191:1, 191:2 stage [26] - 21:4, 35:10, 40:26, 43:25, 48:18, 56:5, 60:5, 72:24, 72:28, 76:13, 78:15, 89:21, 90:15, 113:10, 115:26, 140:12, 140:27, 141:11, 145:2, 160:14, 168:10, 175:12, 176:8, 177:26, 193:10, 199:19 stages [2] - 56:13, 111:29 stake [1] - 190:16 stalled [1] - 105:1 stalling [1] - 52:3 stamp [1] - 149:29 stand [3] - 35:19, 125:15, 193:2 standard [2] - 50:7, 101:28 standards [2] - 103:20, 141:13 stands [2] - 22:20, 191:15 start [11] - 18:14, 20:29, 46:28, 47:20, 168:13, 168:17, 187:9, 196:24,</p>	<p>196:28, 196:29, 203:9 started [5] - 36:12, 36:14, 139:13, 156:23, 196:23 starting [1] - 43:6 starts [1] - 23:25 state [4] - 58:6, 75:18, 162:5, 166:15 State [6] - 45:2, 45:10, 52:8, 70:27, 101:27, 103:19 STATE [1] - 3:27 statement [60] - 22:20, 22:24, 23:23, 48:1, 86:24, 86:29, 87:1, 117:22, 117:25, 117:27, 125:1, 125:6, 136:22, 136:27, 149:2, 155:19, 169:22, 169:28, 170:8, 170:17, 171:2, 171:5, 171:14, 171:16, 171:20, 171:29, 172:7, 173:3, 173:5, 173:7, 173:17, 173:25, 173:26, 174:12, 174:16, 174:20, 174:24, 174:26, 174:28, 175:2, 175:4, 175:8, 176:5, 178:11, 178:18, 178:19, 182:14, 183:12, 183:22, 184:13, 184:15, 185:21, 189:6, 193:6, 194:3, 196:8, 196:13, 201:26, 202:3, 202:10 statements [18] - 19:5, 22:26, 45:24, 45:26, 46:2, 120:13, 121:3, 171:21, 171:22, 173:18, 178:17, 183:29, 193:11, 193:15, 194:6, 197:5, 197:12 states [5] - 86:23, 86:29, 87:3, 118:9, 152:1 Station [2] - 155:21, 156:1 station [11] - 156:4, 156:5, 156:8, 157:2, 157:9, 158:22, 159:25, 159:29, 161:3, 161:20, 174:12 status [8] - 78:24, 79:10, 84:4, 84:5, 84:7, 88:13, 90:28, 116:25</p>	<p>statutes [1] - 184:3 statutory [2] - 64:16, 192:8 stay [2] - 30:9, 62:14 stayed [3] - 137:29, 156:29, 157:8 staying [1] - 63:28 stenographic [1] - 1:26 stenography [1] - 1:24 STENOGRAPHY [1] - 1:29 step [11] - 32:26, 95:12, 98:16, 101:12, 101:14, 101:15, 130:3, 173:20, 190:24 step-by-step [1] - 173:20 STEPHANIE [1] - 2:27 STEPHEN [1] - 2:21 stepping [4] - 99:16, 102:29, 104:20, 191:9 steps [4] - 15:6, 66:3, 121:9, 192:23 still [10] - 33:9, 83:8, 85:27, 105:24, 119:15, 124:21, 147:25, 153:5, 162:23, 201:1 stop [5] - 22:3, 82:25, 101:20, 126:9, 132:7 stopped [1] - 199:14 stopping [1] - 59:22 story [1] - 37:4 straight [2] - 111:9, 111:15 strand [1] - 36:18 strands [10] - 7:23, 18:20, 20:26, 25:4, 25:29, 42:21, 114:26, 128:21, 128:22, 128:26 strategic [1] - 140:9 STREET [3] - 2:12, 3:28, 4:3 Street [2] - 137:23, 137:25 stress [3] - 8:19, 9:2, 154:14 strict [1] - 20:5 strike [1] - 115:16 strong [2] - 16:21, 113:27 struck [3] - 156:11, 157:22, 157:28 structure [1] - 147:1 structures [4] -</p>	<p>149:17, 149:18, 153:26, 156:11 struggling [1] - 95:20 stuck [1] - 23:1 stuff [3] - 49:13, 177:27, 196:2 style [1] - 114:13 stymie [1] - 132:11 subject [12] - 8:12, 34:11, 