

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

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1921, ON 17 FEBRUARY 2017, AS AMENDED ON 7 DECEMBER 2018

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

HELD IN DUBLIN CASTLE  
ON MONDAY, 29TH JUNE 2020 - DAY 150

150

Gwen Malone Stenography  
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following to be a  
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their stenographic notes  
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action.

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## I N D E X

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1 THE HEARING RESUMED, AS FOLLOWS, ON MONDAY, 29TH JUNE  
2 2020:

3  
4 CHAIRMAN: Good morning. Can you hear me,  
5 Mr. McGuinness? 10:30

6 MR. MCGUINNESS: Yes, Chairman, thank you.

7 CHAIRMAN: Very good. I was going to say, I'm not sure  
8 how to say this, but it's nice to see people and it's  
9 nice to be back. But just before we start, I was going  
10 to say that the reason we're able to do this is in 10:31  
11 large part due to the efforts of our Office Manager,  
12 Mr. Barnes. So take a bow, Mr. Barnes, for the  
13 arrangements that we have here. Okay. Now, thanks  
14 very much.

15 MR. MCGUINNESS: Chairman, the witness today is 10:31  
16 Mr. John Barrett.

17 CHAIRMAN: Yes.

18 MR. MCGUINNESS: Just before I ask him to commence his  
19 evidence, I was going to just inform members,  
20 colleagues who are here, for technical reasons, that 10:31  
21 the order of cross-examination after I finish, it will  
22 go to Garda Keogh's team then to ask what questions  
23 they may, and I think before they wish to do that, they  
24 wish to consult with Mr. Kelly, who is tuning in and  
25 listening from London, their leader in the matter; it 10:31  
26 will then go to the Garda Síochána team behind me,  
27 where Mr. McGuinness will be dealing with the matter;  
28 and then it will go to Assistant Commissioner Fanning's  
29 team, if there is any questions to be asked; and then

1 go to Mr. Barrett's team, where Mr. Clarke is appearing  
2 for Mr. Barrett, instructed by Mr. McTiernan; and then  
3 back to me for re-examination. I just say that because  
4 it is in ease of the cameraman as well.

5 CHAIRMAN: Very good. 10:32

6 MR. McGUI NNESS: That he will follow that sequence.

7 CHAIRMAN: Thanks very much. Nobody has any objection  
8 to that I'm sure, that seems perfectly reasonable.

9 MR. McGUI NNESS: If I can ask Mr. Barrett to come  
10 forward. 10:32

11 CHAIRMAN: Where is Mr. Barrett? Thanks very much  
12 Mr. Barrett. Good morning.

13

14 MR. JOHN BARRETT, HAVING BEEN SWORN, WAS  
15 DIRECTLY-EXAMINED BY MR. McGUI NNESS, AS FOLLOWS: 10:33

16

17 THE WITNESS: John Barrett.

18 CHAIRMAN: Thanks very much. Sit down, Mr. Barrett.

19 MR. McGUI NNESS: I should also say, Chairman, that  
20 Mr. Barrett's statement is to be found at Volume 56 at 10:33  
21 page 15960 of the Tribunal papers. Good morning,  
22 Mr. Barrett.

23 A. Good morning, Mr. McGuinness.

24 1 Q. Mr. Barrett, you joined An Garda Síochána as a civilian  
25 at a stage of its development where there was an 10:33  
26 increase in civilisation of the force, isn't that  
27 correct?

28 A. That's correct.

29 2 Q. I think you became the first civilian executive

1 director in An Garda Síochána with responsibility for  
2 Human Resources and development?

3 A. That's correct.

4 3 Q. Is that correct? Could I just ask you to briefly  
5 outline your career prior to that to the Chairman?

10:33

6 A. Following graduation from UCC, I joined IBEC, the Irish  
7 Business Employers Confederation, as it is now, it was  
8 the FUE back then, as a labour law industrial relations  
9 negotiator and adviser to industry. I spent six years

10 there. Then I joined in succession two companies that

10:34

11 I had advised who were on my case list; Full Flex

12 International, a US multinational company, and

13 thereafter a company called Walsh Western

14 International. I was the group director of HR at Walsh

15 Western. I joined one of our customers, Stratus

10:34

16 Computer, a Boston based multinational US organisation.

17 They in turn were taken over by a company called Send

18 Communications of California, which in turn was taken

19 over by Lewison Technologies, and through that I had

20 increasing ranges of responsibility for Ireland and

10:34

21 Europe.

22  
23 After that I joined Millipore Corporation in Strasbourg

24 as European head of HR and deputy general manager for

25 Europe. Then I became European head of HR for applied

10:35

26 materials based in Grenoble in France. They moved me

27 to Silicone Valley in California, where I headed up

28 mergers and acquisitions for the organisation.

29 4 Q. Yes. I think after that, you came back to Ireland



1           then?

2           A.    Yes.

3       5    Q.    And applied successfully for the position of executive  
4           director?

5           A.    Correct. 10:35

6       6    Q.    I think you took up your position on 3rd October of  
7           2014?

8           A.    Yes.

9       7    Q.    Obviously a number of events had happened prior to your  
10          arrival, but you must have been familiar with them 10:35  
11          obviously, the departure of Commissioner Callinan?

12          A.    Yes.

13       8    Q.    I think Deputy Commissioner O'Sullivan had been  
14          appointed as acting commissioner after his departure.  
15          She was then appointed formally as Commissioner in her 10:35  
16          own right. I think, did that happen before your  
17          arrival?

18          A.    She was acting commissioner on my arrival.

19       9    Q.    On your arrival. But she was appointed shortly  
20          thereafter? 10:36

21          A.    Yes.

22       10   Q.    As executive director, could you just give us an  
23          overview of what your responsibilities were at that  
24          point in time and for what?

25          A.    The intention at the time in appointing a civilian was 10:36  
26          that the organisation would begin a process of renewal  
27          and change, that there would be significant investment  
28          in the functions in my area, which included recruitment  
29          and selection of staff, the office of professional

1 standards, garda Internal Affairs, the office of the  
2 chief medical officers, all matters relating to  
3 internal competitions, industrial relations and the  
4 management of employee relations generally for both  
5 civilians and guards, the Garda College in Templemore 10:37  
6 and a range of policy areas under each of those.

7 11 Q. Yes. I think the employee relations, that encompassed  
8 bullying and harassment and grievance procedures?

9 A. Yes, it did.

10 12 Q. I think your responsibilities also covered, as part of 10:37  
11 the employment issues, sick pay and matters related to  
12 that, sickness?

13 A. That's correct. That is for the Garda force and for  
14 civilians.

15 13 Q. Did payroll management come under that, under your 10:37  
16 watch?

17 A. Tangentially in that it is managed by a central payroll  
18 function for the entire civil service based in  
19 Killarney.

20 14 Q. Yes. We will come to aspects of that in due course, 10:37  
21 but your arrival then in October 2014, Sergeant McCabe  
22 had been identified as a Garda who made protected  
23 disclosures at that stage, is that correct?

24 A. That's correct.

25 15 Q. I think you were appointed by the Commissioner as a 10:38  
26 point of contact with Sergeant McCabe, was that from  
27 February 2015 onwards?

28 A. Correct.

29 16 Q. Had you met him prior to that?

1 A. No, not prior to that.

2 17 Q. In terms of Garda Keogh with whom the Tribunal is  
3 dealing now at this point, what was your awareness of  
4 Garda Keogh's position, when you joined and then  
5 shortly after? 10:38

6 A. I had no awareness prior to joining and really no  
7 awareness in any material way until about 2016. My  
8 engagement with Sergeant McCabe was a unique  
9 appointment by the Commissioner. It essentially made  
10 me the protected disclosures managers for dealing with 10:39  
11 Sergeant McCabe. In the case of the response to the  
12 2014 Act, the Commissioner appointed two protected  
13 disclosure managers, Alan Mulligan and Chief  
14 Superintendent McLoughlin in those particular roles,  
15 for civilians and guards respectively. 10:39

16 18 Q. Now, Mr. Mulligan and Chief Superintendent McLoughlin,  
17 they were effectively working under you, is that right?

18 A. They were.

19 19 Q. But were they reporting to you in relation to their  
20 management of protected disclosures from that period 10:39  
21 on?

22 A. No, that's an important distinction, sir. The matters  
23 of protected disclosures are dealt with, it's quite an  
24 independent brief within a delegation from the  
25 Commissioner essentially to act as a PD manager. And 10:39  
26 to do so, the reporting line is directly to the  
27 Commissioner.

28 20 Q. So you have no oversight or, as it were,  
29 responsibility, as such, for the management of those?

1 A. No.

2 21 Q. And were you or would you have been briefed as to the  
3 identity of anyone or any issues?

4 A. Specifically no, and I wouldn't have asked in the  
5 circumstances if it was not in the public domain. 10:40  
6 Protected disclosures managers effectively would have  
7 had responsibility to be recipients of protected  
8 disclosures in situations where they had arisen within  
9 the organisation. They would become investigators and  
10 managers of that investigation. They become protectors 10:40  
11 under part 3 of the Act and they obviously communicate  
12 with the discloser on an ongoing basis, keeping them  
13 briefed on progress on their disclosure.

14 22 Q. Yes. We will see later in 2016 a debate about work  
15 related stress. 10:41

16 A. Yes.

17 23 Q. Two particular guards who were out on sick pay, Garda  
18 Y, who is not Garda Keogh, but Garda X -- sorry, I have  
19 it the other way round. Garda Y was another guard and  
20 Garda X was Garda Keogh, is that correct? 10:41

21 A. I don't know the designations of the Xs and Ys in this  
22 particular --

23 CHAIRMAN: There were two gardaí -- is it okay, can you  
24 hear me?

25 THE WITNESS: Surely, sir, yeah. 10:41

26 CHAIRMAN: There were two who in respect of whom there  
27 were issues about work related stress; is that right?  
28 That was my understanding.

29 MR. McGUI NNESS: Yes.

1 CHAIRMAN: One was Garda Keogh and the other wasn't  
2 Garda Keogh. It doesn't matter whether he was X or Y  
3 or Z or anything else, all we need to know is that one  
4 was Garda Keogh and one wasn't Garda Keogh.  
5 THE WITNESS: Okay. 10:42  
6 CHAIRMAN: Is that right?  
7 MR. McGUI NNESS: Yes, but it is in the context where  
8 Ms. Nugent met Garda X at a stage in 2016.  
9 CHAIRMAN: She met the other officer.  
10 MR. McGUI NNESS: Yes. 10:42  
11 CHAIRMAN: The other garda.  
12 MR. McGUI NNESS: Yes.  
13 CHAIRMAN: Okay. Ms. Nugent met the other idea.  
14 24 Q. MR. McGUI NNESS: Yes. I just want to be clear at the  
15 beginning, you had met Sergeant McCabe some time in 10:42  
16 February 2015?  
17 A. For the first time, yes.  
18 25 Q. Immediately after your appointment, I think?  
19 A. I was there since October '14.  
20 26 Q. Yes. When was the first time that you met Garda Keogh? 10:42  
21 A. I met him only once in my official capacity and that  
22 was on 15th December 2017.  
23 27 Q. We will come back to that in due course. But the  
24 Tribunal has heard that Garda Keogh, as a result of  
25 sick absences, had gone into a period of what's called 10:43  
26 TRR?  
27 A. Correct.  
28 28 Q. I think you understand what that means?  
29 A. Yes.

1 29 Q. Is that where his absences had exceeded 183 days, it  
2 had an effect on his pay?  
3 A. Yes.  
4 30 Q. And in April of 2014, following a meeting with his  
5 superintendent, Superintendent Murray, he was referred 10:43  
6 to the Chief Medical Officer, inter alia. I just want  
7 you to help me with your, either, involvement or  
8 knowledge at that stage. So could I ask you to turn to  
9 page 3272, which is in volume 11 of our books. It  
10 should be there on your left-hand side. You are free 10:43  
11 to look at them either on the screen or in hard copy  
12 there. I'm not sure if they are coming up on our  
13 screens in front of us.  
14 CHAIRMAN: Is it on your screen, Mr. Barrett?  
15 A. I am seeing "Welcome to Dublin Castle". 10:44  
16 MR. McGUI NNESS: A picture of Dublin Castle.  
17 THE WITNESS: I have the letter, Chairman.  
18 MR. McGUI NNESS: Yes.  
19 CHAIRMAN: Certainly I am seeing "Welcome to Dublin  
20 Castle". If we can do it reasonably quickly, well and 10:44  
21 good, if not we will carry on. Carry on,  
22 Mr. McGuinness. If anybody has a problem, just let us  
23 know.  
24 MR. McGUI NNESS: Yes. We have seen this document  
25 before. 10:45  
26 CHAIRMAN: Of course, yes.  
27 MR. McGUI NNESS: It is a report from Chief  
28 Superintendent Wheatley dated 7th April 2015.  
29 CHAIRMAN: Ah yes, I know the one.

1 MR. McGUI NNESS: It is directed to executive director  
2 HRPD, sick report Garda Nicholas Keogh, Athlone Garda  
3 Station. It refers to correspondence from  
4 Superintendent Murray, which was his report of the 2nd  
5 April. Just to read the substantive paragraph in the 10:45  
6 middle, it says:

7  
8 "As outlined in the attached correspondence,  
9 Superintendent Murray believes that Garda Keogh would  
10 benefit from this referral to the Chief Medical Officer 10:45  
11 as he has frequent sickness absences occurring in  
12 haphazard fashion. The referral to the medical officer  
13 may assist in providing additional workplace supports  
14 for the member who has indicated work related stress as  
15 a source for his absence." 10:45

16  
17 A. Yes.

18 31 Q. Now, I don't think I need to open Superintendent  
19 Murray's report, but it came following a meeting that  
20 he had with Garda Keogh at the end of March, there was 10:46  
21 a referral up with medical certificates and so forth.  
22 But that on its face appears to be directed to your  
23 office, is that right?

24 A. That's right.

25 32 Q. would that have come to you? 10:46

26 A. Truthfully, I have no recollection of this letter, I  
27 think it was responded to by Alan Mulligan, if I  
28 reading the succession correspondence. I get  
29 correspondence like this all of the time, but I would

1 put it to the relevant section and that would have gone  
2 down to Alan, and then on to perhaps the folks in  
3 Athlumney House in Navan.

4 33 Q. Yes. I mean, if we do look on the next page,  
5 Mr. Mulligan deals with it, he dealt with it in the 10:46  
6 interim, but he deals with it slightly later and at  
7 this point, but he is referring then back to the chief  
8 superintendent in the second paragraph, saying:  
9

10 "You should now interview this member in order to 10:47  
11 establish the source of the member's stress and if it  
12 is suggested as being work related stress a full  
13 investigation should be carried out."  
14

15 A. Yes. 10:47

16 34 Q. It calls for a medical report. But is that something  
17 that would happen normally or is that something that  
18 would be triggered by discussion with you about --

19 A. This is a very routine kind of enquiry. When I say  
20 routine, shall we say that in Mr. Mulligan's evidence, 10:47  
21 I think he references we have up to 700 people absent  
22 on any given day. So, absences is a normal matter to  
23 deal with, but this obviously was a pattern of  
24 absences.

25 35 Q. Yes. 10:47

26 A. And so, it was elevated at chief superintendent level  
27 and Alan dealt with it in accordance with the policy,  
28 which is what he states here.

29 36 Q. Yes.



1 A. It's for the chief to determine whether or not there is  
2 a causal link. Historically, Chairman, and I am saying  
3 this only to be helpful to the Tribunal, injury on  
4 duty, which is matter in the Garda Code dealt with at  
5 11.37, I think you dealt with this in the course of 10:48  
6 your inquiries.

7 37 Q. Yes.

8 A. It was always considered very simple blunt force injury  
9 on duty kind of concept. With the development of  
10 medical science around Post Traumatic Stress Disorder 10:48  
11 and PTSD generally and it being a real issue, work  
12 related stress was given some consideration. There was  
13 a working group set up to give consideration to how  
14 that would be dealt with.

15 38 Q. Yes. 10:48

16 A. I think Chief Superintendent McLoughlin was originally  
17 involved in drafting a HQ Directive, which put the onus  
18 on the chief superintendents to ensure that they  
19 carried out the enquiries at local level as to whether  
20 or not there was a link between an issue of work 10:49  
21 related stress and work.

22 39 Q. Yes. would you accept on a general level that there  
23 would be a duty on your department to, as it were,  
24 ensure that that would be done?

25 A. Yes. 10:49

26 40 Q. And particularly if it had an effect and possibly a  
27 detrimental effect on pay as to whether it was carried  
28 out or not?

29 A. Yes, I would. I think Mr. Mulligan's efforts here are

1 part of that effort generally to ensure that there is  
2 enquiries made.

3 41 Q. Yes. Could I just ask you then to look at another  
4 report from Chief Superintendent wheatley, dated 27th  
5 April 2015. It's at page 3716 in the next volume. I 10:49  
6 will have to ask you to switch to Volume 13 there.  
7 Chief Superintendent wheatley had been in possession of  
8 a report from Superintendent McLoughlin, that we  
9 needn't look at, it referred to further absences of  
10 Garda Keogh, further medical certificates citing work 10:50  
11 related stress. Chief wheatley is writing here again  
12 and looking for an expedited review. Again, it's  
13 directed to you but does that ring a bell at all or  
14 would it have been dealt with by Mr. Mulligan?

15 A. It would have been dealt with, there is a process by 10:50  
16 which these matters are routinely dealt with.

17 42 Q. Yes, okay. We know in any event that the review was  
18 expedited and a date was fixed for the 19th May. Would  
19 you have been informed of the outcome of that review,  
20 whether the member was being certified as fit or 10:51  
21 otherwise?

22 A. I have no recollection of being informed that he was  
23 fit or otherwise. But in the normal course I would see  
24 these things in statistical form.

25 43 Q. Yes. 10:51

26 A. We would track across the organisation data by grade,  
27 by region, but rather than at name level. So I  
28 wouldn't have been, you know, aware that this was Garda  
29 Keogh. I would have been watching the trend across the

1 organisation.

2 44 Q. Yes.

3 A. Single day absence, pattern absence, civilian absence  
4 versus garda absence, absence by rank, absence by  
5 region. 10:51

6 45 Q. Yes. If we turn in the same volume then to page 3719,  
7 this is written to you explicitly at that time by  
8 Dr. Oghuvbu?

9 A. Yes.

10 46 Q. This is obviously in the context of an intended 10:52  
11 appointment, but he has written back in relation to  
12 Mr. Mulligan's letter, which is in initial referral,  
13 which is referred to in the documents. But he is  
14 writing back to you explicitly there.

15 A. Yes. 10:52

16 47 Q. Would that be common or would that be a matter of form?

17 A. It would be a matter of form. His superior at the time  
18 was Dr. Donal Collins, who was the Chief Medical  
19 Officer.

20 48 Q. Yes. 10:52

21 A. Doctor Collins sat on my staff and was particularly  
22 careful to manage both confidentiality and thorough  
23 reporting. So I am sure he would have named various  
24 people at that point in time. I don't recall the  
25 letter, frankly. 10:53

26 49 Q. Yes.

27 A. But I would place a high degree of confidence that  
28 Donal Collins would have made some reference to it.

29 50 Q. Yes. I think that's a fairly standard form as to what

1 is required to be done?

2 A. Yes.

3 51 Q. The appointment date is fixed and then there is an onus  
4 on local management to explain the purpose of it?

5 A. In the exception, I attended a number of case 10:53  
6 conferences of a medical nature, but by and large I  
7 wouldn't. These case conferences would be attended by  
8 staff from Athlumney House who administer sick pay and  
9 related benefits and generally there are -- there's a  
10 decision tree which would go from, if you like, the 10:54  
11 operational side and it would elevate to me by  
12 exception.

13 52 Q. Yes.

14 A. And I think that's ultimately what happened in  
15 September of '16, when the issue of pay with respect to 10:54  
16 Garda Keogh was brought to my attention.

17 53 Q. Yes. But a slightly different question and focus now.  
18 Obviously Chief Superintendent Wheatley has written up,  
19 drawing attention to the work related stress as a  
20 possible source of the absence, the superintendent has 10:54  
21 forwarded the original referral and supporting  
22 documentation and then there's further documentation  
23 coming in, including actual reports from his own doctor  
24 certifying him out with work related stress. When it  
25 is now going to the doctor at this stage, would you 10:54  
26 have expected the doctor, without an investigation  
27 report locally, to assess a member for work related  
28 stress?

29 A. Doctors routinely -- we have three doctors, routinely

1 assess people for all kinds of reasons.

2 54 Q. Yes.

3 A. So that would be, you know, any day you would walk to

4 the surgery there would be a queue of people waiting to

5 see one or other of the doctors. That's a routine 10:55

6 matter. It happens all the time. As do those case

7 conferences I describe, wherein consideration is given

8 to how pattern absentees, for example, are dealt with,

9 or people with particular conditions arising from

10 accidents or injury on duty. 10:55

11 55 Q. Yes. Obviously Mr. Mulligan, we have seen one of the

12 first letters I asked you to look at, writing back to

13 chief wheatley looking for an investigation into work

14 related stress. From your point of view, do you regard

15 a report of that investigation as a necessary 10:56

16 prerequisite for the doctor to go about assessing

17 whether there is work related stress?

18 A. Not necessarily, No. I mean, the doctors are a

19 tremendous resource, both for advice and for diagnosis.

20 So, there aren't strict preconditions which would guide 10:56

21 the engagement of a doctor. Donal Collins in

22 particular at that time would have been urging chief

23 superintendents throughout the divisions to reach out

24 and be proactive with respect to people who, for

25 example, had addiction problems or who had, you know, 10:56

26 psychological issues. He was hugely proactive in that

27 space. So there was an effort to be of assistance.

28 56 Q. Yes. Mr. Mulligan was met with the reply from chief

29 wheatley dated 26th May 2015. Again, it's technically

1 addressed to you. It's at page 3276 in volume 11.  
2 3276. She is reflecting a report from Superintendent  
3 Murray, which we don't need to go into, but she  
4 summarises it there in the second paragraph:

5  
6 "As outlined in the attached correspondence, the  
7 district officer Athlone advises that he cannot further  
8 explore the reasons for the member's alleged stress as  
9 the member is not willing to further discuss the issue  
10 which he states arising out of his involvement and 10:57  
11 protections under the confidential reporting  
12 legislation."

13  
14 Now, that appears to be the first mention in writing --

15 A. Yes. 10:57

16 57 Q. -- of the link, as it were, between Garda Keogh, his  
17 absences, possible work related stress issues, medical  
18 certificate and then this impediment, as it were, to  
19 the investigation. First of all, just a question, to  
20 get it out of the way, you presumably didn't get this 10:58  
21 or if you did it would have been referred on in the  
22 usual way?

23 A. It was referred on in the usual way. I mean, the  
24 difficulty in the sense, in advance of the Covid break  
25 I read quite an amount of this material. 10:58

26 58 Q. Yes.

27 A. So I have a perception of it, but at the time I can  
28 certainly say this would not have been something I  
29 would have engagement with.

1 59 Q. Yes.

2 A. Conscious also, you know, I have read carefully the

3 examination of Chief Superintendent McLoughlin and, you

4 know, he was actively engaged with his role as

5 protected disclosures manager after this. The original 10:59

6 complaint, as I understand it, Chairman, from Garda

7 Keogh was made under the old currency of the

8 confidential recipient.

9 60 Q. Yes.

10 A. So I think you're in a nether land time here between 10:59

11 Chief Superintendent McLoughlin's appointment and --

12 we're post obviously the Act but we're pre the

13 appointment.

14 61 Q. Yes.

15 A. This is the first time also I would have noted that in 10:59

16 my reading of this material now, as opposed to then.

17 62 Q. Yes. I mean, it is perhaps unfair to look back with

18 total 20/20 vision, but this issue here of the linkage,

19 it did give rise to the problem that you attempted to

20 resolve with Chief Superintendent McLoughlin a year 10:59

21 later, the inability to actually have an 11.37

22 investigation. But I am just wondering, looking back,

23 do you accept perhaps that this should have been picked

24 up at the time in some way?

25 A. Well, it was dealt with, I think, again, and I fully 11:00

26 accept your 20/20 hindsight issue, because I have been

27 trying to identify the same difficulty.

28 63 Q. Yes.

29 A. Yes, the onus -- let's be clear about this, the onus

1 rests on the chief superintendent to conduct an  
2 investigation. That's what the HQ Directive says. I  
3 think Chief Wheatley made certain efforts and we can  
4 see from the correspondence that those efforts did not  
5 reach conclusion. 11:00

6 64 Q. Yes.

7 A. A year on, as you said, I had to make a decision in  
8 this matter.

9 65 Q. Yes.

10 A. And I decided in favour of Garda Keogh, and I think 11:00  
11 properly so.

12 66 Q. Well, we will come to that obviously. I think perhaps  
13 it may be the case that it certainly didn't become a  
14 financial issue, because Garda Keogh at this point was  
15 certified fit for work. 11:01

16 A. Correct.

17 67 Q. And went back to work. And he wasn't necessarily then,  
18 at that stage, tripping into TRR?

19 A. Correct.

20 68 Q. There may not have been, as it were, the financial 11:01  
21 hardship arising from this issue as such?

22 A. I think your point that this had potentially a flag  
23 element to it is correct.

24 69 Q. Just going forward to later in the year, there were  
25 various absences from work by Garda Keogh throughout 11:01  
26 later 2015. Superintendent Murray was seeking a  
27 further referral and a case conference. A case  
28 conference took place in relation to Garda Keogh and  
29 the doctor I think wrote to you again. If we look at



1 page 3751 in Volume 13. Again, is that pretty standard  
2 form there?

3 A. Absolutely, yeah. Yeah. And the response to it looks  
4 very standard also, yes.

5 70 Q. Yes. Now, we know from Dr. Oghuvbu, his own evidence, 11:02  
6 he saw Garda Keogh and Garda Keogh produced a document  
7 in terms of a list to him and talked him through  
8 different issues that he had at work relating to his  
9 superintendent and his employers. But ultimately he  
10 reported to you on the 8th January. If we look at page 11:03  
11 3750 in the same book there. If we look at the top  
12 there. It's addressed to you directly, as it were.  
13 would that have come past you or would it have been  
14 automatically referred on by your office?

15 A. It would have been automatically referred on. 11:03

16 71 Q. Pardon?

17 A. It's a report of a consultation, yeah.

18 72 Q. Yes. Now, he refers there to issues relating to his  
19 work, workplace accommodations adjustments there in the  
20 last paragraph. In the first page paragraph: 11:04  
21  
22 "Against a background of reported issues in the  
23 workplace or associated work..."  
24  
25 would you expect -- although he is respecting his 11:04  
26 obligation of medical confidentiality, he is signalling  
27 something there? would you expect that to have been  
28 picked up upon by someone in your office or by someone  
29 to whom this report was referred on?

1 A. Yeah, I think the -- I am looking at the letter. I  
2 haven't studied this correspondence before. The answer  
3 is yes in general terms, I would have expected that  
4 people would have responded or picked up on this. You  
5 know, inappropriate use of alcohol", "workplace or 11:04  
6 associated", yeah, "issues", I would have expected that  
7 would raised a flag, yes.

8 73 Q. Obviously the doctor there isn't engaging in any  
9 discussion about whether there is work related stress  
10 or what his own doctor is certifying, but would you 11:05  
11 expect if there is a query raised with the doctor about  
12 how he was being medically clarified, that perhaps best  
13 practice might have been important?

14 A. Mr. McGuinness, this is new to me in the sense that I  
15 haven't seen this document before. But I would very 11:05  
16 much expect and I would be surprised if there wasn't a  
17 follow through from some other part of the organisation  
18 with respect to this correspondence.

19 74 Q. Yes.

20 A. I don't know if it's there. 11:05

21 75 Q. CHAIRMAN: which section would you be looking for,  
22 Mr. Barrett.

23 A. I would expecting that the sick and absence section,  
24 sir, would be the appropriate people to deal with it.

25 76 Q. CHAIRMAN: who is in charge of that section? 11:06  
26 A. Monica Carr led that section in Athlumney house. It is  
27 a significant team of people.

28 77 Q. CHAIRMAN: Yes.

29 A. All familiar with both the regulations and, you know,

1           engaging with the office of CMO and Dr. Oghuvbu, who  
2           worked for Donal Collins at the time and was part of  
3           that team.

4    78   Q.   CHAIRMAN:   So the sickness and absence section?  
5           A.   Yes. 11:06

6    79   Q.   CHAIRMAN:   Is that, so to speak, the SAMS section?  
7           A.   Well SAMS is the system that they use.

8    80   Q.   CHAIRMAN:   Okay.   So the sickness and absence section  
9           in Athlumney House in Navan, they should have picked up  
10          on this? 11:06

11          A.   I think so, yes.

12   81   Q.   CHAIRMAN:   Was it said to them?  
13          A.   I would assume it was.

14          MR. McGUI NNESS:   Yes.

15          A.   I would assume it was. 11:06

16   82   Q.   CHAIRMAN:   How would we know whether it was or not?  
17          A.   Because my office would generally forward it there,  
18               in -- they maintain files on -- it's from them that I  
19               get the statistics with respect to numbers of people  
20               absent by region etcetera. 11:07

21   83   Q.   CHAIRMAN:   So this comes to your office?  
22          A.   It does.

23   84   Q.   CHAIRMAN:   And who deals with it?  
24          A.   My clerical staff would deal with this in the normal  
25               way.   It would normally be then sent for Alan 11:07  
26               Mulligan's attention and subsequently to Monica Carr.  
27               In 2015 Alan may have been in fact heading up Athlumney  
28               House at that point.

29   85   Q.   MR. McGUI NNESS:   Yes.   If we look at some further

1           correspondence. I mean, at this point in time Garda  
2           Keogh was, I don't say permanently absent, but he was  
3           certified as unfit on the basis of work related stress  
4           from his own doctor from the beginning now of 2016  
5           onwards, just if we are looking forward from that date. 11:07  
6           If we look at page 3744, Ms. Carr there.

7           A.    Yes.

8   86   Q.    This is again Volume 13. Ms. Carr has scheduled him  
9           for review. So that process has kicked in at that  
10          point in time? 11:08

11          A.    Yes.

12   87   Q.    You'd expect that to be normal?

13          A.    Yes.

14   88   Q.    Normal procedure. If we then look about the  
15          appointment, the chief superintendent is written to, at 11:08  
16          3747. That letter, if we go to 3747, issued then to  
17          the chief superintendent. That would appear to have  
18          issued on foot of a letter from the doctor to you, if  
19          we look at 3748?

20          A.    Yes. 11:09

21   89   Q.    Again, it's addressed to you directly. He refers back  
22          to his earlier, as it were, formal report after the --  
23          would that be standard procedure?

24          A.    It would be. This is Monica Carr identifying herself.  
25          Essentially it's under my style and title as executive 11:09  
26          director, but to the sickness and absence section. She  
27          was at the time heading up that part of the Athlumney  
28          operation, as well as being the director there at the  
29          time, she was doing two jobs.

