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

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

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

HELD IN DUBLIN CASTLE
ON MONDAY, 14TH OCTOBER 2019 - DAY 99

99

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

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CO. WESTMEATH

FOR AGSI,

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1	THE HEARING COMMENCED, AS FOLLOWS, ON MONDAY, 14TH	
2	OCTOBER 2019:	
3		
4	CHAIRMAN: Morning everyone. I think we will just take	
5	a moment while the preliminaries and pictures are taken $_{ m 10:3}$	32
6	and it will only take a few minutes. Okay, are we all	
7	set? Thank you very much. Good morning everybody.	
8	Now, how shall we proceed?	
9	MR. McGUINNESS: Chairman, I should introduce the	
10	Tribunal legal team for the purpose of this module.	32
11	CHAIRMAN: Yes.	
12	MR. McGUINNESS: I am Diarmuid McGuinness senior	
13	counsel, appearing with Mr. Patrick Marrinan senior	
14	counsel, Ms. Sinéad McGrath BL, and Mr. John Davis,	
15	solicitor. We also have some very diligent documentary 10:3	33
16	juniors, Ms. Emma Toal, Ms. Lalita Morgan-Pillay and	
17	some researchers, Ella Woolfson and Orla Doolin. So	
18	that is the Tribunal team, Chairman.	
19	CHAIRMAN: Thank you very much. Mr. Kelly, I see you	
20	there, would you like to introduce your team?	33
21	MR. KELLY: I will, certainly, thank you very much,	
22	Chairman. My name is Matthias Kelly, I am representing	
23	Garda Nick Keogh. Sitting beside me is Patrick O'Brien	
24	junior counsel, beside him, Aisling Mulligan junior	
25	counsel and Mr. Keogh. Behind me sits my instructing 10:3	33
26	solicitor, John Gerard Cullen.	
27	CHAIRMAN: Thank you. Mr. Murphy.	
28	MR. MURPHY: Yes, Chair. My name is Shane Murphy, I am	
29	appearing for the Commissioner of An Garda Síochána and	

1	34 other Garda witness. I am effectively appearing	
2	with Mr. Micheál P O'Higgins senior counsel, Dónal	
3	McGuinness junior counsel, Shelley Horan junior counsel	
4	and Kate Egan junior counsel. We are instructed by the	
5	Chief State Solicitor's Office.	10:34
6	CHAIRMAN: Thank you very much. Now, Mr. McGarry,	
7	moving over this way. Yes, Mr. McGarry, good morning.	
8	MR. McGARRY: Thank you, Chairman. I appear for former	
9	Assistant Commissioner Fintan Fanning with Mr. Stephen	
10	O'Connor, instructed by Séan Costello Solicitors.	10:34
11	CHAIRMAN: Yes. Who else do we need to	
12	MR. FERRY: Good morning, Chairman. My name is John	
13	Ferry junior counsel, I appear for Superintendent	
14	Noreen McBrien, instructed by Mr. Conlon and assisted	
15	by Anne Giles. I am also led by Mr. Paul Carroll SC.	10:34
16	CHAIRMAN: Thank you very much. Thanks, Mr. Ferry.	
17	Yes.	
18	MS. GLEESON: Good morning, Chairman. I appear on	
19	behalf of Nicholas Farrell, Sergeant Aidan Lyons,	
20	Sergeant Andrew Haran and Sergeant Sandra Keane. I am	10:35
21	led by Mr. Dockery.	
22	CHAIRMAN: Thank you very much.	
23	MS. GLEESON: I am here together with Siobhan Lafferty	
24	Solicitor, and Ms. Sarah Maher.	
25	CHAIRMAN: Very good. Those are the introductions. I	10:35
26	am sorry, I had forgotten.	
27	MR. KANE: Chairperson, my name is James Kane, junior	
28	counsel, I appear for Fergal Greene, Stephanie Treacy,	
29	David Turner. I am instructed by Elizabeth Hughes and	

1	Éabhall Ní Cheallacháin of Hughes Murphy Solicitors.	
2	Mr. Patrick McGrath and Eoin Lawlor are also	
3	instructed.	
4	CHAIRMAN: Thank you very much. That is very helpful.	
5	MR. CONNELLAN: Good mornings, John Connellan BL, I am	10:3
6	instructed by Paul Connellan of T&N McLynn Solicitors.	
7	CHAIRMAN: Mr. Connellan, just a tiny bit closer	
8	towards the microphone, just a little bit now, not too	
9	much, so that we can all hear you.	
10	MR. CONNELLAN: John Connellan junior counsel,	10:3
11	instructed by T&N McLynn Solicitors, we appear on	
12	behalf of witness number 2, Olivia O'Neill.	
13	CHAIRMAN: Thank you very much. All right, so the	
14	introductions having been performed, Mr. Marrinan.	
15		10:3
16	OPENING STATEMENT BY MR. MARRINAN	
17		
18	MR. MARRINAN: Chairperson, it is my function to	
19	deliver an opening statement on behalf of the Tribunal	
20	for the purposes of outlining in publican an overview	10:3
21	of the complaint of Garda Nicholas Keogh, as received	
22	by the Disclosures Tribunal under terms of reference	
23	(p), the responses to this complaint and the issues	
24	which have emerged on the same to date.	
25		10:3
26	This overview is, of course, subject to the evidence	
27	that emerges, which will be tested by all the parties	
28	during the course of these public hearings.	

1	By way of background and as mentioned in the Tribunal's	
2	opening statement delivered on 11th April 2019, the	
3	disclosures Tribunal was established by ministerial	
4	order on 17th February 2017 to inquire into definite	
5	matters of urgent public importance. These matters	10:36
6	were set out in 16 terms of reference, listed from (a)	
7	to (p.	
8		
9	The first module, concerning terms (a) to (o), has been	
10	completed by Mr. Justice Charleton, who submitted	10:37
11	reports dated 30th November 2017 and 11th October 2018.	
12	Today we are commencing consideration of a complaint	
13	under the final terms of reference, term of reference	
14	(p).	
15		10:37
16	That term of reference sets out that the Tribunal will	
17	consider any other complaints by a member of the Garda	
18	Síochána who has made a protected disclosure prior to	
19	16th February 2016 alleging wrongdoing within the Garda	
20	Síochána, where following the making of the protected	10:37
21	disclosure the Garda making the said disclosure was	
22	targeted or discredited with the knowledge or	
23	acquiescence of senior members of An Garda Síochána.	
24		
25	The Tribunal addressed this term in some detail in the	10:37
26	opening statement and clarified that:	
27		

29

9

"The essence of this reference is that the Tribunal is

to consider complaints made by persons who, as members

of An Garda Síochána, made protected disclosures before the relevant date and who allege that they were thereafter targeted or discredited with the knowledge or acquiescence of offices of superintendent rank or hi gher. "

10:38

10:38

10:38

10:39

10:39

It was also emphasised that an important limitation on any consideration by the Tribunal is that the focus of the mandate under (p) is not on the substance of any wrongdoing reported by the disclosure, no matter how serious the allegation, but rather on the conduct towards the garda subsequent to the disclosure and whether that conduct was condoned, tolerated or known about by senior members of An Garda Síochána.