35:29, 40:4, 44:19, 58:8, 141:24, 142:13, 168:3, 168:25, 191:18, 191:28 subject-matter [1] - 35:29 subjective [1] - 116:29 submit [1] - 175:13 submitted [1] - 196:15 submitting [1] - 175:3 subsequent [6] - 18:6, 21:25, 130:10, 133:7, 134:13, 192:14 subsequently [7] - 10:17, 36:2, 38:13, 69:11, 93:21, 181:21, 192:16 substance [9] - 49:5, 83:2, 104:6, 104:26, 104:27, 109:5, 116:17, 116:19, 163:18 substantial [4] - 48:25, 97:10, 97:11, 98:19 substantially [1] - 102:10 substantive [6] - 74:19, 74:22, 116:5, 116:13, 142:17, 194:4 succeeded [2] - 141:16, 161:27 successor [1] - 139:18 sufficient [3] - 22:25, 68:20, 97:2 sufficiently [1] - 36:19 suggest [5] - 41:12, 72:24, 102:4, 124:6, 185:20 suggested [4] - 7:25, 17:27, 128:12, 196:12 suggesting [4] - 10:3, 21:22, 62:21, 67:3</p>
---	--	--	---	--

<p>suggestion [6] - 15:18, 95:24, 101:29, 122:28, 189:3, 200:21 suggests [1] - 53:5 suitability [2] - 92:22, 93:10 suitable [5] - 41:24, 75:29, 90:6, 92:27, 92:29 summaries [1] - 77:8 summary [2] - 181:4, 183:3 summons [3] - 44:22, 45:12, 63:24 super's [1] - 155:13 Superintend [1] - 185:13 Superintendent [169] - 15:12, 15:14, 17:11, 17:14, 19:4, 29:15, 29:27, 38:17, 38:20, 40:8, 42:16, 42:25, 44:18, 44:28, 45:3, 45:23, 45:28, 46:17, 47:1, 47:15, 47:18, 48:27, 49:2, 49:27, 51:24, 52:10, 53:17, 53:20, 53:24, 54:16, 55:1, 55:21, 56:20, 58:4, 58:7, 58:13, 58:18, 58:22, 58:23, 58:24, 59:1, 59:11, 59:14, 60:21, 61:4, 61:14, 61:17, 61:27, 62:29, 67:10, 67:11, 67:26, 68:8, 68:10, 69:22, 71:4, 72:14, 73:15, 75:14, 76:5, 76:23, 76:29, 77:3, 77:25, 78:10, 78:16, 78:28, 79:16, 80:7, 80:18, 80:24, 81:24, 83:4, 84:28, 86:15, 86:16, 86:18, 87:5, 87:9, 88:3, 88:29, 89:5, 89:28, 90:15, 91:7, 92:9, 92:23, 92:27, 93:10, 94:12, 96:2, 96:17, 96:19, 96:22, 96:27, 97:6, 97:20, 97:24, 98:8, 98:27, 99:10, 100:1, 100:10, 100:14, 100:15, 100:19, 100:20, 100:23, 100:24, 101:6, 102:2, 104:6, 104:13, 107:2, 107:6, 107:9, 107:19, 108:21, 110:7, 110:26, 112:21,</p>	<p>115:11, 115:13, 115:18, 115:25, 117:26, 118:14, 119:5, 123:29, 127:10, 131:29, 132:18, 133:20, 139:28, 141:21, 142:9, 143:19, 145:19, 146:18, 162:2, 163:10, 163:27, 164:13, 164:18, 165:11, 165:25, 166:8, 166:23, 168:7, 168:21, 169:11, 169:25, 170:7, 170:19, 170:20, 170:27, 171:12, 172:21, 173:24, 178:11, 183:13, 183:14, 184:10, 184:14, 184:16, 185:7, 197:13, 201:17, 201:23 SUPERINTENDENT [15] - 2:15, 3:3, 3:3, 3:4, 3:5, 3:6, 3:8, 3:9, 3:9, 3:13, 3:14, 3:17, 3:19, 3:19, 3:21 superintendent [34] - 11:13, 42:17, 59:4, 92:28, 93:1, 93:20, 101:21, 101:26, 107:10, 123:29, 137:13, 137:15, 137:18, 137:19, 137:22, 141:20, 144:7, 145:17, 145:21, 146:14, 147:4, 147:5, 148:15, 150:26, 153:20, 154:19, 155:16, 167:1, 167:29, 168:23, 172:7, 175:25, 178:22, 186:24 superintendent's [1] - 155:14 superintendents [3] - 