1 90 Q. Yes. Now, Garda Keogh's evidence is that he raised an  
2 issue of misclassification with the doctor at the  
3 December consultation and then it raised its head again  
4 at the consultation on 19th May 2016, that Garda Keogh  
5 attended. He also gave evidence, the doctor gave 11:10  
6 evidence that he actually received and took a copy of a  
7 script which was headed "harassment index" on that  
8 date. But in the interim, Chief Superintendent  
9 Wheatley had written to you again on 18th May 2016,  
10 which as it turned out was the day before the 11:10  
11 appointment was fulfilled. But if we look at page 3203  
12 in Volume 11. She is referring to an earlier report  
13 from Superintendent Murray, who is keeping her  
14 up-to-date. She also says:  
15  
16 "I have also on today's date visited the member at his 11:11  
17 home to enquire into his welfare and wellbeing. I  
18 enquired as to the probability of him returning to work  
19 in the future and was advised by Garda Keogh that his  
20 current absence is attributable to work related stress 11:11  
21 arising from his involvement in investigations being  
22 progressed outside the Westmeath division. Garda Keogh  
23 intimated he would not be returning to work until these  
24 matters had been concluded as these matters were  
25 exacerbating his conditions. 11:11  
26  
27 Garda Keogh stated that he would be attending the  
28 scheduled appointment with the Chief Medical Officer on  
29 the 19th May and informed me that he was engaging with

1 the Employee Assistance Service. Upon Garda Keogh's  
2 resumption to duty I will ensure that a full  
3 investigation is conducted to establish the source of  
4 the member's alleged work related stress and if same  
5 can be attributed to his absence."

11:12

6  
7 Is that correspondence that would you have seen at that  
8 point?

9 A. I think it's about that point that I became aware that  
10 we had a difficult problem to address.

11:12

11 91 Q. Yes.

12 A. I think that is the first occasion I think I list in my  
13 own chronology attached to my own statement.

14 92 Q. I mean, it does raise issue and I am wondering whether  
15 one could regard it as topsy-turvy in the sense that  
16 the member is out sick --

11:12

17 A. Yeah.

18 93 Q. -- allegedly due to work related stress, he is saying  
19 there can't be a work related stress investigation, in  
20 a sense, and that he wouldn't be returning to work  
21 until his investigations had taken place. And on the  
22 other hand, the chief superintendent is saying that she  
23 won't be able to or won't be conducting a work related  
24 stress until he returns to duty. Did you see that as a  
25 catch 22?

11:13

26 A. Yes.

27 94 Q. Or is that a fair comment?

28 A. I think that's a fair comment.

29 95 Q. And can I ask you to express a view as to what you

11:13

1 think the way out at this point perhaps might have  
2 been?

3 A. At this point in time I had a conversation, at least  
4 one that I can remember with Tony McLoughlin, Chief  
5 Superintendent McLoughlin, about this. Because having 11:13  
6 been the author of the policy, he was very anxious --  
7 or the author of the HQ Directive, he was very anxious  
8 that the division would conduct this particular review  
9 and he, I think, concludes about this time or shortly  
10 thereafter that this is, as you describe it, a Catch 22 11:13  
11 situation.

12 96 Q. Yes. Now, I don't think -- subject to what you may  
13 tell me, Garda Keogh had written to the Minister on the  
14 16th May. If we look at page 3296.

15 A. 3296. 11:14

16 97 Q. He is making a final point there. You saw this letter  
17 later in the year I think?

18 A. Yes.

19 98 Q. It was referred at a later stage. Garda Keogh is  
20 making many points in the letter but this is one to the 11:15  
21 Minister about the penalisation issue. I think you  
22 became aware that Superintendent McLoughlin spoke to  
23 Garda Keogh on the phone on the 20th?

24 A. Yes.

25 99 Q. They had a second conversation then on the 23rd, where 11:15  
26 Chief Superintendent McLoughlin gave an undertaking to  
27 look at the misclassification issue?

28 A. Correct.

29 100 Q. Isn't that correct? Did you become aware yourself that

1           Garda Keogh's SAMS record was changed then at that  
2           point in time from ordinary illness flu/viral to mental  
3           health?

4           A.    That's correct, I was informed of that.

5   101   Q.    Superintendent McLoughlin met Garda Keogh then on the           11:15  
6           3rd June and he was given a copy of the harassment  
7           index, did you discuss that with you?

8           A.    Not until afterwards, he met him, as I understand it  
9           now, in Tullamore with the employment assistance  
10          officer who was supporting Garda Keogh in that period.           11:16

11   102   Q.    Yes.

12          A.    Michael Quinn, Garda Michael Quinn.

13   103   Q.    He did express the wish at that meeting also that the  
14           classification would be changed from mental health and  
15           enquired about whether it should be in fact certified           11:16  
16           as injury on duty?

17          A.    Yes.

18   104   Q.    I think you became aware of that at that point?

19          A.    So, in ease of the Tribunal's understanding of these  
20           matters, you may very well have covered this in fine           11:16  
21           detail already, so just to reiterate, injury on duty is  
22           a designation under the Code where effectively a chief  
23           superintendent has the Authority to determine that  
24           somebody's absence through injury has arisen because of  
25           their duties. And effectively, an 11.37 maintains the           11:17  
26           pay and benefits levels of that member at a full level  
27           on an ongoing basis for a period of time.

28   105   Q.    Yes.

29          A.    Normally it's reviewable, within quarterly or whatever



1 time horizons were set, depending on the nature of the  
2 injury. In parallel, at about this time, counsel,  
3 there's a working group looking at the matters I  
4 referred to earlier, as to whether or not an 11.37 is a  
5 suitable way to deal with stress/post traumatic injury. 11:17  
6 And that is also seeking to progress some kind of  
7 definitions on this matter. The chief did not seek to  
8 address this by way of 11.37, is my understanding.

9 106 Q. Yes. We know that Chief Superintendent McLoughlin went  
10 back to Chief Superintendent Wheatley to say was an 11:18  
11 investigation done?

12 A. Yes.

13 107 Q. And she replied, repeating the previous explanation?  
14 A. Yes.

15 108 Q. That seems to have been accepted or was there a 11:18  
16 discussion between yourself and Chief Superintendent  
17 McLoughlin about that issue?

18 A. Well, Chief Superintendent McLoughlin advised me that  
19 he was very uncomfortable with the fact that we  
20 couldn't ground it upon the kind of investigation that 11:18  
21 would normally be the practice in circumstances like  
22 this.

23 109 Q. Okay. In any event, he addressed the e-mail to  
24 Ms. Carr and also to you on the 4th June. If we could  
25 look at bottom of page 9695, which is in volume 34, it 11:19  
26 should be there beside you. At the bottom of the page  
27 the e-mail commences, the last few lines, and if we go  
28 on then to page 9696, it refers there to two Gardaí.  
29 Garda Y is Garda Keogh, Garda X is another garda. And

1 it notes the CMO's position then in relation to both of  
2 them, it notes that both of them are on reduced pay.  
3 It says in the fourth line:  
4  
5 "The investigation of work related stress allegations 11:20  
6 are ongoing and are likely to be complicated."  
7  
8 Now that's not accurate as far as Garda Keogh is  
9 concerned, isn't that correct?  
10 A. Sorry, what page are you on, Mr. McGuinness? 11:20  
11 110 Q. The e-mail starts at the very bottom of 9695 and it  
12 goes on to the next page?  
13 A. Okay. And the fourth line?  
14 111 Q. The fourth sentence, the fourth paragraph, as it were?  
15 A. Fourth paragraph. Yeah. 11:20  
16 112 Q. Do you think it is the case that Chief Superintendent  
17 McLoughlin was anticipating that there was going to be  
18 an investigation or that --  
19 A. I can't say. It's imprecise.  
20 113 Q. In any event, he expresses a view that it's urgent and 11:20  
21 that at a minimum the pay status should not change  
22 without personal contact being made with the members  
23 concerned. And then it concludes by saying:  
24  
25 "This requires urgent attention. My recommendation is 11:21  
26 that a mechanism be found for pay not to be reduced  
27 while matters are under consideration."  
28  
29 You got that, I take it?

1 A. Yes.

2 114 Q. Mr. Downey replies, if we go back to 9695, and then  
3 Chief McLoughlin replies to Mr. Downey and it is copied  
4 just to you and the chief is saying:  
5  
6 "A change of mindset required here."  
7  
8 Do you see that?

9 A. Yes, I do. And I think the concluding sentences are  
10 important. 11:21

11 115 Q. Yes.

12 A. I would be at one with the chief on that.

13 116 Q. Yes. In any event, if we look at 9687 in the same  
14 volume, you're copied in on all of this these?

15 A. Yes. 11:22

16 117 Q. I don't think we need to go through them, but I just  
17 want to confirm that you're aware of them?

18 A. I am aware of the deliberations of the committee. I  
19 sat in on several of its meetings because this was  
20 regarded as an important matter. 11:22

21 118 Q. Yes. We saw from Chief McLoughlin's opening one, he  
22 thought it was a good idea to meet with both?

23 A. Yes.

24 119 Q. If we see at 9692, it appears that Ms. Nugent met Garda  
25 X, who is not Garda Keogh, that afternoon. If we go to 11:23  
26 9684, we see that same e-mail, it goes up to Ms. Carr?

27 A. Yes.

28 120 Q. And then there is a process proposed by Ms. Egan?

29 A. Yes.

1 121 Q. which was a general draft proposal, isn't that correct?  
2 A. That's correct.  
3 122 Q. And then it goes from Ms. Carr back up to Ms. Nugent,  
4 including you. And then, at the top is your e-mail to  
5 everyone else, saying: 11:24  
6  
7 "This is a special case. There needs to be a  
8 restoration of full pay for Garda X."  
9  
10 I am just wondering where Garda Keogh is Garda Y, was 11:24  
11 there some distinction being made at the time there?  
12 A. These cases were decided contrary to the arrangements  
13 for pay generally.  
14 123 Q. Yes.  
15 A. And the decision taken was, and I am not altogether 11:24  
16 clear who Garda X is, but any changes made at that time  
17 with respect to altering TRR or injury on duty  
18 arrangements would have to be recommended by me to the  
19 Commissioner.  
20 124 Q. By you? 11:25  
21 A. Yes.  
22 125 Q. That's why I am wondering, you had been briefed by  
23 Chief Superintendent McLoughlin, who had met Garda  
24 Keogh --  
25 A. Yes. 11:25  
26 126 Q. -- and had a number of phone calls with him. There was  
27 confirmation that Chief Superintendent Wheatley hadn't  
28 in fact conducted a work related stress investigation?  
29 A. That's correct.

1 127 Q. It appears to have been ongoing in relation to the  
2 other officer. I am just wondering, was there not a  
3 logic to take the same decision in relation to each of  
4 them at the same time?

5 A. We took a decision at a later stage, I think it is 11:25  
6 delayed by two or so months from this date.

7 128 Q. Yes.

8 A. I think it's September, Mr. McGuinness, that the  
9 decision was taken with respect to Garda Keogh.

10 129 Q. Yes. Now, I mean, in fairness, I do want to note that 11:25  
11 the doctor's report was still awaited. And that was  
12 sent to you on the 10th June. Was that a factor, do  
13 you think, involved; that you were waiting for the  
14 doctor?

15 A. I am sure it was a factor. But whether it was a 11:26  
16 determining factor or not, I can't say. Quite frankly,  
17 I am not familiar with these papers in a way that  
18 perhaps I should be.

19 130 Q. In any event, that is your decision in relation to the  
20 other guard? 11:26

21 A. Yes, with the approval obviously of the Commissioner.

22 131 Q. Yes. Well, could we see what Chief Superintendent  
23 Wheatley wrote to you on the 8th June, it's at 3266.

24 A. Yeah.

25 132 Q. Back in volume 11. She had sent e-mails back in the 11:27  
26 period we have just been looking at, the 4th/5th June.  
27 But this is a more formal report.

28 A. Yes, I think this was requested by Tony, Chief  
29 Superintendent McLoughlin.

1 133 Q. So she is setting out -- if we go on to page 3267, the  
2 report commences there.

3 A. I have it.

4 134 Q. In the second paragraph she recites the current  
5 position and in the fourth line she says: 11:28  
6

7 "Efforts are being made locally to establish the source  
8 of the member's alleged work related stress. However  
9 the member is reluctant to discuss the matter as he  
10 indicated that it arises out of matters which he has 11:28  
11 reported through the confidential reporting mechanism,  
12 matters which he does not want to discuss with  
13 management within the division."  
14

15 She then refers to Superintendent Murray's meeting with 11:28  
16 him on the 26th March and she tabs a report. On the  
17 next page she tabs further reports. She seems to be  
18 satisfied that Superintendent Murray has made the  
19 necessary enquiries, in the middle of that page, 3268.  
20 At the bottom of page 3268 she says: 11:28  
21

22 "Despite a number of enquiries with Garda Keogh to  
23 establish the source of his alleged work related  
24 stress, the member has continuously correlated his  
25 involvement as confidential reporter to his absence 11:28  
26 through alleged work related stress. I am also  
27 conscious that the member's continued absence was the  
28 subject of a case conference in December 2015."  
29

1 she refers to the different correspondence there. Page  
2 3269, in the middle she says:

3  
4 "He hasn't indicated there were incidents."

5  
6 Then her conclusion is at the bottom of that page, if  
7 we scroll down to the final paragraph. She seems to be  
8 saying effectively that it hasn't proved possible to  
9 conduct a full investigation and she doesn't believe  
10 any further or specific information be provided by  
11 Garda Keogh which would enable the further  
12 investigation.

13  
14 "However, and to be clear and to avoid any doubt, I am  
15 to enquire if there is any requirement to further  
16 investigate Garda Keogh's absence through alleged work  
17 related stress. In the event that further  
18 investigation of this matter is warranted, I would  
19 recommend that permission be granted to appoint an  
20 inspector outside the Westmeath division to conduct  
21 same."

22  
23 So, in a sense she is saying the division now can't do  
24 it, and I am telling you they can't do it and are you  
25 requiring me to do it, and if you are not going to do  
26 that would you get somebody else appointed. Do you  
27 recollect was there any discussion between yourself and  
28 Chief Superintendent McLoughlin about getting an  
29 outside officer in to try and break the impasse?

1 A. There was. The discussion centred around the meeting  
2 that Chief Superintendent McLoughlin had had five days  
3 earlier with Garda Keogh in person at the Tullamore  
4 Court Hotel. I think there's confirmation of that  
5 meeting, at which Chief McLoughlin described himself 11:30  
6 essentially as the single point of contact going  
7 forward. I think also Garda Keogh recorded in a letter  
8 to the Minister on the 14th June, if I am not mistaken,  
9 that Chief Superintendent McLoughlin undertook to  
10 investigate matters. 11:30

11 135 Q. Yes. If we look at the doctor's report then at 3741.  
12 This is sent to you by name. Do you recall getting  
13 this?

14 A. Mr. McGuinness, can you advise me, 3741? This is  
15 volume 34? 11:31

16 136 Q. No, I am sorry, Mr. Barrett, we're back to volume 13?  
17 A. 13, my apologies. I have it now.

18 137 Q. It's obviously in the context of this point in time.  
19 It's after the decision has been made about the other  
20 guard being restored to full pay. Then the doctor's 11:32  
21 report becomes available on the 10th and it's sent to  
22 you, it would appear. would you recollect getting  
23 that?

24 A. No, I don't.

25 138 Q. Okay. 11:32

26 A. I would have seen these letters by exception. But I  
27 would have had a discussion with Chief McLoughlin in  
28 the case but I don't remember this letter specifically.

29 139 Q. Yes. In any event, in the last paragraph he says:



1  
2 "In the context of ongoing background issues reportedly  
3 associated with the member's work which appear to be  
4 having a significant negative effect on the member's  
5 sense of wellbeing and maintenance of same recommend a 11:32  
6 priority service is involving your office and the  
7 member's senior divisional management. This would  
8 facilitate elucidation of reasonable and practicable  
9 support re workplace considerations to foster his  
10 sustained wellbeing and effectiveness when a return to 11:33  
11 work becomes feasible."  
12  
13 In any event, that was arranged and I take it you were  
14 informed of that at that time?  
15 A. Yes, in normal course I would be aware that these case 11:33  
16 conferences would be happening, the specific details  
17 being brought to my attention.  
18 140 Q. Yes.  
19 A. I understand a case conference did go ahead.  
20 141 Q. I think the doctor reported the outcome of that to you 11:33  
21 at 3740, if we just go back two pages?  
22 A. Sure, yeah.  
23 142 Q. You became aware that there was a programme of  
24 treatment agreed upon?  
25 A. Yes. 11:34  
26 143 Q. And to some extent substantially funded as well; isn't  
27 that correct?  
28 A. I would have approved that, yes. Chief McLoughlin is  
29 acting at this point, as I understand it, in his role

1 as protected disclosure manager.

2 144 Q. Yes.

3 A. So, I can identify between the lines here of what's  
4 actually being said by Dr. Oghuvbu, and I was aware of  
5 the generality that we were going to support a 11:34  
6 programme and we had made arrangements for its funding,  
7 as you said.

8 145 Q. Yes. Chief Wheatley appeared to have been enquiring  
9 about the issue of an investigation, because she wrote  
10 again on 25th July 2016, if we look at page 3314? 11:35

11 A. Yeah.

12 146 Q. That's addressed to the chief superintendent, which is  
13 Chief Superintendent McLoughlin, isn't that correct?

14 A. Correct.

15 147 Q. She is restating the position there, but she is also 11:35  
16 saying:  
17  
18 "While these matters have been reported on by this  
19 office in the past, a decision in respect of the  
20 further investigation of this matter has not been 11:35  
21 received at this office. Accordingly in the interest  
22 of providing clarity and to avoid any doubt, I am to  
23 enquire if an investigation into the alleged work  
24 related stress Garda Keogh is to be carried out  
25 locally." 11:36  
26

27 Now, Chief McLoughlin wrote back, if we go back to page  
28 3313. This is the response, he says:  
29

1 "I wish to advise that this correspondence should be  
2 redirected to the executive director, Human Resources  
3 and People Development for the attention of Sick  
4 Section, Navan, who deal with this issues relating to  
5 sick.

11:36

6  
7 I also wish to draw your attention to the Garda Code  
8 instructions on this matter."

9 A. That last sentence is important I think,  
10 Mr. McGuinness, in light of where the responsibility  
11 lay for conducting that investigation.

11:36

12 148 Q. Yes. But does 11.37 not require the divisional officer  
13 to do it rather than the Sick section?

14 A. No, an 11.37 is a decision with respect to an injury on  
15 duty.

11:36

16 149 Q. Yes.

17 A. The instructions in this matter, the Garda Code  
18 reference there, I think is in relation to the  
19 investigation of the matter.

20 150 Q. Yes.

11:37

21 A. Which lay with, as far as Chief McLoughlin, as I  
22 understand it, was concerned, that should have been  
23 conducted in the routine way in the first instance by  
24 Chief Wheatley. Chief Wheatley's position on this is  
25 she couldn't do it because Garda Keogh was out and he  
26 wasn't cooperative. I understand on the 3rd June, when  
27 Chief McLoughlin and Garda Quinn met with Garda Keogh  
28 in Tullamore, at that meeting I think there was a  
29 commitment that the chief would actually conduct some

11:37

1 form of investigation. But he is conscious of the  
2 fact, and I think he's correct in this regard, that the  
3 fundamental responsibility for managing the  
4 determination of this lay with Chief Wheatley.

5 151 Q. Yes. I don't know whether you can comment on this, but 11:37  
6 it doesn't appear that she was ever after this further  
7 request ever actually given an instruction to do it or  
8 told how she should go about it or whether an  
9 independent inspector or superintendent from some other  
10 division should do it? 11:38

11 A. I can't comment, I'm not that familiar with the  
12 correspondence trail.

13 152 Q. Yes. But can I ask you this question: If it did  
14 remain uninvestigated from that time to this, would you  
15 regard that as a fault in the system or an omission 11:38  
16 that ought not to have occurred?

17 A. Well, I can say that it was an outstanding matter at  
18 the time I came to consider the issue of pay.

19 153 Q. Yes.

20 A. In September. 11:38

21 154 Q. Yes. I am looking, as it were, beyond your own  
22 responsibility and credit for that obviously, but if it  
23 remained uninvestigated, would you regard that as a  
24 failure of the system?

25 A. Well it's certainly contrary to what the system 11:39  
26 suggests should have happened.

27 155 Q. CHAIRMAN: Mr. Barrett, can you say, what was the  
28 question to be investigated?

29 A. I understand the question to be whether or not the

1 absence of Garda Keogh was caused by the stress that he  
2 alleged occurred at work.

3 156 Q. CHAIRMAN: By?  
4 A. The work related stress.

5 157 Q. CHAIRMAN: What does that actually mean. What was the 11:39  
6 question that somebody was going to say, right, let's  
7 get to the bottom of this?  
8 A. Somebody would have had to determine was there a causal  
9 link between -- was there reason to believe that he was  
10 out on foot of the matters that he alleged occurred. 11:39

11 158 Q. CHAIRMAN: His doctor was certifying that he was  
12 suffering from work related stress?  
13 A. Yes.

14 159 Q. CHAIRMAN: And that was the reason why he was absent.  
15 So, I am trying to understand, what was the nature of 11:40  
16 the investigation?  
17 A. Well, there wasn't an investigation in any meaningful  
18 way.

19 160 Q. CHAIRMAN: No, but what was the nature of the  
20 investigation that was intended or supposed to be 11:40  
21 carried out?  
22 A. Well, in the normal course, if it was --

23 161 Q. CHAIRMAN: Do you understand me?  
24 A. I do, I do.

25 162 Q. CHAIRMAN: I mean, I am wondering, was this something a 11:40  
26 garda would undertake, something a doctor would  
27 undertake, something, I don't know, a psychiatrist, a  
28 psychologist, what was the question they were trying to  
29 answer?

1 A. Normally in the course of these things it would be  
2 determined with reference to the CMO's office and by  
3 local garda management.

4 163 Q. CHAIRMAN: I mean, it's very simple: If somebody says,  
5 look, Garda Ryan and Garda Barrett were on the beat 11:40  
6 when people came up and beat them up, injury on duty,  
7 no problem?

8 A. Correct.

9 164 Q. CHAIRMAN: That's simple?

10 A. Yes. 11:41

11 165 Q. CHAIRMAN: As you say, it's more difficult if it's post  
12 traumatic stress or if it is of a psychological nature?

13 A. Yes.

14 166 Q. CHAIRMAN: That's not obvious, it's more difficult?

15 A. It is. 11:41

16 167 Q. CHAIRMAN: But I am just wondering, so suppose Chief  
17 Superintendent Wheatley said, very good, I am going to  
18 either get somebody to do this or I am going to do it  
19 myself?

20 A. Correct. 11:41

21 168 Q. CHAIRMAN: Very good. One would think that she would  
22 explain to Garda Keogh, look, this is important,  
23 because of whatever other reason, it's important  
24 because your sick pay --

25 A. Exactly. 11:41

26 169 Q. CHAIRMAN: -- is very much dependent on this, you're on  
27 a pension rate at the moment and your service is, so to  
28 speak, interrupted because you're not qualifying for  
29 pension and so on, all your entitlements. Here is a

1 big issue for you. So, you know, put him in the  
2 picture?

3 A. Correct.

4 170 Q. CHAIRMAN: Nobody seems to have done that?

5 A. well, you're absolutely right, Chairman. In the normal 11:42  
6 course across 41 divisions, there are adult to adult  
7 conversations, difficult things every day. And they  
8 normally work very well. That's what I think Chief  
9 McLoughlin was anticipating should happen in this  
10 particular case and that is what clearly didn't happen 11:42  
11 in this particular case.

12 CHAIRMAN: Yes.

13 171 Q. MR. MCGUINNESS: Obviously without commenting, and this  
14 question isn't commenting on anyone's position, but it  
15 requires cooperation with the process in a sense? 11:42

16 A. Yes.

17 172 Q. And perhaps an exploration as to why people mightn't be  
18 prepared at any particular time to cooperate with the  
19 process. But ultimately, is it dependent on that, is  
20 it wholly dependent on that in your view? 11:43

21 A. well, I credit Chief McLoughlin for his meeting on the  
22 3rd June, in that he opened a channel of dialogue  
23 directly with Garda Keogh. I understand from papers I  
24 have now read that he undertook to conduct some form of  
25 investigation, into what specifically I'm not sure. 11:43  
26 But at least there was an engaged conversation around  
27 the issues. I think that's what is missing in the  
28 correspondence from Chief Wheatley. She called to his  
29 house, certainly, but she didn't manage to get past his

1 view that I'm not talking to you. I was mindful of  
2 that when it came to making a decision in September.

3 173 Q. All right. Perhaps we would look at just a note  
4 relating to the decision, there's a degree of  
5 uncertainty about when you met with Mr. Mulligan and 11:44  
6 Chief McLoughlin and made the decision.

7 A. There is.

8 174 Q. Can I ask you to look at this note, volume 35, at  
9 10072.

10 A. 35, yeah. 11:44

11 175 Q. This is a standard form, it's form D22B, which is meant  
12 to be filled out on a current basis to continue the  
13 authorisation to grant full pay.

14 A. Correct.

15 176 Q. If we just go down the screen there, this is one of 11:44  
16 these that records this, it's for a different later  
17 period obviously. But it records:

18

19 "I now request permission to authorise to grant the  
20 member full pay for the 4/8/17-31/8/17 as per chief 11:44  
21 superintendent HRPD and executive director HRPD on  
22 27/9/16."

23

24 That would appear to suggest, I know it's not your  
25 document, it's from the pay section, that they appear 11:45  
26 to have been told this is when the decision was taken.  
27 If we look at the e-mail that Chief McLoughlin has  
28 given evidence about at 3441. You see there that's  
29 from Chief McLoughlin to Clare Egan:



1  
2 "You will be aware from previous discussions that Garda  
3 Keogh is out of work on sick leave with what I  
4 understand to be stress related. I believe he is on  
5 reduced or no pay at this stage. I also understand 11:45  
6 your department has written to DPERS for clarification  
7 on this situation. In the meantime I recommend that  
8 this member is restored to full pay as soon as possible  
9 pending the outcome of your report to DPERS.  
10 11:46  
11 I would be obliged if I can be informed when this is to  
12 happen so I can contact the member."  
13  
14 In any event, you met with Chief McLoughlin and  
15 Mr. Mulligan around this time and he was certainly 11:46  
16 strongly of the view and recommended it to you and you  
17 agreed with that, as I understand it?  
18 A. That's correct.  
19 177 Q. This was in a formal sense your decision to recommend  
20 this? 11:46  
21 A. Correct.  
22 178 Q. We had some discussion with some of the other witnesses  
23 about what full pay meant here?  
24 A. Yes.  
25 179 Q. But Mr. Mulligan on Day 144, we needn't look at it, but 11:46  
26 he said full pay is basic pay but not the allowances?  
27 A. Correct.  
28 180 Q. You'd agree with that?  
29 A. I would. Allowances are paid for such things as

1           unsocial hours working, shift work and in circumstances  
2           where those hours aren't required of somebody then the  
3           payment for them doesn't arise. So there is a loss, if  
4           you like, to normal earnings in being restored to full  
5           basic pay, which is what we did here. 11:47

6 181 Q. Mr. Mulligan said, I mean, that there was a number of  
7           things under consideration at the meeting as per the  
8           e-mails, were we penalising him by applying the sick  
9           regulations strictly and were we on humanitarian  
10          grounds possibly victimising him also? 11:47

11          A. We sought direction from the Department of Public  
12          Expenditure and Reform on that matter and Mr. Mulligan  
13          brought that to the table as I recall. This matter  
14          seen through the prism of part 3 of the Protected  
15          Disclosures Act gives rise to real considerations of 11:48  
16          whether penalisation arises or not. That's the basis  
17          on which Mr. Mulligan sought the input of DPER.

18 182 Q. Yes. Mr. Mulligan also told the Chairman at the time,  
19          we couldn't do the allowances because there was no  
20          11.37, I think you would agree with that? 11:48

21          A. Well, there was no 11.37, that's correct.

22 183 Q. In any event, if we go to 3442, we see Chief McLoughlin  
23          receiving the e-mail from Ms. Egan on the 6th October  
24          from pay section. Did Chief McLoughlin tell you that  
25          he informed Garda Keogh to inform him of this? 11:48

26          A. I read that.

27 184 Q. And that he then wrote to him also formally to inform  
28          him of that. Perhaps we will look at that, because it  
29          is relevant to your state of knowledge about the

1 bullying and harassment issue. If we look at page  
2 3467. The second paragraph:

3  
4 "I wish to advise that I have pursued the issue of your  
5 pay and have written to civilian HR in Navan in order 11:49  
6 to progress same. At this stage you should be returned  
7 to the payroll.

8  
9 In the interest of clarity and completeness I wish to  
10 ask if it is your intention to make a formal complaint 11:49  
11 under bullying and harassment policy in addition to any  
12 other complaints made by you. I appreciate that you  
13 indicated to me on the phone that it is not your  
14 intention to do so."

15 11:49  
16 Was that something that the chief had advised you of at  
17 the time?

18 A. Yes. We had had a discussion about this time,  
19 obviously the pay meeting that we held brought -- it  
20 was a single issue meeting as I recall and it was 11:50  
21 purely focused on Garda Keogh.

22 185 Q. Yes.

23 A. So, there was clarity required around this. I  
24 understood from Chief McLoughlin that there was some  
25 previous engagement with GSOC and I couldn't understand 11:50  
26 how that arose but I thought it was useful to ask that  
27 question.

28 186 Q. Yes. Garda Keogh replied, if we look at the next page,  
29 3468, he says:

1  
2 "I wish to acknowledge receipt of correspondence. I  
3 also acknowledge that I have been returned to the  
4 payroll.

5  
6 I accept I made an indication to you regarding bullying  
7 and harassment. However, the fact that I have reported  
8 this and supplied relevant documents to support my  
9 allegations. I understand there are obligations for  
10 both myself and An Garda Síochána to have this  
11 investigated under the terms of bullying and harassment  
12 policy of An Garda Síochána and I wish to make a formal  
13 complaint in relation to same."

14  
15 I think you were informed of that, I think Chief  
16 McLoughlin recommended to Ms. Hassett that there would  
17 be a full investigation into the matter. Mr. Mulligan  
18 opened a file in the matter on the 1st November, and I  
19 think you then wrote to Garda Keogh on the 15th  
20 November. If we look at that letter, page 3472. You  
21 are saying there:

22  
23 "I refer to correspondence dated 20th addressed to  
24 Chief Superintendent McLoughlin in which you state that  
25 you wish to have the complete dealt with formally.  
26 Please be advised that Chief Superintendent McLoughlin  
27 has no role in the investigation of complaints made  
28 under the harassment policy other than to provide  
29 advice and support to members on the policy."

1  
2  
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28  
29

That is because he was the equality officer I think; is that right?

A. That's correct. No, he could -- it was open to Chief McLoughlin to actually conduct an investigation in his autonomous role as the equality officer, that is clearly stated I think at 7.4 in the policy. 11:52

187 Q. Yes.

A. But that wasn't happening here.

188 Q. Yes. It says: 11:52

"I've enclosed a copy of the policy..." Sorry, I should read the previous sentence:

"However, he does not investigate complaints made under the policy. I have enclosed a copy of the policy for your information in particular which may be of assistance to you." 11:52

Then you detail various matters. Then you conclude by saying on the next page: 11:52

"The person appointed to investigate a complaint under the policy must be higher than the complainant and the person complained of and be not lower than inspector rank. While you have provided certain documentation to Chief Superintendent McLoughlin regarding your complaint it is unclear from same against whom the allegations are being made, the exact detail/nature of 11:53

1 your complaint and the highest rank being complained  
2 of.

3

4 To ensure the resolution of your complaint may be  
5 commenced the details referred to above should be  
6 provided by you to your divisional officer at your  
7 earliest convenience. "

11:53

8

9 Can I ask you, had you considered the documentation  
10 that Chief McLoughlin had been sent in the post?

11:53

11 A. I hadn't seen it.

12 189 Q. You hadn't seen it. Did your office receive that?

13 A. No, I think Chief McLoughlin in his own evidence said  
14 he gave it to Kathleen Hassett and it was kept under  
15 lock and key, I presume that's the same document.

11:53

16 190 Q. You never saw it as part of your function to --

17 A. I'd add no value to that.

18 191 Q. Yes. I think Chief McLoughlin informed you of a call  
19 that he had with Garda Keogh on the 25th November,  
20 where he, Garda Keogh, said he understood the process,  
21 that he was seeking legal advice, but also indicating  
22 that making the complaint to his divisional officer,  
23 who was Chief Gralton, at the time, could be an issue?