15

1

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We are now proceeding to a public hearing Procedures: of the evidence relating to the complaint of Garda Keogh as it arises under term of reference (p). These hearings will be conducted in accordance with the scheme of procedures which have been published by the Tribunal, a central tenet of which is the guarantee of fair procedures.

23

28

29

Garda Nicholas Keogh: On 1st July 2000, Garda Keogh was attested as a member of An Garda Síochána and assigned to Clonmel Garda Station as a student garda. Following his training in Templemore, he was assigned to Bray Garda Station, where he was initially attached to the drugs unit. He served in Bray until his

transfer to the Westmeath division in 2006.

Garda Keogh has been allocated to the Westmeath division since 10th October 2006, where he was initially posted to Ballynacargy Garda Station. One year later he was transferred to Athlone Garda Station, on 16th October 2017.

In October 2009, Garda Keogh successfully obtained a post in a competition for vacancies in the district drugs unit, Athlone. From October 2009 he served with the drugs unit until 22nd August 2011, from where he returned to regular policing duties. His secondment to the drugs unit was not a permanent posting and was subject to the rotation policy of the superintendent then in charge.

Garda Keogh returned to regular policing as a result of this policy.

10:40

The Tribunal is concerned with events subsequent to the making of a protected disclosure on 8th May 2014, as outlined below. Garda Keogh continued to work in Athlone Garda Station and following a period in which he had frequent sickness related absences, which are certified by his general practitioner as being due to work related stress, he ultimately reported sick and unfit for duty on 26th December 2015 and has not since resumed duty.

On 8th May 2014, Garda Keogh was named in Dáil Éireann by then deputy Luke Ming Flanagan as a whistleblower. Deputy Flanagan stated that Garda Keogh was meeting with a confidential recipient from An Garda Síochána. In his address to the Dáil, Deputy Flanagan raised serious issues that Garda Keogh reported in relation to matters of policing which were alleged to have occurred in and around Athlone.

10:41

10.41

The Confidential Recipient for An Garda Síochána at the time, Judge Patrick McMahon, states that he met with Garda Keogh on 8th May 2014 and was provided with an affidavit sworn by Garda Keogh. The Garda raised concerns about the operation of the drugs unit in 10:42 Athlone, including, in particular, an operation code named "Operation Loki" and inquiries and prosecutions that followed it. In his meeting with Judge McMahon, Garda Keogh raised concerns about the conduct of some members in Athlone Garda Station.

An investigation into this protected disclosure was commenced under the Garda Síochána Confidential Reporting of Corruption or Malpractice Regulations 2007, on 9th May 2014. The acting Garda Commissioner, Nóirín O'Sullivan, immediately appointed Assistant Commissioner Donal Ó Cualáin to investigate the issues raised by Garda Keogh.

1	Assistant Commissioner Ó Cualáin and his team met with
2	Garda Keogh during June 2014 and Garda Keogh made a
3	statement in which he expanded on his affidavit, to
4	include other issues concerning a member of An Garda
5	Síochána, whom I will describe as Garda A, and his
6	relationship with a person or persons allegedly in the
7	sale and supply of drugs in Athlone. In particular, he
8	made allegations concerning Garda A and his
9	relationship with a person who I will describe as
10	MS. B.
11	
12	The Ó Cualáin investigation report into matters
13	relating to policing and practises and activities in
14	Athlone Garda station made under the Garda Síochána
15	Confidential Reporting Corruption and Malpractice 10:4
16	Regulations 2007, was finalised on 24th November 2015.
17	
18	In his report to the Director of Public Prosecutions,
19	Assistant Commissioner Ó Cualáin stated that some of
20	the allegations made by Garda Keogh were plausible and $_{ m 10:4}$
21	had substance, but the evidence, which was
22	circumstantial, fell short of what was required to
23	bring a criminal prosecution. The Director of Public
24	Prosecutions directed no prosecution on 3rd March 2016.
25	10:4
26	I mention this by way of background only, to describe
27	what happened after Garda Keogh made his protected
28	disclosure.

1 Chairperson, as I stated at the outset, the purpose of 2 this statement is to outline in public the issues that have emerged in respect of Garda Nicholas Keogh under 3 term of reference (p). 4 5 10:44 6 There are two preliminary matters to address. 7 first is the issue of redactions. 8 During this overview and in the course of the public 9 hearings, it will be evident that redactions have been 10 10.44 11 made where necessary. The Tribunal may make any 12 appropriate redaction to documents where there is 13 material which is irrelevant to any issue and/or where 14 it is necessary to protect the rights or privacy or 15 confidentiality of any party or person. Documents may 10:45 16 be redacted in any other case where the justice of the 17 case so requires. 18 19 The second is the management structure in place in 20 Athlone Garda station between 8th May 2014 and 26th 10:45 December 2015. Athlone Garda station is within the 21 Athlone division of the Westmeath division of An Garda 22 23 Síochána. 24 25 On 8th May 2014, when Garda Keogh made his protected 10 · 45 disclosure, the divisional officer in Westmeath 26 27 division was Chief Superintendent Mark Curran. Superintendent Noreen McBrien was the district officer 28

29

and superintendent in Athlone Garda Station.

1		
2	The district management team for the Athlone district	
3	included Inspector Nicholas Farrell, Inspector Aidan	
4	Minnock, the sergeant in charge Michelle Baker and	
5	Detective Sergeant Eamon Curley.	10:46
6		
7	On 9th March 2015, Chief Superintendent Lorraine	
8	Wheatley was appointed as the divisional officer in the	
9	Westmeath division and Superintendent Pat Murray was	
10	appointed as the district officer in Athlone.	10:46
11		
12	We will hear from these Gardaí and a number of other	
13	members attached to Athlone Garda station. To avoid	
14	any confusion or misunderstanding, all the relevant	
15	members of An Garda Síochána will be referred by	10:46
16	reference to their rank at the time of events	
17	concerning Garda Nicholas Keogh, notwithstanding any	
18	subsequent promotion or retirement.	
19		
20	Moving onto the issues for examination by way of public	10:46
21	hearing, these have been identified to include the	
22	following:	
23		
24	Issue 1: The investigation of the Pulse entry by Garda	
25	Nicholas Keogh on 18th May 2014.	10:46
26		
27	On 18th May 2014, Garda Keogh created an intelligence	
28	entry on the Garda Pulse system, which was recorded as	
29	PID 4085409. This intelligence entry stated as	