19:17, 153:20 superior [2] - 149:7, 151:21 supervision [1] - 39:15 supplied [1] - 166:22 supplying [1] - 52:3 support [8] - 25:5, 30:12, 39:14, 61:5, 61:24, 78:2, 106:1, 106:6</p>	<p>supporting [1] - 80:7 supportive [2] - 72:2, 109:26 suppose [13] - 9:21, 29:26, 43:6, 47:20, 61:26, 111:6, 128:1, 144:2, 146:6, 177:10, 186:29, 187:6, 193:22 Supreme [1] - 82:5 surely [1] - 101:26 surfaced [1] - 55:14 surprising [1] - 97:19 surrounding [1] - 146:2 suspect [7] - 65:2, 81:23, 90:26, 94:9, 110:4, 148:12, 202:12 suspicious [1] - 96:13 sustained [1] - 39:14 sweeping [1] - 71:23 SWORN [1] - 136:14 system [1] - 140:18 systematic [1] - 123:26 SIÓCHÁNA [1] - 3:2 Sióchána [33] - 28:21, 34:9, 34:13, 37:16, 41:23, 52:2, 52:15, 58:12, 59:12, 59:20, 64:11, 64:15, 67:4, 72:29, 84:26, 92:26, 103:27, 104:29, 106:1, 106:6, 109:11, 109:18, 112:29, 117:7, 122:21, 123:10, 137:5, 150:5, 164:1, 165:19, 168:4, 169:2 Sióchána's [1] - 126:2</p>	<p>task [2] - 10:13, 74:22 tasked [15] - 17:7, 25:11, 25:26, 26:1, 26:4, 32:1, 32:19, 45:4, 96:23, 96:25, 99:28, 100:2, 100:5, 100:9, 100:11 tasking [1] - 9:24 TD [1] - 125:6 TDs [1] - 150:8 team [3] - 93:7, 142:10, 153:3 technical [2] - 105:7, 188:21 TEMPLE [1] - 2:31 ten [5] - 36:8, 126:27, 126:28, 195:26, 200:16 tenet [1] - 37:21 terms [33] - 19:8, 21:17, 25:9, 26:3, 28:26, 33:5, 33:7, 33:8, 33:28, 69:16, 91:18, 97:1, 98:9, 98:11, 98:22, 98:23, 103:2, 103:24, 104:20, 106:25, 115:9, 133:22, 134:8, 137:11, 140:21, 142:28, 150:24, 151:4, 159:6, 160:21, 163:25, 166:23, 188:21 territory [3] - 21:4, 50:28, 96:3 test [1] - 49:13 text [6] - 93:28, 94:3, 94:7, 129:11, 129:13, 174:8 texted [1] - 47:3 texting [1] - 31:12 texts [1] - 31:9 thankful [1] - 121:21 that'd [1] - 179:29 THE [16] - 1:3, 1:7, 1:8, 1:13, 2:3, 2:6, 6:1, 6:8, 135:19, 135:22, 135:24, 136:4, 136:6, 136:17, 192:13, 203:23 the... [1] - 54:6 theme [1] - 80:6 THEN [4] - 95:8, 136:4, 136:6, 203:23 therefore [5] - 8:28, 68:5, 87:8, 98:20, 167:8 thinking [2] - 181:5, 203:9</p>	<p>thinks [3] - 99:21, 128:4, 203:14 third [9] - 66:11, 66:12, 107:27, 121:16, 164:24, 166:20, 169:10, 186:15, 199:23 thoroughness [1] - 27:11 three [9] - 28:20, 72:2, 78:2, 99:11, 99:12, 109:25, 120:4, 142:3, 176:8 threshold [3] - 19:8, 101:27, 197:17 throughout [1] - 73:20 thrust [2] - 108:8, 108:9 THURSDAY [2] - 1:18, 6:1 ti [1] - 188:22 tight [2] - 112:10, 112:19 timeframes [1] - 29:4 timeline [5] - 56:17, 59:16, 66:5, 66:7, 66:25 timelines [3] - 59:7, 91:20, 171:16 Tipperary [1] - 137:27 TO [1] - 6:10 to-ing [2] - 68:18, 87:16 today [5] - 42:8, 60:26, 84:25, 86:3, 95:18 together [1] - 172:7 toing [1] - 170:13 TOM [3] - 3:12, 4:10 Tombola [4] - 156:12, 157:21, 159:16, 159:21 tomorrow [5] - 49:17, 203:10, 203:17, 203:19 tone [1] - 115:23 Tony [2] - 51:29, 108:20 took [9] - 16:18, 19:5, 34:22, 93:7, 132:6, 145:15, 150:13, 157:17, 178:2 tool [1] - 145:13 toolbox [1] - 145:13 top [6] - 27:18, 47:2, 72:2, 109:25, 125:23, 186:20 totality [3] - 25:3,</p>