11:54

24 A. I don't recall that, and I know that when the  
25 relationship that I subsequently discovered well after  
26 the fact, the familial relationship between Chief  
27 Gralton and Superintendent Murray, I was not aware of  
28 at the time. So if I was told it, I simply didn't  
29 recall it.

11:54

1 192 Q. okay.

2 A. The chief did write to me I think or suggest to me that

3 because of the nature of this my letter was asking him

4 to put the complaint through the people he was

5 complaining of. And I think we went and made an 11:54

6 alternative arrangement.

7 193 Q. Yes. I think you were made aware by Mr. Mulligan, who

8 phoned Mr. Cullen I think, and there was an offer even

9 to go down to meet Garda Keogh and Mr. Cullen to take

10 the complaint or discuss the issue with them, is that 11:55

11 correct?

12 A. Yes, I read that.

13 194 Q. But also then you received a letter from Mr. Cullen I

14 think, if we look at page 3476. This was addressed to

15 a number of people, including you, and it sought a 11:55

16 number of different things. Did you reply to that, do

17 you recall?

18 A. I think there was action taken on foot of it, I don't

19 know if I made a reply. I know that at that point in

20 time I received a direction thereafter to make certain 11:56

21 that there was a statement taken on this matter.

22 195 Q. Yes. I think the PIAB authorisation issued in respect

23 of Garda Keogh's application to initiate proceedings

24 and I think you were made aware of that at one stage?

25 A. I have seen the papers. 11:56

26 196 Q. Yes. But then on the 15th December you were in contact

27 with Chief McLoughlin again about the matter, if we

28 look at page 3495. That related to gathering up all

29 the information for the defence of the bullying and

1 harassment claim in the proceedings, do you recall  
2 that?

3 A. I know vaguely about this. I would have simply  
4 received a query from legal and I would have passed it  
5 to the two relevant gentleman, Chief McLoughlin and 11:57  
6 Alan Mulligan.

7 197 Q. Okay. Mr. Cullen wrote to you again on the 15th  
8 December. If we look at page 3504. And it says:  
9  
10 "Dear, Mr. Barrett, Minister and Ms. O'Sullivan. 11:57  
11  
12 We refer to the letter of Mr. Barrett dated 11th  
13 November 2016 requesting further information on the  
14 bullying and harassment complaint.  
15 11:57  
16 Please note Garda Keogh hereby again invokes his rights  
17 under such bullying and harassment policy. Garda Keogh  
18 advises that he wishes to make a statement of complaint  
19 under said policy as soon as practicable to a  
20 non-conflicted officer." 11:58  
21 A. Yes.

22 198 Q. "Please advise when and where he can make further such  
23 statement of complaint as soon as practicable."  
24  
25 I think the Commissioner made an instruction on the 11:58  
26 following day, she obviously having received this, that  
27 a statement should be taken as a matter of priority?

28 A. Yes, that's correct.

29 199 Q. That was sent to you, that instruction, isn't that



1 correct?

2 A. That's correct.

3 200 Q. That's at 3506, we don't need to look at that. You  
4 nominated Chief Superintendent Roche on the 20th, is  
5 that correct? 11:58

6 A. I did.

7 201 Q. If we go to page 3507, the next page that is, and this  
8 is directed to Assistant Commissioner Fanning?

9 A. Yeah.

10 202 Q. You're in the middle paragraph nominating him to 11:58  
11 investigate the complaint. But it was his  
12 responsibility to make the appointment.

13 A. Correct.

14 203 Q. Would you just explain that, because it seemed to  
15 become an issue in a minor way, perhaps? 11:59

16 A. Okay. Again, the regulations suggest that those with  
17 policy responsibilities have the facility to nominate  
18 somebody, but those with line responsibilities have the  
19 Authority to make the appointment.

20 204 Q. Yes. I think you were copied on an instruction to a 11:59  
21 different chief superintendent, Chief Superintendent  
22 Scanlan?

23 A. Yes.

24 205 Q. On the 23rd December?

25 A. Just to clear this up, Mr. McGuinness. 11:59

26 206 Q. Yes.

27 A. In very simple terms: There was a period of time when  
28 chief superintendent John Scanlan and Garda Nicholas  
29 Keogh were in the same district together, I think

1 at a time when --

2 207 Q. He was stationed in Ballynacarrigy?

3 A. Correct. I was searching for it, thank you.

4 208 Q. Yes.

5 A. And the basis for me recommending Gerry Roche was to 12:00

6 avoid the possibility that this matter would become an

7 issue of they having had a prior relationship or

8 whatever.

9 209 Q. Okay.

10 A. Assistant Commissioner Fanning assured me that wasn't 12:00

11 an issue and to expedite matters and to proceed, I was

12 quite pleased with his assurances and I then nominated

13 Chief Superintendent John Scanlan.

14 210 Q. Yes. So that, as it were, that divisional

15 responsibility was respected in that regard? 12:00

16 A. Yes.

17 211 Q. Okay. In any event, I think Chief Superintendent

18 McLoughlin was looking for an update as to what was

19 happening in early January and I think you received an

20 update from Assistant Commissioner Fanning on the 31st 12:01

21 January. Perhaps if we look at that, page 3515. If we

22 go down the page. Chief Superintendent Scanlan's

23 report is attached, which is on the next page, if we

24 scroll on further. Then that reports on the actual

25 then raising of a potential issue of conflict? 12:01

26 A. Again, I should just point out, this is precisely the

27 kind of thing that I was seeking to avoid by my

28 nomination of Roche in the first instance.

29 212 Q. Yes. I think Assistant Commissioner Fanning didn't

1 perceive that there was a conflict in the sense that it  
2 wouldn't prevent him taking statement, whatever about  
3 investigating it?

4 A. Correct, and that's ultimately how I think it was  
5 resolved. 12:02

6 213 Q. Yes. I think you became aware of a request from the  
7 Commissioner's office to hold a case conference in the  
8 matter and that Mr. Mulligan was to be responsible for  
9 that, is that correct?

10 A. Yes. 12:02

11 214 Q. I think you took the view that a case conference  
12 couldn't be held until you had received the results of  
13 Chief Superintendent Scanlan's efforts to take a  
14 statement of complaint, isn't that correct?

15 A. Well, the conference was to be about the nature of the 12:03  
16 complaints.

17 215 Q. Yes.

18 A. And that was the purpose of the statement.

19 216 Q. Yes. From the point of view of the Commissioner, the  
20 Commissioner's office through I think Superintendent 12:03  
21 Walsh was, I won't say keeping the pressure on but  
22 regularly enquiring whether a statement had yet been  
23 taken?

24 A. Correct.

25 217 Q. When it was going to happen, that it would be 12:03  
26 progressed as soon as possible?

27 A. And somewhere in there I think I wrote to Assistant  
28 Commissioner Fanning circa March and asked about the  
29 progress of --

1 218 Q. Yes.

2 A. -- the discussions.

3 219 Q. Yes. I think you sought an update in early April and  
4 you had by the 12th April I think received -- you  
5 received a report of the 12th April on the 21st April. 12:04  
6 If we look at page 10021. That is quite clear as to  
7 what is enclosed there, just to note the middle  
8 paragraph.

9

10 "This office is now in respect of a further report 12:05  
11 dated 12th April from chief superintendent Portlaoise  
12 enclosed document of Garda Keogh dated 2nd March 2017  
13 relevant appendices please.

14

15 Assistant commissioner Eastern Region will now give 12:05  
16 this matter further consideration and report more fully  
17 in early course."

18

19 Do you recall getting that?

20 A. I don't, and I don't recall the enclosures. 12:05

21 220 Q. Yes. Well, that document referred to, it's a five-page  
22 typed script, unsigned?

23 A. Unsigned.

24 221 Q. Yes. Perhaps if we scroll down the page to 10013.  
25 This is the report of Chief Superintendent Scanlan of 12:06  
26 the 12th April that I referred to, which is his report  
27 relating to that five-page statement.

28 A. Yes.

29 222 Q. And he describes what happens there. Now, I think you

1 received a second report from Assistant Commissioner  
2 Fanning on the 28th April, could we look at that, at  
3 page 3525. I am sorry, that is your report to Chief  
4 Superintendent McLoughlin. You are reporting to him  
5 that Garda Keogh provided the chief superintendent with 12:07  
6 a prepared statement, documents are currently being  
7 considered by assistant commissioner Eastern Region and  
8 you will advise him of developments on receipt of a  
9 further report from that assistant commissioner.

10  
11 The consideration of the documents had been earlier 12:07  
12 reported to you by Assistant Commissioner Fanning, if  
13 we just go back a little bit in time to the 5th April,  
14 at page 6823. I think the minute of the 22nd March,  
15 you're referring to there in the first line is a 12:07  
16 request for an update. He is reporting to you the  
17 following by way of interim report:

18  
19 "Chief Superintendent Scanlon Portlaoise has sent me  
20 one part of a two part report from Garda Keogh. 12:08  
21

22 I am examining it and from an early perusal of the file  
23 it appears to be much wider than a bullying and  
24 harassment issue.

25  
26 I will revert on receipt of the next phase of the 12:08  
27 report. "  
28

29 And there doesn't appear to have been anything enclosed

1 with that.

2 A. There wasn't. Not that I have seen.

3 223 Q. In any event, you acknowledged receipt of Assistant  
4 Commissioner Fanning's second report to you, the one we  
5 looked at, of the 12th April, sorry on the 21st April, 12:08  
6 if we look at your letter at 6872. That says:  
7  
8 "I am to acknowledge receipt of your correspondence  
9 dated 21st inst. made under the above caption, the  
10 contents of which are noted. 12:09  
11  
12 I await your further report in due course."  
13  
14 So that is acknowledging receipt of the report of the  
15 21st with the five-page statement 12:09  
16 A. Well, I wondered about that, Mr. McGuinness. "The  
17 contents of which are noted", I have sought from both  
18 the Tribunal and from other sources whether or not this  
19 attachment was given to me at that point in time. I  
20 can't determine whether it was. 12:09  
21 224 Q. Yes. Well, we just looked at that report of the 21st,  
22 if we go back to 10021?  
23 A. Yes. So let's be clear as to what I was expecting to  
24 receive. The terms of reference that John Scanlan was  
25 pursuing was to determine the -- to take statement in 12:10  
26 full from Garda Keogh of his complaints and to  
27 determine on foot of those complained of the level of  
28 the person to be appointed to conduct the B&H  
29 investigation.

1 225 Q. Yes.

2 A. Okay.

3 226 Q. So you're raising a query as to whether you got the  
4 five-page unsigned statement with that?

5 A. The five-page unsigned statement effectively enabled 12:10  
6 nothing to happen. What we needed was, ultimately what  
7 we got I think much later, the comprehensive document,  
8 I think it runs to 18 different sections, signed and  
9 dated the 27th March. I think that reached my office  
10 on the 4th October. 12:11

11 227 Q. Yes. Well, perhaps we will look at the letter that  
12 Assistant Commissioner Fanning sent to you on 24th May  
13 2017?

14 A. Yes.

15 228 Q. He had had some and instructed Inspector McCarthy to 12:11  
16 have some further dealings and enquiries with Garda  
17 Keogh in the interim about what further matters he  
18 wished to have encompassed in the investigations. But  
19 ultimately he made this report to you on the 24/5. If  
20 we look at page 10049. Now, he refers to your original 12:11  
21 correspondence tab A, which we are not concerned with.  
22

23 "I also refer to correspondence from this office dated  
24 21, tab B."

25 12:12

26 which we have just looked at.

27

28 "Which refers to the statement of the 2 nd March and  
29 your correspondence dated 20th April at tab C."

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29

which is the acknowledgment of that?

A. Yes.

229 Q. He then says:

"On the 16th May 2017 I also corresponded with Garda Keogh copy attached tab D."

12:12

That is neither to you or from you. Then he refers to a discussion with Mr. Mulligan. Then he refers to a phone contact with Inspector McCarthy?

12:12

A. Yes.

230 Q. And then he refers to:

"Garda Keogh also stated that he first raised his issues as outlined in his statement to Chief Superintendent Scanlan, directly with Chief Superintendent McLoughlin HRM in June 2016, some 11 months ago."

12:12

If we continue down then. There is reference to a sergeant that we needn't be concerned with. Then he starts referring to the statement.

12:13

"One of the greatest issues of concern to me is the opening line of Garda Keogh's statement dated 27th March 2017: Following my making protected disclosures I encountered harassment, exclusion victimisation penalisation..."

12:13



1  
2 Etcetera, etcetera. Then he says:

3  
4 "I am not aware of the issued raised under the  
5 protected disclosures investigation. However, these 12:13  
6 matters are now raised in both statements and in his  
7 account Inspector McCarthy may welcome within protected  
8 disclosures policy. It is clear that his allegations  
9 are grounded in his current status as protected  
10 disclosure discloser. I am of the view that this could 12:13  
11 well be treated as effectively being a protected  
12 disclosure and it may well be that those allegations  
13 are included in the earlier disclosure."  
14

15 Then he refers to an incident about Garda A. 12:13

16 A. Yes.

17 231 Q. Then the next paragraph, if we scroll down:

18  
19 "The issues set out in the statement witnessed by Chief  
20 Superintendent Scanlan and the additional list set out 12:14  
21 in the unsigned statement also handed to Chief  
22 Superintendent Scanlan by Garda Keogh are most serious.  
23 The allegations could in some circumstances merit a  
24 criminal investigation and the allegations include an  
25 allegation against the Garda Commissioner by a 12:14  
26 protected discloser. I am of the firm view that the  
27 bullying policy is not wide enough to include the  
28 comprehensive investigation you decide. The decision  
29 in an earlier case (McCabe) by HRM."

1  
2 He footnotes that. He says:

3  
4 "I am reluctant to make any appointments in this matter  
5 as there may well be a conflict of interest in that I 12:14  
6 had prior involvement in a previous correspondence with  
7 Garda Keogh and if may well be the perception of the  
8 parties that I would not be impartial. Garda Keogh  
9 corresponded with me on the 15th April 2015 to which I  
10 issued a response." 12:14

11  
12 That was the request from Garda Keogh to meet him,  
13 which Assistant Commissioner Fanning didn't in the  
14 instance. He then concludes by saying:

15 12:15  
16 "You will recall in correspondence dated 20th May, tab  
17 E, that Chief Superintendent Roche was nominated to  
18 investigate the complaint under the bullying and  
19 harassment policy and was requested of me to formalise  
20 the appointment. You will also note that Garda Keogh 12:15  
21 informed Inspector McCarthy that he had first raised  
22 these issues directly with Chief Superintendent  
23 McLoughlin HR PD in June 2016 and that information then  
24 provided with as not made available to me as part of  
25 the decision-making process. 12:15

26  
27 I recommend a full investigation into these matters."  
28

29 Now, there is no tab including Garda Keogh's statement

1 of the 27th March there, the signed one, with different  
2 appendices. He does refer to a very small portion of  
3 the content. But, was that statement of the 27th  
4 received by you in the office with this?

5 A. No. Shall I say, at that particular date, that letter, 12:16  
6 I wasn't actually there, but notwithstanding, I didn't  
7 receive it until the 4th October.

8 232 Q. Well, I think you were asked in the course of your  
9 interview with the investigators about a number of  
10 reminders that issued from the assistant commissioner's 12:16  
11 office?

12 A. Yes.

13 233 Q. You recall that?

14 A. I do, I was very troubled about it.

15 234 Q. And there were reminders referred to in the interview 12:16  
16 and related to letters of the 16th June, the 17th  
17 August, the 1st September and the 22nd September, and  
18 they're at pages 6879, 6882, 6884 and 6889. Do you  
19 recall getting those reminders?

20 A. Well, curiously that summer had two -- 12:17

21 235 Q. Pardon?

22 A. That summer had two very significant issues for me that  
23 were going on and that I think would have been well in  
24 the public domain. The first half of my year was very  
25 taken up personally with the financial irregularities 12:17  
26 at the Garda college.

27 236 Q. Yes.

28 A. This led to a Public Accounts Committee hearing that  
29 occurred in May. Immediately after that I was away for

1 two weeks, during which that time Assistant  
2 Commissioner Fanning met with Alan Mulligan, who was my  
3 delegate, in my absence. I was doing some exams at the  
4 time. I returned in June for a further hearing at the  
5 Public Accounts Committee and it's in that interregnum 12:18  
6 that this correspondence that you've just opened  
7 arrived in my office.

8 237 Q. Yes.  
9 A. The second series of letters that came from Assistant  
10 Commissioner Fanning, there are two of them in an 12:18  
11 August window, which fall I think between the end of  
12 July and the 22nd August.

13 238 Q. Yes.  
14 A. In this period of time I was on annual leave and again  
15 doing exams. I did have no recollection, so when I saw 12:18  
16 these the dates from the investigators of the Tribunal  
17 I was troubled, because I had no knowledge of receiving  
18 this critical report, the statement of Garda Keogh,  
19 prior to October. And the suggestion was made to me,  
20 well, you had to have received it. And the short 12:19  
21 answer is, I didn't. Now, I was troubled by it as we  
22 went through this evidence and I said, I will need to  
23 see the records.

24 239 Q. Yes.  
25 A. And it's only, Mr. McGuinness, having read the 12:19  
26 transcripts of the Tribunal itself that I come to  
27 understand actually what had happened.

28 240 Q. Yes.  
29 A. But when I was interviewed I didn't have the benefit of

1                   that.

2   241   Q.    Yes. Well, I mean, in relation to the first reminder  
3                   on the 16th June, you appear to have replied on the  
4                   17th June?

5           A.    Yeah, I would have been there for that. 12:20

6   242   Q.    Pardon?

7           A.    I would have been in, at work at that date.

8   243   Q.    Yes. And you may recall that, your reply referred to  
9                   the fact that Chief Superintendent McLoughlin was away  
10                  for three weeks? 12:20

11          A.    Yes.

12   244   Q.    Isn't that right?

13          A.    This was with reference to a case conference that I  
14                  understand we were seeking to advance at that time.

15   245   Q.    Yes. But if we look at the first letter, 6879, this is 12:20  
16                  from Assistant Commissioner Fanning and that's the 16th  
17                  June, it says:

18

19                "I refer to my previous correspondence to you dated  
20                24th May 2017. 12:20

21

22                It is three weeks since my last correspondence for  
23                which I have received no acknowledgment. I believe  
24                that taking all factors into account that any delay  
25                should be kept to a minimum. 12:20

26

27                I am keen to revert to Garda Keogh with a decision with  
28                I believe to be straightforward.

29

1 I await your response."

2

3 That is dated 16th June. In terms of what was in that,  
4 he was recommending a full investigation, larger than a  
5 bullying and harassment? 12:21

6 A. Yes.

7 246 Q. Of a sort of Byrne-McGinn model essentially, is that  
8 what you took from that?

9 A. Well, I didn't, because the correspondence that I  
10 understand he had met with Alan Mulligan circa 22 May 12:21  
11 in my absence, and that the reference to larger at that  
12 point, he was talking about a Byrne/McGinn model  
13 certainly when we sat down for conversation on the 3rd  
14 October, he was very of the view that a Byrne-McGinn  
15 type model would work. The decision on a bullying and 12:21  
16 harassment policy rested with me. I had to make a  
17 determination whether or not the confines of the policy  
18 would be sufficient or whether there were matters in  
19 the statement, at which time I hadn't actually seen the  
20 full statement. 12:22

21 247 Q. Yes.

22 A. Were such that it needed a Byrne-McGinn type model or  
23 whether bullying and harassment could take care of it.  
24 The reality of the request that was made by Garda Keogh  
25 was, he was seeking for action under the policy. And 12:22  
26 it was Assistant Commissioner Fanning's respectful  
27 view, and I respect his experience, he sat in my chair  
28 before I did, that it required something larger.

29 248 Q. Yes.

1 A. I, in my letter back to Mr. Cullen, I think on or about  
2 the 13th October, made it clear I was going to  
3 deliberate on it and I told I think that I would take a  
4 month or take to the end of the month of October to  
5 determine whether or not it was a Byrne-McGinn or 12:22  
6 bullying and harassment type investigation. At the end  
7 of the day I made a determination that it was more  
8 suitable that it be a bullying and harassment type  
9 investigation and I did so because the policy provided  
10 a framework under which if there were, for example, 12:23  
11 elements of criminality, they could then be assessed  
12 and independently investigated. One did not preclude  
13 the other.

14 249 Q. Yes. And I mean, it is easy for us to look back and  
15 say but it seems clear that you didn't know what was in 12:23  
16 Garda Keogh's original protected disclosures or what  
17 allegations, criminal or otherwise, were being enquired  
18 into?

19 A. Correct.

20 250 Q. And it would appear that Assistant Commissioner Fanning 12:23  
21 didn't either, because he was not -- I think he didn't  
22 have knowledge of what was in the allegations that were  
23 being investigated?

24 A. But, Mr. McGuinness, he had the benefit of the  
25 statement of the 27th March, which I didn't. 12:23

26 251 Q. Just in relation to that, having received his report,  
27 as it were, if we could call it that, of the 24th May,  
28 I am just wondering why you mightn't have written back  
29 to him saying, look, you're referring to the statement

1 of the 27th, please send me a copy of it.

2 A. Well I wasn't there. The 24th March, I went looking at  
3 that point in time to see had we received the documents  
4 and we hadn't. Curiously, I get these follow up  
5 e-mails or letters from Assistant Commissioner Fanning 12:24  
6 through the summer and we're still awaiting the Scanlan  
7 report.

8 252 Q. Well, perhaps we will just look at them in sequence.  
9 If we go to your reply to the letter of the 16th, which  
10 is on the 17th, 10057. If we scroll down there. 12:24  
11

12 "I act to acknowledge receipt of your correspondence.  
13

14 Please advise that Chief Superintendent McLoughlin is  
15 on annual leave for three weeks and on his return I 12:25  
16 will arrange a meeting to discuss issues arising in  
17 this matter."

18 A. Yes.

19 253 Q. Obviously a meeting was what was being sought by the  
20 Commissioner at case conference, you had in a sense 12:25  
21 postponed it earlier because you hadn't got Scanlan's  
22 statement?

23 A. He had asked Alan Mulligan in my absence to make  
24 arrangements to have a conference.

25 254 Q. Could we look at the next letter of the 17th August, 12:25  
26 6882?  
27

28 "I am directed by assistant commissioner Eastern Region  
29 to refer to above and previous correspondence dated



1                   24th May and 16th June.

2

3                   Assistant commissioner enquires as to present position

4                   regarding this matter please. "

5 12:26

6                   Do you recall

7           A.    I wasn't there at the time, I was absent at that time.

8   255   Q.    Okay. 11th September, 6884?

9           A.    Yes.

10   256   Q.   He refers to the previous letters, refers to your 12:26

11                   previous correspondence, and then he says:

12

13                   "You will recall my correspondence dated 24th May that

14                   I recommended a full investigation into these matters

15                   and Lordship that any delay should be kept to a 12:26

16                   minimum.

17

18                   I would appreciate your response to these matters,

19                   which are ongoing sometime. "

20           A.    Yes. I think there is a further letter later in 12:26

21                   September that requested either we were going to have

22                   this case conference -- Alan -- Mr. Mulligan had sought

23                   to bring the various matters together on a number of

24                   occasions through the summer and I think he references

25                   illness and absence and certainly my absence would have 12:27

26                   been part of it, as to why that conference didn't take

27                   place.

28   257   Q.    Yes.

29           A.    So I was reading this correspondence in that context.

1           There is a letter later in September I understand from  
2           Fintan, from Assistant Commissioner Fanning, which  
3           arrives at about the same time that we had received a  
4           letter from Mr. Cullen. Now, a couple of things that  
5           need to be said about this particular correspondence. 12:27  
6           It's very clear at this point in time that Garda Keogh  
7           is to be considered in the prism of protected  
8           disclosure. The reference in the earlier letter to  
9           protected disclosure I think is really important. So  
10          that, matters from the time that Chief Superintendent 12:27  
11          McLoughlin identifies himself as the protected  
12          disclosures manager are dealt with in 2016 and the  
13          early part of '17 almost exclusively by him. This  
14          correspondence from Assistant Commissioner Fanning  
15          breaks that loop to some degree in the summer of 2017. 12:28  
16 258 Q.   well, I suppose he is reacting to what he has read in  
17           the statement on one view?  
18          A.   Yes.  
19 259 Q.   That he is concerned that it is quite a different bag  
20           of issues? 12:28  
21          A.   But it would still fit under the umbrella of a  
22           protected disclosure, though he sees it as broader than  
23           a bullying and harassment issue.  
24 260 Q.   Yes. Perhaps we will look at this letter of the 22/9  
25           at 6889? 12:28  
26          A.   Yes.  
27 261 Q.   He refers to the previous correspondence and then he  
28           copies you with a letter from Mr. Cullen's office?  
29          A.   Yes.

1 262 Q. Together with a letter from Garda Keogh?  
2 A. Yes.  
3 263 Q. And then he says:  
4  
5 "Assistant commissioner has directed me to acknowledge 12:29  
6 receipt of letter from John Gerard Cullen. Assistant  
7 commissioner Eastern Region is awaiting confirmation  
8 from your of a meeting to discuss this matter."  
9 A. Correct.  
10 264 Q. You yourself though had received from Garda Keogh in 12:29  
11 the summer, earlier, isn't that right?  
12 A. I had, in July.  
13 265 Q. Yes. Could we look at that page?  
14 A. Yeah.  
15 266 Q. volume 35? 12:29  
16 A. That's the one, there's no response given to that, I  
17 think.  
18 267 Q. No response given to this?  
19 A. No, to the letter from Keogh in July, from Mr. Cullen  
20 in July. 12:29  
21 268 Q. Right. Well perhaps we'd look at the letter that was  
22 sent to you, 10064. That's dated 12/7. They're  
23 enclosing a letter, a manuscript from Garda Keogh dated  
24 the 9th July.  
25 12:30  
26 "This letter (which speaks for itself) contains an  
27 initial garda attachment."  
28  
29 That is a SAMS record

1  
2 "Which records his current absence from work as being  
3 due to mental health issues.  
4

5 In relation to this latter matter, Garda Keogh was 12:30  
6 originally incorrectly recorded by An Garda Síochána as  
7 being somebody sent from work due to flu instead of  
8 work related stress. This flu was clearly contradicted  
9 by his doctor's certificates which restated work  
10 related stress. 12:30  
11

12 An effect of such early misrepresentation of his  
13 disability was firstly a failure to initiate any timely  
14 investigation into the causation of such work related  
15 stress. A second consequence was that he was not, for 12:30  
16 a substantial period of time, given his basic rate of  
17 pay. We understand that both an investigation and the  
18 payment of wages are mandatory in accordance with long  
19 established custom and practice in respect of work  
20 related stress. We enclose here with a letter from the 12:31  
21 general practitioner dated 31st January 2017 confirming  
22 for the avoidance of doubt the diagnose of work related  
23 stress.  
24

25 It now appears that instead of rectifying the official 12:31  
26 record from flu to work related stress in June 2016  
27 there has been a further error in categorisation by An  
28 Garda Síochána such that he is now currently being  
29 recorded as being absent from work for mental health

1 reasons. A further consequence of this latest official  
2 error is that there has again been a further  
3 prolongation of a failure by An Garda Síochána to  
4 initiate any investigation into the causation of such  
5 work related stress together with a denial to Garda 12:31  
6 Keogh of payment of wages at the full rate of pay.  
7 This latter is ordinarily paid to gardaí who are absent  
8 from work due to work related stress.

9  
10 In all the circumstances we would be grateful if you 12:31  
11 might furnish all documentation relating to decisions  
12 taken by An Garda Síochána to incorrectly Garda Keogh  
13 firstly as being absent with the flu (contradicting the  
14 regulation notice from his physicians of work related  
15 stress) and secondly, being absent with mental health 12:32  
16 issues thereby further preventing any investigation and  
17 the payment of wages at a full rate. We should also be  
18 grateful if you might kindly furnish us with all  
19 documentation which relates to either the delayed,  
20 partial or full denial of payment of full wages in this 12:32  
21 case and to the failure to investigate such serious  
22 matters of harassment for over a year now."

23  
24 Then it refers to the Data Protection Act etcetera.  
25 But Garda Keogh's letters that came with that is at 12:32  
26 10066. And again, that's addressed directly to you.

27  
28 "I am writing in relation to my sick record, Garda  
29 Nicholas Keogh. I am a garda that had made a protected

1 disclosure. I was forced to go out sick on 26/12/15  
2 can work related stress. I was curiously being  
3 recorded sick with the flu.  
4  
5 I met with Chief Superintendent McLoughlin on the 3rd 12:33  
6 June '16 who undertook..."  
7  
8 If we scroll down the page Mr. Kavanagh  
9  
10 "...to address my sick record and did so. 12:33  
11  
12 However, under Freedom of Information request I  
13 received my absence report (attached) where I am now  
14 marked out sick with mental health despite my sick  
15 certs stating work related stress. 12:33  
16  
17 I now understand that your office may not be aware of  
18 same.  
19  
20 For your information please and yours sincerely. " 12:33  
21 A. Yeah.  
22 269 Q. Now, I think you received those letters, isn't that  
23 correct?  
24 A. I did, after I returned.  
25 270 Q. Yes. And I think -- 12:33  
26 A. Can I just --  
27 271 Q. A draft was prepared for you to send out in reply in  
28 the middle of August, is that correct?  
29 A. That's correct. Mr. McGuinness, can I just deal with

1 this, because I am very conscious of the realities of  
2 this. The Chairman mentioned SAMS earlier. This is a  
3 fairly rigid system in which there are a series of drop  
4 down menus for the categorisation of absence and for  
5 dealing with general causes associated with people 12:34  
6 being sick or absent and there isn't, certainly there  
7 wasn't then, any categorisation specifically for work  
8 related stress. The nearest approximation of it, and  
9 you know, I am very sensitive to people's concerned  
10 around labels and being labelled in a mental health 12:34  
11 context, and indeed, you know, An Garda Síochána has  
12 tried to deal with building support systems to support  
13 people with mental health. Chief McLoughlin has been  
14 in the vanguard of that. But I could understand the  
15 distress this caused and it is a function of the drop 12:34  
16 down menus on the SAMS system and perhaps Chief  
17 McLoughlin should have gone back and explained we don't  
18 have specific label that says work related stress and  
19 clarify the point before it came a clear bugbear to  
20 Garda Keogh and for that I am apologetic, but it is the 12:35  
21 reality.

22 272 Q. So may we take it from that, that this wasn't sort of  
23 an individual fault or omission directed at Garda Keogh  
24 as such?

25 A. No. 12:35

26 273 Q. But just simply the way the system was?

27 A. That's an excellent and important observation,  
28 Mr. McGuinness. There would have been other various  
29 forms of condition that would have been dealt with

1 under the general label of mental health. And that's  
2 what the printout clearly said.

3 274 Q. Yes. In any event, we will see in due course a reply  
4 ultimately issues but I think the office and the sick  
5 pay section had prepared a draft for you and you 12:36  
6 probably saw that on your return from holidays but  
7 another letter had come in from Mr. Cullen's office on  
8 the 17th August directed to a number of people. If we  
9 look at that, 10094. If we just scroll down the page  
10 there, the second paragraph there it says: 12:36

11  
12 "We now understand Garda Keogh's express complaints of  
13 harassment, bullying, detrimental treatment and his  
14 formal invocation of the Garda bullying and grievance  
15 procedures have been suspended. Garda Keogh has been 12:37  
16 advised in fact that the whereabouts (in An Garda  
17 Síochána) of his formal complaints are unknown. His  
18 complaints have effectively been clandestinely secreted  
19 and covered up."