1	TOIIOWS:	
2		
3	"Observed Ms. B in her car at certain location. On	
4	seeing member she smiled and stuck out her tongue.	
5	Ms. B is seriously involved in the heroin trade in	10:47
6	Athlone, with a turnover of approximately €2,500 per	
7	week. She has no previous convictions for drugs due to	
8	the fact that she has been aided and abetted for years	
9	by a senior member of the drugs unit, who himself is a	
10	close associate of a high ranking Garda officer.	10:47
11	Fact."	
12		
13	As soon as this entry came to the attention of his	
14	superiors, Garda Keogh says that Inspector Nicholas	
15	Farrell asked where he was getting the information in	10:48
16	respect of the turnover. He says that he was also	
17	asked to change the entry.	
18		
19	Chief Superintendent Mark Curran queried whether the	
20	Pulse entry met the criteria outlined in CHIS (covert	10:48
21	human intelligence source system). CHIS is the	
22	procedure of An Garda Síochána, dealing with the	
23	registration and use of informants to assist with the	
24	investigation of crime. Garda Keogh was asked to	
25	provide a report in this regard.	10:48
26		
27	Garda Keogh took the position that this was not a CHIS	
28	matter and that it was matter for the Ó Cualáin	
29	investigation.	

Τ		
2	In a statement to the Tribunal, Chief Superintendent	
3	Mark Curran states that he was concerned about the	
4	accuracy of the data and whether Garda Keogh was	
5	operating outside the official guidelines in relation	10:49
6	to the management of CHIS and the related HQ	
7	directives. He further states that:	
8		
9	"He was concerned about the serious allegations of	
10	criminality and potential corruption, both explicitly	10:49
11	stated and inferred in this intelligence report. I was	
12	also concerned that any investigation being carried out	
13	could be compromised."	
14		
15	In his statement to the Tribunal, Garda Nicholas Keogh	10:49
16	stated:	
17		
18	"I believed that this interference by Inspector Farrell	
19	and Chief Superintendent Curran was inappropriate	
20	interferences from senor management in the independent	10:49
21	police internal investigation headed by Assistant	
22	Commissioner Ó Cualáin."	
23		
24	It will be evident from the material referenced during	
25	these public hearings that this intelligence entry led	10:50
26	to a series of extensive reports over a number of	
27	years.	
28		
29	The Tribunal will consider whether the questioning of	

1	Garda Keogh on this issue was legitimate or whether it
2	constituted targeting or discrediting of Garda Keogh.
3	
4	Issue 2: The investigation of the Pulse check by Garda
5	Keogh on 18th May 2014.
6	
7	On the same day that Garda Keogh made the Pulse entry,
8	the subject of Issue 1, Garda Keogh carried out a
9	search on the Garda Pulse system in respect of Garda A.
10	10:50
11	Garda A made a complaint in respect of this Pulse check
12	on 24th September 2014, stating that this constituted a
13	use of Pulse for personal reasons and these checks were
14	in no way Garda relate matters. Garda A alleged that
15	this check was sinister and asked for the matter to be 10:50
16	fully investigated.
17	
18	Superintendent Noreen McBrien requested Sergeant Andrew
19	Haran to seek a report from Garda Keogh as to the
20	reasons this enquiry was made in relation to personal 10:5
21	data. In her statement to the Tribunal she says that:
22	
23	"The query to Garda Keogh was made in my governance
24	capacity in my role as district officer. I was
25	operating within my role and responsibility as district $_{ m 10:5^{\circ}}$
26	officer when carrying out this enquiry. As district
27	officer I have a duty of care to all my staff."
28	
29	Garda Keogh subsequently stated to this Tribunal that:

"It was evident to senior management that an independent police investigation was in train in respect of my complaint relating to Garda A. I had checked Garda A on the Pulse on 18th May 2014 to source on 10th May 2014) which was the subject of my forthcoming statement to the internal investigator. I was entitled to check the Pulse without such attempted interference by this said letter (which demanded a report that conflicted with my obligations to the internal investigation) and also in the light of what I had been advised by the said source."

He further stated:

"As far as I can remember, I did not reply to Superintendent McBrien, because I had been advised not to speak to anybody about the investigation except the investigation team. I spoke with Detective 10:52 Superintendent Mulcahy about this, where I outlined the obvious reason why I checked Garda A on Pulse before I met him (that is Detective Superintendent Mulcahy) to be sure that there was nothing else that I needed to be aware of. Incidentally, I had never been asked to 10:52 explain previously why I checked anybody on Pulse."

10:52

The Tribunal will consider whether senior Garda members were entitled or obliged to question him about this

1	Pulse check and, if so, whether he was entitled not to	
2	answer these questions and/or whether the questioning	
3	constituted targeting or discrediting.	
4		
5	Issue 3: The investigation into Olivia O'Neill's visit	10:5
6	to Athlone Garda station on 28th May 2014.	
7		
8	On 28th May 2014, Ms. Olivia O'Neill called to Athlone	
9	Garda Station. It is not disputed that she wanted to	
10	make a statement about an alleged assault on her	10:5
11	daughter by Ms. B. It is further not disputed that	
12	Garda Keogh was on duty in the public office that night	
13	and that he told her that he could not take her	
14	statement. A dispute of fact, however, arises as to	
15	the content of the exchange he then had with	10:5
16	Ms. O'Neill.	
17		
18	Garda Keogh in his statement to the Tribunal has set	
19	out that:	
20		10:5
21	"Olivia O'Neill then proceeded to allege spontaneously	
22	and of her own motion and volition that there was	
23	police collusion in Athlone in the drugs trade and that	
24	Ms. B was doing favours for guards. Her allegations	
25	were general in nature. Given my involvement as a	10:5
26	witness in the internal investigation into corruption,	
27	I realised that I would be conflicted in taking any	
28	statement from her. I therefore replied that in those	

circumstances she should make her statement to another

1 quard and that she should name names and name guards. 2 I went immediately to Sergeant Haran to asked him to 3 designate another guard to take her statement." 4 5 Sergeant Haran designated Garda Stephanie Treacy to 10:54 6 take this statement. Garda Treacy reported her 7 dealings with Olivia O'Neill and reported that the 8 witness told her that Garda Keogh had advised her of the information to include in her statement, including 9 10 allegations concerning Gardaí and Ms. B. Both Garda 10:55 11 Keogh and Ms. Olivia O'Neill deny this. 12 13 Garda Keogh continues in his statement to the Tribunal: 14 15 "No statement was taken from Olivia O'Neill, either in 10:55 16 relation to her assault or her claims of corruption. 17 Instead, I received a formal request on 11th June 2014 18 for a written report setting out the nature and content 19 of my conversation with Olivia O'Neill. I was 20 questioned a number of times about the content of my 10:56 21 conversations with Olivia O'Neill on 9th June, 8th July 22 2014 (while the other matters were ignored). It was 23 sought to turn the desk encounter in a public office 24 into a coaching of Olivia O'Neill by me. There was no 25 reason to request the content of the conversation other 10:56 26 than the fact that Olivia O'Neill wished to make a

2829

27

We will hear from Inspector Nicholas Farrell,

complaint about Garda corruption."