T				
<p>T&N [1] - 4:2 tab [3] - 182:10, 182:22, 185:7 tabbed [1] - 185:26 table [3] - 12:20, 22:8, 56:4 tabs [2] - 185:20, 185:21 talks [4] - 18:24, 19:1, 125:23 TARA [1] - 3:22 targeted [1] - 147:16 targeting [3] - 107:13, 146:21, 147:3</p>				

<p>25:12, 41:7 touch [6] - 30:15, 48:19, 54:5, 74:8, 74:9, 78:23 TOWNPARKS [1] - 2:12 train [2] - 36:19, 43:23 transcript [1] - 1:25 transferred [3] - 137:17, 137:28, 138:1 transmission [1] - 74:24 transmitted [1] - 40:21 transparent [1] - 63:3 transpired [1] - 147:14 TREACY [1] - 2:27 treat [1] - 199:24 treated [3] - 78:3, 80:4, 184:5 TRIBUNAL [2] - 1:2, 2:6 Tribunal [8] - 69:14, 99:1, 118:19, 125:1, 136:27, 138:24, 147:24, 154:11 TRIBUNALS [1] - 1:8 trust [1] - 109:18 trusted [2] - 149:25, 170:21 try [4] - 69:11, 69:12, 111:4, 159:6 trying [6] - 23:4, 24:8, 77:22, 111:6, 129:21, 201:10 Tuesday [2] - 90:9, 156:27 turn [3] - 107:25, 167:23, 199:9 turned [1] - 172:12 TURNER [1] - 2:28 twice [1] - 193:29 two [34] - 7:4, 7:22, 11:20, 28:5, 33:20, 33:25, 38:4, 42:20, 45:24, 51:15, 53:26, 95:17, 95:29, 121:2, 124:20, 132:23, 167:23, 168:12, 171:21, 171:22, 171:27, 172:22, 173:12, 173:17, 175:12, 177:15, 180:12, 189:11, 189:21, 197:12, 197:15, 198:28, 200:13, 201:2</p>	<p>tying [1] - 118:20 type [4] - 15:24, 20:29, 69:25, 198:8 typed [2] - 179:18 typically [1] - 179:11</p> <p style="text-align: center;">U</p> <p>UCD [1] - 156:24 ultimately [8] - 34:9, 35:17, 37:12, 55:12, 72:21, 97:23, 143:16, 189:27 unamended [1] - 147:25 unannounced [2] - 155:29, 156:4 unbelievable [1] - 82:25 uncertainty [1] - 74:10 unchanged [1] - 147:25 unclear [1] - 89:8 uncomfortable [1] - 53:27 UNDER [2] - 1:2, 1:8 under [47] - 14:16, 14:29, 19:6, 32:4, 33:10, 35:11, 39:15, 45:25, 67:3, 67:7, 68:7, 74:27, 115:14, 115:15, 115:24, 127:27, 127:29, 128:3, 147:5, 150:4, 152:18, 156:9, 165:23, 168:12, 169:10, 171:7, 176:21, 176:28, 177:23, 183:27, 185:8, 186:3, 186:21, 187:3, 188:5, 188:9, 190:17, 190:24, 196:17, 197:9, 197:23, 197:29, 198:1, 199:6, 199:21, 200:5 understood [2] - 25:17, 179:1 undertake [7] - 11:25, 12:23, 21:16, 22:1, 23:14, 45:11, 65:22 underway [1] - 162:27 undoubtedly [1] - 45:29 unexpected [1] - 92:10</p>	<p>unfair [18] - 54:19, 54:28, 55:3, 55:18, 73:12, 78:3, 80:19, 80:20, 80:24, 83:8, 88:16, 88:24, 88:25, 102:5, 102:26, 104:29, 106:19 unfinished [1] - 146:26 unfortunate [1] - 40:24 uniform [1] - 158:13 unit [2] - 141:13, 146:14 unknown [1] - 123:11 unlawful [1] - 151:23 unless [4] - 60:1, 103:25, 188:27, 189:2 unnecessarily [1] - 131:28 unnecessary [3] - 85:5, 86:1, 187:26 unprecedented [1] - 38:1 unproven [9] - 48:16, 73:17, 