20  
21 Could I just ask you to comment on that from your  
22 knowledge or perspective? 12:37

23 A. I think I addressed this question, Mr. McGuinness, when  
24 the Tribunal investigators asked me was, I think, the  
25 complaint lost. And at no point was the complaint lost 12:37  
26 or was there -- I think more particularly of interest,  
27 to the Tribunal Chairman, there was no reason for it to  
28 be lost. It simply wasn't transmitted to me as I had  
29 expected it would be in a timely fashion. But there



1 was no clandestine plan to facilitate the progression  
2 of Pat Murray from superintendent to chief  
3 superintendent that I was aware of. I certainly had no  
4 hand, act or part, as I described it in my statement,  
5 in that.

12:38

6 275 Q. This letter goes on to repeat many of the complaints  
7 which have been made in the two previous letters that  
8 we have just seen and then at the bottom of the page it  
9 continues on to make that explicit acquisition, as it  
10 were.

12:38

11  
12 "It appears that on the one hand for over 18 months any  
13 investigation into the grave and systematic bullying  
14 has been initially camouflaged, secreted and paced on  
15 hold while on the other hand the promotion of  
16 Superintendent Murray to chief superintendent has been  
17 covertly preferred, protected from the inside and  
18 furtively advanced.

12:38

19  
20 We now call on you again to investigate the failure of  
21 the Commissioner of An Garda Síochána to carry out any  
22 timely investigation into the causation of work related  
23 stress to the prejudice of Garda Keogh and the favour  
24 of Superintendent Murray."

12:38

25  
26 Then it concludes as writ there.

12:39

27  
28 Just in terms of Superintendent Murray, I think you  
29 were asked in interview what your knowledge of

1 Superintendent Murray was?

2 A. Correct. Mr. McGuinness, I had not met Superintendent  
3 Murray, I am sure we were at large meetings together,  
4 where he was in one part of the room and I was in  
5 another. I think the first time I shook hands with 12:39  
6 Chief Superintendent Pat Murray was when he joined my  
7 staff as the head of the Garda College, after his  
8 promotion. I wouldn't have been able to recognise him  
9 prior to that.

10 276 Q. You had no personal or professional dealings with him 12:39  
11 at all?

12 A. No, none.

13 277 Q. Prior to or meetings with him prior to him coming on to  
14 the Templemore staff?

15 A. No. 12:39

16 278 Q. Had you any knowledge as to whether he was seeking  
17 promotion, what steps he was taking in relation to  
18 promotion?

19 A. No, I hadn't, and you know, I need to be very clear  
20 about this, the competitions office sits within Human 12:40  
21 Resources, but since the advent of the Policing  
22 Authority, the competitions for superintendent and  
23 chief superintendent, assistant commissioner etcetera,  
24 were managed exclusively and properly by the Policing  
25 Authority. And so, any candidate who wished to apply 12:40  
26 for such positions would do so and send their  
27 application forward in the normal way to the Policing  
28 Authority. So I would have no idea who the candidate  
29 slate was, other than you know, water cooler

1 conversation about Diarmuid McGuinness has applied and  
2 John Barrett has applied, that would have been the  
3 extent of it, would I have had no idea who were the  
4 applicants.

5 279 Q. Okay. One of the assertions in the letter earlier was 12:40  
6 that Garda Keogh had been advised that this has  
7 happened his complaint. Had you any conversation with  
8 Garda Keogh at that point in time?

9 A. No. I met Garda Keogh only once and that was I think  
10 December 17th, 2017. And we met in Portlaoise. 12:41

11 280 Q. Yes.

12 A. I had no knowledge of Garda Keogh's complaint in the  
13 round until I got that comprehensive document in  
14 October.

15 281 Q. All right. Well, perhaps we will just scroll up the 12:41  
16 page here, just to see the top of this letter.

17 A. Clearly I have --

18 282 Q. It was sent to quite a number of people?

19 A. Yes.

20 283 Q. If we just go back to 10094, and go back up to 93 then. 12:41  
21 So it's sent to first of all the Minister, the  
22 Commissioner, the Policing Authority, and then the  
23 fourth person is Mr. Ó Cualáin?

24 A. I think I am cc'd, Mr. McGuinness, at the end.

25 284 Q. That's the point, you're cc'd on it? 12:42  
26 A. Yes.

27 285 Q. It doesn't appear from the documents I have seen that  
28 you have made any reply to that directly at that  
29 particular time?

1 A. Not at that time, no.

2 286 Q. But I think within the month of September, you received  
3 correspondence from Mr. Cullen's office?

4 A. Yes.

5 287 Q. Dated 25th September 2017? 12:42

6 A. That's correct.

7 288 Q. If we look at that, it's volume 35, 10100. I think in  
8 fairness to yourself, I think you said in your  
9 interview that this was the first time when you  
10 received the statement. So you actually got it towards 12:43  
11 the last week in September, is that correct?

12 A. Yeah. Can I make two points?

13 289 Q. Yes.

14 A. They are contextual but I think they are relevant. The  
15 period August/September '17 was a tumultuous time for 12:43  
16 the organisation, and it was clear to me from a number  
17 of -- I returned from vacation at the back end of  
18 August and it was clear to me that this matter, which  
19 was, as far as I was concerned, a protected disclosure  
20 being dealt with by the protected disclosure manager 12:43  
21 from the time he identified himself as such to Garda  
22 Keogh, this needed assistance from me, the  
23 correspondence was clearly at a high pitch, there was a  
24 series of very visible accusations now being addressed  
25 to me by Garda Keogh and his legal team that needed my 12:44  
26 engagement directly.

27 290 Q. Yes.

28 A. I think there's a preponderance of correspondence right  
29 across this matter. Somewhere in and around the last

1 week of September, beginning of October, I began to  
2 tell Mr. Mulligan and Mr. McLoughlin that we were going  
3 to deal with this. On the 2nd -- I asked people to  
4 prepare for a case conference that was called by me on  
5 the 3rd October. And on the 2nd October, in 12:45  
6 preparation for that, Chief Superintendent McLoughlin  
7 and I telephoned Mr. Cullen and had a conversation  
8 which was in part to, if you like, put a voice and a  
9 dialogue around these matters, to say we have received  
10 your correspondence and we are going to take some 12:45  
11 action on foot of it. And it's, I suppose, an a  
12 consequence of the various elements that had come about  
13 throughout the summer and I think what the media were  
14 making comment on and we had a change of Commissioner's  
15 in the office, I think Ms. O'Sullivan had gone on 12:45  
16 extended vacation, and this matter was crying out to be  
17 dealt with. So that conversation on the 2nd October  
18 informed the meeting of the 3rd October and on the 4th  
19 October we take delivery of the statement dated 27th  
20 March. 12:46

21 291 Q. That is what I am suggesting here, that you actually  
22 got it with this letter?

23 A. Yes, yeah.

24 292 Q. You were I think resent it or sent it by Assistant  
25 Commissioner Fanning on the 4th? 12:46

26 A. Yes.

27 293 Q. Isn't that right?

28 A. Yeah.

29 294 Q. As well. But on the same date then, I think Chief

1           McLoughlin gave you a brief update on matters that were  
2           perhaps pertinent to your discussion and on the 25th he  
3           sent you an e-mail. If we look at 3549. Perhaps it is  
4           3548. I may have the pagination wrong. Bear with me.  
5           Yes. This seems to reflect a discussion where he was  
6           able to get confirmation that the PD had been  
7           investigated, that the file had gone to the DPP who  
8           advised no prosecution. He says:

12:46

10          "I understand that statement not sure if it was signed  
11          was made by Garda Keogh in May under B&H policy but I  
12          have not seen it.

12:47

14          I have written on a number of occasions for work  
15          related stress complaint to be investigated. It may  
16          form part of a B&H complaint but have I no update."

12:47

18          You received an e-mail then from Assistant Commissioner  
19          Fanning on the 26th, if we look at page 6891. He  
20          refers to the earlier e-mail and he is looking to have  
21          a date confirmed. I think you got back to him that  
22          day, if we look at 6892, and you are proposing in the  
23          heading there, meeting Tuesday, 3rd October 2017 at 12  
24          as a matter of urgency

12:47

25          A. Yes.

12:48

26   295   Q. The phone call that was had with Mr. Cullen, you were  
27          speaking to Mr. Cullen directly?

28          A. That's correct. I had him on a speaker phone in the  
29          conference table with Chief McLoughlin present.

1 296 Q. Yes. And Chief McLoughlin said the purpose of it was  
2 to enable you to be in a position to bring any issues  
3 raised by Mr. Cullen to the conference?

4 A. Yes and to give Mr. Cullen a certain amount of  
5 assurance that there was an effort being made. Given 12:48  
6 the correspondence of the previous number of summer  
7 months, I felt we needed to directly engaged.

8 297 Q. Yes. The meeting took place on the 3rd and there are  
9 typed minutes, a record made by I think Chief  
10 McLoughlin. If we look at Volume 36, 10118. You have 12:49  
11 seen these in the documents, I take it?

12 A. I have.

13 298 Q. I don't want to go all the way through it, but it  
14 records the assistant commissioner outlining his  
15 position there. 12:49

16 A. Yes.

17 299 Q. About the need for a bigger investigation.  
18 CHAIRMAN: I think we have been through this  
19 previously, isn't that right?

20 MR. McGUI NNESS: This witness hasn't commented on it 12:49  
21 but I don't want to open it in its entirety.

22 CHAIRMAN: No. If anybody wants to question about it,  
23 then they are obviously free to do so.

24 MR. McGUI NNESS: Yes.

25 300 Q. There was a debate about what scope of inquiry might 12:49  
26 be --

27 A. Correct.

28 301 Q. -- appropriate and perhaps who might do it as well.  
29 Was there a discussion of Assistant Commissioner

1 McPartlin being appointed at that time?

2 A. Not at that stage, no.

3 302 Q. In any event, an action sheet was agreed or issued on  
4 foot of the meeting, if which look at page 3551. And  
5 you were to do the first two actions, isn't that right? 12:50

6 A. Mm-hmm. Yes.

7 303 Q. I think Assistant Commissioner Fanning, it had been  
8 agreed that he would liaise with Garda Keogh about what  
9 was going to happen, and what he would be informed of  
10 as well, isn't that correct? 12:50

11 A. That's correct. One of the things that I think  
12 Assistant Commissioner Fanning deserves credit for and  
13 to some respects it created a problem was, Assistant  
14 Commissioner Fanning and Inspector McCarthy stayed in  
15 close touch with Garda Keogh. Now, I think they were 12:50  
16 giving him an understanding that we were in possession  
17 of a document, which we were not in that period of  
18 April, May, June etcetera. That may have created the  
19 commentary that came later in Mr. Cullen's letters.  
20 But to be fair, there's an obligation on a -- there is 12:51  
21 a right of a protected discloser to be kept informed.  
22 I think that is something that would normally fall to  
23 the protected disclosure manager to do.

24 304 Q. Yes. You did receive an e-mail on the 4th October, as  
25 you have referred to, from Assistant Commissioner 12:51  
26 Fanning in relation to the statement. Perhaps we will  
27 just look at that, page 10104.

28 A. Yes.

29 305 Q. It is Inspector McCarthy directed by assistant



1 commissioner Eastern Region to refer to a meeting of  
2 yesterday and to forward copies of statements taken by  
3 Garda Nick Keogh on 22nd March and hand-delivered to  
4 HRM on 24th May 2017 per file from Assistant  
5 Commissioner Fanning dated 24th May 2017, please.

12:52

6  
7 So you seem to be certainly getting it there and it  
8 just seems to be --

9 A. But the suggestion that it is, you know, per file of  
10 Assistant Commissioner Fanning 24 May, I think  
11 Mr. Mulligan and I are at one, neither of us had seen  
12 it to this date from Assistant Commissioner Fanning.

12:52

13 306 Q. There is a notation on that, I think that is  
14 Ms. Hassett's reference?

15 A. Yes.

12:52

16 307 Q. "Case conference Mr. Barrett to appoint investigator  
17 issues raised by Garda Keogh broader than bullying and  
18 harassment."

19 A. Bullying and harassment.

20 308 Q. I think Assistant Commissioner Fanning wrote to you  
21 then on the 6th October, if we look at page 10108, four  
22 pages down from that, that it was now going to be your  
23 responsibility to be dealing with Garda Keogh at that  
24 stage, that's the 6th October. He is referring to the  
25 meeting. He is acknowledging the e-mail for actions  
26 arising. In the last line he informs you that:

12:52

12:53

27  
28 "Garda Keogh had been informed by Inspector McCarthy  
29 that the actions arising in all future correspondence

1 with Garda Keogh will be from executive director Human  
2 Resources and People Development and that an assistant  
3 commissioner would be appointed to investigate these  
4 matters."

5 A. Yeah. 12:53

6 309 Q. Now, I think you were being prompted by Sergeant  
7 Brodrick, is it, following up on the action sheets to  
8 appoint the assistant commissioner, and I think you  
9 were contemplating Assistant Commissioner Barry O'Brien  
10 at one stage, is that right? 12:54

11 A. That's right.

12 310 Q. Had you discussed that with him, for instance, or do  
13 you clear these things in advance?

14 A. Well, it's an informal engagement because you are  
15 dealing with people who are extraordinarily busy and 12:54  
16 this arose with Assistant Commissioner McPartlin as  
17 well. Ultimately, I think probably a month later than  
18 I had wanted to, I think somewhere around end of  
19 November, I make a decision that the matter is going to  
20 be dealt with under the bullying and harassment policy 12:54  
21 and it's going to be dealt with by Assistant  
22 Commissioner Finn. There was a suggestion, and this  
23 was considered right the way up to a meeting that was  
24 convened by Joe Nugent on the 23rd October, there was  
25 the consideration of whether or not bullying and 12:55  
26 harassment should be one part and all other parts  
27 should be hived off into a separate investigation.  
28 Ultimately I determined that there would be an  
29 investigation, as was requested by Garda Keogh, under

1 the B&H policy and the policy had a framework. I think  
2 my reasons for this decision are important. It had a  
3 framework which was respectful of the person seeking to  
4 invoke the policy and it provided protections for those  
5 who may be impugned by the matters to be investigated. 12:55

6 311 Q. Yes. Well, you had written directly to Mr. Cullen on  
7 the 13th October, yourself, and perhaps we would look  
8 at the letter at 10121. This is replying to quite a  
9 number of different issues, and in particular it  
10 follows the sequence of an eight point handwritten 12:56  
11 letter where Garda Keogh had enumerated concerns?

12 A. Yes.

13 312 Q. Which were copied by Mr. Cullen to a number of parties?

14 A. Correct.

15 313 Q. This came to you then to reply in a compendious way to 12:56  
16 each of those eight points.

17 A. Yes.

18 314 Q. The notion seems to have been reached that, as  
19 expressed in two of the letters, that his pay will be  
20 stopping? 12:56

21 A. Yes.

22 315 Q. And your first paragraph deals with that, that  
23 assurance, that there would be a continuous of his  
24 basic pay beyond that date, no plan to change that at  
25 this time. Had there been some reconsideration of the 12:56  
26 pay issue?

27 A. To be honest, I don't know what that reconsideration  
28 was, but it seems to me that in light of the  
29 discussions we had on the 2nd October on the telephone,

1 in the correspondence that I received, that there was  
2 nothing that should interfere with the continuation of  
3 pay pending the actioning of the items agreed at the  
4 meeting.

5 316 Q. Okay. We will just see the next thing that you said to 12:57  
6 him, the second matter, if we go down the page onto the  
7 next page there.

8  
9 "Secondly, the matters raised by Garda Keogh under the  
10 terms of the protected disclosure Act continue to be 12:57  
11 reviewed."

12  
13 You say:

14  
15 "Last week at this office a series of decisions were 12:57  
16 taken to action key elements of our telephone cushion  
17 with you."

18  
19 You address then the eight issues as set out in that  
20 letter, as follows: 12:57

21 A. Mm-hmm.

22 317 Q. You say:

23  
24 "I have undertaken the specific action of assessing how  
25 best to proceed with respect to item 1. I expect to 12:58  
26 have reached a conclusion on this before the end of  
27 October and it will be communicated to you directly. I  
28 will set out the process to be followed and the  
29 personnel assigned."

1 A. Yes.

2 318 Q. I mean, there is an issue of delay which Garda Keogh is  
3 raising with the Tribunal in the context of the  
4 bullying and harassment investigation not having been  
5 initiated and latterly progressed quickly. At this  
6 stage it is almost a year since he has confirmed to  
7 Chief Superintendent McLoughlin that he is evoking it.  
8 Just as a process manager, would you regard it as  
9 unsatisfactory to have a delay --

10           A.    I would.

11 319 Q. -- of that period. It related to status or the number  
12 of issues he was raising or where they went, what would  
13 you like to say about that?

14 A. I think the delay is unsatisfactory. I think you have  
15 the anatomy of the serial events that took place from  
16 the end of '16 through to this juncture in 2017 well  
17 enumerated in your questioning of me. So you can see  
18 what the various segments are. In honesty, the  
19 bullying and harassment policy itself gives timelines  
20 as to when an entire bullying and harassment  
21 investigation should be concluded, and they are tight  
22 timelines. I think the criminal investigation into the  
23 matters raised by Garda Keogh took three and a half  
24 years. I think that the actual investigation conducted  
25 by Assistant Commissioner Finn took something over a  
26 year. So these are lengthy periods of time. And you  
27 know, we appointed John Scanlan and agreed on his  
28 position somewhere in January 2017. The statement  
29 dated 27th March reached me six months later.

1 320 Q. Yes. I raise the issue because the Chairman is  
2 entitled to make such recommendations as he may think  
3 fit and I am not in any way suggesting he is going to  
4 make any recommendation, that is a matter for the  
5 future. But it would seem that a part of the process 13:00  
6 contributing to delay might include issues that various  
7 sections at different stages didn't know what had  
8 happened with the disclosures and the investigation  
9 into disclosures. Is that an inbuilt problem by reason  
10 of the issue? 13:00

11 A. I think the actions of and the way the policy on the  
12 protected disclosures is set up is designed to have a  
13 protected disclosure manager to shepherd these matters  
14 that we talked about and to ensure that there is, you  
15 know, as I said, a place at which disclosures made 13:01  
16 internally can be received, matters can be  
17 investigated, communication with the discloser can be  
18 managed and managed confidentially and resolved  
19 ultimately if that's possible. So the intention and  
20 the policy there, it didn't in this case and this is 13:01  
21 under the prism of a protected disclosure, this is  
22 suddenly in my hands and I'm not the protected  
23 disclosure manager, you know, so it didn't work  
24 particularly well, is the point.

25 321 Q. But I suppose I am asking you perhaps more directly 13:01  
26 then, are the delays or the lack of knowledge or the  
27 problems that can beset an issue such as this, are they  
28 related to the non-disclosure of the person making the  
29 disclosure, a lack of knowledge of others as to what is

1           being investigated etcetera?

2           A.    That can be a part of it, certainly.  These are complex

3           matters, I think Chief McLoughlin has made that point,

4           and sometimes because of the confidentiality needing to

5           be maintained it hampers active engagement with other 13:02

6           parties.  I think dealing with matters in serial as

7           opposed to parallel certainly tends to extend time.

8   322   Q.    You refer to the length of investigations as well,

9           which is a feature of all of the investigations to some

10          greater or lesser degree.  You may not have any 13:02

11          knowledge of this, but is it perhaps a fault, if it is

12          a fault, that investigators have other jobs to do, in

13          the sense that they're not dedicated full-time to the

14          carrying out of these specific tasks, they have to

15          carry their additional other daily weekly monthly 13:02

16          burden?

17          A.    I can't really make any useful comment other than to

18          say specialists who have specialisms tend to be able to

19          focus more so than generalists who have many irons in

20          the fire.  That is a truism not just for the guards but 13:03

21          for any place I have ever worked in this country,

22          Europe and America, it's no different.

23   323   Q.    All right.  In point 2 there you say:

24

25          "Wi th respect to the bullying and harassment complai nt 13:03

26          I am advised that there has been extensive

27          correspondence from Garda HRM section seeking

28          clari fication from Garda Keogh as to who speci fi cally

29          he was naming as the subject of hi s complai nt.  We are

1 now aware from both the correspondence and the  
2 telephone conversation who that individual is. We will  
3 proceed accordingly."

4

5 Had Garda Keogh or Mr. Cullen named Superintendent 13:03  
6 Murray and Superintendent Murray only?

7 A. No.

8 324 Q. In the phone call?

9 A. There is an error in that paragraph. That should  
10 really have referred to the materials received but one 13:03  
11 of the issues that we had all the while in the absence  
12 of Scanlan's report was specificity of the very two  
13 questions that we were being asked to clarify through  
14 the efforts of Chief Superintendent Scanlan. Who is it  
15 that is being named, and that's a list of names, your 13:04  
16 point, and what are their ranks, so that we can make a  
17 determination to the level of the bullying and  
18 harassment investigator.

19 325 Q. Yes. But you seem to be suggesting that there is only  
20 one person? 13:04

21 A. That's an error on my behalf.

22 326 Q. Paragraph 3 then:

23

24 "The matters relating to how the Policing Authority  
25 proceed in circumstances outlined. I have today 13:04  
26 written to the CEO of the Policing Authority and raised  
27 that question with them. My letter is attached."

28 A. Yes.

29 327 Q. That is I think your letter of the 13th --



1 A. Yes.

2 328 Q. -- October, written on the same date?

3 A. Yes.

4 329 Q. And obviously written prior to writing this letter on  
5 the same date? 13:05

6 A. Yes. I would have been conscious from reading the  
7 correspondence, Mr. McGuinness, that there was a very  
8 clear concern being articulated that there was some  
9 silence or some conspiracy or some actions taken or not  
10 taken which would suggest that Garda Keogh was very 13:05  
11 uncomfortable with the process. For transparency and  
12 in the light of the Garda Code of ethics I wanted to  
13 demonstrate that I was alerting, personally alerting  
14 the Policing Authority, even though I was conscious  
15 that in prior correspondence Mr. Cullen had copied 13:05  
16 correspondence to the Chairperson of the Policing  
17 Authority, so I think they were already well on notice  
18 of the concerns of Garda Keogh, but for the purposes of  
19 making it clear that, you know, we have nothing to  
20 hide, there is absolutely no issue with putting them on 13:06  
21 notice formally from my office, I did so and I copied  
22 that letter to Mr. Cullen.

23 330 Q. Yes. You were asked in interview by the investigators  
24 whether you had informed the Commissioner's office that  
25 you had written the letter to Ms. Hall of the Policing 13:06  
26 Authority?

27 A. I couldn't recall.

28 331 Q. You couldn't recall?

29 A. I don't have a copy. I see it in -- I was given some

1 materials from --

2 332 Q. Yes, but you in fact cc'd had letter to Chief  
3 Superintendent McLoughlin, isn't that correct?

4 A. That's correct.

5 333 Q. So it's not as if you have done it in a clandestine 13:06  
6 way?

7 A. No, I am conscious that Chief McLoughlin would a direct  
8 reporting line to the Commissioner as protected  
9 disclosures manager for Garda Keogh.

10 334 Q. And certainly your explanation that you gave to the 13:06  
11 investigators was that you felt you had an obligation  
12 to ensure that all relevant information available to  
13 you was put before the Policing Authority?

14 A. Correct.

15 335 Q. And it wasn't a secret, in fact, it was out in the 13:07  
16 public domain?

17 A. Right.

18 336 Q. You probably weren't aware the Commissioner's office  
19 had written the day before?

20 A. No. 13:07

21 337 Q. In relation to -- been written to the day before, on  
22 the 12th, about matters that were in the public domain?

23 A. The guiding principle for me was more the code of  
24 ethics which demands that, you know, we do what we can  
25 to make matters transparent and plain and that was I 13:07  
26 think an appropriate response in the context of all the  
27 issues that had been put to us.

28 338 Q. Yes. At paragraph 4 you say:  
29

1 "I have written to the office of the Garda Keogh and  
2 the to office of head of legal services to address the  
3 errs set out. This office has had no sight of the  
4 correspondence to date and we have now requested. Our  
5 expectation is that it will form part of the  
6 comprehensive file which will be made available to the  
7 individual or team to be appointed under 1 above to  
8 review matters.

13:07

9  
10 5. In the matter.

13:08

11  
12 6. Our intention is that matters to be established  
13 under 1 above will address the issues comprehensively  
14 and diminish the need for intervention of the  
15 Tánaiste."

13:08

16  
17 There was a request for an outside investigator?

18 A. Correct.

19 339 Q. "7. I wish to assure you and your client that this  
20 office that those charged with the management of  
21 protected disclosure report. Huge confidence in the  
22 professionalism of the office holder Chief  
23 Superintendent McLoughlin has met with Garda Keogh in  
24 his capacity as protected disclosure manager and this  
25 relationship continues in effect.

13:08

13:08

26  
27 A number of points to conclude and to point a way  
28 forward.

1 Firstly, we are submitted to addressing the issues put  
2 forth by Garda Keogh, your client. You can be sure  
3 that I will remain available to you and the commitment  
4 to action given will be actioned."

13:08

5  
6 If we scroll down the page, Mr. Kavanagh, thank you.

7  
8 "Secondly, at a meeting at this office last week, it  
9 was agreed that the regular contact from the Employee  
10 Assistance Service would be supplemented by a visit, as  
11 has happened in the past, to your client from Inspector  
12 McCarthy. This will take place shortly.

13:08

13  
14 Finally this, office has now assumed coordinative  
15 responsibility for matters at issue and we will seek to  
16 progress the issue transparently and with all due  
17 Élan."

13:09

18  
19 That is dated 13th October. Chairman, I think the  
20 witness has been in the witness box for over two and a  
21 half hours, it might be an appropriate time to take a  
22 short break.

13:09

23 CHAIRMAN: Yes. I think Mr. Barnes notified the  
24 parties that we want to avoid a situation where people  
25 have to go through an elaborate checking, so that we  
26 had proposed a shorter lunch break of half an hour  
27 rather than an hour and I hope that that message got  
28 through to everybody so they could bring themselves a  
29 sandwich or whatever it was that they needed, so as to

13:09

1 avoid starvation afterwards. So the plan would be,  
2 what time is it now, we will sit in half an hour's time  
3 and we will proceed to around 3:30, if that is  
4 convenient. I mean in the meantime, if you find the  
5 whole going a bit rough, let us know.

13:10

6 THE WITNESS: No.

7 CHAIRMAN: Okay. I appreciate that Garda Keogh's team  
8 will need a few minutes for consultation. Perfectly  
9 understood, not a problem. Okay.

10 MR. McGUINESS: And if it helps parties assess the  
11 position, Chairman, I estimate I will probably no more  
12 than 30 minutes left.

13:10

13 CHAIRMAN: Very good. Thank you very much. Okay.  
14 Very good.

15  
16 THE HEARING THEN ADJOURNED FOR LUNCH AND RESUMED AS  
17 FOLLOWS:

13:10

18  
19 MR. McGUINESS: Mr. Barrett, just before the break we  
20 had been looking at the first of your long letter of  
21 reply to Garda Keogh on 13th October 2017. I have  
22 referred to your letter to the Policing Authority, and  
23 that's at page 12477. It's addressed to Ms. Hall. And  
24 you say:

13:46

25  
26 "I write in the strictest confidence on foot of a  
27 question raised by a Garda member in correspondence.  
28 The letter from the member's solicitor raised a series  
29 of questions and was copied to amongst others the

13:47

1 Minister for Justice and Equality, the Chairman of the  
2 Policing Authority 21st September 2017 from John Gerard  
3 Cullen solicitor.

4  
5 In the light of extensive and other general issues 13:47  
6 raised in the letter from Mr. Cullen which attaches the  
7 handwritten letter of Garda Keogh, I thought it best to  
8 draw the correspondence to your specific attention and  
9 to restate the question raised. It was as follows:  
10 Has the Policing Authority considered such a scenario 13:47  
11 whereby (I cannot say for sure that this has happened)  
12 a complaint is made against a senior officer who is  
13 going for promotion and happens to be favoured by Garda  
14 management. Garda management delay commencing the  
15 investigation, including serving notice disciplinary or 13:47  
16 otherwise on the senior officer candidate, whereby  
17 should the Policing Authority ask the candidate to  
18 disclose such discipline information he/she could  
19 answer none in good faith. In the meantime the actual  
20 complaint is withheld/lost by Garda management to 13:48  
21 facilitate their choice of candidate being promoted.  
22 Is this possible?

23  
24 This office now seeking to deal with all matters  
25 relating to Garda Keogh and I would be most grateful if 13:48  
26 you could ensure that I am copied on any reply you  
27 might send or have already sent to Mr. Cullen."

28  
29 So, I think you were explaining that you were aware

1           that they had been, as it were, in the loop?

2           A.    Yes.

3 340 Q.    And addressed correspondence directly by Mr. Mr. Cullen  
4           and elsewhere. You saw it as part of your function to  
5           refer to this portion of the letter. And, as I say, 13:48  
6           you copied that letter to Garda Keogh and to Chief  
7           McLoughlin?

8           A.    That's correct.

9 341 Q.    I think you received a reply from Ms. Hall, just it  
10          complete the record on that, at page 12513. That's a 13:49  
11          letter dated the 27th. The essence of the reply is in  
12          the first paragraph:

13

14          "I acknowledge receipt of your letter of the 13th  
15          October which refers to a letter from solicitor John 13:49  
16          Gerard Cullen, on which you were copied. It would not  
17          be perhaps for us to copy third parties (including An  
18          Garda Síochána) on any response sent to Mr. Cullen.  
19          Mr. Cullen's client is of course free to provide you  
20          with a copy of any such correspondence if he so 13:49  
21          wishes. "

22

23          It then sets out the clearance process.

24          A.    Yes.

25 342 Q.    which you understood at the time and were not enquiring 13:49  
26          at all obviously. But you probably hadn't been aware  
27          when you wrote your letter that they had originally  
28          earlier written to the acting commissioner,  
29          Mr. Ó Cualáin, on the 12th October. If we look at page

1 12471. Writing to the Commissioner there about the  
2 clearance form and the second paragraph says:  
3  
4 "Further to an alleged matter which is in the public  
5 domain I would be grateful to know if any bullying or 13:50  
6 harassment complaint has been received or if there is  
7 any investigation relating to the same in train or  
8 being contemplated with regard to this candidate and if  
9 so the stage of those processes."  
10 13:50  
11 The Chairman has already heard evidence from An Garda  
12 Síochána, the relevant people at this stage dealing  
13 with that issue.  
14 A. Yes.  
15 343 Q. The second case conference then took place on the 23rd 13:51  
16 October, isn't that correct?  
17 A. That's correct.  
18 344 Q. There are typed notes of that to be found at page 3598.  
19 You have seen those notes, I take it?  
20 A. I have seen a couple of versions of notes. 13:51  
21 345 Q. Yes. There's also I think some maintained by Sergeant  
22 Gallagher?  
23 A. Yes.  
24 346 Q. Séan Gallagher, is that right? Perhaps we will just  
25 scroll down here. It was chaired by Mr. Noonan, I 13:51  
26 think, the chief administrative office?  
27 A. Mr. Nugent, yeah.  
28 347 Q. Mr. Nugent, I beg your pardon.  
29 A. Yeah.