1	Superintendent Noreen McBrien, Chief Superintendent	
2	Mark Curran, Sergeant Haran and Garda Stephanie Treacy	
3	in respect of the enquiries subsequently carried out in	
4	respect of this incident.	
5		10:56
6	Inspector Farrell stated in his report to Chief	
7	Superintendent Mark Curran on 29th May 2014, that:	
8		
9	"The advice allegedly given by Garda Nicholas Keogh is	
10	not appropriate in the circumstances and projects the	10:56
11	image of An Garda Síochána in an unfavourable light.	
12	It also places Ms. B in a vulnerable position from	
13	persons currently under investigation in the Athlone	
14	area. "	
15		10:57
16	Garda Keogh continues in his statement to the Tribunal,	
17	that:	
18		
19	"I understand that Chief Superintendent Curran sent out	
20	guards again to take a statement from Olivia O'Neill	10:57
21	about me only. I was advised by Olivia O'Neill that	
22	the guards would not take her statement of assault	
23	unless she made a complaint about me."	
24		
25	Ms. O'Neill's daughter had in fact made a statement of	10:57
26	complaint on the night in question.	
27		
28	Chief Superintendent Mark Curran has stated to the	
29	Tribunal that:	

1		
2	"I absolutely reject the assertion that these enquiries	
3	were an attempt to target or discredit Garda Keogh."	
4		
5	The Tribunal will consider whether the investigation of	10:5
6	the matter constituted targeting or discrediting of	
7	Garda Keogh.	
8		
9	Issue number 4: The investigation into Liam McHugh's	
10	complaint to Garda Aidan Lyons on 31st May 2014.	10:5
11		
12	A report made Garda Aidan Lyons of Athlone Garda	
13	station dated 2nd June 2014, stated that:	
14		
15	"With reference to the above, I wish to report that on	10:5
16	31st May 2014, at approximately 9pm, I was approached	
17	by Liam McHugh On bastion Street, Athlone. Mr. McHugh	
18	brought up the general topic of whistleblowers and we	
19	had a general conversation for a few minutes, during	
20	which he informed me as follows: "The bald Garda came	10:5
21	over to me the other day and asked if I could remember	
22	the time I was searched by the three guards and €800	
23	was stolen from me and spent drinking in the castle,	
24	pub, the bookies, and casino". He stayed if I wanted	
25	to make a complaint about it, then he would back me up.	10:5
26		
27	I asked Liam McHugh if he was alleging that this had	

29

actually happened and his answer was no, not at all, I

am not going to bringing trouble on myself. I asked

1	him if he was referring to Garda Nicholas Keogh and he	
2	confirmed that he was. He went on to say, he told me	
3	he was there himself when it happened and he would back	
4	me up if I wanted to make a complaint."	
5		10:59
6	Garda Keogh states that on 9th June 2014 he was called	
7	in to the office of Superintendent Noreen McBrien and	
8	told that she was investigating another complaint	
9	against him. He states that he had no idea what this	
10	was about.	10:59
11		
12	Garda Keogh continues in his statement to the Tribunal	
13	that:	
14		
15	"On 8th July 2014, I was called in to the	10:59
16	Superintendent's office. Noreen McBrien informed me	
17	that she was sending persons out again to try and take	
18	a statement Liam McHugh and also Olivia O'Neill. She	
19	said that she had to do it. Garda Keogh says that he	
20	perceived this to be an interference with the internal	
21	investigation and that he advised Assistant	
22	Commissioner Ó Cualáin of this on 16th July 2014."	
23		
24	Superintendent Noreen McBrien reported the matter to	
25	her divisional officer, Chief Superintendent Mark	10:59
26	Curran, on 16th July 2014. In a report dated 21st July	
27	2014, Chief Superintendent Mark Curran referred to a	
28	review of the matter by an independent chief	
29	superintendent and queried whether it had been	

1	established with Garda Keogh if he had a conversation	
2	with Liam McHugh in relation to the matters outlined in	
3	the report of Garda Aidan Lyons.	
4		
5	Garda Keogh states that it was not until 5th August	11:00
6	2014 that he was told of the details of the Liam McHugh	
7	allegation. He says that he was shown the report by	
8	Superintendent McBrien, but was not shown the name of	
9	the author of the report at the time. He says that he	
10	later discovered that it was a report by Garda Aidan	11:00
11	Lyons, who was a garda partner of Garda A at the time.	
12		
13	Garda Keogh states that:	
14		
15	"There was again no rigorous follow-up or conclusion to	11:00
16	this charge. It appeared to be just another false	
17	allegation left in the ether and used to blacken and	
18	cause apprehension in me. It was inscrutable, was	
19	dropped out of nowhere and went nowhere."	
20		11:01
21	However, Superintendent McBrien states in her statement	
22	to the Tribunal that:	
23		
24	"As district officer I had to address such issues and	
25	informed him that he should not misunderstand this. He	11:01
26	said he understood this and it is recorded in my notes	
27	of that meeting."	
28		

The Tribunal will consider the manner in which senior

1	officers investigated the matter and whether the	
2	investigation constituted targeting or discrediting of	
3	Garda Keogh.	
4		
5	Issue 5: The micro supervision of Garda Nicholas Keogh	11:01
6	by Sergeant Yvonne Martin, Sergeant Cormac Moylan and	
7	Sergeant Aidan Haran.	
8		
9	As stated at the outset, Superintendent Patrick Murray	
10	took up the position of district officer in Athlone on	11:01
11	9th March 2015. Garda Keogh alleges that	
12	Superintendent Murray put in place a regime of	
13	excessive supervision by arranging for three sergeants	
14	to oversee his work.	
15		11:02
16	Garda Keogh, in his statement to the Tribunal, states	
17	that:	
18		
19	"I was allocated Sergeant Martin as a liaison person to	
20	discuss work related issues. Sergeant Moylan and	11:02
21	sergeant Haran were also dispatched to supervise me.	
22	It was implied/alleged that my work output,	
23	investigations and reporting of incidents were	
24	deficient. These implications were made without	
25	rational grounds or hearings. Up until the encounter	11:02
26	with criminality and protected disclosures in Athlone,	
27	I had never been hypercriticised since I joined the	
28	guards in 1999. I was apparently now being placed	
29	under the microscopic supervision of Sergeant Martin.	