83:1, 100:27, 102:20, 105:2, 106:19, 132:6 unsatisfied [2] - 77:9, 77:13 unsigned [11] - 120:13, 172:2, 176:5, 178:12, 178:21, 182:13, 184:15, 189:6, 189:10, 189:12, 197:11 unsubstantiated [9] - 48:9, 48:11, 48:15, 72:17, 100:28, 105:2, 106:19, 108:3, 108:7 unsure [1] - 32:4 UNTIL [1] - 203:23 untrue [1] - 123:14 unusual [6] - 28:15, 53:19, 97:16, 97:19, 101:25, 193:18 unwitnessed [1] - 182:13 up [60] - 6:15, 6:23, 9:15, 10:14, 13:7, 16:14, 17:19, 20:14, 24:10, 26:18, 35:11, 38:18, 38:21, 50:3, 55:22, 60:29, 66:20, 66:21, 70:13, 72:27, 75:12, 82:7, 82:20, 85:1, 87:29, 88:18, 99:15, 119:14, 122:11, 123:12,</p>	<p>123:21, 125:8, 131:2, 133:4, 134:20, 141:2, 142:16, 143:20, 143:21, 147:20, 152:23, 154:21, 156:24, 164:9, 164:20, 173:29, 176:10, 179:19, 181:7, 181:12, 181:14, 186:11, 186:23, 187:10, 193:25, 194:7, 195:29, 196:4, 202:12, 202:18 up-to-date [3] - 85:1, 142:16, 147:20 update [10] - 7:29, 76:7, 83:28, 84:4, 84:5, 84:7, 88:13, 116:24, 184:10, 194:27 updated [6] - 85:2, 85:27, 127:12, 127:17, 192:17, 195:2 updates [1] - 29:14 updating [1] - 120:28 upfront [2] - 10:17, 12:4 upset [1] - 146:8 urging [2] - 194:19, 196:8 useful [2] - 130:28, 201:14 usual [1] - 95:19 utilise [2] - 163:14, 163:20 utilised [1] - 156:10 utilising [1] - 151:11</p> <p style="text-align: center;">V</p> <p>value [1] - 82:29 valued [1] - 153:3 varied [1] - 191:16 variety [1] - 106:20 various [6] - 13:9, 25:3, 45:5, 50:6, 58:8, 114:22 vary [2] - 191:3, 192:2 vast [1] - 54:20 verbal [1] - 77:8 verbatim [1] - 1:25 versa [1] - 158:3 via [1] - 41:19 vice [1] - 158:3 victimisation [3] - 45:22, 58:11, 183:24 victims [2] - 106:28,</p>	<p>106:29 view [64] - 10:5, 14:13, 14:28, 16:17, 16:18, 16:21, 18:11, 20:23, 27:8, 28:1, 28:5, 28:19, 33:3, 52:14, 53:11, 55:3, 55:4, 55:16, 60:6, 71:27, 71:28, 72:22, 73:8, 73:9, 75:5, 83:6, 83:9, 90:22, 95:16, 95:24, 96:12, 101:6, 102:4, 102:11, 102:26, 106:25, 106:26, 109:18, 112:29, 114:4, 117:6, 121:7, 124:14, 124:21, 128:29, 129:1, 129:8, 134:7, 140:10, 141:26, 143:5, 145:26, 148:5, 181:18, 184:4, 184:20, 192:21, 197:5, 199:18, 201:5, 202:23 viewed [1] - 97:9 views [6] - 13:24, 27:21, 37:23, 52:14, 142:27, 143:22 visit [4] - 155:29, 156:4, 156:13, 156:15 visited [2] - 120:19, 121:1 visits [2] - 179:10, 180:2 Volume [3] - 136:23, 136:26, 136:28 volume [2] - 174:21, 174:22 volumes [1] - 187:23</p> <p style="text-align: center;">W</p> <p>waiting [3] - 53:20, 53:21, 164:20 waiver [1] - 185:28 Wallace [3] - 125:5, 150:8, 150:25 Wanderers [1] - 160:17 wants [4] - 63:8, 119:28, 119:29, 124:20 WAS [5] - 95:8, 113:22, 115:5, 132:27, 136:14 Waterford [1] - 137:27 ways [4] - 21:20,</p>
---	--	---	--	---