1 348 Q. I beg your pardon. There was a discussion to identify  
2 all the particular strands, which are set out there.  
3 But at the bottom of it, correct me if you don't agree  
4 with this, there seemed to be a determination that of  
5 all the things that ought to happen the bullying 13:52  
6 complaint should be bottomed out and that that should  
7 be progressed, an appointment should be made and an  
8 investigation should take place?  
9 A. Yes. I think at that point there were people in the  
10 room who knew that I was on the verge of making an 13:52  
11 appointment and that in effect my determination was  
12 that while I had a certain sympathy for the argument  
13 made by Assistant Commissioner Fanning, I was neutral  
14 at best, I think is how I express it in a subsequent  
15 note, that the thing needed to be expanded beyond B&H. 13:52  
16 349 Q. Yes. There does seem to have been some discussion  
17 there or thereabouts about the appointment of Assistant  
18 Commissioner McPartlin?  
19 A. Yes. And that would have arisen if there was going to  
20 be a broader discussion. As in, if there was going to 13:53  
21 be that second paralleled investigation. There's some  
22 confusion about this, which I think I can clear up.  
23 350 Q. Yes.  
24 A. In the event of there being can go more than a  
25 Byrne-McGinn type thing. 13:53  
26 351 Q. Yes.  
27 A. One suggestion I think addressed at that meeting was  
28 that effectively, I think the term used is, strip out  
29 the bullying and harassment and all the other issues

1 would go into some other investigation, fact-finding or  
2 whatever.

3 352 Q. Yes.

4 A. That's if I was to determine that it's a bullying and  
5 harassment and it's not sufficient, because it doesn't 13:53  
6 cover all the issues.

7 353 Q. Yes. It's just, you do seem to have it in your mind  
8 that it might need a wider one, because we will see in  
9 a minute when we come to the 5th November, where you're  
10 meeting Garda Keogh -- 13:53

11 A. Yeah.

12 354 Q. -- isn't that right, you're talking not merely about  
13 the Finn appointment but the McPartlin appointment too?

14 A. Yes. There is a suggestion, you know, that there were  
15 other issues that needed to be dealt with. The thing 13:54  
16 that ultimately guided me in going with just a bullying  
17 and harassment, under the policy, was that if  
18 criminality, as Assistant Commissioner Fanning I think  
19 was genuinely concerned about, if there was an issue of  
20 criminality arising in that investigation, then at that 13:54  
21 point the criminality could be taken and commenced as a  
22 separate investigation. I think it's fair to say,  
23 Mr. McGuinness, you raised it with me before we broke  
24 for lunch, there was a real imperative around time at  
25 this point. This thing has taken a lengthy period. 13:54  
26 There was a framework or a scaffolding or a B&H  
27 investigation and that was more easy expedited than  
28 something wherein the parties who were impugned by  
29 certain allegations might find fault with a

1           Byrne-McGinn or something that didn't have the same, if  
2           you like, policy structure.

3   355   Q.    Yes.

4           A.    That was a consideration of mine.

5   356   Q.    Yes. I mean, what was envisaged as the larger one 13:55  
6           would be in a sense non-procedural, non-policy based  
7           but simply based on an administrative decision that an  
8           investigation shall encompass everything?

9           A.    And I quite frankly didn't know if I had the vires for  
10          that. 13:55

11   357   Q.    Okay. Well, in any event, obviously one of the other  
12          concerns were the people who were being complained  
13          about and I think you received notice from Assistant  
14          Commissioner Fanning on the 10th October, following he  
15          having sent Inspector McCarthy out to visit Garda 13:55  
16          Keogh, that Garda Keogh was not available to mediate on  
17          the point?

18          A.    Yes.

19   358   Q.    Perhaps if we look at page 3619?

20          A.    Yes. 13:56

21   359   Q.    That is an e-mail to you, just if we go down the page.  
22          He had sent Inspector McCarthy out the previous day,  
23          Garda Keogh had signed a sort of objection and he had  
24          received that back. At the same time I think were you  
25          aware that Assistant Commissioner Fanning had written 13:56  
26          out to those who were possibly named or implicated in  
27          the complaint to inform them of the making of the  
28          complaint?

29          A.    Yes.

1 360 Q. And seeking a similar sort of response as to whether  
2 they would be objecting?

3 A. I think that is the correct policy that Assistant  
4 Commissioner Fanning was following.

5 361 Q. It obviously follows that whoever objected first would 13:57  
6 mean -- or objected at all, if any objected, there  
7 wouldn't be a mediator?

8 A. Correct. Everyone would have to buy in.

9 362 Q. Have to, have to go for investigation, isn't that  
10 right? 13:57

11 A. Correct, a single objection would have been sufficient.

12 363 Q. Then if we look at page 3625, this is you writing to  
13 the Assistant Commissioner Fanning, nominating  
14 Assistant Commissioner Finn and you're asking him to  
15 formalise the appointment under the sexual harassment 13:57  
16 and bullying policy?

17 A. Yes.

18 364 Q. "Keep me informed of matters". Am I correct in saying  
19 that nomination took place following a meeting in your  
20 office when he came to see you about a possible 13:57  
21 appointment, is that right?

22 A. Yeah, I think so. I think we ironed it out on that  
23 basis, yes.

24 365 Q. And then if we look at page 3624, one page up, he is  
25 confirming that Assistant Commissioner Finn was 13:58  
26 appointed, isn't that correct?

27 A. Yes, and under the specific policy provisions.

28 366 Q. Yes. You had prepared an update for the Deputy  
29 Commissioner I think on the 5th July covering the whole

1 period of effectively a year, from the 1st December '16  
2 up until the 5th December '17, isn't that right, for  
3 his information. If we go to page 3626. Was this in  
4 response to a particular request for an update from the  
5 Deputy Commissioner? 13:59

6 A. It may have been. Quite frankly, I don't recall.

7 367 Q. Okay.

8 A. Can I see the date on this again?

9 368 Q. Yes. It should be 5th December, if we scroll up, or  
10 down. It gives an overview of events? 13:59

11 A. Yeah, and 5th December, okay. I think there's a  
12 reference in there that might be incorrect. But  
13 anyway. Yes.

14 369 Q. What do you think that may be?

15 A. I think the McPartlin thing may have made its way into 13:59  
16 that.

17 370 Q. Yes.

18 A. I think it shouldn't have.

19 371 Q. Yes.

20 A. Because I think by that date two things have happened, 13:59  
21 AC McPartlin had indicated that she was unwilling, and  
22 I think at that point we had also bottomed out that it  
23 was just going to be a bullying and harassment matter.

24 372 Q. Yes.

25 A. So that should have been circa the time we appointed AC 14:00  
26 Finn.

27 373 Q. Yes.

28 A. I would imagine that's on foot of a request,  
29 Mr. McGuinness. I don't have the request in mind, but

1           it looks like something that would be done on foot of a  
2           request.

3 374 Q.   Perhaps if we just look at the volume itself, it should  
4           be in volume 12. 3626 and the preceding page.

5           A.   Got it, yeah. 14:01

6 375 Q.   It would seem, in any event, that a request came from  
7           the Deputy Commissioner's that you were responding to,  
8           is that correct?

9           A.   That looks like it. I don't...

10 376 Q.   The error that you referred to, if we just look at page 14:01  
11           3628, the last paragraph there.

12           A.   There was some debate, Mr. McGuinness, at the meeting  
13           of the 23rd as to whether or not there was a  
14           requirement for a fact-finding mission. And, you know,  
15           what that was going to accomplish in the circumstances, 14:01  
16           I think I wrote a note after the meeting of the 23rd  
17           which said, and this is from memory now, that I was  
18           somewhat neutral on the idea of the more expanded  
19           format.

20 377 Q.   Yes. 14:02

21           A.   And I think that began to fall away somewhere in that  
22           window.

23 378 Q.   Yes. I mean obviously I think it's clear you didn't  
24           appoint her on the 19th but her appointment is  
25           contemplated in a number of different documents and 14:02  
26           e-mails?

27           A.   It is.

28 379 Q.   And it may be that you intended to record here that you  
29           intended to appoint her?

1 A. Yes, I think that's fair comment. There's confusion  
2 around that, for certain.

3 380 Q. Okay. In any event, following Assistant Commissioner  
4 Finn's first meeting with Garda Keogh and Mr. Cullen,  
5 Mr. Cullen wrote on the 5th December a letter 14:02  
6 complaining about conceptual fragmentation and  
7 procedural fragmentation of the complaint and that it  
8 was being disarticulated in its parts from a whole.

9 A. Okay.

10 381 Q. Do you recall seeing that letter? 14:03

11 A. No, I don't but if you can pull it up, I will have a  
12 better --

13 382 Q. Yes. 3630.

14 A. Yeah.

15 383 Q. It has gone purple on the screen for some reason. You 14:03  
16 have that in front of you?

17 A. Yes.

18 384 Q. A three-page letter?

19 A. Yes, have I it. I am cc'd on it.

20 385 Q. Yes. It appears to be a complaint which follows upon 14:03  
21 an understanding on his part that it was limited to the  
22 bullying and harassment claim and wouldn't embrace the  
23 other matters. And there the memorable phrase about  
24 the procrustean bed at the top of page 2?

25 A. Yeah. It's in the nature of -- and I am not an 14:04  
26 investigator, so let me put that label very clearly out  
27 there.

28 386 Q. Yes.

29 A. It's in the nature of these kinds of investigations

1           that there is compartmentalisation for reasons of  
2           getting things clearly defined and stated. So I wasn't  
3           obviously at the meeting that is referred to in the  
4           Mullingar Park Hotel.

5   387   Q.    Yes. 14:04

6           A.    I read this letter and in some respects I felt it's  
7           well within Assistant Commissioner Finn's competence to  
8           deal with the matters. He didn't speak to me about it.  
9           I think he proceeded from there. I was aware that he  
10          was planning an early meeting. 14:05

11   388   Q.    Yes. I think you wrote to him about that suggesting  
12          the 15th?

13          A.    Yes.

14   389   Q.    If we look at page 3633, there is an e-mail from you to  
15          him at 12:30 on the 16th, just down there. 14:05

16          A.    3633.

17   390   Q.    Yes, it's in the middle of the page, your e-mail to  
18          Chief McLoughlin. It says:

19

20          "Hi Tony. Just tried to call you back and I saw you 14:05  
21          were at a meeting on this matter. I think we need to  
22          appoint Mick Donlon in the disclosures office to track  
23          and trace. All the various elements of this moving  
24          file make certain that we keep all the elements  
25          together. We need to be cognisant of the appointment 14:05  
26          of AC Finn and AC McPartlin to two elements of this  
27          case.

28

29          After our discussion this morning we do need to make



1 time to speak to Mr. Cullen and his client before  
2 Christmas and see where that leads us from a welfare  
3 and return to work plan."  
4  
5 Then you are suggesting the 15th. 14:06  
6 A. Mm-hmm.  
7 391 Q. He agrees with that. You did meet them on the 15th I  
8 any in the Killeshin Hotel?  
9 A. That's correct.  
10 392 Q. I don't know if you kept minutes of that but you have 14:06  
11 seen Chief McLoughlin's minutes?  
12 A. I have, and I kept a note that I wrote in my own hand  
13 on a letter from Mr. Cullen. It was just a very simple  
14 handwritten scrawl. I think I had typed copies of that  
15 made and given to the investigators, Mr. McGuinness. 14:06  
16 393 Q. Yes.  
17 A. I don't know if it's on the file.  
18 394 Q. In any event, just looking at the chief's note at page  
19 3635, if we go back over the -- if you turn over the  
20 page yourself? 14:06  
21 A. Yeah.  
22 395 Q. It's in volume 12. It records who is there. Then  
23 there are a number of sort of bullet points.  
24  
25 "Mick Finn B&H. 14:06  
26  
27 AC McPartlin all the elements.  
28  
29 Welfare. What can we do for you?

1  
2 Back to work.  
3  
4 Set up if I go back and..."  
5 14:07  
6 I am not sure what that says.  
7  
8 "...and work."  
9  
10 He refers to the health meeting with the CMO and the 14:07  
11 minutes of that and correspondence. The case  
12 conference in December?  
13 A. Loss of allowances.  
14 396 Q. Loss of allowances, yes. work related stress, loss of  
15 allowances. He complains about Superintendent Murray 14:07  
16 on the next page:  
17  
18 "No issue with M Curran. It was chief's office."  
19  
20 It goes about, it goes into different elements 14:08  
21 regarding Garda A and Ms. B that we are not concerned  
22 with. On the final page of it, at 3639, towards the  
23 very bottom of the page, raising again obviously the  
24 possibility of injury  
25 A. Yeah. IOJ, injury on duty. 14:08  
26 397 Q. Yes. That was something that was still concerning him,  
27 isn't that correct, injury on duty issue?  
28 A. Mr. McGuinness, can I just volunteer this in ease of  
29 the Tribunal.

1 398 Q. Yes.  
2 A. I felt going to that meeting that it was an important  
3 opportunity to continue the dialogue that we started on  
4 the telephone call with Mr. Cullen on the 2nd  
5 September. 14:09  
6 399 Q. Yes.  
7 A. Many of the issues, and this is from experience in  
8 dealing with Sergeant McCabe, many of the issues that  
9 were difficult, example like trust building, confidence  
10 building, etcetera, were overcome in that case when 14:09  
11 Sergeant McCabe returned as the traffic sergeant in  
12 Mullingar.  
13 400 Q. Yes.  
14 A. And I was seeking to encourage Garda Keogh to consider  
15 a return to work as such a measure. And I felt it was 14:09  
16 important that we do it in person. Garda Keogh was in  
17 excellent form, he was looking extremely fit and well.  
18 We had a lengthy conversation in the shadow of  
19 Christmas on the 15th December. And I felt we were  
20 moving in the right direction. AC Finn had begun his 14:09  
21 dialogue, and that my sincere hope was that we would be  
22 able to engineer a return to work for Garda Keogh,  
23 which would then, you know, vitiate all the issues  
24 about full pay and allowances and all that, would  
25 naturally restore themselves, and the opportunity to 14:10  
26 rebuild what was, you know, a stellar career in the  
27 first years of its time in An Garda Síochána. I  
28 thought it was the right thing to do and that was  
29 the mindset I brought to that meeting.

1 401 Q. Yes. I mean the reference to checking the allowance  
2 payment for injury on duty, was that progressed after  
3 the meeting, that is on page 3636?

4 A. I think it was. Again, that is a question I think is  
5 best asked of Chief McLoughlin in his capacity. But to 14:10  
6 the best of my knowledge, those items were dealt with.  
7 We -- I was seeking to allow AC Finn opportunity to  
8 conduct his investigation and hopefully on foot of this  
9 meeting to create a situation where Garda Keogh would  
10 return to work. 14:11

11 402 Q. Yes. I know you wrote to Assistant Commissioner  
12 McPartlin in late January talking about her  
13 appointment?

14 A. Yes.

15 403 Q. She wrote back saying you haven't spoken to me about 14:11  
16 the appointment?

17 A. Yes, that is where the matter was. She came and spoke  
18 to me at that point and said, what appointment. I  
19 think that's when the idea of going beyond the B&H  
20 ended. 14:11

21 404 Q. I am wondering, did it become abandoned in a more  
22 practical way because of what Garda Keogh and  
23 Mr. Cullen said to you at this meeting. At page 3638,  
24 at the top of it?

25 A. Yeah. 14:11

26 405 Q. It's in his handwritten obviously, the top of 3628:  
27  
28 "All aspects of my complaints are under some sort of  
29 investigation at present. No loose ends at present.

1  
2 But I am the one pushing it."

3 A. That is clear. I mean, we had a multiplicity of  
4 investigations ongoing at this point. There had been a  
5 criminal investigation. There was civil litigation. 14:12  
6 There was bullying and harassment commenced. The  
7 matter was dealt with under the prism of protected  
8 disclosure. There was a multiplicity of activities or  
9 avenues being pursued. And it had taken -- it was a  
10 complex matter, I think we have to describe it for what 14:12  
11 it was, and it had taken a very long time. That too  
12 had its consequence.

13 406 Q. Yes. No other investigation was established  
14 thereafter?

15 A. To the best of my knowledge. 14:12

16 407 Q. Yes. Insofar as Assistant Commissioner Finn's  
17 investigation occurred then, had you any role in  
18 monitoring it or --

19 A. No.

20 408 Q. He wasn't required to report to you? 14:12

21 A. No, he wasn't required to report to me. His report  
22 would go back to Assistant Commissioner Finn.

23 409 Q. You are written to about the issue of stenographers and  
24 recording meetings in February?

25 A. Yes. 14:13

26 410 Q. And later in the year you're making enquiries, if we  
27 look at a letter, 4711, this is on the 28th September  
28 2018. You're writing to Assistant Commissioner Fanning  
29 and you are referring to his previous correspondence.

1 He was keeping you up-to-date insofar as he was kept  
2 up-to-date, isn't that fair?

3 A. Yes. I think Assistant Commissioner Fanning, to be  
4 fair, was seeking to encourage AC Finn to get this  
5 dealt with as expediently as possible. 14:13

6 411 Q. Yes. I mean, some of the issues that were raised and  
7 reported upon related to the entitlement and the fact  
8 that parties had sought legal advice at different  
9 stages?

10 A. Yes. 14:14

11 412 Q. There in the second paragraph, for instance. But you  
12 seem to be pressing here for the investigation to be  
13 finalised and that they be given a two-week deadline to  
14 respond to the allegations?

15 A. Part of the difficulty in the elongation of this whole 14:14  
16 thing, is that there were these gaps in the cooperation  
17 or -- it's not anybody's fault, it just occurred, there  
18 was legal advice sought or whatever. It had the effect  
19 of making the thing elongated.

20 413 Q. Now, I'm sure you weren't trying to cut across their 14:14  
21 right to legal advice in any way?

22 A. No, no.

23 414 Q. But they don't appear at that stage to have responded  
24 to the allegations made and you're suggesting then, if  
25 we go down the page onto the next page, what ought to 14:14  
26 happen.

27

28 "They should be informed that the assistant  
29 commissioner will finalise his investigation."

1  
2 Then you raise the spectre of non-cooperation.  
3 A. Yeah. As the policyholder on this, you know, while  
4 every autonomy must be given to the investigating  
5 officer, I have to be mindful of certain of the issues 14:15  
6 arising in the course of investigation if they are put  
7 to me, and they were by AC Fanning on I think those two  
8 previous occasions you referred to. So that was my  
9 response.  
10 415 Q. I mean, you're not in any sense taking side? 14:15  
11 A. No.  
12 416 Q. One against the other?  
13 A. Not at all.  
14 417 Q. You're anxious it be concluded?  
15 A. Yeah. In fairness, I think that is precisely what 14:15  
16 earlier we had been accused of, by, you know, not  
17 expediting matters. I just wanted to make certain that  
18 we weren't letting this thing drift off further.  
19 418 Q. Yes. I think Assistant Commissioner Fanning further  
20 wrote to you on the 10th October 2018? 14:16  
21 A. I had been suspended.  
22 419 Q. On the 10th October?  
23 A. No, sorry, I hadn't been suspended by then.  
24 420 Q. If we look at 4713?  
25 A. Okay. 14:16  
26 421 Q. You are being sent the report by Inspector McCarthy  
27 which is the report on the next page, if we scroll  
28 down?  
29 A. Yes.

1 422 Q. The reason being explained is that there are further  
2 queries raised by Mr. Cullen on Garda Keogh's --  
3 A. And that's fine, all of that is fine.  
4 423 Q. And then I think you got a further report on the 18th  
5 October, if we look at 4719 and 4720. Sorry, he is 14:16  
6 forwarding a request from you dated the 18th?  
7 A. Yes.  
8 424 Q. If we look on the next page. You're seeking to be  
9 updated essentially.  
10 A. Yes. 14:17  
11 425 Q. I think you refer to an issue of suspension there,  
12 which isn't relevant. I think you did say in your  
13 statement to our investigators that you met Garda Keogh  
14 once in your official capacity, as it were?  
15 A. Yes. 14:17  
16 426 Q. Executive director. And then you met him, I think was  
17 it --  
18 A. The 30th October.  
19 427 Q. The 30th October, on foot of a request from him I  
20 think? 14:18  
21 A. Correct.  
22 428 Q. That he had some information, important information to  
23 impart?  
24 A. He left a voicemail on my telephone.  
25 429 Q. Yes. 14:18  
26 A. I mean, I have to confess, so did probably a hundred  
27 others, and I was in my car when I took the message.  
28 430 Q. Yes.  
29 A. I was driving to Dublin and he invited me to have a



1 coffee with him.

2 431 Q. Was it information in relation to any of the issues  
3 that he is currently examining?

4 A. No.

5 432 Q. No? 14:18

6 A. No.

7 433 Q. In relation to all of the other issues, I think you  
8 have answered the investigators' questions about your  
9 knowledge or involvement in our list of 22 issues and I  
10 think had you no knowledge or involvement of any of 14:18  
11 them, except the ones that we have discussed in  
12 evidence this morning?

13 A. That's true.

14 434 Q. Pay, sick classification and penalisation, bullying and  
15 harassment; isn't that correct? 14:18

16 A. That's correct.

17 435 Q. Thank you very much, Mr. Barrett.

18 A. Thank you, Mr. McGuinness.

19

20 END OF EXAMINATION 14:19

21

22 CHAIRMAN: Mr. O'Brien, you would be next, isn't that  
23 right. You probably need a few minutes, yourself and  
24 Ms. Mulligan, you need a few minutes, is that right?

25 MR. O'BRIEN: Yes, please. I think ten minutes, 14:19  
26 Chairman, would suffice.

27 CHAIRMAN: Is that enough? Okay. It's nearly twenty  
28 past, if I said 2:30, is that convenient?

29 MR. O'BRIEN: May it please you, Chairman.

1 THE WITNESS: That's fine, Chairman.

2 CHAIRMAN: So be it. We will sit at 2:30 again.

3 Thanks very much.

4

5 THE HEARING THEN ADJOURNED BRIEFLY AND RESUMED AS 14:19

6 FOLLOWS:

7

8 CHAIRMAN: Thank you very much. Yes, Ms. Mulligan.

9

10 MR. JOHN BARRETT WAS CROSS-EXAMINED BY MS. MULLIGAN, AS 14:35

11 FOLLOWS:

12

13 436 Q. MS. MULLIGAN: Good afternoon, Mr. Barrett.

14 A. Good afternoon. If you bear with me for a minute.

15 437 Q. I wonder can I just go back to the very start, without 14:36

16 hoping the HQ Directive, are you happy to say that you

17 are familiar with HQ Directive 139/2010?

18 A. No.

19 438 Q. Okay.

20 A. If I could have a copy put on the screen, I would be 14:36

21 grateful.

22 439 Q. Okay. If we could have open volume 38, please,

23 Mr. Kavanagh, it is page 8202. Just in relation to

24 your role, so I think you have given relatively clear

25 evidence that, for want of a better word, your role is 14:36

26 the system, so you don't look at individual people per

27 se, you're looking at the organisation as a whole,

28 would that be a fair summation as to your role?

29 A. Yes.

1 440 Q. when we look at the role at local management, it's your  
2 role to look at the system and it's the local  
3 management's role to look at the individuals who will  
4 be applying and who will be using these directives on  
5 the ground level, would that be fair? 14:37

6 A. Yeah. These directive are to the organisation on how  
7 to conduct various matters of process. I would look at  
8 the score that comes back, how many people we have on  
9 various categories of illness, etcetera.

10 441 Q. And I think at the very start of your evidence, for 14:37  
11 example, you said there would be hundreds of people off  
12 at any given moment and you would be looking at the  
13 numbers rather than individual cases?

14 A. Yeah, individual cases only by exception.

15 442 Q. Yes, by exception? 14:37

16 A. Yes.

17 443 Q. So, for example, it wouldn't be standard for you for  
18 any and all work related stress investigations to be, I  
19 suppose, managed in any substantial or personal way by  
20 you? 14:37

21 A. Correct.

22 444 Q. So when you look at the management of the work related  
23 stress/injury on duty categorisation, you're looking at  
24 it from a numbers, how is it being used, how many  
25 people are availing of it, is it effective, how long is 14:38  
26 it taking; would that be fair?

27 A. That's correct, and I think there was some reference in  
28 my evidence, but in others, to a review that was  
29 ongoing with respect to injury on duty.

1 445 Q. Yes. So again, process as opposed to person. And so,  
2 from Garda Keogh's point of view, while his file might  
3 go up through, I think there are three essentially  
4 tenants is the local management, then you have HR and  
5 the Sick Section in Navan? 14:38

6 A. Yes.

7 446 Q. So there are two, we'll say, HR and administrative  
8 processes and then there's the local management role  
9 which would be, I suppose, the more direct --

10 A. Yes. 14:38

11 447 Q. -- interaction from the individual's point of view?

12 A. That's correct.

13 448 Q. So when we look at the 11.37 and it says:  
14  
15 "Where there is a doubt about whether or not an injury 14:38  
16 on duty occurred."  
17  
18 which is just on the second paragraph, on page 8205.

19 A. 8205 yeah.

20 449 Q. You did give clear evidence that that doubt, the 14:39  
21 question is really for the chief superintendent, is  
22 that right?

23 A. Yeah, the decision is the chief superintendent. My  
24 reference to doubt was, when we met in September, there  
25 having been no report I think having been requested in 14:39  
26 June, I think somebody used the term we gave Garda  
27 Keogh the benefit of the doubt.

28 450 Q. Just so I am very clear in terms of we see in May of  
29 2015, the start of the administrative process once the

1           six certs are scanned in through Navan, to say you now  
2           need to do an investigation?

3           A.    Yes.

4   451   Q.    And my question to you then is, that letter that's sent  
5           saying you now need to do an investigation, is that a   14:40  
6           proforma letter?

7           A.    Pretty much.

8   452   Q.    I asked Mr. Mulligan and he said this is essentially  
9           the process to try and catch any gaps?

10          A.    Yes.   14:40

11   453   Q.    Therefore, the authorisation or the engagement with an  
12          investigation rest, for want of a better word, purely  
13          with the management, the local management?

14          A.    The local management, that's correct.

15   454   Q.    In other words, your chief superintendent is the person   14:40  
16          who holds the responsibility?

17          A.    Correct.

18   455   Q.    But she of course may delegate down to investigations?

19          A.    Yes.

20   456   Q.    So that then leads me on to the issue of that   14:40  
21          delegation into an investigation.  Would you expect in  
22          ordinary course if someone is going to do the work  
23          related stress investigation, that the person who is  
24          the subject of that investigation would be informed?

25          A.    Yes.   14:40

26   457   Q.    So in other words, Garda Keogh would be written to in  
27          line with presumably the attachment from HR --

28          A.    Yes.

29   458   Q.    -- we have to do a work related stress investigation?

1 A. That strikes me as --  
2 459 Q. Standard?  
3 A. Yeah, standard.  
4 460 Q. And would, in your -- and obviously again I accept that  
5 you are a process, not a person, in engaging as HR, but 14:41  
6 from that point of view would you expect to if you open  
7 the file that you would see that letter, I have been  
8 asked to do a work related stress investigation, I  
9 wonder you come in to meet me?  
10 A. Yes. 14:41  
11 461 Q. Or would you be available to have a conversation, or  
12 any of those things?  
13 A. Yes, I would expect there would have been a number of  
14 efforts made certainly before.  
15 462 Q. And so, if I was to tell you that there is no such 14:41  
16 letter on this file, would that surprise you?  
17 A. I would be surprised.  
18 463 Q. Okay. Then if I were to look at continuing on I  
19 suppose the process as opposed to the individual, and  
20 if there was no such letter and a letter -- we'll say 14:41  
21 that it's the 7th May letter from HR and it says please  
22 conduct an investigation, would you expect when a reply  
23 is sent identifying the steps that were taken that  
24 there was in fact an investigation outlining what steps  
25 were taken? 14:41  
26 A. I would, and I am obviously a little bit surprised by  
27 your line of questioning, only because there's a very  
28 definitive letter from Chief Superintendent wheatley  
29 saying that she took the trouble to go and visit Garda

1           Keogh at his home address. So I was, up to the point  
2           of your questioning, assuming that which is written is  
3           true.

4   464   Q.    If we might just open then, because I think it might be  
5           helpful for everyone, if we just look at page 3267. 14:42

6           A.    3267.

7   465   Q.    Just to be absolutely clear about everything. I think  
8           to be fair, you will have seen this, it is a series of  
9           correspondence in a report furnished to Chief  
10          Superintendent McLoughlin? 14:43

11          A.    Okay. And it's written by? Who is the author?

12   466   Q.    It might be of a benefit to have a hard copy because  
13          there are several sequential pages?

14          A.    3267. Yes.

15   467   Q.    And you will see -- I will give you a moment? 14:43

16          A.    This is the lengthy document that Mr. McGuinness  
17          opened, yeah.

18   468   Q.    Yes, the lengthy document. It identifies the steps  
19          taken by, we'll say, local management to investigate  
20          the source of the work related stress. One of the 14:43  
21          issues that arises is that is that efforts were made  
22          locally to establish the source of the member's work  
23          related stress. And it says:

24

25          "On the 26th March Superintendent Murray met with Garda 14:43  
26          Keogh at Athlone Garda Station to discuss the frequent  
27          absences at work."

28

29          Do you see that?

1 A. I do, paragraph 3.

2 469 Q. Yes. Would it surprise you then to identify that that  
3 was actually not a meeting for the purposes of a work  
4 related stress investigation, but was the very first  
5 time that Superintendent Murray met Garda Keogh? 14:44

6 A. I would be surprised, yes. Very clearly what it  
7 doesn't say here is to discuss the member's frequent  
8 attendance at work.

9 470 Q. In fact Superintendent Murray in his evidence described  
10 it as a meeting to solve problems. A number of issues 14:44  
11 were raised by Superintendent Murray at this meeting.  
12 But just so I am clear about the process, if you are  
13 going to conduct a work related stress investigation,  
14 you have identified that you would expect the chief  
15 superintendent to write to the subject of the 14:44  
16 investigation, would you expect the investigator, if we  
17 acknowledge that this is what Superintendent Murray's  
18 role is in this process, as the investigator, who is  
19 appointed by Chief Superintendent Wheatley, if that is  
20 the case, would you expect then that that, I suppose 14:45  
21 that new role, that additional role that Superintendent  
22 Murray would have would be identified to Garda Keogh?  
23 There is to be a work related stress investigation,  
24 one, and two, that he would be informed of that?

25 A. I really am always surprised that matters are not dealt 14:45  
26 with adult to adult. I think if this was a meeting, as  
27 is suggested here, to discuss the member's frequent  
28 absence from work, I take it to mean what it says. I  
29 wasn't at the meeting, so I can't make any comment. I



1           haven't -- the date didn't jump off the page at me.  
2           But in an organisation with 17,000 people, one  
3           assumes -- you know.

4   471   Q.    I totally accept again, you're not necessarily  
5           double-checking everyone's work? 14:46

6           A.    Sure, I'm not. But the business that this letter  
7           purports to tell us about is very normal, it happens in  
8           every Garda district, in every Garda division in every  
9           Garda region every day.

10   472   Q.   You wouldn't be over -- you yourself wouldn't be, I 14:46  
11           suppose, doing it in chronological order?

12           A.    Not at all.

13   473   Q.    You would expect local management to do the job?

14           A.    Precisely, and so it must operate.

15   474   Q.    And I appreciate that. So for example, this report 14:46  
16           that goes to Chief Superintendent McLoughlin, dated 6th  
17           June 2016 --

18           A.    Yeah.

19   475   Q.    -- refers to the efforts that were made to investigate  
20           the source of Garda Keogh's work related stress. And 14:46  
21           can I just for the absolute clarity, there's only one  
22           direct meeting between Superintendent Murray and my  
23           client, Garda Keogh, and that is on the 26th March  
24           2015. So that predates the request for the work  
25           related stress investigation and there was no further 14:47  
26           attempts made by anyone to contact Garda Keogh about  
27           the source of this stress.