Sergeant Haran and Sergeant Moylan. Everything I did was being scrutinised in great detail for possible mistakes."

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He also stated that:

11:03

11:03

"I had a third sergeant allocated to monitor me, unlike anybody el se. This is basically three sergeants monitoring me and being asked to go through everything I am doing to find something I am not doing right or to 11:03 identity some misdemeanour on my part. It is my belief that Superintendent Pat Murray was targeting me in this respect."

14 15

Superintendent Murray rejects this allegation, saying 11:03 inter alia:

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"On 13th March 2015, at the request of Inspector Nicholas Farrell, I met Sergeant Andrew Haran. brought up Garda Keogh and told me of the support he was trying to give Garda Keogh, which was something he had taken on himself in an informal way. I spoke with Sergeant Haran again on 20th March 2015 and he said he felt the support role he was providing to Garda Keogh should pass to someone else and now was a good time for 11:04 I chose Sergeant Yvonne Martin for the that to happen. role simply because she had just arrived on transfer to Athlone and could be determined as neutral. I asked her to take on the role that day and she agreed."

T		
2	Superintendent Murray met with Garda Keogh on 26th	
3	March 2015 and discussed the issues with him, which led	
4	to the decision of which Garda Keogh complains.	
5		11:04
6	We will hear from Sergeants Martin, Haran and Moylan on	
7	this issue. Sergeant Haran agrees that he was Garda	
8	Keogh's supervising sergeant when Sergeant Moylan was	
9	absent and says that this was not unusual.	
10		11:04
11	He further states that:	
12		
13	"In general terms I was glad to assist Garda Keogh in	
14	doing files and reports. He readily admitted it was a	
15	weakness on his part."	11:05
16		
17	Sergeant Moylan states that:	
18		
19	"I would regularly question any member of the unit in	
20	respect of their work. The reality is that I was Garda	11:05
21	Keogh's unit sergeant and I treated him no differently	
22	than any other member under my supervision."	
23		
24	The Tribunal will consider whether Garda Keogh was	
25	placed under micro supervision in Athlone under the	11:05
26	direction of Superintendent Patrick Murray and whether	
27	the conduct of the sergeants, as ordered by	
28	Superintendent Murray, individually or collectively	
29	constituted targeting or discrediting of Garda Keogh	

1		
2	Issue 6: The disciplinary investigation in relation to	
3	the motor tax on Garda Nicholas Keogh's vehicle during	
4	2015.	
5		11:05
6	Superintendent Patrick Murray told Garda Keogh in March	
7	2015 that his long outstanding claims for travelling	
8	expenses could not be paid until he properly taxed his	
9	motor vehicle, paying the higher private rate of tax	
10	and not the lower commercial rate, as he had been	11:06
11	doing.	
12		
13	Garda Keogh maintains that Superintendent Murray	
14	treated him differently and more severely than he did	
15	other Gardaí in the district who had incorrectly taxed	11:06
16	their vehicles.	
17		
18	Garda Keogh deals with this car tax issue in some	
19	detail in his statement to the Tribunal, stating that:	
20		11:06
21	"I thought this very odd. I pointed out inter alia	
22	that the NCT authorities would not process my van as	
23	private (it had to be tested commercially by the	
24	Department of the Environment). It had no back seats,	
25	was used for police duty and to carry dogs."	11:06
26		
27	He also refers to Pulse records showing a number of	
28	checks on his car during 2014 by Garda Gerry White and	
29	Superintendent Noreen McBrien. The Tribunal will hear	

1 from Garda white and Superintendent McBrien in this 2 regard. 3 4 Superintendent Murray says in his statement to the 5 Tribunal that: 11:07 6 7 "I then spoke to him about his car tax and he got 8 slightly annoyed and indicated he felt people were 9 getting at him. I showed him the results of enquiries 10 I had Inspector Minnock make at a tax office in 11 · 07 11 Tullamore in relation to his jeep, which showed it was 12 taxed in the wrong category, commercial instead of 13 private, resulting in a loss of revenue in the State. 14 I spoke about the effect of that on his claims for 15 travelling expenses. I offered a solution to dealing 11:07 16 with the matter, which was that he would correct his 17 tax and pay the arrears to cover the period of his 18 travelling claims and when he showed me proof of same, 19 I would approve his travel claims and finalise the 20 matter by way of regulation 10 caution. I explained 11:07 21 that would conclude the matter and it would never be 22 mentioned to him again. He agreed to that course of 23 He then indicated that other members in the 24 district also had similar issues with their private 25 cars, so I told him I would have everyone's vehicle 11:08 26 checked. I subsequently had those checks carried out."

2728

29

We will hear from Chief Superintendent Lorraine Wheatley in relation to the issue, who says that:

1		
2	"It was not within Superintendent Murray's gift to	
3	permit payment from public funds outside of financial	
4	regulations. I believe this was a very fair and	
5	bal anced intervention."	11:08
6		
7	In a statement to the Tribunal investigators, Garda	
8	Keogh stated that:	
9		
10	"I also made the point that there were other Gardaí	11:08
11	that had the same tax and were also driving commercial	
12	vehicles in the same way as me."	
13		
14	It is the case that on 24th April 2015, Superintendent	
15	Murray issued a minute entitled "members private	11:09
16	vehicles" to "all members of Athlone district", stating	
17	that he had been made aware "in a general way" that the	
18	private vehicles of members were not in order in	
19	relation to tax, insurance, NCT and driving licences.	
20	He stated that checks would be carried out on 1st June	11:09
21	2015 and that "any claims involving the use of members'	
22	private vehicles" would only be approved "if the	
23	vehicle being used complies with all road traffic	
24	legislations in force".	
25		11:09
26	In a statement to the Tribunal Garda Keogh states:	
27		
28	"It was self-evident that there were, according to this	
29	letter, levels of severe dereliction which were far	