<p>55:11, 96:19, 102:8 week [6] - 11:21, 74:18, 83:23, 85:29, 99:11, 156:28 weeks [7] - 20:7, 33:12, 33:13, 33:20, 33:25, 84:10, 176:8 welcome [2] - 20:24, 184:1 welfare [2] - 26:22, 39:17 WELLINGTON [1] - 2:31 west [2] - 156:25, 157:4 Western [3] - 118:15, 156:20, 156:21 WESTMEATH [1] - 4:4 Westmeath [3] - 122:23, 138:3, 150:6 Wexford [2] - 93:7, 137:26 whatsoever [5] - 18:23, 37:18, 73:4, 107:17, 170:22 Wheatley [2] - 51:29, 56:23 WHEATLEY [1] - 3:4 whereabouts [1] - 123:10 whereas [1] - 198:1 wherein [2] - 122:20, 127:8 whichever [1] - 19:14 whistleblower [1] - 150:14 whistleblower's [1] - 36:27 WHITE [1] - 3:11 white [1] - 31:3 whole [3] - 38:21, 114:6, 190:29 Wicklow [2] - 138:2, 150:6 wide [3] - 71:23, 184:21, 188:8 wider [7] - 114:6, 128:1, 172:25, 177:9, 186:7, 188:4, 197:21 wind [1] - 134:5 wish [11] - 30:9, 122:16, 127:7, 127:14, 144:20, 152:19, 169:9, 172:18, 188:7, 188:8 wishing [1] - 163:19 WITHDREW [1] - 136:4</p>	<p>withheld [5] - 134:28, 167:3, 167:5, 167:8, 167:11 withheld/lost [1] - 125:26 withhold [1] - 106:18 WITNESS [9] - 5:2, 6:8, 95:8, 135:19, 135:22, 135:24, 136:4, 136:17, 192:13 witness [4] - 129:16, 130:28, 136:9, 203:14 witnessed [5] - 174:2, 175:6, 175:7, 184:13, 202:3 wold [1] - 179:17 wonder [1] - 46:18 wondering [4] - 108:19, 108:21, 194:1, 203:20 word [6] - 46:9, 48:15, 54:17, 103:21, 108:7, 133:20 wording [1] - 129:13 words [12] - 7:11, 48:17, 49:4, 49:5, 54:18, 72:11, 72:18, 88:25, 91:9, 104:8, 111:17, 200:28 workplace [2] - 152:26, 186:28 works [1] - 74:8 worrying [3] - 62:24, 63:1, 109:4 write [9] - 63:29, 83:19, 129:18, 149:23, 152:3, 152:13, 153:29, 180:9, 195:15 writes [5] - 35:28, 36:5, 37:28, 38:22, 194:23 writing [8] - 26:9, 127:3, 134:28, 135:29, 153:23, 165:24, 170:29, 178:2 written [15] - 8:22, 86:29, 87:1, 117:25, 127:15, 135:25, 151:28, 153:10, 153:15, 158:27, 178:17, 178:18, 178:19, 181:15 wronged [2] - 54:11, 54:18 wrote [15] - 142:17, 149:19, 164:9, 166:8, 166:13, 169:7, 175:16, 179:5, 192:16, 193:25,</p>	<p>193:27, 193:29, 194:17, 194:18, 195:2</p> <p style="text-align: center;">Y</p> <p>year [5] - 138:5, 139:13, 140:15, 143:26, 150:4 years [5] - 28:18, 28:20, 138:9, 154:3, 190:1 yesterday [28] - 6:15, 7:15, 7:22, 10:10, 12:22, 12:25, 13:6, 15:29, 18:10, 18:18, 22:24, 28:16, 31:19, 37:14, 37:19, 38:8, 42:19, 43:1, 49:15, 54:28, 84:24, 95:18, 96:6, 97:1, 98:14, 102:12, 122:16, 127:7 yesterday's [1] - 202:2 yourself [15] - 17:17, 17:22, 24:16, 31:14, 56:23, 57:11, 62:21, 74:13, 92:19, 94:3, 94:7, 96:11, 104:22, 113:28, 150:7</p> <p style="text-align: center;">É</p> <p>ÉABHALL [1] - 2:30 ÉIREANN [2] - 1:4, 1:5</p> <p style="text-align: center;">Ó</p> <p>Ó [25] - 3:7, 7:24, 9:19, 9:23, 10:19, 31:13, 43:2, 43:11, 47:3, 95:13, 118:15, 125:5, 129:12, 138:25, 138:29, 141:22, 142:10, 142:19, 144:25, 162:7, 162:10, 163:1, 187:12, 203:11, 203:14</p>
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