28           A.    I am at a significant disadvantage here in the sense  
29           that I will take your word for it. And I can say that

1 I did rely upon the kinds of reports that are received,  
 2 as I did not just from Chief Wheatley but from chiefs  
 3 all over the country when matters became contentious. I  
 4 would expect and I think anybody in the room would  
 5 expect that in circumstances like this there would be 14:47  
 6 an honest, open and adult to adult conversation as to  
 7 why people are absent from work and what is the nature  
 8 of the stress and what are the stressors and what are  
 9 the symptoms of the stress and how does it manifest  
 10 itself. All the normal, lay person, interested 14:48  
 11 enquiries that should be made around topics like that.  
 12 And any organisation, and I say this as somebody who  
 13 has a considerable amount of experience in guiding  
 14 organisations on stuff like this, any organisation  
 15 would be concerned to understand sources of stress and 14:48  
 16 distress for its employees. Because they impact proper  
 17 functioning. So when I get a report that tells me  
 18 this, I take it at face value because it should be so.  
 19 476 Q. So the report in the correspondence is dated the 7th  
 20 May is the request, the response is then furnished by 14:48  
 21 Superintendent Murray on the 20th May. And in that  
 22 time no efforts were made to contact Garda Keogh about  
 23 the source of his stress, to inform him that there was  
 24 an investigation, that there was a request for an  
 25 investigation, the consequence of cooperating or 14:48  
 26 failure to cooperate with that investigation, none of  
 27 those things happened?  
 28 A. I can't make any comment on that. I don't -- I'm take  
 29 your word for it, I don't know.

1 477 Q. I think it's established none of those things happened.  
2 what they mean is a matter of submission. But that  
3 seems to have been established on the facts that that  
4 is what happened. Is that the proper functioning --  
5 A. No, it's not. 14:49  
6 478 Q. -- of HR directive 139/2010?  
7 A. I'm not familiar with the directive in all its detail,  
8 but I can certainly say that that is not the spirit of  
9 the intent of such an inquiry.  
10 479 Q. Okay. When we take it into account the fact that Garda 14:49  
11 Keogh was a whistleblower, would that give you an  
12 additional cause for concern?  
13 A. Well, I think the actual issue of stress, you know, it  
14 doesn't require -- it's not different for  
15 whistleblowers or non-whistleblowers, it's an issue in 14:49  
16 and of itself and I think the conversation should be,  
17 you know, a full and frank discussion, whistleblower or  
18 no.  
19 480 Q. Absolutely. But we will say, that if the issue, I  
20 suppose the additional stress of having been subject to 14:50  
21 protected disclosure, having had --  
22 A. Yeah, normal human empathy would say, if you were  
23 dealing with somebody with some kind of --  
24 481 Q. Might be more difficult, without minimising anyone  
25 else? 14:50  
26 A. Just as an awareness.  
27 482 Q. Indeed. So from that point of view, if what I have  
28 just said is correct, would you say that an  
29 investigation took place?

1 A. I am at a real disadvantage here because you are asking  
2 me to agree with you, and I will do so in a  
3 hypothetical sense, if as you described it to be.

4 483 Q. Of course?

5 A. It would be improper, it would be insufficient in my 14:50  
6 view. In my view.

7 484 Q. It would be?

8 A. But I think there is a requirement just in all human  
9 interaction that there is an adult to adult transaction  
10 about problem identification, you know, and how it is 14:50  
11 that that problem should then perhaps best be dealt  
12 with.

13 485 Q. Just for the purposes of clarity as well, if we look at  
14 the report that was furnished to Chief Superintendent  
15 McLoughlin, and again that's at page 3267, none of that 14:51  
16 is clearly identified in that correspondence to Chief  
17 Superintendent McLoughlin either.

18 A. None of what?

19 486 Q. The fact that there is only one meeting on the 26th  
20 March 2015? 14:51

21 A. I'll have to re-read this. It says "efforts have been  
22 made locally", it sounds as if it's in the plural.

23 487 Q. I suppose just for clarity, what I am trying to say is  
24 that when a request is made from HR on the 7th May to  
25 do an investigation and a report is furnished on the 14:52  
26 20th May, and doesn't make it clear that the only  
27 attempt to have a meeting with Garda Keogh was dated  
28 the 26th March, would you have concern about that and I  
29 suppose the honesty behind the report in that regard?

1 A. I am not prepared to -- there's a series of things here  
2 that I am not familiar with that I am being asked to  
3 make a judgment on. I think I can make a judgment  
4 about the human interaction, the transaction that  
5 should occur in a generic way between somebody 14:53  
6 enquiring about work related stress and somebody  
7 experiencing work related stress. The particular  
8 mechanics of this, I am not sufficiently familiar with  
9 the date sequence or how matters unfolded. But I take  
10 your point in general, if that's an answer to the 14:53  
11 question.

12 488 Q. Okay. Just so we are -- I might have to be a little  
13 bit more specific when we go through the paperwork as  
14 is required then. In terms of -- we'll say, we'll  
15 start with Chief Superintendent Wheatley's role. She 14:53  
16 received the request on the 7th May to conduct a work  
17 related stress investigation. One might expect if that  
18 investigation was to be completed or any undertaking to  
19 have the investigation, you would see some attempt of  
20 correspondence directly with the subject, in this case 14:53  
21 it would be Garda Keogh?

22 A. I would imagine it could have been done by  
23 correspondence, it could have been done by telephone.

24 489 Q. Yes.

25 A. Just, I would like to have a discussion with you. 14:54

26 490 Q. Yes.

27 A. There's a matter to be raised. It doesn't necessarily  
28 have to be in writing, it could have been done, you  
29 know, in a face-to-face meeting in a hallway. But

1 there would have to be a contact.

2 491 Q. Some direct contact of some kind?

3 A. Correct.

4 492 Q. And one of the things that you might then expect to see  
5 on top of that would be, what is the nature of the 14:54  
6 complaint and can you talk to me about it?

7 A. I think that's a central core to any problem solving,  
8 identification of what the issue is, yes.

9 493 Q. And I can't imagine that in the circumstances I think  
10 you said there was some 17,000 people in the 14:54  
11 organisation --

12 A. Yes.

13 494 Q. -- that your direct line manager, it wouldn't be that  
14 surprising if the person or the alleged source of  
15 stress was your direct line manager, I presume that is 14:54  
16 probably standard enough?

17 A. It does happen.

18 495 Q. It does happen?

19 A. You know, there are any number of stressors, but it can  
20 happen, of course. 14:54

21 496 Q. And so, for example, is it possible if such an issue is  
22 addressed that a third party, someone would come in  
23 from beyond the division to be an independent  
24 investigator, so in other words, a different chief  
25 superintendent? 14:55

26 A. Sure. It happens all the time, there's adult to adult  
27 arrangements made around the organisation to circumvent  
28 personal difficulties and to try and resolve things  
29 intelligently.

1 497 Q. So from that point of view, the fact that Garda Keogh  
2 had made a protected disclosure, then that wasn't  
3 necessarily a bar per se to having an investigation,  
4 would that be fair?

5 A. Having an investigation? 14:55

6 498 Q. Yes, having a work related stress investigation?

7 A. Not at all.

8 499 Q. Not at all. So one of the issues that was raised by  
9 Chief Superintendent Wheatley is that she progressed it  
10 as far as she could. That obviously from our point is 14:55  
11 disputed. But from your point of view, if it's the  
12 case that she progressed it as far as she could  
13 directly, she could have sought the appointment of an  
14 investigator from a different division or different  
15 district. So in other words, if the individual, Garda 14:56  
16 Keogh had a specific grievance with Chief  
17 Superintendent Wheatley, can a different chief  
18 superintendent be the person to do the investigation,  
19 for example?

20 A. Sure. I didn't realise that there was an issue between 14:56  
21 Garda Keogh and Chief Superintendent Wheatley.

22 500 Q. No, it was hypothetical, just for clarity?

23 A. Right.

24 501 Q. That was a purely hypothetical issue?

25 A. Okay. 14:56

26 502 Q. So in other words, if you're the divisional officer?

27 A. Sure.

28 503 Q. And the complaint is about you?

29 A. Yeah.

1 504 Q. It would make sense that you wouldn't be the person?  
2 A. Of course.

3 505 Q. If that is the case, can a person from a different  
4 division become the investigating officer?  
5 A. Of course. 14:56

6 506 Q. So that is something that is in place and happens?  
7 A. It happens all the time by local arrangement right  
8 throughout the country. I'm sure there is probably  
9 meetings going on now under that particular format.

10 507 Q. For example, there's no correspondence from Chief 14:56  
11 Superintendent Wheatley or anyone else in that regard  
12 for any such request to be made, that we have. Are you  
13 familiar with there being any such correspondence?  
14 A. I am not familiar with this. And truthfully, this is  
15 at a level which I think Chief McLoughlin may have been 14:57  
16 a better person to ask these questions of. For two  
17 reasons: He's an actual architect of the HQ and would  
18 be closer to the division in his capacity as the  
19 protected disclosure manager that was engaged with  
20 Garda Keogh. But I can answer you at a level of 14:57  
21 principle and I think there's nothing I am saying that  
22 isn't, if you like, just common sense. But you know, I  
23 respect the requirement for the use of common sense in  
24 dealing with matters of sensitivity.

25 508 Q. Very good. 14:57  
26 A. And I can't say about the specific.

27 509 Q. That's helpful. There is one other issue that has  
28 arisen from Ms. Claire Egan, I will find the relevant  
29 reference now, but Ms. Egan says that she wasn't aware



1 of any application for Garda Keogh's to be considered  
2 for an injury on duty. Now, where would that  
3 application arise from? would that come from local  
4 management? I presume, as I understand it, Claire Egan  
5 works again for the Sick Section? 14:58

6 A. Yes.

7 510 Q. And correct me if I am wrong, what would you expect is  
8 a section 11.37 from Chief Superintendent Wheatley?

9 A. Yes.

10 511 Q. And then, once that authorisation is provided by her, 14:58  
11 then HR?

12 A. Yes.

13 512 Q. Or the Sick Section?

14 A. Yes.

15 513 Q. Do the administrative aspect of that, is that correct? 14:58  
16 A. That is absolutely correct. So chief's prerogative,  
17 local decision based on investigation, forward report  
18 into Sick Section, matter is resolved and processed.

19 514 Q. In relation to that then, the role of the CMO is  
20 obviously to identify if there's any other reason that 14:58  
21 might --

22 A. Yes.

23 515 Q. -- have caused the stress. would it be fair to say  
24 that it is the absence of any other reason -- or are  
25 you familiar with there being a test? 14:58

26 A. No. You know, again, the question is perhaps best  
27 directed at Dr. Oghuvbu, but, you know, the CMO is the  
28 expert who advises the chief.

29 516 Q. Yes.

1 A. Is probably the most simple way I can...

2 517 Q. Again for the sake of completeness, that was put to  
3 Dr. Oghuvbu and what he said was that he would wait for  
4 an application for a request to be made. In other  
5 words, he wouldn't diagnose work related stress or 14:59  
6 injury on duty in the absence of being informed that is  
7 what someone was asking him to do. Would you agree  
8 with that position?

9 A. I would have to bow to whatever his process is.

10 518 Q. Okay. 14:59

11 A. But to my knowledge there was a case conference  
12 attended by Dr. Oghuvbu.

13 519 Q. Yes, there was.

14 A. At some juncture in this process.

15 520 Q. Some 12 months later, yes. 14:59

16 A. All right. Okay.

17 521 Q. Yes, that is the case. The issue is that, yes, while  
18 the matter was resolved and again by Chief  
19 Superintendent McLoughlin, there is quite a significant  
20 timeline between the first request for an investigation 15:00  
21 by HR and the subsequent resolution of matters?

22 A. Yes. I take that point.

23 522 Q. It is that issue that we find ourselves discussing  
24 quite substantively in these proceedings, if that makes  
25 sense. 15:00

26 A. I understand. I think Mr. McGuinness asked me some  
27 questions about that. I think I have answered as  
28 honestly as I can.

29 523 Q. As best you can. Just then in relation to the bullying

1 and harassment piece, again Mr. McGuinness has gone  
2 through all the substantive correspondence, so I am  
3 going to go through a few of them, if that's okay?

4 A. Sure.

5 524 Q. Can I just ask, and I am just going to put the question 15:00  
6 more generally and then I can go more into documents,  
7 but in terms of this issue of delay, you have quite  
8 reasonably said there was a delay, there were a few  
9 moving parts that caused difficulty. It just doesn't  
10 appear that you have identified in any of the 15:01  
11 correspondence when you address the issues that you are  
12 acknowledging the delay in a contemporaneous fashion.  
13 So, in the flow of correspondence you're not saying  
14 there has been a delay here, we need to move this on,  
15 or acknowledging that was an issue from that point of 15:01  
16 view, at the time. Is that just looking at it with the  
17 benefit of hindsight now?

18 A. I think it is, truthfully. One of the issues I think  
19 that I am finding difficult is, I read these papers in  
20 some detail before Covid in the expectation of coming 15:01  
21 here and having this inquiry, I read some of them in  
22 the last couple of days, and my perspective I think was  
23 probably a little different when I was in the middle of  
24 it, if you know what I mean.

25 525 Q. Yes. 15:02

26 A. And that's a reality I think for all of us. So I am  
27 finding the question difficult to answer, as to what  
28 lens I should use, was I conscious of the delay because  
29 I have had the benefit of standing back and looking at

1           it now, or was I conscious of the delay when I was in  
2           the middle of it. You know, I can acknowledge it now,  
3           but it's probably with the benefit of reading everybody  
4           else's contribution.

5   526   Q.    Seeing the whole picture? 15:02

6           A.    Yes.

7   527   Q.    And I suppose the same question then sort of applies to  
8           the issue of the statement that you say you didn't  
9           receive from Assistant Commissioner Fanning until  
10          October? 15:02

11          A.    Yes.

12   528   Q.    That he says was sent to you in March. And there is a  
13          series of correspondence that have been opened  
14          extensively by Mr. McGuinness. But at no point do you  
15          say that I don't have this statement from Chief 15:02  
16          Superintendent Scanlan. I suppose just I want you to  
17          clarify why didn't you do that?

18          A.    I can address that very clearly and if there is any  
19          doubt I think discussion with the investigators for  
20          this Tribunal. When they put that to me, that there 15:03  
21          was this correspondence from AC Fanning, I said I never  
22          saw it. As in, I never saw the attachments or the  
23          appendices that were sent. I was troubled, because my  
24          initial reaction was, have I missed it? I think the  
25          recall evidence of Assistant Commissioner Fanning and 15:03  
26          the evidence of Mr. Mulligan corroborates at least what  
27          I said in absolute honesty to the investigators. I  
28          didn't see it because it wasn't sent. It wasn't in the  
29          appendixes that I had received. And I wasn't there,

1           which was the difficulty, I knew, on those dates, Alan  
2           was standing in my shoes. So I had that anxiety. But  
3           Mr. Fanning himself I think makes the point that it was  
4           the 4th October when the matter was resolved.

5   529   Q.   But my question is: If you didn't receive it, why           15:04  
6           weren't you looking for it?

7           A.   Well, the correspondence that went to me was opened by  
8           Alan, I had reports on it. This is where the benefit  
9           of hindsight becomes really valuable. Perhaps I should  
10          have said, hold a second, let's go through all of this           15:04  
11          in fine detail. The reality is, I didn't do it until  
12          we had the benefit of Mr. Cullen's correspondence in  
13          September or in whatever that was, September.

14   530   Q.   And I think just you have already made the point about  
15          the difficulty between having I suppose several           15:04  
16          different players moving at all times, from the  
17          Chairman's point of view and I suppose from the ability  
18          to progress matters into the future, if there was to be  
19          an issue that Chief Superintendent McLoughlin's office  
20          -- would it be your view that Chief Superintendent           15:04  
21          McLoughlin's office should deal with all issues in  
22          relation to whistleblowers and not --

23          A.   Well that's the intent. That's the role of the  
24          protected disclosures manager, is to do just that. I  
25          had a specific role in that very same vein with           15:05  
26          Sergeant McCabe. It's an extremely demanding and  
27          difficult and unpredictable obligation to have on  
28          behalf of an organisation. And I empathise with the  
29          chief. I think what is evident is that there was a lot

1 of valiant endeavour and a lot of, what I would  
2 consider to be, outputs in terms of correspondence and  
3 documents flowing. The frustration that I am clearly  
4 seeing from the letters from Mr. Cullen is outputs are  
5 different from outcomes. 15:05

6 531 Q. So from that point of view, having one person carrying  
7 the whole story is something that is probably necessary  
8 to avoid this kind of system failure?

9 A. I have lived a life in the private sector by and large  
10 and certainly a single point of contact is probably a 15:06  
11 whole lot more effective.

12 532 Q. CHAIRMAN: You think there was failure?

13 A. I agree that there was certainly elements of confusion,  
14 Chairman.

15 533 Q. CHAIRMAN: No, that is not my question? 15:06

16 A. The failure --

17 534 Q. CHAIRMAN: Was there a failure? I mean, sorry, here is  
18 the question, if I am understanding Ms. Mulligan's  
19 point, he makes his complaint in March, the 27th March,  
20 Assistant Commissioner Finn is appointed, if I 15:06  
21 understand, on the 11th November, those are the  
22 relevant dates?

23 MS. MULLIGAN: The 15th November.

24 CHAIRMAN: Sorry, the 15th November.

25 MS. MULLIGAN: Yes. 15:06

26 535 Q. CHAIRMAN: Are you standing over that?

27 A. I certainly see it as -- I will answer your question by  
28 putting it in this context.

29 536 Q. CHAIRMAN: No, are you standing over that as proper

1 behaviour. I mean, you're the man in charge. You  
2 carry the can. Whether it was Alan Mulligan or anybody  
3 else, you're the boss. Do you think that's acceptable?  
4 Because I'll tell you something, I don't

5 A. Chairman, I don't disagree with you. 15:07

6 537 Q. CHAIRMAN: And I can understand why Garda Keogh is  
7 there saying, what's going on, is there something here,  
8 maybe there is, maybe there isn't, he thinks there was  
9 something very sinister going on?

10 A. Yes. 15:07

11 538 Q. CHAIRMAN: Doesn't he have every reason to think  
12 there's something sinister going on when everybody is  
13 -- however it's done, Assistant Commissioner Finn isn't  
14 -- and I don't sense that you were saying, gosh, we  
15 made an awful mess of this, I'm sorry. I don't have 15:07  
16 any sense of that. I think you're explaining things,  
17 that it could be this way or it could be that. I don't  
18 want to be rough, forgive me. Look, maybe it's because  
19 we're just coming back and I am being indiscrete. But  
20 I mean, let's face it, he is sitting there, he has made 15:08  
21 his complaint and nothing is happening and he can't  
22 find out what's happening?

23 A. Chairman, I can certainly agree and understand where  
24 are you coming from.

25 539 Q. CHAIRMAN: Yes. I am not trying to -- listen, believe 15:08  
26 me, Mr. Barrett I'm not trying to give you a hard time?

27 A. I don't for a moment --

28 540 Q. CHAIRMAN: Ms. Mulligan has been more polite than I am  
29 but essentially her point is really simple?

1 A. I am not defending this delay and as you've said, and  
2 you're correct, I am seeking to explain it, right. And  
3 do I think it's good enough in the circumstances?  
4 Absolutely not good enough.

5 541 Q. CHAIRMAN: Okay. 15:08

6 A. I think if you -- and let's put this in --

7 542 Q. CHAIRMAN: What do you think went wrong?

8 A. Well, I think that there is a series of communications  
9 which are incomplete, in that they did not contain the  
10 required information. And let's be clear. All that 15:09  
11 Chief Superintendent Scanlan was tasked to do was take  
12 a statement.

13 543 Q. CHAIRMAN: Yes.

14 A. And determine what it is that was the most senior  
15 officer complained of. 15:09

16 544 Q. CHAIRMAN: So as to tell us the level of which --

17 A. Precisely.

18 545 Q. CHAIRMAN: Okay.

19 A. In the context of the bullying and harassment itself,  
20 it sets out some timelines, albeit they aspirational, 15:09  
21 which are substantially shorter than the timeline that  
22 it took to actually take the statement. So I can't  
23 disagree with you, Chairman. I am not seeking to --

24 546 Q. CHAIRMAN: No, no, I understand. Please understand, I  
25 am not here to give you a hard time? 15:09

26 A. I understand that.

27 547 Q. CHAIRMAN: I am looking more at systems and issues and  
28 so on. I think that was the thrust of his Mulligan's  
29 exploration of the matter. So the first thing you



1 think was communication that went wrong. I am looking  
2 at the thing then and I think, there are two views  
3 about the nature of the investigation to be carried  
4 out, isn't that right? Assistant Commissioner Fanning  
5 says it should be this way and the other, the majority 15:10  
6 view says well, no, we have a bullying and harassment?  
7 A. Yes. which is what was sought, let's be clear.  
8 CHAIRMAN: I understand. That is what Mr. Cullen had  
9 sought on behalf of -- but that doesn't take a long  
10 time to decide. I mean, you have to talk about it and 15:10  
11 then you decide.  
12 A. Yes.  
13 548 Q. CHAIRMAN: You don't sit down, wringing your hands and  
14 scratching your head. You know, you do it. You of all  
15 people with your extensive experience in industry and 15:10  
16 everything else would know that. You make a decision  
17 and there it is, right or wrong. Surely.  
18 A. I would agree with you entirely and can I say further,  
19 that in the circumstances of this commencing in May  
20 2014, wherein there are elements that, you know, took 15:10  
21 their own course, all elongated courses.  
22 549 Q. CHAIRMAN: Sure, yes. But everything here seems to  
23 have conspired to lengthen the time, people not talking  
24 to other people, people taking different views and then  
25 not able to make up their minds about what to do? 15:11  
26 A. well, I am satisfied, Chairman, with respect to the  
27 decisions that I took and the part that I played in  
28 this.  
29 550 Q. CHAIRMAN: Okay.

1 A. which moved from the tail end of September to the point  
2 at which Mr. Nugent took the coordination role on the  
3 23rd October.

4 551 Q. CHAIRMAN: Okay.

5 A. I am satisfied that I sought to move this Élan and in 15:11  
6 good faith.

7 552 Q. CHAIRMAN: I understand. So basically -- sorry to  
8 interrupt?

9 A. Sure.

10 553 Q. CHAIRMAN: But if I understand your position is, look, 15:11  
11 you say, I accept there was a delay, and the delay that  
12 you say was there and the delay that you accept must be  
13 criticised is it arises because of the communications,  
14 is that essentially the point?

15 A. In a lifetime of working in this space and doing all 15:12  
16 sorts of things, I have never seen so much committed to  
17 paper when a phone call, a conversation or a meeting  
18 would drive the thing further and faster.

19 Ms. Mulligan's enquiries regarding the report, that it  
20 was given, a written report has to be taken into the 15:12  
21 literal sense. And you know, what was put to me  
22 suggested that something is different behind the words  
23 "Garda Keogh at Athlone Garda Station to discuss the  
24 member's frequent absence from work", that tells me  
25 what this letter says was discussed. 15:12

26 554 Q. CHAIRMAN: Not but in this case, just to focus on the  
27 point that we are looking at, the delay in assigning  
28 the assistant commissioner to carry out the bullying  
29 and harassment investigation, that, you say, and I

1 introduced some other elements about decisiveness and  
2 you said no, if I am understanding, it is a lack of  
3 communications, that is the report?

4 A. The nature of the communications elongated the process.  
5 I think we could have foreshorten that. 15:13

6 555 Q. CHAIRMAN: Thank you.

7 A. That is a reality in the volumes of correspondence that  
8 we have here, I think, you know, things can be done  
9 more effectively, much like you and I are having,  
10 chairman, a conversation right now to clarify what it 15:13  
11 is that needs clarification. If we were doing this in  
12 correspondence we would probably have half a dozen  
13 letters written at this stage.

14 CHAIRMAN: I understand. Okay. Thanks very much.  
15 That's all I wanted to ask. Do you want to ask 15:13  
16 anything arising out of that, Ms. Mulligan?

17 MS. MULLIGAN: Just one or two things very briefly.

18 CHAIRMAN: And then I will move on to everybody else.

19 556 Q. MS. MULLIGAN: Just in relation to page 2549, this is  
20 just the meeting calling for a case conference, where 15:13  
21 you did try to take actions and move things forward.

22 A. Yeah.

23 557 Q. It just doesn't say there in the minutes of that  
24 meeting that you still don't have Chief Superintendent  
25 Scanlan's report? 15:14

26 A. No.

27 558 Q. I just wanted to give you an opportunity to address  
28 that?

29 A. Sure. Fintan Fanning advised us that he had a copy

1 with him and that we were going to be given the  
2 benefit, if you like, of what it said. The essence of  
3 -- the reason this meeting took place was really the  
4 letter from Mr. Cullen at the end of September, which  
5 came to me and suggested that our protected disclosure 15:14  
6 arrangements perhaps weren't working as they should.

7 559 Q. Just so I am clear, Mr. Cullen's letter I suppose --  
8 A. Triggered.

9 560 Q. Lit the fire to move, progress things forward?  
10 A. Yes. 15:14

11 561 Q. In the absence of that letter, do you think that this  
12 matter wouldn't have moved forward then?  
13 A. No, I think it would. I tried to give context in  
14 answering Mr. McGuinness. Of all of the other things  
15 that were going on in the August, September, October, 15:15  
16 timeframe, we were having a tumultuous time in An Garda  
17 Síochána at that time, and there was a tremendous  
18 amount of interest, external and internal, in this  
19 matter and I decided that it needed to be pushed along,  
20 if that's a fair statement of my action. 15:15  
21 CHAIRMAN: Okay.

22 562 Q. MS. MULLIGAN: Just so that I have put it to you, I am  
23 going to say that this delay just had the effect of  
24 both targeting and discrediting Garda Keogh because it  
25 left him in a situation where he was left in limbo, 15:15  
26 ultimately 18 months for something that is supposed to  
27 take a number of weeks.

28 A. Yeah, I don't think the number of weeks would ever  
29 apply to a case of this complexity.

1 563 Q. I appreciate that but the sheer extent of it had the  
2 effect of damaging Garda Keogh and certainly his  
3 relationship with his employer?  
4 A. I think that, you know, and taking the Chairman's  
5 point, I can explain the various segments of this, I am 15:16  
6 not seeking to approve or justify it.  
7 564 Q. Very good. Nothing further.  
8  
9 END OF EXAMINATION  
10  
11 CHAIRMAN: Thanks very much. Now, who is next? Yes  
12 Mr. McGuinness. The other Mr. McGuinness, Mr. Donal  
13 McGuinness, yes.  
14 MR. DONAL MCGUINNESS: Thank you, Chairman.  
15 CHAIRMAN: You're for An Garda Síochána. 15:16  
16 MR. DONAL MCGUINNESS: Yes.  
17 CHAIRMAN: Are you okay, Mr. Barrett?  
18 THE WITNESS: Yes, I am very anxious to be of  
19 assistance.  
20 CHAIRMAN: It's a long day. Thanks very much. 15:16  
21  
22 MR. JOHN BARRETT WAS THEN CROSS-EXAMINED BY MR. DONAL  
23 MCGUINNESS, AS FOLLOWS:  
24  
25 565 Q. MR. DONAL MCGUINNESS: Mr. Barrett, can I deal with the 15:16  
26 work related stress issue in brief to start with. The  
27 11.37 process, that has to be engaged in and we have  
28 talked about it at great length, that is a process that  
29 anticipates a certain amount of participation on the

1 part of the guard who claims he has been injured on  
2 duty, isn't that correct?

3 A. It does.

4 566 Q. Garda Keogh was at all times represented by a solicitor  
5 during this time. Garda Keogh as a guard would be 15:17  
6 aware that in order to get the 11.37 processed he has  
7 to engage in a process to get certification; isn't that  
8 right?

9 A. I think that is widely understood, yes.

10 567 Q. Now, the correspondence that you have gone into in 15:17  
11 relation to Chief Superintendent Wheatley, she makes it  
12 very clear that from her perspective Garda Keogh has,  
13 for the want of a better word, put the hand up to any  
14 enquiries being asked of him that address the issue as  
15 to yes is claiming he is out of work on work related 15:17  
16 stress. Do you accept that that is her view?

17 A. I do. Again, in response to the correspondence that  
18 was opened by Ms. Mulligan, that's the suggestion  
19 clearly, yes, that there was a less than forthcoming,  
20 is the best way I could put it. 15:18

21 568 Q. Yes. Ms. Mulligan has referenced the letter of the 8th  
22 June 2016, if we might just call that letter up, and  
23 she sets out, Chief Superintendent Wheatley clearly  
24 sets out the chronology of events that has led her to  
25 the view that she is not able to progress this issue of 15:18  
26 finding out exactly what is the cause of the work  
27 related stress. Sorry, the page number is 3267. This  
28 is the letter that Ms. Mulligan referred to:  
29

1 "On 26th March 2015 Superintendent Murray met with  
2 Garda Keogh at Athlone Garda Station to discuss the  
3 member's frequent absences from work. Superintendent  
4 Murray outlined in his report dated 2nd April that  
5 Garda Keogh was reticent to discuss any issues 15:19  
6 regarding his absence through work related stress."  
7

8 Then she goes on to provide some more detail in  
9 relation to that.

10 A. Yeah, I have that letter. 15:19

11 569 Q. Ms. Mulligan has suggested that the reason why Garda  
12 Keogh failed to engage with Superintendent Murray on  
13 that occasion was because he was in some way concerned  
14 with that work related stress, that's my understanding  
15 of her question? 15:19

16 A. That's what I understood from it also.

17 570 Q. But are you aware that Superintendent Murray was barely  
18 two weeks --

19 A. I am.

20 571 Q. -- in Athlone at that time? 15:19

21 A. He was newly appointed in Athlone, yeah.

22 572 Q. Yes. So would you accept that it's very unlikely that  
23 within such a relatively short period of time there  
24 would on such animosity between them, that that is  
25 actually the reason why? 15:19

26 A. Well I was conscious of his date of appointment and I  
27 know he was preceded in the role.

28 573 Q. Yes. We might just look in a little more detail at  
29 some of the correspondence. There was a letter of the

1 17th May 2016 from Chief Superintendent wheatley, that  
2 is at 3203?

3 MR. McGUI NNESS: Chairman, might I just intervene on  
4 that point, because I did open that letter, but that  
5 isn't the letter that Chief Superintendent wheatley 15:20  
6 sent to the executive director's office in her report  
7 of the 8th June. There's a slightly revised version of  
8 it, which is actually dated the 18th May. That's to be  
9 found at 3277. There's some more factual information  
10 in it in relation to her visit. I should have opened 15:20  
11 that.

12 CHAIRMAN: Are you happy to deal with it on that basis,  
13 Mr. McGuinness. I am sure what Mr. McGuinness is  
14 saying is correct. Are you happy to accept that?

15 MR. DONAL McGUI NNESS: I am, Chairman. 15:20

16 CHAIRMAN: Thank you very much. Then 3277 is the one,  
17 is that right?

18 MR. McGUI NNESS: Yes.

19 574 Q. MR. DONAL McGUI NNESS: If we look at that letter, Chief  
20 Superintendent wheatley addresses the issue again, 15:21  
21 isn't that correct, or for the first time.

22  
23 "I enquired if Garda Keogh was anxious to return to  
24 work and was advised by Garda Keogh he attributes his  
25 current absence to work related stress deriving from 15:21  
26 his involvement in investigations being progressed  
27 outside the Westmeath division. Garda Keogh intimated  
28 that he would not be returning to work until these  
29 matters had been concluded as these matters were



exacerbating his condition.

While this was noted the referral of the member to the CMO by his local district officer was made following a significant number of absences and the member's own acknowledgment of a dependence on alcohol. During my meeting with him he outlined that he was not drinking heavily. . . ."

I will go on.

"Garda Keogh stated that he would be attending the scheduled appointment with CMO."

She references the medical certificates forwarded by the member set out the reasons for his continued absences from work. If we then just go on to the 26th May, which is 3276, the second paragraph there, Chief Superintendent Wheatley advises your office -- sorry that is --

MR. MCGUINNESS: That is a year earlier.