1	greater than mine and to which a blind eye was being	
2	turned. Guards with such a degree of noncompliance	
3	were given a period of grace of two months in clear	
4	breach of cut and dry statutory provisions."	
5		11:10
6	Garda Keogh describes in the letter of 24th April 2015	
7	as "a retrospective attempt to justify a vindictive	
8	di sci pl i nary procedure "	
9		
10	This allegation is rejected by Superintendent Patrick	11:10
11	Murray in his interview with the Tribunal	
12	investigators, who stated that he issued five	
13	regulation 10 notices in 2015 and that there was one	
14	other person who had to back tax and that was dealt	
15	with in the same way.	11:10
16		
17	The Tribunal will examine whether this was so and will	
18	consider whether the handling of this matter	
19	constituted targeting or discrediting of Garda Keogh.	
20		11:10
21	Issue 7: The disciplinary investigation in relation to	
22	the sick leave of Garda Nicholas Keogh during July	
23	2015.	
24		
25	Garda Keogh reported sick and unfit for duty on the 9th	11:10
26	July 2015. He phoned the station to say that he was	
27	going off sick leave on 10th July 2015, but did not	
28	report for duty on the following four days. Sergeant	
29	Cormac Movlan reported the matter to Superintendent	

1	Patrick Murray on 14th July 2015. Garda Keogh provided	
2	a retrospective sick certificate on 16th July 2015 to	
3	cover the relevant period.	
4		
5	Garda Keogh says in his statement to the Tribunal that: 1	1:11
6		
7	"There was an issue of a mix-up about my signing off	
8	sick and then not reporting for duty. I had apparently	
9	rung in off sick. I was on the contrary sick. It was	
10	at most a mistake. The medical certificate	11:11
11	materialised retrospectively to certify my sickness	
12	during the period. In any case, this medically	
13	certified absence was irrationally turned by	
14	Superintendent Patrick Murray into a charge of being	
15	absent without leave."	11:12
16		
17	Superintendent Patrick Murray states in his statement	
18	to the Tribunal that:	
19		
20	"On Wednesday, 15th July 2015 at about 12 noon I phoned 1	1:12
21	Garda Keogh regarding his absence. He acknowledged his	
22	absence without leave and said he had reported fit for	
23	duty on 10th July 2015 while drunk, had forgotten he	
24	had done so and had been continuously drinking over the	
25	next few days and so didn't report for dutyl	11:12
26	explained to Garda Keogh that I felt absence without	
27	leave in the manner described may be a breach of	
28	discipline and I would have to seek a formal	

explanation from $\mathop{\text{\rm him}}\nolimits$...on the 4th August, I reported

1 the matter to chief superintendent in Westmeath, recommending the matter be dealt with as a less serious 2 3 breach of discipline." 4 5 Chief Superintendent Lorraine Wheatley appointed 11:12 Superintendent Alan Murray to investigate the matter on 6 7 10th August 2015, under regulation 14 of the Garda 8 Síochána (Discipline) regulations 2007. Superintendent Alan Murray carried out his investigation. Garda Keogh 9 10 pleaded quilty to the charge of neglect of duty between 11:13 11 11th and 14th July 2015 and denied the charge of 12 discreditable conduct. 13 14 On 18th September 2015, Superintendent Alan Murray 15 found that Garda Keogh was in breach of the "neglect of 11:13 16 duty" charge and not in breach of the "discreditable" 17 conduct" charge. In mitigation he had regard to the 18 fact that "Garda Keogh stated that he suffered from 19 work related stress and was drinking heavily and when 20 questioned by superintendent Murray he admitted his 11:13 mistake". He was find €300. 21 22 23 Garda Keogh sought a review of that decision by Chief 24 Superintendent Lorraine Wheatley, who affirmed the 25 penalty on the 9th November 2015. Garda Keogh raised 11 · 14 26 issues regarding his contact with Sergeant Moylan and 27 Superintendent Patrick Murray during 11th to 15th July 2015 period and later raised issues as regards the 28

29

fairness of the review process in November 2015. These

1	criticisms are disputed by Superintendent Alan Murray	
2	and by Chief Superintendent Lorraine Wheatley.	
3		
4	As a consequence of this disciplinary finding, a report	
5	was sent by Superintendent Patrick Murray to the Human 🕠	1:14
6	Resource Directorate Overpayment Section.	
7		
8	The Tribunal will consider whether this disciplinary	
9	action was warranted or justifiable in the	
10	circumstances and whether the handling of the matter by ${}_{1}$	1:14
11	Superintendent Patrick Murray and/or the investigation	
12	constituted targeting or discrediting of Garda Keogh.	
13		
14	Issue 8: Former Commissioner Nóirín O'Sullivan alleged	
15	interference by telephone to Superintendent Patrick	1:15
16	Murray in April 2015.	
17		
18	In his statement to the Tribunal, Garda Nicholas Keogh	
19	states that:	
20	1	1:15
21	"On the 10th April 2015 I was made aware that Nóirín	
22	O'Sullivan had personally telephoned Superintendent Pat	
23	Murray about me. It appears to have happened between	
24	the 2nd and the 10th April 2015. Thereafter, I was	
25	confidentially advised that Superintendent Pat Murray	1:15
26	told other guards in Athlone station to "pull away from	
27	and alienate, me".	
28		
29	In his statement to the Tribunal investigators, he	

1	stated that:	
2		
3	"All I can say is that I have no direct evidence that	
4	former Commissioner O'Sullivan contacted Superintendent	
5	Murray in April 2015, other than saying the guards in	11:16
6	the station told me this. That is as far as I can go.	
7	I am not willing to name the guards concerned for fear	
8	that they will be targeted."	
9		
10	Commissioner Nóirín O'Sullivan has stated to the	11:16
11	Tribunal that this phone call never took place and that	
12	the allegation "is completely untrue and without	
13	foundation".	
14		
15	Superintendent Patrick Murray further stated that he	11:16
16	had never spoken to former Commissioner Nóirín	
17	O'Sullivan about Garda Keogh and that "she did not	
18	phone me in April 2015 and I never suggested to anyone	
19	that they should pull away from or alienate Garda	
20	Keogh, nor would I have any reason to do so."	11:16
21		
22	On the 23rd May 2019, Garda Keogh informed the Tribunal	
23	that he believed that Sergeant Andrew Haran informed	
24	him about the telecommunication between former	
25	Commissioner Nóirín O'Sullivan and Superintendent	11:17
26	Patrick Murray but that he is "less certain about his	
27	recollection of his informant". The Tribunal will hear	
28	from Sergeant Andrew Haran in this regard, who had	
29	rejected the suggestion by Garda Keogh.	

1		
2	The Tribunal will consider whether Garda Keogh was	
3	targeted or discredited as alleged.	
4		
5	Issue 9: The criticism of criminal investigations by	11:17
6	Garda Nicholas Keogh during 2015.	
7		
8	Superintendent Patrick Murray raised queries in respect	
9	of a number of crime files where Garda Nicholas Keogh	
10	was the investigating officer. Garda Keogh maintains	11:17
11	that the criticisms were unjustified, that his sergeant	
12	did not comment adversely as they went before him and	
13	that it was inconsistent and unreasonable of	
14	Superintendent Murray to single him out for alleged	
15	policing deficiencies.	11:17
16		
17	In his statement to the Tribunal, Garda Keogh states	
18	inter alia that:	
19		
20	"Police work was again irrationally scrutinised and	11:18
21	minutely criticised by Pat Murray."	
22		
23	Garda Keogh outlines in his statement that:	
24		
25	"The queries from Superintendent Pat Murray were	11:18
26	oppressive and irrational."	
27		
28	This is disputed by Superintendent Murray, who says in	
29	his statement to the Tribunal that:	

"The queries I generated in this case were not in any way directed at Garda Keogh personally but were instead to ensure that the investigation was carried out to a high standard to fulfil my obligations as district officer."

11:18

Garda Keogh refers to his investigation of a robbery from the person which occurred in Athlone on the 13th September 2015. While this investigation was initially recorded on Pulse as "robbery from the person" it was subsequently re-classified as "attention and complaints".

Garda Keogh states in his statement to the Tribunal that:

"An interesting feature of this is that Pat Murray, who here expressly classified the incident as serious, has simultaneously and self contradictorily declassified it 11:19 on Pulse on the very same day as not serious, when he downgraded the "robbery" to "attention and complaints". In other words, to a non-crime. Furthermore, Superintendent Pat Murray did not have jurisdiction to so reclassify this incident. In the latter action of deflating the importance of the incident, Superintendent Pat Murray was, with only inconvenience of self contradiction, massaging the crime figures downwards while simultaneously increasing the

1	importance of this same incident when he wanted to	
2	blame me."	
3		
4	This is disputed by Superintendent Murray, who states	
5	that he sought explanations from Garda Keogh "to 11:	19
6	demonstrate my commitment to high standards". He	
7	states that:	
8		
9	"I was not targeting Garda Keogh in any way. In	
10	replying Garda Keogh accused me of harassment. In my 11:	20
11	response to him on 13th October 2015, I indicated I	
12	felt his reply was not satisfactory in allowing me to	
13	provide assurance that high standards relating to their	
14	investigation of crime were met. I advised Garda Keogh	
15	of his obligation to account and I invited him to make 11:	20
16	a complaint about me if he felt I was harassing him. I	
17	again sought a response to my substantive query. Garda	
18	Keogh replied on the 29th October 2015 in a similar	
19	vague fashion and I simply let the matter rest."	
20	11:	20
21	In his statement to the Tribunal investigators Garda	
22	Keogh stated that:	
23		
24	"All I can say is that everything I submitted was	
25	submitted through Sergeant Monaghan, and he never	20
26	questioned anything or my work. And then when queries	
27	arose with Superintendent Murray, Sergeant Monaghan	
28	forwarded them to me. Sergeant Monaghan was the	
29	middleman in this. He himself, to my memory, was never	

1	critical of anything I sent up to him. It was only	
2	when my work went to Superintendent Murray that the	
3	criticism started and it would then come back down to	
4	me. "	
5		11:21
6	Chairperson, the Tribunal will consider whether the	
7	response of Superintendent Murray in each case was	
8	reasonable and proportionate and in accordance with	
9	proper, appropriate or established practise for a	
10	district officer. The Tribunal will consider whether	11:21
11	the handling of these matters constituted the targeting	
12	or discrediting of Garda Keogh within the meaning of	
13	term of reference (p).	
14		
15	Issue 10: Complaints by Garda Nicholas Keogh in	11:21
16	relation to the denial of a request for cancellation of	
17	annual leave on the 31st August 2015.	
18		
19	Garda Keogh wrote to the sergeant in charge at Athlone	
20	Garda station on the 1st September 2015, stating that:	11:22
21		
22	"I took annual leave on 31st August 2015. However, I	
23	was requested to meet GSOC that day in Portlaoise and I	
24	requested to have the annual leave cancelled for that	
25	day. "	11:22
26		
27	This application was approved by Sergeant Monaghan but	
28	Superintendent Murray subsequently refused it "in	
29	absence of any proper explanation."	

T		
2	Garda Keogh was informed of this decision by Sergeant	
3	Monaghan on 10th September 2015 and told that he still	
4	wished to have this date considered for cancellation	
5	that he should "forward a comprehensive report as to	11:22
6	the reasons".	
7		
8	In his statement to the Tribunal, Garda Keogh states	
9	that:	
10		11:22
11	"Superintendent Pat Murray, who was aware of the	
12	confidentiality of GSOC communications with members,	
13	countermanded this approval citing absence of proper	
14	explanation in circumstances where I could not provide	
15	any more specific explanation given the confidential	11:23
16	nature of GSOC disclosures."	
17		
18	In his statement to the Tribunal, Superintendent	
19	Patrick Murray states that he had met with Garda Keogh	
20	on the night of the 30th August 2015 at 9pm and that	11:23
21	he:	
22		
23	"Made no mention of seeking to have annual leave	
24	cancelled for the next day. Therefore, I felt the	
25	application was vague in nature. I'm not aware of any	11:23
26	further explanation being provided that allowed the	
27	matter to be revisited."	
28		
29	In his statement to the Tribunal investigators, Garda	

1	Keogn states that:	
2		
3	"Superintendent Murray was looking for a comprehensive	
4	report of what I was going to meet GSOC about. The	
5	protected disclosure process is supposed to be	11:23
6	protected and confidential. Former Garda Commissioner	
7	O'Sullivan was saying publicly she supported	
8	whistleblowers, but I feel Superintendent Murray was	
9	looking to ascertain confidential information about my	
10	meeting with GSOC."	11:24
11		
12	The Tribunal will consider whether the handling of this	
13	matter constituted targeting or discrediting of Garda	
14	Keogh.	
15		11:24
16	Issue 11: Complaints by Garda Keogh in relation to his	
17	confinement to indoor duty on the 22nd October 2015.	
18		
19	On the 22nd October 2015, Garda Keogh was detailed for	
20	indoor duty at Athlone Garda Station.	11:24
21		
22	Garda Keogh in his statement to the Tribunal states	
23	that:	
24		
25	"I was reduced to indoor duties and was confined to	11:24
26	desk bound duties in the public office carrying out	
27	therefore the most stressful job in the station in	
28	circumstances where it was known to management that I	
29	was suffering from work related stress. Thus, on the	