575 Q. MR. DONAL MCGUINNNESS: Actually, if we could look at that year. It's 2015, a year earlier, the alleged stress:

"As the member is not willing to further discuss the issue which he states arises out of his involvement and protections under the confidentially reporting legislation."

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And then if we go to the 3267, which is back to this letter, this long letter, and this letter is the 8th June 2016.

A. Yeah.

15:22

576 Q. And once more this is in response to this issue as to whether or not an investigation has been carried out, do you understand?

A. I do.

577 Q. And it's to your office. The letter sets out the progress of this issue, the difficulties with this issue and then if we just go to the very last paragraph, at page 3269:

15:23

"In view of the foregoing, it has not been possible to conduct a full investigation into Garda Keogh's absence through alleged work related stress, nor do I believe will any further or specific information be provided by Garda Keogh which would enable the further investigation of this claim."

15:23

She is making it very clear that she is unable to progress matters. She goes on:

"However, to be clear and to avoid any doubt, I am to enquire if there is any requirement to further investigate Garda Keogh's absence through alleged work related stress. In the event that the further investigation of this matter is warranted, I would

15:23

1 recommend that permission be granted to appoint an  
2 inspector outside the Westmeath division to conduct  
3 same. "

4 A. Yeah. Now, if you recall my answer to Mr. Diarmuid  
5 McGuinness earlier, Chief Superintendent McLoughlin had 15:24  
6 met with Garda Keogh on the 3rd June, that's about a  
7 week, five days earlier than this letter, and he had  
8 committed per a letter from Garda Keogh of the 14th  
9 June that he would conduct the investigation. So  
10 effectively what I understand the chief to have done is 15:24  
11 to circumvent the dilemma that was pointed up here in  
12 this letter, some days earlier he anticipated it,  
13 because this had been raised. Chief McLoughlin, to his  
14 credit, has been very careful to ensure that in  
15 situations where work related stress arises that the 15:24  
16 obligation to investigate it was very much put in the  
17 hands of the divisional office. It's not just in the  
18 Westmeath meet division, it's in all of the divisions,  
19 he has been a leading light in that respect and a  
20 leading campaigner for supports for mental health 15:25  
21 within An Garda Síochána. So I think this letter in  
22 many respects was almost moot by the fact that that  
23 meeting took place on the 3rd June in Tullamore and  
24 that the chief himself was going to take this in hand.  
25 And I think that's confirmed. 15:25

26  
27 Subsequently the actions clearly were in September,  
28 which I appreciate again to the Chairman's point there  
29 was some delay, but there was a decision taken at that

1 point, on the recommendation of the chief, that pay,  
2 full basic pay would be restored to Garda Keogh.

3 578 Q. Yes. That's essentially where I get to.

4 A. Sorry, I didn't mean to preempt.

5 579 Q. Garda Keogh, who was independently legally advised, as 15:25  
6 any guard would be, would be aware of the 11.37  
7 procedure?

8 A. Yes.

9 580 Q. Chief Superintendent Wheatley shows her good faith by  
10 explaining to your office exactly the difficulty that 15:26  
11 she has in completing an investigation into the cause  
12 of the work related stress. And that is associated  
13 with the very single fact that Garda Keogh has invoked  
14 his status as a protected discloser not to engage with  
15 Superintendent Murray on this issue? 15:26

16 A. I'm not impugning Chief Wheatley at all. What she  
17 wrote I read to be the position.

18 581 Q. I'm not suggesting you are impugning the Chief but what  
19 I want to make clear, her motives have very clear here.  
20 Her motives are, she is telling head office is this is 15:26  
21 the problem, this is the reason why we haven't got an  
22 investigation and if you still think an investigation  
23 is needed --

24 A. Get somebody else, yeah.

25 582 Q. -- then there is the opportunity to appoint another to 15:26  
26 investigate it?

27 A. Understood.

28 583 Q. That plays into --

29 A. It does.

1 584 Q. -- cross-examination by Ms. Mulligan, who raised the  
2 issue with you as to whether or not engaging with  
3 outside investigators was something that is done from  
4 time to time?  
5 A. It is, and I think we are clear on that. 15:27  
6 585 Q. So Chief Superintendent Wheatley actually engaged even  
7 with that issue as well?  
8 A. She did.  
9 586 Q. Yes.  
10 A. I think Chief McLoughlin, to his credit, had already 15:27  
11 found a different bridge to try and address the matter.  
12 587 Q. And that's the point I am making, is that the problem  
13 was created as a result of Garda Keogh forming a view  
14 that as a protected discloser he didn't have to engage  
15 with local management on the issues that he says now 15:27  
16 were causally related to the work related stress  
17 because he is a protected discloser. And the work  
18 around it was fine, the local division went as far as  
19 they could, and the local management went as far as  
20 they could and told your office they went as far as 15:28  
21 they could, and then your office and Tony McLoughlin  
22 found a work around to that; isn't that really the  
23 case?  
24 A. That is the case.  
25 588 Q. He was put on full pay from October 2016 and it was 15:28  
26 backdated to December 2015?  
27 A. That's correct, when the absence began.  
28 589 Q. Thank you. Now, if we move onto the next issue. This  
29 is the issue of delay, this is the issue you have

1 engaged in with the Chairman in relation to the delay  
2 that you believe occurred in relation to the bullying  
3 and harassment and the progressing of that complaint.  
4 As I understand it, you referenced that there was a  
5 delay in actually taking the complaint in the first 15:28  
6 instance. Did I understand you correctly in saying  
7 that?

8 A. I think that's documented, Mr. McGuinness. I think  
9 there were meetings to happen that didn't happen.  
10 There was legal advice sought. There was a variety of 15:28  
11 different things that are in the various papers that I  
12 have read. Now don't ask me what papers because  
13 there's a forest of paper here.

14 590 Q. well, let's break it down. There is the initial period  
15 when Garda Keogh eventually decides that he wishes to 15:29  
16 engage with the bullying and harassment policy. We  
17 will call that period number one. He eventually  
18 decides in November 2016 to engage in the policy, isn't  
19 that correct?

20 A. That is correct. 15:29

21 591 Q. So there is that period between November 2016 and the  
22 end of March 2017, when he delivers his signed  
23 statement to Chief Superintendent Scanlan. That is  
24 period number one.

25 A. That's your numbering, I accept the point. 15:29

26 592 Q. I just want to clarify, do you believe that there has  
27 been a delay in relation to that period?

28 CHAIRMAN: Between the time he decided to engage with  
29 the -- I'm sorry Mr. McGuinness, just so we know where

1 we are going. The time he discovers he says he wants  
2 to engage with the bullying and harassment policy.

3 A. Yes.

4 593 Q. CHAIRMAN: And that appears to be November 2016?

5 A. '16, correct. 15:30

6 594 Q. CHAIRMAN: Take that for the moment?

7 A. Yeah.

8 595 Q. CHAIRMAN: We know that he meets Chief Superintendent  
9 Scanlan in March 2017 and gives him a statement on the  
10 27th March 2017. And Mr. McGuinness says, let's take 15:30  
11 that as period number one. We were discussing period  
12 number two. The period between the Scanlan exchanges,  
13 the Scanlan encounter when the statement was made and  
14 possibly November, when Assistant Commissioner Finn,  
15 but that is another matter, but the first one 15:30  
16 Mr. McGuinness wants to say, let's take the first of  
17 those, November 2016 to the Chief Superintendent  
18 Scanlan statement, which is the end of March.

19 A. That's period number one.

20 596 Q. CHAIRMAN: Correct. 15:31

21 A. All right. In that, there are various back and forths,  
22 I have a letter in there saying can I be updated on the  
23 progress of this statement and I think there are  
24 responses telling me that meetings were scheduled and  
25 had to be cancelled and that there was legal advice 15:31  
26 sought and there was a statement that wasn't signed,  
27 there's a lot of activity which then, to the chair's  
28 point, ultimately results in a signed statement dated  
29 27th March.

1 597 Q. MR. DONAL MCGUINNESS: well, I represent quite a few  
2 clients in An Garda Síochána and one of them is Chief  
3 Superintendent Scanlan.  
4 A. Sure.  
5 598 Q. I had perhaps understood that you were suggesting that 15:31  
6 there had been a delay under his watch?  
7 A. No, no, I'm not attributing it to anybody.  
8 599 Q. In taking a statement?  
9 A. Let's be clear, there is correspondence, again please  
10 I'm not that familiar with all the paperwork and this 15:31  
11 is something I didn't micromanage in any way, but there  
12 are correspondences in there to suggest that meetings  
13 were to be set up with Garda Keogh, and one party or  
14 the other, and I'm attributing no blame, right, were  
15 unavailable, or that Garda Keogh engaged legal advice. 15:32  
16 Now, there are people in the room who are far more  
17 familiar with the correspondence than I am, but that  
18 was my reading, that there was a series of valiant  
19 efforts made and for one reasonable reason or another  
20 it took the length of time that it did. 15:32  
21 600 Q. If I may add some clarity to that period of time?  
22 A. Sure.  
23 601 Q. If we could have a look at page 9866, please. This is  
24 the second page of a letter from HR director Alan  
25 Mulligan to the superintendent in the Commissioner's 15:32  
26 office. If we could go 9866, it's 25th November 2016  
27 it is dated. You might scroll down, Mr. Kavanagh,  
28 please. There is a typed there of July 16th but  
29 November is inserted because that was the date it was



1 sent.

2  
3 If you just scroll up a little bit please to the main  
4 paragraph there. Yes. Stop there, please. In the  
5 middle of that paragraph Mr. Mulligan says:

15:33

6  
7 "Mr. Cullen said that he has no problem with this  
8 letter, that he understands that Garda Keogh must  
9 formally submit him a complaint in a clear and  
10 unambiguous manner and that he has advised Garda Keogh  
11 to fully comply with the Garda policy in relation to  
12 bullying and harassment. He advised me that Garda  
13 Keogh was working on his complaint and will send it as  
14 soon as possible. I offered my assistance and/or  
15 Ms. Hassett's assistance to Mr. Cullen and Garda Keogh  
16 in relation to the matter. Mr. Cullen took my contact  
17 details and said he will ring me if he needs  
18 assistance. We agreed that Garda Keogh's complaint  
19 would be sent directly to me or Chief Superintendent  
20 McLoughlin. I promised that we will arrange for  
21 investigating officer to be appointed as soon as the  
22 complaint is received."

15:33

15:33

15:33

23  
24 So An Garda Síochána has very clearly engaged with  
25 Garda Keogh and his solicitor at this time, telling him  
26 what is required in order to progress his bullying and  
27 harassment complaint, do you agree with me?

15:34

28 A. I do, yes.

29 602 Q. Yes. And then if I could just give you a series of

1            dates and you can disagree with these if you wish, but  
2            I think they are correct, on the 23rd December 2016  
3            Assistant Commissioner Fanning instructed Chief  
4            Superintendent Scanlan to take the statement under the  
5            bullying and harassment complaint, you don't dispute            15:34  
6            that?

7            A.    I think he did something different, I think he asked  
8            the statement be taken and that he would therefore be  
9            able to determine the rank of -- there were two  
10           elements of it, the second element being, being in a            15:34  
11           position to determine the rank of the investigator.

12    603    Q.    That's correct. And that was after you had attempted  
13           to appoint Chief Superintendent Roche and he thought  
14           that that was premature?

15           A.    Which was because I wanted to ensure that there was no            15:34  
16           issue or conflict which may give rise to a delay, as it  
17           did.

18    604    Q.    Indeed. So Chief Superintendent Scanlan was instructed  
19           two days before Christmas. He then engaged with Garda  
20           Keogh and Garda Keogh told him that he thought Chief            15:35  
21           Superintendent Roche had been engaged and he was  
22           surprised by Chief Superintendent Scanlan, that was in  
23           January 2017, you don't dispute that?

24           A.    I don't.

25    605    Q.    He on that occasion raised the possibility that Chief            15:35  
26           Superintendent Scanlan was conflicted, you're familiar  
27           with that query. As a result of that conversation  
28           Chief Superintendent Scanlan spoke to Tony McLoughlin  
29           on 20th January 2017 and passed on the concerns and

1 eventually he was directed to proceed by AC Fanning on  
2 13th February 2017, you don't dispute any of these  
3 dates?

4 A. No, they're all the explanations I guess.

5 606 Q. Exactly. Then on the first occasion Garda Keogh met 15:35  
6 for the first time with Chief Superintendent Scanlan on  
7 the 2nd March 2017, when we have the short unsigned  
8 statement prepared. And then there were a series of  
9 dates that Garda Keogh was unavailable. 7th March '17,  
10 when Chief Superintendent Scanlan sought to engage with 15:36  
11 him; 13th March '17, Garda Keogh was contacted and  
12 requested for a time; 15th March 2017 Garda Keogh was  
13 unavailable for the week; on the 20th March '17 Garda  
14 Keogh looked for further time; and eventually there was  
15 a meeting set for the 21st March '17 and Garda Keogh 15:36  
16 cancelled that meeting. Eventually he did meet on the  
17 27th March 2017 and a statement was finalised and  
18 prepared. Do you accept all of those dates?

19 A. I mean if you tell me so. I didn't micromanage this,  
20 but I read it and as I said to Ms. Mulligan, you know, 15:36  
21 I don't know what I knew at the time relevant to what I  
22 know now, Mr. McGuinness. I am not trying to be  
23 difficult about this.

24 607 Q. Yes.

25 A. But I do accept that there were several valiant efforts 15:37  
26 made, and I am not attributing any became to either  
27 side, but this did take a period of time.

28 608 Q. Yes. And if I might just ask you to have a look at  
29 document 10031, please.

1 CHAIRMAN: Are you sure that is the right number?

2 MR. DONAL MCGUINNESS: Yes.

3 CHAIRMAN: would you give it to me again?

4 MR. DONAL MCGUINNESS: 10031.

5 CHAIRMAN: Thank you. 15:37

6 609 Q. MR. DONAL MCGUINNESS: This is the personal injury  
7 summons that was issued by Garda Keogh and his  
8 solicitor on 13th April 2017. If I might just refer  
9 you to page 10035, I don't want you to spend any time  
10 reading it but have you seen this document before. 15:37

11 A. No.

12 610 Q. well, I hope I'm not being unfair here, the endorsement  
13 of claim that appears on page 10035, if we just scroll  
14 down please, Mr. Kavanagh:

15 15:38

16 "Particulars of bullying, harassment, intimidation,  
17 demeaning behaviour and the like."

18

19 Then if you just scroll onto the next page please,  
20 Mr. Kavanagh, there is a series of particulars. 15:38

21 A. Yes.

22 611 Q. Of the alleged bullying and harassment. I am going to  
23 suggest to you that these particulars very much mirror  
24 the content of the statement that was prepared by Chief  
25 Superintendent Scanlan, with Chief Superintendent 15:38  
26 Scanlan. So the issues being addressed in the personal  
27 injuries summons are the same as the issues that are  
28 addressed in the bullying and harassment statement. Do  
29 you understand?

1           A.    I do.

2   612   Q.    The point I am making is that Garda Keogh may have had  
3           his own reasons for delaying the contact with Chief  
4           Superintendent Scanlan because he was engaged in  
5           another process, which he is perfectly entitled to           15:39  
6           engage in, namely further and solve his personal  
7           injury claim against An Garda Síochána for the very  
8           same things that --

9           MS. MULLIGAN:  Chairman, I am very reluctant to  
10          interrupt my friend, but that seems extremely           15:39  
11          speculative and not something that this witness can  
12          even speak to.  So in those circumstances I am going to  
13          object to that being put to the witness.

14          CHAIRMAN:  Yes, that seems like a good objection.  It's  
15          not that there's anything particular improper about the   15:39  
16          question, Mr. McGuinness, but how on earth could  
17          Mr. Barrett, with all his talents and experience, how  
18          on earth could he be expected to -- I mean, that is a  
19          point that you might make in a submission or an  
20          argument.  One of the ways I look at this is, if           15:39  
21          Mr. Barrett said, oh absolutely, does it make any  
22          difference?  Or if he said, oh absolutely not, does it  
23          matter in the slightest what answer he gives to that  
24          question?

25          MR. DONAL MCGUINNESS:  Very good, Chairman, I was just   15:40  
26          giving the witness an opportunity to --

27          CHAIRMAN:  I think the essence is, Mr. McGuinness, if I  
28          may, we have identified period number one, and I  
29          understood, Mr. Barrett, that you said, look, in the

1 nature of things everybody was trying to do their best  
2 but there were delays. Mr. McGuinness is seeking to  
3 establish that whatever about that, the delays were not  
4 to be laid at the door of Chief Superintendent Scanlan.  
5 There's not much moral blame in it, he's not 15:40  
6 suggesting, but he is saying that Chief Superintendent  
7 Scanlan was not to blame for any of the delay between  
8 November and March.

9 A. Chairman, I am at a very substantial disadvantage. I  
10 have never seen these pleadings, whether they mirror 15:41  
11 the --

12 613 Q. CHAIRMAN: Don't mind the pleadings, don't mind that,  
13 we're past that. I'm just saying over all, what he is  
14 saying is, Chief Superintendent Scanlan -- I'm not sure  
15 that Ms. Mulligan is making any claim, but just in case 15:41  
16 somebody is making a claim, Mr. McGuinness wishes to  
17 say these dates establish that that it is not Chief  
18 Superintendent Scanlan's responsibility, he wasn't  
19 responsible for any of the delays in phase number one.  
20 That is all he is saying. If you don't want to comment 15:41  
21 on that, say I don't want to comment on that. If you  
22 want to say you comment on that, comment on it. And  
23 you don't have to say anything on it?

24 A. I don't want to comment.

25 CHAIRMAN: Very good. Thank you very much. 15:41  
26 MR. DONAL MCGUINNESS: Thank you.

27 CHAIRMAN: I mean the dates that Mr. McGuinness has  
28 presented, and if I may say so very, very clearly  
29 presented, he says that's evidence, if you like, he is

1 referring to evidence that we already have and to tell  
2 the honest truth, Mr. Barrett, it doesn't matter  
3 whether you agree with it or not, do you know what I  
4 mean.

5 A. I do. 15:42

6 614 Q. CHAIRMAN: Now it may be disagreed with, isn't that  
7 right, Ms. Mulligan?

8 MS. MULLIGAN: It's a matter for submission.

9 CHAIRMAN: Thank you very much. Okay, Mr. McGuinness.

10 615 Q. MR. DONAL MCGUINNESS: Thank you, Chairman. But it 15:42  
11 might be of some interest to you, Mr. Barrett, that in  
12 a document that you prepared and sent to the deputy  
13 commissioner, Governance and Strategy, which was dated  
14 5th December 2017, you indeed set out a very detailed  
15 chronology of the events that had transpired, including 15:42  
16 a lot of the dates that I have just mentioned.

17 A. I don't doubt it. It's just that I'm not attributing  
18 any --

19 CHAIRMAN: No, no, I understand.

20 616 Q. MR. DONAL MCGUINNESS: So I'm going to move on to 15:42  
21 period number two now if that is in order, Chairman?

22 CHAIRMAN: Yes, absolutely.

23 617 Q. MR. DONAL MCGUINNESS: And if we could have a look at  
24 document number 10049, please. This is a letter which  
25 shows that -- it's from AC Fanning, can you scroll down 15:43  
26 to the bottom of that document, please. It's from AC  
27 Fanning of the 24th May 2017, scroll up to the top  
28 please, to your office. I am right in that, yes?

29 A. That's correct.

1 618 Q. Yes. Essentially, this document suggests, if you want  
2 to take time to read it or perhaps you are familiar  
3 with it having prepared for today, it establishes two  
4 things, I suggest to you. One is that Garda Keogh was  
5 in the loop with what is proposed. But the critical 15:44  
6 thing here is that AC Fanning is proposing that the  
7 bullying and harassment policy is not wide enough and  
8 he is making it very clear to your office at this time,  
9 hang on a second with the bullying and harassment, I  
10 have got the statement, I have read it, it's not big 15:44  
11 enough to deal with this issue and Garda Keogh is aware  
12 that that is my view?

13 A. Correct.

14 619 Q. You're also aware that Garda Keogh doesn't in any way  
15 criticise AC Fanning's management and governance of 15:44  
16 this issue. In fact, I think he has apprised him of  
17 this?

18 A. I will take your word for it.

19 620 Q. I call this period number two?

20 A. This is the period two the 24th May? 15:44

21 621 Q. This is the period, if you like, after the statement is  
22 received at the end of March?

23 A. 27th March to 24 May.

24 622 Q. Yes.

25 A. Okay. 15:45

26 623 Q. But it goes on. I just want to you accept two things  
27 out of this letter. One is that AC Fanning is of the  
28 firm view that the policy is not adequate to deal with  
29 the issues that arise in the statement. That is the



1 first thing.

2 A. Right.

3 624 Q. Do you accept that?

4 A. I'm not accepting that.

5 625 Q. No but do you accept that that's his view? 15:45

6 A. Oh that's his.

7 626 Q. And he expressed that to you?

8 A. And he held that view all the way to the 23rd November.

9 627 Q. Indeed. But importantly, within that letter is a  
10 reference that Garda Keogh has been kept informed of 15:45  
11 this issue. If you go on to document 10051, and this  
12 is a letter from AC Fanning. My understanding is it's  
13 dated the 30th May to Garda Keogh. And he tells him:  
14

15 "I am of the view that these matters merit 15:46  
16 consideration outside the bullying and harassment  
17 policy before proceeding to next steps I am awaiting  
18 his decision and once I have his decision I will  
19 communicate with you further.

20 15:46

21 I do hope that you are keeping well and I do look  
22 forward to you returning to the workplace, where I  
23 believe you can make a very valuable contribution."  
24

25 He refers to Inspector McCarthy visiting him on the 15:46  
26 22nd May, where he raised a number of other issues?

27 A. Sure.

28 628 Q. So he is essentially keeping Garda Keogh in the loop as  
29 to this is his view, bullying and harassment shouldn't

1 be progressed, if I could nuance it that way, because  
2 there is a bigger enquiry to be made?  
3 A. So let me just go to the second paragraph:  
4  
5 "I have included those issues along with your statement 15:46  
6 and forwarded them to (me) on the 24th May."  
7 629 Q. Yes?  
8 A. "The purpose is that I am of the view that these  
9 matters merit consideration."  
10  
11 So he is essentially saying that -- he is expressing  
12 what he expressed to you on the 24th May, I believe  
13 that there is a greater issue at stake here, beyond the  
14 bullying and harassment policy. The matter needs a  
15 larger investigation. Garda Keogh is being made aware 15:47  
16 of it?  
17 A. He was consistent on that all the way through.  
18 CHAIRMAN: Yes. But you don't agree.  
19 A. No, ultimately I don't agree.  
20 630 Q. CHAIRMAN: I know you don't agree with that, but you 15:47  
21 don't agree that he forwarded the material?  
22 A. Oh I don't agree that he forwarded the materials,  
23 absolutely no.  
24 631 Q. CHAIRMAN: There is a factual statement where there is  
25 a difference? 15:47  
26 A. Okay.  
27 632 Q. CHAIRMAN: You say, no, he didn't do that. You agree  
28 that he formed the view with which you do not agree  
29 about the policy and the approach to the matter, you

1 agree?

2 A. There are two facts that I am absolutely clear about.

3 One is at this point in time Fintan Fanning is very

4 clear that the matters as set out in the statement of

5 the 27th March extend beyond the bounds of -- 15:48

6 633 Q. CHAIRMAN: That's his view?

7 A. That's his view. The second thing I am clear about is,

8 I did not receive the documents that he talked about

9 until the 4th October.

10 CHAIRMAN: So there we are. 15:48

11 MR. DONAL MCGUINNESS: If we just go back to page

12 number 10050 please, the second last paragraph, this is

13 the letter to you. He says:

14

15 "I am reluctant to make any appointments in this matter 15:48

16 as there may well be a conflict of interest, in that I

17 had prior involvement in a previous correspondence

18 regarding Garda Keogh and it may well be the perception

19 of the parties that I would not be impartial. Garda

20 Keogh corresponded with me on the 15th April to which I 15:48

21 issued a response on the 24th April."

22

23 So he is raising another issue as well in addition to

24 the issue about the bullying policy not being

25 comprehensive enough to cover this matter. Do you 15:49

26 accept that?

27 A. I understand that clearly, I think. But what was the

28 question about, Mr. McGuinness, I didn't --

29 634 Q. No, I am just pointing it out?

1           A.    Okay.

15:49

15:49

15 · 50

15 · 50

15 · 50

1  
2           So very clearly Garda Keogh was in the loop here about  
3           AC Fanning's firm views as to how to progress matters?  
4           A.   And also firm in his view that these materials had been  
5               transmitted to my office. 15:50  
6 637   Q.   Yes.  
7           A.   So if you recall my earlier evidence, Mr. McGuinness, I  
8               was clear that Mr. Fanning or Assistant Commissioner  
9               Fanning did in effect some of the work of the protected  
10              disclosure manager because communication is a key part 15:51  
11              of that.  
12 638   Q.   Yes.  
13           A.   By keeping the protected discloser, Garda Keogh,  
14               appropriately in the loop, save that he is giving  
15               assurances to Garda Keogh that materials which were not 15:51  
16               transmitted had been.  
17 639   Q.   Yes.  
18           A.   That's my earlier evidence.  
19 640   Q.   But I suppose if you were to take the key message that  
20               AC is communicating to you, is that he doesn't want the 15:51  
21               bullying and harassment policy to kick off, because he  
22               believes that there is a bigger issue, a bigger  
23               investigation required?  
24           A.   If you go through the transcript of Assistant  
25               Commissioner Fanning's evidence, I think he is very 15:51  
26               correct and very respectful as to who is the  
27               policyholder, as to who is the personal ultimately  
28               going to have to make that decision. And I think the  
29               trail of correspondence, including some from me, makes

1 the point that I am neutral at best on the idea of  
2 extending it. I was mindful of the fact that time that  
3 had elapsed, to the Chairman's point, we would be  
4 setting potentially the clock at zero, and I think that  
5 might be an expression you yourself used.

15:52

6 CHAIRMAN: Yes.

7 A. And I was mindful of the fact that in the context of  
8 something that assistant commissioner Eugene Corcoran  
9 said at the meeting of the 23rd November, we needed to  
10 have regard to the consideration of those who were  
11 impugned by Garda Keogh in his allegations, and there  
12 were a number of those people. By going with what  
13 Assistant Commissioner Fanning argued as Byrne-McGinn  
14 model, we were going into a situation where there  
15 weren't tram rails and handrails and parameters in a  
16 way that such exists in a bullying and harassment  
17 policy. And so, due process, fair procedure,  
18 timelines, resources and there being precedent that we  
19 could rely upon was all part of my consideration as to  
20 why B&H trumped any novel extended beyond. Plus, after  
21 the 4th October when I had an opportunity to read at  
22 length and read several times the statement taken by --  
23 please let me finish, this is important -- the  
24 statement taken by Chief Superintendent Scanlan, I was  
25 satisfied that in the main the matters raised fell  
26 within the terms of bullying and harassment, which was  
27 my jurisdiction, and that if there were criminal  
28 matters there was a facility for the criminal matters  
29 to be explored in parallel, as a part of a criminal

15:52

15:52

15:53

15:53

1 investigation if AC Finn so decided.

2 CHAIRMAN: Mr. McGuinness's point however is, for what

3 it's worth and as far as it goes, this e-mail shows

4 that Assistant Commissioner Fanning was keeping Garda

5 Keogh in the loop, we all agree with that. 15:53

6 A. Yes.

7 641 Q. CHAIRMAN: You're agreeing with that. And number two,

8 that Garda Keogh appeared to be satisfied with it.

9 That's what Mr. McGuinness is suggesting?

10 A. I understand that. 15:54

11 642 Q. CHAIRMAN: Okay. I am right about that,

12 Mr. McGuinness?

13 MR. DONAL MCGUINNESS: You are indeed, Chairman.

14 CHAIRMAN: That's essentially the point. Okay. It

15 doesn't mean it's right but that is what Mr. McGuinness 15:54

16 is suggesting this e-mail indicates, evidences or

17 implies.

18 643 Q. MR. DONAL MCGUINNESS: Yes. And if we could just move

19 to document 13367, this is Garda Keogh's diaries, and

20 there's an entry there of the 5th July, you probably 15:54

21 can't read it, I will do that for you.

22 A. I can't.

23 CHAIRMAN: why don't you read it, Mr. McGuinness.

24 644 Q. MR. DONAL MCGUINNESS:

25 15:54

26 "Under pressure, trying to stop promotions, didn't need

27 (two initials) witness crap."

28

29 So I'm suggesting to you that Garda Keogh had other

1 things on his mind in July of 2017, he was trying to  
2 stop promotions.

3 A. I haven't seen this before, by the way, so it's news to  
4 me.

5 CHAIRMAN: well, Mr. McGuinness, there is some limit to 15:55  
6 what Mr. Barrett as the executive director can say  
7 about a diary entry. There's a limit to  
8 cross-examination.

9 MR. DONAL MCGUINNESS: I do accept that, Chairman, but  
10 in circumstances where this witness has been asked 15:55  
11 directly about the period of delay and he has  
12 deprecated the period of delay, I believe there is a --

13 CHAIRMAN: I understand that, but explicating the  
14 meaning of his diary, Mr. McGuinness, you and I know we  
15 will not fall out over this one, Mr. McGuinness, 15:55  
16 because we both know the rules.

17 645 Q. MR. DONAL MCGUINNESS: May it please you, Chairman. If  
18 I could ask you then to look at document 5897, please.  
19 This is a letter from Inspector McCarthy to Garda  
20 Keogh. Again, I only reference it to illustrate that 15:56  
21 Inspector McCarthy on behalf of Assistant Commissioner  
22 Fanning is keeping him in the loop at all times.

23  
24 "I wish to acknowledge our meeting yesterday afternoon  
25 at your home, wherein you spoke about matters regarding 15:56  
26 members of An Garda Síochána. I also prefer to  
27 previous correspondence from this office to you dated  
28 16th June 2017 and to inform you that AC Eastern Region  
29 has written to executive director HRPD on the 17th



1 August seeking an updated report regarding this  
2 matter."

3  
4 So AC Fanning is writing to Garda Keogh and he is  
5 saying, listen, I am keeping in touch with your office 15:56  
6 about this matter, but the matter that essentially is  
7 still a live one is, AC Fanning's view, that the  
8 investigation that needs to be carried out is not the  
9 bullying and harassment complaint but a larger type  
10 investigation. Do you agree with me that that is the 15:57  
11 live issue on the 17th August 2017?

12 A. No, I don't, and here's why: The outstanding matter  
13 upon which the decision is going to be made is the  
14 assignment given to Chief Superintendent Scanlan in  
15 January or December of 2016, a copy of which we still 15:57  
16 do not have. And I would contend that this letter from  
17 James McCarthy tends to suggest that HR and PD are  
18 equipped with all the necessary inputs upon which to  
19 make the decision and the delay is attending therefore  
20 on us. Now, let's be clear about this, I commend the 15:57  
21 regional office for keeping the protected discloser  
22 updated on progress. Essentially that is the action  
23 that would normally fall to the PD manager. And in my  
24 evidence earlier before you began this  
25 cross-examination I think I called that out. At the 15:58  
26 meeting on the 3rd October in my office I explicitly  
27 instructed that the contact established by the said  
28 James McCarthy inspector should continue. I saw it to  
29 be positive and of assistance to anybody who felt they

1           were being obscured by or cut out from or deprived of  
2           information. So, insofar as the communication exists,  
3           goodness.

4           CHAIRMAN: Communication is good but it is based on a  
5           mistake? 15:58

6           A. Correct.

7   646   Q. CHAIRMAN: And you say the mistake is there's an  
8           implication, which there apparently is, I'm going to  
9           look for an updated report, meaning I haven't got one?

10          A. Yes. 15:58

11   647   Q. CHAIRMAN: And you say you couldn't have got one  
12          because we didn't have the right material?

13          A. And that fundamentally is, I think --

14   648   Q. CHAIRMAN: I mean we're not going to resolve that one,  
15          if you know what I mean. But Mr. McGuinness's point 15:59  
16          is, here they're keeping in touch with Garda Keogh?

17          A. Goodness.

18   649   Q. CHAIRMAN: And you say you're entirely in favour of  
19          that?

20          A. Yes. 15:59

21   650   Q. CHAIRMAN: But you say there's a real problem insofar  
22          as your office is concerned?

23          A. Absolutely.

24   651   Q. CHAIRMAN: Because your office does not have the --  
25          that is your case, your office does not have the 15:59  
26          documentation and clearly Inspector McCarthy and  
27          Assistant Commissioner Fanning think you do, or  
28          apparently think you do?

29          A. At that point in time they may very well have been

1           labouring under the misapprehension, but to go through  
2           the transcript --

3 652 Q. CHAIRMAN: I understand that.

4           A. The transcript of Assistant Commissioner Fanning's own  
5           evidence makes clear that it was October 4 when that 15:59  
6           material became available to me, from him.

7 653 Q. CHAIRMAN: I am with you. To the extent that it's an  
8           issue of fact, we will have to worry about that and  
9           look at the various things. But that's what you say  
10          about this e-mail, this letter? 16:00

11          A. Communication in general good, Chairman.

12 654 Q. CHAIRMAN: Okay, I think we have that.

13          A. Material communicated not correct.

14 655 Q. MR. DONAL MCGUINNESS: If we could have a look at 5896  
15          please. This is another letter from AC Fanning to your 16:00  
16          office of 1st September 2017.

17

18          "I refer to previous correspondence from June."

19

20          He goes on to say: 16:00

21

22          "You will recall in my correspondence dated 24th May  
23          that I recommended a full investigation into these  
24          matters and also that any delay should be kept to a  
25          minimum. 16:00

26

27          I would appreciate your response to these matters which  
28          are ongoing for some time."

29

1           So it's clear to me, from reading that letter, that he  
2           is referencing back the letter of the 24th May, he's  
3           not referencing the statement of Garda Keogh in the  
4           bullying and harassment complaint, he's referencing the  
5           larger investigation -- 16:00

6           A.     But Mr. McGuinness --

7   656   Q.     -- "I recommend a full investigation into these  
8           matters."

9           A.     Isn't it only fair to say that he is making the  
10          assessment that this is a matter larger than bullying 16:01  
11          and harassment, based upon a statement taken with Chief  
12          Superintendent Scanlan? That is the basis of his  
13          assessment that this is larger than B&H, right.

14   657   Q.     Don't get me wrong, I am not saying that he is right or  
15          wrong, I just want to explain that this is in his mind? 16:01

16          A.     I am accepting that it is in his mind and I said to the  
17          Chairman that it continued to be in his mind.

18   658   Q.     CHAIRMAN: Carry on, Mr. Barrett, you said that he is  
19          basing his view as to the nature of the inquiry on the  
20          statement given to Chief Superintendent Scanlan. 16:01

21          A.     That is my belief.

22   659   Q.     CHAIRMAN: Yes. well, that appears to be so. Sorry,  
23          let's assume that that is the case, I don't think  
24          anybody is going to dispute that. So what is the next  
25          thing you are going to say about that? 16:02

26          A.     So he has the facility to have a fully formed opinion.

27   660   Q.     CHAIRMAN: Yes.

28          A.     Based upon this document.

29   661   Q.     CHAIRMAN: Yes.

1 A. which at that point, right, there is no way I can  
2 counter it, because nobody has had sight of it, right.

3 662 Q. CHAIRMAN: You haven't seen it. That's your evidence?  
4 A. So the reality becomes that when we gain sight of this  
5 document, and he continues to canvass this view and I 16:02  
6 am accepting Mr. McGuinness's point, at the meeting we  
7 had in my office on the 3rd October, he said, oh, this  
8 is larger than B&H, and he says, I think there could be  
9 criminality in it.

10 663 Q. CHAIRMAN: Yes. 16:02  
11 A. And we spend a little bit of time discussing, well, if  
12 there was to be criminality in it, what would that give  
13 rise to, it would give rise to a criminal investigation  
14 independent and separate from.

15 664 Q. CHAIRMAN: Indeed? 16:02  
16 A. So B&H does not obviate or prevent --

17 665 Q. CHAIRMAN: I heard that, I understand that to be your  
18 situation and to be also your situation as a matter of  
19 logic. So you really challenge the logic behind  
20 Assistant Commissioner Fanning's position? 16:03  
21 A. It's, I'm sure, a very sincerely held view.

22 666 Q. CHAIRMAN: I understand that. People have  
23 disagreements. But I'm understanding that you don't  
24 agree, first of all you say about the statement, I have  
25 that, then you say the logic is, you could still have 16:03  
26 the B&H investigation and if criminality is revealed  
27 you can slough that off, you can send that off to a  
28 criminal investigation, there's nothing to stop you  
29 doing that. That's what you are saying. Okay.

1 667 Q. MR. DONAL MCGUINNESS: If we can look at 3549. Please,  
2 if we look towards the -- yes. The last complete  
3 paragraph on that current screen grab.  
4  
5 "Assistant Commissioner Fanning is concerned about 16:04  
6 making an appointment under the bullying and harassment  
7 policy. He says that the investigation should be made  
8 under the Byrne/McGinn model where it encompasses a  
9 wider investigation. "  
10  
11 So he persists in his view at the meeting of the 3rd 16:04  
12 October 2017?  
13 A. I said that earlier.  
14 668 Q. I know you did. We are talking about periods of delay,  
15 so I am just chronicling the reason why there was a 16:04  
16 delay, is that AC Fanning, who is in touch with Garda  
17 Keogh, and is apparently in agreement with this  
18 approach is saying, hang on a second here, let's not  
19 engage the bullying and harassment policy, let's get a  
20 wider investigation. And he is persisting in that 16:04  
21 approach, correctly or incorrectly, I am not passing  
22 any judgment on it, he is persisting in that approach  
23 as of 3rd October 2017?  
24 A. We are in violent agreement.  
25 669 Q. Sorry, I beg your pardon? 16:05  
26 A. You and I are in violent agreement.  
27 670 Q. Yes.  
28 A. He is consistent right the way through to the 23rd  
29 November, to the best of my knowledge.

1 671 Q. Indeed. Exactly. That's essentially where we will end  
2 this discussion, that right up to the very end AC  
3 Fanning essentially tries to divert matters to move  
4 away from bullying and harassment because he is  
5 obviously concerned that you start the bullying and 16:05  
6 harassment that the larger investigation will never be  
7 engaged. So eventually, after the second meeting of  
8 the 23rd October, he finally agrees that he will  
9 nominate, or that he will appoint someone to conduct  
10 the bullying and harassment policy? 16:05

11 A. Mr. McGuinness, I know that this is, you know, a matter  
12 related in some way to delay, AC Fanning is entitled to  
13 his sincerely held views and I am certain that they  
14 were sincerely held.

15 672 Q. Indeed, I am not suggesting otherwise? 16:06

16 A. He attended that meeting, I understand, on the 23rd and  
17 this is based on my reading in a subsequent  
18 conversation with him, where he made submissions at the  
19 meeting and after the meeting with respect to pie  
20 charts and various other things that he had prepared 16:06  
21 for Joe Nugent to consider. I think there is a  
22 correspondence between himself and Joe after that  
23 meeting. So I want to make it plain, I get the point  
24 that he was advocating something different. I am the  
25 policyholder, I have to make a decision as to what is 16:06  
26 the appropriate way to proceed here.

27 673 Q. CHAIRMAN: Ultimately it was for you to decide?

28 A. It was for me to decide. But I explained, you know, as  
29 transparently as I could, having read the Scanlan

1 statement, that I was satisfied that in the main,  
2 right, it related to matters that I would consider to  
3 be bullying and harassment. And as I said to the  
4 Chairman, if it emerged in the course of that  
5 investigation that, for example, and it's only an 16:06  
6 example, if criminality, which was one of the things  
7 that AC Fanning --

8 674 Q. CHAIRMAN: That could be accommodated?  
9 A. Precisely.

10 CHAIRMAN: Okay, all right. Anything else, 16:07  
11 Mr. McGuinness?

12 675 Q. MR. DONAL MCGUINNESS: You are in agreement with me  
13 that as of the 23rd October there is essentially a  
14 decision taken. You were at that meeting, Joe Nugent  
15 was at that meeting, AC Fanning was at that meeting, 16:07  
16 there was a decision taken as of the 23rd October to  
17 move forward with the bullying and harassment.

18 A. I can't say there was a decision taken at the meeting.  
19 The meeting was chaotic in some respects, in the sense  
20 that I think we have a couple of different minutes of 16:07  
21 it. I made a note myself of the meeting and I don't  
22 have it to hand. I left the meeting hearing clearly  
23 that Fintan was of the view that it was a broader issue  
24 and that there were views around the table that we  
25 should keep it as a bullying and harassment issue and 16:07  
26 that I should go away and reflect on that.

27 676 Q. CHAIRMAN: There can't have been many people in the  
28 Garda Síochána who weren't aware at this stage of  
29 Assistant Commissioner Fanning's view that it should be



1 broader, because everybody was aware of it at this  
2 stage. All right.

3 MR. DONAL MCGUINNESS: Including Garda Keogh.

4 CHAIRMAN: Eventually a decision was made, let's have a  
5 bullying and harassment decision. You had to make that 16:08  
6 decision, you made that call and that was your call to  
7 make.

8 A. That's correct.

9 677 Q. MR. DONAL MCGUINNESS: And a nomination was eventually  
10 made on 15th November '17. 16:08

11 A. Somewhere around then, yeah.

12 CHAIRMAN: Yes.

13 678 Q. MR. DONAL MCGUINNESS: You would agree with me that  
14 there was never an attempt to clandestinely, secrete,  
15 camouflage Garda Keogh's bullying and harassment 16:08  
16 statement at any stage within An Garda Síochána?

17 A. I would like to be clear about that: No, I would  
18 certainly agree that there was no clandestine effort  
19 that I was aware of at all, and I would have been  
20 central to an awful lot of the movements of that 16:08  
21 statement.

22 679 Q. And the period of delay that I call period of delay  
23 two, that we just discussed --

24 A. No, I thought you were characterising that to 24 May,  
25 from 27 March. 16:09

26 CHAIRMAN: No. Wait now. Don't worry, I mean I have  
27 the point, Mr. McGuinness.

28 680 Q. MR. DONAL MCGUINNESS: Thank you, Chairman. There's  
29 one other issue, Mr. Barrett, that I would like to just

1 raise with you, because AC McPartlin is also a client  
2 that this legal team represents and there is some  
3 documentation on file that suggests that on the 19th  
4 October that you appointed her to carry out a fact find  
5 into issues concerning Garda Keogh. 16:09

6 A. There was confusion around this on the basis that at  
7 that point we were looking at the two possible options  
8 and the suggestion was made and it wasn't me in the  
9 first instance that came up with it, I don't know where  
10 the name Orla McPartlin came from but -- 16:09

11 681 Q. Can I interrupt you, Mr. Barrett, I don't want to delay  
12 the Tribunal unnecessarily, it's the only the fact?

13 A. Sure.

14 682 Q. -- the fact that there was a letter, there is a letter,  
15 it's document 10416? 16:10

16 A. Can I see it?

17 683 Q. It's signed by you, it dated 19th October 2017, it  
18 says:  
19  
20 "I am hereby appointing you to conduct a fact-finding 16:10  
21 investigation on matters raised with respect to the  
22 above member."  
23

24 A. And do you have her reply?

25 684 Q. No, but if we just look at this letter first. It is 16:10  
26 cc'd to Acting Commissioner Donal Ó Cualáin, Deputy  
27 Commissioner John Twomey, Mr. Joe Nugent Chief  
28 Administrative Officer?

29 A. John Twomey I think was the source of the suggestion

1           that we approach Orla, and Orla wrote back, so you have  
2           a reply?

3 685 Q.    Yeah, just we'll come to the reply in a second,.  
4           Mr. Barrett. Do you accept this letter never reached  
5           AC McPartlin? 16:11

6           A.   Well she wrote me a reply declining, so she must have  
7           had knowledge of this.

8 686 Q.    Well let's have a look at her reply then, 10424. She  
9           references your correspondence of the 29th January  
10          2018, if we just go back to your letter of the 29th 16:11  
11          January 2018, it's 10425, if we call that up first,  
12          Mr. Kavanagh. I will just read this.

13

14          "Prior to Christmas we spoke with respect to the review  
15          of all matters pertaining to the file of complaint 16:11  
16          sent to An Garda Síochána by a solicitor acting for  
17          Garda Keogh. That long list of issues required two  
18          appointments and with assent I appointed AC Michael  
19          Finn to examine the bullying and harassment issues  
20          arising and I appointed you to survey all other 16:11  
21          matters.

22

23          It seems that the communication to your office was not  
24          properly forwarded and so as to ensure that the  
25          original intent is appropriately set out I am writing 16:11  
26          to you again to confirm.

27

28          Very helpfully, AC Fanning segmented the issues set out  
29          to Mr. John Gerard Cullen acting for Garda Keogh and I

1 attach a copy of Mr. Cullen's letter.

2  
3 Any and all files and materials held by HRPD will be  
4 made available."

5  
6 Then if I can just go to 10424, this is AC McPartlin  
7 writing to you on the 31st January --

8 A. No, this is a letter from Joe Nugent.

9 CHAIRMAN: Thank you.

10 MR. DONAL MCGUINNESS: Sorry, 10424, please.

11 CHAIRMAN: Now, there we are.

12 687 Q. MR. DONAL MCGUINNESS: "With reference to your  
13 correspondence of the 29th January in above matter, I  
14 wish to state that at no stage prior to or since  
15 Christmas 2017 did you and I have a conversation about 16:12  
16 a review of matters pertaining to a file of complaint  
17 sent to An Garda Síochána by the solicitor acting for  
18 Garda Nicholas Keogh.

19  
20 In addition, I have not at any more time received 16:12  
21 correspondence from you in that regard either in my  
22 role as AC Western Region or AC executive support and  
23 corporate services.

24  
25 There has been no previous communication either written 16:13  
26 or oral between your office and mine in relation to the  
27 aforementioned matter. I note also that there is no  
28 copy of correspondence attached to your letter of 29th  
29 January 2018 as indicated in same.

1  
2 I am at a loss as to the purpose of your correspondence  
3 of 29th January 2018."

4 A. I have never seen that letter as it's presented there.  
5 I had a conversation with Orla, she declined the 16:13  
6 appointment and that is news to me.

7 688 Q. well, perhaps we will finish this by looking at 10426,  
8 please. This is a letter from Joseph Nugent CAO of the  
9 31st January 2018, who, as you will recall, was one of  
10 the parties indicated as a cc corresponded on your 16:13  
11 initial appointment?

12 A. Yeah.

13 689 Q. It says:  
14

15 "I refer to the above ours of the 25th January 2018 and 16:14  
16 yours of the 29th January 2018, the contents of which  
17 are noted.

18

19 In our ours of 25th January 2018 it was confirmed that  
20 none of the addressees were in receipt of yours of 19th 16:14  
21 October 2017. There was no instruction to correct this  
22 anomaly as you were separately informed that the  
23 executive director, legal and compliance, is looking at  
24 the broader question and will develop a strategy on how  
25 best to proceed in this issue. 16:14  
26

27 Forwarded for your information and necessary  
28 attention."

29 A. He never saw that correspondence either.

1 CHAIRMAN: So you never saw this?

2 A. No. I saw Joe Nugent's response in his

3 cross-examination and it referred to writing a letter

4 to the Department of Justice. This correspondence is

5 news to me. 16:14

6 690 Q. CHAIRMAN: Okay. But the net result is that there was

7 never an assignment of Assistant Commissioner McPartlin

8 to do anything?

9 A. There was originally a suggestion that she should be

10 assigned if there was to be -- 16:14

11 691 Q. CHAIRMAN: I understand that.

12 A. Sure.

13 692 Q. CHAIRMAN: But it never actually happened?

14 A. No, it didn't.

15 693 Q. CHAIRMAN: However it happened and whether the letters 16:15

16 got crossed or lost or did or didn't, it didn't happen?

17 A. It fell away.

18 694 Q. CHAIRMAN: Okay.

19 695 Q. MR. DONAL MCGUINNESS: And the reason I mention it and

20 the reason I bring it up is not to cause any 16:15

21 embarrassment, Mr. Barrett, it's that AC McPartlin

22 subsequently did a peer review at the instruction of AC

23 Sheahan in relation to the McMahon investigation.

24 A. That was a separate matter entirely.

25 696 Q. That was a separate matter entirely? 16:15

26 CHAIRMAN: So are we clear that Mr. Barrett confirms

27 she had nothing to do with anything.

28 MR. DONAL MCGUINNESS: Indeed.

29 CHAIRMAN: Either on his recollection she turned it

1 down flat at the verbal suggestion, or there's a  
2 mystery was to how it happened but she never had  
3 anything to do with it. She wrote a stiff letter of  
4 protest but it comes to nothing in the end.

5 MR. DONAL MCGUINNESS: Indeed. But I can confirm my  
6 firm instructions. 16:15

7 CHAIRMAN: I understand.

8 MR. DONAL MCGUINNESS: That she never received any such  
9 instructions in the first instance.

10 CHAIRMAN: Okay. 16:16

11 MR. DONAL MCGUINNESS: Thank you. Mr. Barrett.

12  
13 END OF EXAMINATION.

14  
15 CHAIRMAN: Now, how are you doing, Mr. Barrett? 16:16

16 THE WITNESS: I am fine.

17 CHAIRMAN: Are you fine? Has anybody else many  
18 questions of Mr. Barrett? I wouldn't have thought so.  
19 Mr. McGarry, why don't I start with you, you're for  
20 Assistant Commissioner Fanning. 16:16

21 MR. MCGARRY: Yes.

22 CHAIRMAN: I am going to end up with Mr. Clarke, who is  
23 for Mr. Barrett. So I am going to end up there but I  
24 wouldn't have thought that anybody else had a great  
25 deal of questions. Now, Mr. McGarry. 16:16

26 MR. MCGARRY: Just a couple of matters, Chairman, if I  
27 may.

28 CHAIRMAN: Yes.

1  
2  
3  
4 MR. JOHN BARRETT WAS CROSS-EXAMINED BY MR. MCGARRY, AS  
5 FOLLOWS:  
6

7 697 Q. MR. MCGARRY: Mr. Barrett, you said in your evidence  
8 that Assistant Commissioner Fanning's evidence supports  
9 you to the extent that you didn't get any of the  
10 material relating to Garda Keogh, that's the statement 16:16  
11 and the Scanlan report?

12 A. No, I got it on the 4th October.

13 698 Q. Yes, but prior to the 4th October?

14 A. No, I didn't. I got an unsigned statement, the Scanlan  
15 report comes to us, I think it's October 4th, the day 16:17  
16 after the meeting we had in my office.

17 699 Q. You said earlier in your evidence that the evidence of  
18 Assistant Commissioner Fanning corroborates what you've  
19 said in relation to it, I didn't see it because it  
20 wasn't sent. That's what you said earlier on in your 16:17  
21 evidence.

22 A. Correct, and I would have to get you the page number of  
23 the details, I can send it to the Chairman or send it  
24 to the Tribunal.

25 700 Q. Assistant Commissioner Fanning's evidence, that was not 16:17  
26 his evidence. His evidence specifically was, because  
27 he was asked about this in some detail on Day 148,  
28 after page 200, when he was asked about the position,  
29 he didn't accept that that material had not been sent.



1 In fact, the correspondence that was opened was the  
2 correspondence that we've looked at, which referred  
3 back to the letter of the 24th May and, indeed, the  
4 letter that was sent by Inspector McCarthy following  
5 the meeting in October, I think it was on the 4th 16:17  
6 October, where he refers to the fact that the material  
7 was hand-delivered, that included the statement  
8 witnessed by Garda Keogh hand-delivered to HRM on the  
9 24th May?

10 A. I have seen that piece in the first statements made by 16:18  
11 Fintan Fanning and I would refer you also to the  
12 evidence given by Alan Mulligan on the same matter. He  
13 was standing in my shoes on that particular day in May.

14 701 Q. Yes, but your evidence when you said that Assistant 16:18  
15 Commissioner Fanning agreed with you to the effect that  
16 I didn't see it because it wasn't sent, that wasn't his  
17 evidence?

18 A. All right. Let me get the reference, apologies. My  
19 evidence can be confined to this then. I did not  
20 receive a copy of the Scanlan statement made by Garda 16:18  
21 Keogh until 4th October 2017.

22 702 Q. You seem very adamant about that, Mr. Barrett, but  
23 you've also told us that you didn't see the letter of  
24 the 24th May, the 16th June, the 30th June, the 17th  
25 August, even the two letters in September because you 16:19  
26 were occupied with other things at the time?

27 A. That's true of much of that correspondence. I mean,  
28 you are giving me a list. But certainly, given that I  
29 wasn't in the office for a period of time in May, I was

1 dealing with matters pertaining to the Garda College  
2 and PAC and I was out for 28 odd days of August, there  
3 is a substantial amount of that time. But the office  
4 receives material and so, in my stead would have been  
5 Alan Mulligan and I think his testimony referred.

16:19

6 703 Q. Thank you.

7  
8 END OF EXAMINATION.

9  
10 CHAIRMAN: Okay, thank you very much. Now, anybody  
11 else before I come to Mr. Clarke? Very good. Okay,  
12 Mr. Clarke, thank you.

16:19

13 MR. CLARKE: Chairman, I don't have any questions.

14 CHAIRMAN: Thank you very much. Well it has been very  
15 well ventilated. Mr. McGuinness, have you any  
16 questions.

16:20

17 MR. MCGUINNESS: Yes just a few, Chairman.

18 CHAIRMAN: Yes.

19  
20 MR. JOHN BARRETT WAS RE-EXAMINED BY MR. MCGUINNESS, AS  
21 FOLLOWS:

16:20

22  
23 704 Q. MR. MCGUINNESS: Mr. Barrett, when Ms. Mulligan was  
24 asking you about Chief Wheatley's responses to the  
25 issue as to whether she had carried out one and whether  
26 she could carry out one etcetera, you seemed to be  
27 implying that Chief Superintendent McLoughlin had given  
28 Garda Keogh an undertaking that he, the chief, would  
29 carry it out.

16:20

1 A. Well, I wonder --

2 705 Q. He undertook, as I understood it, to look into his pay  
3 issue, but not to investigate the cause of his stress?

4 A. I think I am referring, Mr. McGuinness, to a letter  
5 that is sent from Garda Keogh or Mr. Cullen on his 16:20  
6 behalf dated the 14th June. And I assumed the matters  
7 to be investigated essentially were the matters that  
8 they discussed on that day.

9 706 Q. Yes.

10 A. On the 3rd in Tullamore. 16:21

11 707 Q. Yes. I just am going to suggest to you that that may  
12 be a misinterpretation of matters in the sense that  
13 Garda Keogh subsequently in that letter considered that  
14 Chief Superintendent McLoughlin had undertaken to  
15 investigate the bullying and harassment, whereas Chief 16:21  
16 Superintendent McLoughlin's evidence was that that  
17 wasn't so, because Garda Keogh made it expressly clear  
18 that he had made a complaint to GSOC about it at that  
19 point in time?

20 A. Okay, I will be guided by you, sir. 16:21

21 708 Q. You made reference there, which just caused me a little  
22 bit of concern. You said you had never seen the  
23 assignment of Chief Superintendent Scanlan in the  
24 papers.

25 A. No, no, my apologies, the output. 16:21

26 709 Q. The output?

27 A. The output of the chief superintendent's work.  
28 Obviously I was involved in the appointment and the  
29 assignment of Chief Superintendent Scanlan.

1 710 Q. Yes.  
2 A. And as I was saying to Mr. McGuinness, it was a twofold  
3 assignment that he had; take the statement and  
4 determine on foot of it what was the level of the  
5 person to be appointed to conduct the investigation. 16:22  
6 711 Q. Yes. Just to be clear that we are talking about the  
7 same letter, page 3508, just to confirm that.  
8 A. Yes, that's it.  
9 712 Q. This is Assistant Commissioner Fanning's instruction to  
10 Chief Superintendent Scanlan as to what to do? 16:22  
11 A. Yeah.  
12 713 Q. Okay. Now, if we go back to 3507, you had recommended  
13 something entirely different, which was the appointment  
14 of Chief Superintendent Roche to investigate the  
15 complaint? 16:22  
16 A. Because, and this is one of the things when we're  
17 talking about delay, my original thought in  
18 recommending that Chief Superintendent Roche would  
19 effectively roll what the Chairman is calling delay A  
20 and the work that was subsequently done by AC Finn, 16:23  
21 that he would effectively try and roll with that as a  
22 way of expediting matters, but that didn't prove  
23 workable for a couple of reasons, the assistant  
24 commissioner rightly pointed out that we needed first  
25 as a preliminary statement get a statement and 16:23  
26 determine the rank of the person that should conduct  
27 the investigation.  
28 714 Q. I am not saying there is anything improper about that  
29 view because it does determine who you should appoint

1 as such?

2 A. The level, yes.

3 715 Q. But if an appointment had actually been made it might  
4 have avoided the year's passage of time?

5 A. It would have proved problematic, because as it turned 16:24  
6 out I think CS Curran was one of those that was  
7 impugned and he too was a chief superintendent. So it  
8 perhaps --

9 716 Q. CHAIRMAN: So it wouldn't have worked?

10 A. It wouldn't have worked. 16:24

11 717 Q. CHAIRMAN: There was Chief Superintendent Wheatley and  
12 there was Chief Superintendent Curran.

13 A. Chief Superintendent Wheatley wasn't impugned.

14 718 Q. CHAIRMAN: At that point, sorry?

15 A. I think Curran was, I think that's true. So, in some 16:24  
16 respects while it was the longest way around, it was  
17 the shortest way home.

18 719 Q. CHAIRMAN: On the other hand, by appointing Chief  
19 Superintendent Roche he would have run into this  
20 problem presumably at the very beginning and he would 16:24  
21 have reported back and somebody more senior would have  
22 been appointed?

23 A. Well, as I said to Mr. McGuinness, Chair, the initial  
24 thought Gerry Roche was somebody who hadn't served with  
25 -- 16:24

26 720 Q. CHAIRMAN: He was not likely to be in any way sort of  
27 connected. I see that point, yes. So there would have  
28 been something to be said for having him do it, and if  
29 he ran into an issue he would be reported back and

1           somebody else would be appointed?

2           A.    There was value in that.

3   721   Q.    MR. McGUI NNESS:   Just in terms of the preparation that  
4           you engaged in for the meeting of the 3rd October, we  
5           have seen obviously Mr. Cullen's letter to you of the   16:25  
6           23rd September and then an e-mail that Chief  
7           Superintendent McLoughlin sent you?

8           A.    Yes.

9   722   Q.    You actually did reply to that and I perhaps should  
10          have opened that, at page 3547. That's your reply of   16:25  
11          the 28th September. You say:

12

13          "Thank you for your e-mail of the 25th September, which  
14          addresses the areas which are being considered with  
15          respect to bullying and harassment. The factual   16:25  
16          position as of today is that to progress a bullying and  
17          harassment investigation the person seeking to invoke  
18          the policy must nominate the source of the bullying and  
19          harassment complaint. Despite repeated requests to do  
20          so, Nicholas Keogh has not done so as of today's date."   16:26  
21

22          A.    Yes.

23   723   Q.    Now, your state of knowledge in order to make at that  
24          statement?

25          A.    Well, I was without the Scanlan report and I suppose   16:26  
26          that's a clumsy way of saying it, but the issue that  
27          was arising was, we were without whatever it was that  
28          had been downloaded from Garda Keogh.

29   724   Q.    You had obviously Mr. Cullen's letter of the 23rd, but

1           you hadn't spoken to Garda Keogh yourself until the 2nd  
2           October?

3           A.    No, I spoke to Mr. Cullen on the 2nd.

4   725   Q.    On the 2nd?

5           A.    Yes. 16:26

6   726   Q.    But obviously that is subsequent to this letter?

7           A.    Yes.

8   727   Q.    So your statement there about Nicholas Keogh not having  
9           done so as of the 28th?

10          A.    Was incorrect. 16:26

11   728   Q.    How did you know that?

12          A.    That was incorrect.

13   729   Q.    I see. The second paragraph then says:

14

15                "I am unsighted on progress of investigations being 16:26  
16               conducted by Chief Superintendent Scanlan as of today's  
17               date."

18          A.    Yes.

19   730   Q.    He "but I understand that some of the papers are in  
20               file with Ms. Kathleen Hassett."

21          A.    Per Tony's e-mail, yeah. 16:27

22   731   Q.    Pardon?

23          A.    Chief McLoughlin had I think received papers from Garda  
24               Keogh and had handed them to Kathleen Hassett, I think  
25               there is some reference prior to that. 16:27

26   732   Q.    Obviously it doesn't appear that Chief Superintendent  
27               Scanlan was conducting any investigations other than  
28               the taking of the statement?

29          A.    Yes.

1 733 Q. That you had been informed had been taken?  
2 A. Yes. I think there's confusion in that letter.  
3 734 Q. There is confusion, is there? Okay. And then some of  
4 the papers, I think Chief Superintendent McLoughlin did  
5 provide them to Ms. Hassett, could some of those papers 16:27  
6 have included the statement of the 27th?  
7 A. No, I don't think so, I think they were papers that  
8 were submitted to Chief Superintendent McLoughlin by  
9 Garda Keogh and he had asked I think for some of them  
10 to be returned for the purpose of making a statement. 16:28  
11 735 Q. Yes. Mr. McGuinness then asked you about Mr. Nugent's  
12 letter concerning Assistant Commissioner McPartlin and  
13 you said you had never seen that letter?  
14 A. Yes.  
15 736 Q. I think that was provided to you in the Tribunal 16:28  
16 papers?  
17 A. And if it was, sir, I didn't take any heed of it. And  
18 I will go and study those papers on my return to  
19 Limerick.  
20 737 Q. Don't worry. Just for your own information, they 16:28  
21 appear to be in volume 37?  
22 A. volume?  
23 738 Q. volume 37. Thank you, Mr. Barrett?  
24 A. Thank you, sir.  
25  
26 END OF EXAMINATION.  
27  
28 CHAIRMAN: Okay. Mr. Barrett, thank you very much for  
29 facilitating us by agreeing to come in today for



1 good-humouredly and good-naturedly tolerating a very  
2 long day and answering all the questions that you did.  
3 So, we are very grateful to you, thank you very much  
4 for doing that. I thought it was best if possible to  
5 keep ourselves going so that you would be finished.

16:29

6 THE WITNESS: I'm obliged to you.

7 CHAIRMAN: And get it all over in one day rather than  
8 have you thinking about it and coming back overnight.  
9 So I think that is a more satisfactory way and thank  
10 you very much for your assistance.

16:29

11 THE WITNESS: Chairman if I could say one thing, I  
12 would like to commend your investigators for the  
13 assistance they were for me unsighted of documents and  
14 access to my office.

15 CHAIRMAN: Thank you very much, indeed, thank you very  
16 much, yes, and I am sure they will be most grateful to  
17 receive that. Thank you, indeed.

16:29

18  
19 THE WITNESS THEN WITHDREW

20  
21 CHAIRMAN: So 10:30 tomorrow.

16:29

22 MR. McGUINESS: Yes, Chairman, thank you.

23 CHAIRMAN: Thank you.

24  
25 THE HEARING THEN ADJOURNED UNTIL TUESDAY, 30TH JUNE  
26 2020 AT 10:30AM

16:30



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