1	22nd October 2015, Superintendent Pat Murray simply	
2	"with immediate effect" reduced me to indoor duties.	
3	There was no analysis or right of representation. He	
4	said that he will "review the matter again on 1st	
5	November 2015". He never did."	11:25
6		
7	Garda Keogh in his statement to the Tribunal	
8	investigators stated that:	
9		
10	"I suspect the real reason I was put on indoor duties	11:25
11	at that time was that it was just after Garda A had	
12	been suspended and who was subject of my complaint in	
13	October 2015. It was a message for everyone in the	
14	station (a circular was issued to every sergeant in the	
15	district by Superintendent Murray) so that every other	11:25
16	Garda could see that they were making an example of me.	
17	Everyone in the station knew that I was desk bound and	
18	I believe that was a message for everyone. That is my	
19	belief. He never gave me a specific reason. My	
20	assignment to indoor duties was never reviewed."	11:25
21		
22	Superintendent Murray in his statement to the Tribunal	
23	states that:	
24		
25	"I met Garda Keogh again in my office in relation to	11:26
26	this matter on 22nd October 2015 to serve a form 1A14	
27	on him at the request of Chief Superintendent	
28	Westmeath. I noticed that Garda Keogh had deteriorated	

and that he didn't seem well to me. I asked him about

1	his health and his drinking and he wouldn't answer. I
2	noticed his hands shaking a lot to the degree that he
3	could barely sign his name while acknowledging receipt
4	of the form. I discussed with him his frequent
5	sickness absence and the impact of it on his ability to 11:2
6	follow up on work related matters. I explained that I
7	had discussed the lack of progress on some matters
8	involving Garda Keogh with Sergeant Monaghan while
9	going through his incident list at a PAF meeting with
10	Sergeant Monaghan on 19th October 2015. Garda Keogh
11	didn't seem with it to me and I asked him if he felt
12	fit enough to be in work. He said he did. As a result
13	of what I saw I explained to that I would have to
14	assign him to indoor duty and I discussed that with
15	him, explaining the reasons why and referring him to
16	our conversation of the 30th August, where we had
17	discussed the possibility of this happening. He
18	appeared to me to agree with the course of action I was
19	taking. I reported how I found Garda Keogh and my
20	decision to confine him to indoor duties to Chief
21	Superintendent Westmeath."
22	
23	Sergeant Haran in his statement to the Tribunal says

that:

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11:27

"A decision was made by Superintendent Murray to confine Garda Keogh to indoor duty. I was not consulted in relation to this decision. I cannot recall how or when I became aware of this decision.

1	was aware that Garda Keogh was unhappy with the
2	decision from informal conversations we had. He felt
3	that his assignment to indoor duties was a ploy on the
4	part of management to push him out. He did not make a
5	formal complaint to me at that time. I am unaware as $_{11:2}$
6	to whether he made a formal complaint to anyone else in
7	the station."
8	
9	The Tribunal will consider the decision to assign Garda
10	Keogh to indoor duty in October 2015 and whether this
11	constituted targeting or discrediting of Garda Keogh by
12	Superintendent Patrick Murray within the meaning of
13	term of reference (p).
14	
15	Issue 12: Complaints by Garda Nicholas Keogh in
16	relation to the misrecordings of sick leave and the
17	reduction of salary.
18	
19	Chairperson, as I stated at the outset, Garda Keogh was
20	on sick leave on a number of occasions in 2014 and
21	2015, until going on sick on 26th December 2015 until
22	the present. He submitted sick certificates to the
23	district office at Athlone Garda Station during 2014
24	and 2015, which were issued by his general practitioner
25	Dr. David Bartlett in Athlone, and which recorded that
26	Garda Keogh was medically unfit for work due to "work
27	related stress."
28	
29	In his statement to the Tribunal, Garda Keogh states

1 that he discovered that his absence through sickness 2 was being recorded as "viral flu "and not "work related 3 stress" during this period. As a consequence of viral 4 flu being specified as an ordinary illness, Garda Keogh 5 was placed on reduced pay of €290 per week when he 6 reached a threshold of 92 days absence in a 12-month 7 period. 8 In his statement to the Tribunal investigators, Garda 9 Keogh states that he recorded that he was being 10 recorded as absent with "viral flu" in December 2015 11 12 when meeting with Garda chief medical officer 13 Dr. Oghenovo Oghuvba. He says that doctor told him 14 that "he was going to talk to someone high up about this". Garda Keogh states that this meeting took place 11:30 15 16 one week after a case conference had been held in 17 respect of Garda Keogh with the Chief Medical Officer, 18 Superintendent Patrick Murray and other senior officers attending. 19 20 In his statement to the Tribunal Garda Keogh states 21 22 that: 23 24 "The police appeared to wish to deny knowledge of my 25 work related stress while on the other hand dealing 26 punitively with my condition in terms of reduction of

11:29

11:30

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11:30

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pay, monitoring, disciplining etc. My recurrent

matters rather than a welfare or safety issue."

sickness was seen as disciplinary and wage reduction

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The Tribunal will hear from Garda Olivia Kelly, the district clerk in Athlone Garda station, who recorded the category of Garda Keogh's absence on the Garda sickness absence management system (called SAMS) and amended same on the 23rd May 2016.

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The Tribunal will also hear from a number of witnesses in the Human Resources section of An Garda Síochána and from Superintendent Patrick Murray and Chief 11:31 Superintendent Lorraine Wheatley on this issue. Tribunal will consider why this illness category was changed from "viral flu" to "mental health" on the 23rd May 2016 and subsequently changed to "work related stress/injury on duty" in late 2016. The Tribunal will 11:31 consider why Garda Keogh was placed back on full pay on the 13th October 2016, back dated to the 26th December The Tribunal will hear from Chief Superintendent Anthony McLoughlin, who is the Protected Disclosures Manager at the Human Resources and People Development 11:32 in this regard.

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The Tribunal will examine the background to this matter and consider whether the handling of this issue by senior management constituted targeting or discrediting 11:32 of Garda Keogh.

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Issue 13: Complaints by Garda Nicholas Keogh in relation to the alleged denial of overtime.

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In his interview with the Tribunal investigators, Garda Keogh states that he was the only member on his unit not offered overtime on a number of occasions during 2014 and 2015. Garda Keogh specified the relevant dates and festivals during his interview with the Tribunal investigators.

11:32

11:33

11:33

11:33

This allegation is rejected by the local management in Athlone. Sergeant Cormac Moylan states that:

"While Garda Keogh alleges that he was denied overtime,
I wish to refute the assertion in its entirety that I
denied him over time at any time. If I did have
overtime to allocate, it was offered to all members on
an equal basis."

Superintendent Patrick Murray states that:

"I was not involved in a general distribution of overtime to individual Garda members in Athlone as that was the responsibility of the sergeant in charge and/or unit sergeant. Overtime is not offered on the basis of seniority. Sickness absence has a bearing on overtime allocation as set out in Garda Finance Code 10.1(5)."

The Tribunal will consider whether Garda Keogh was refused overtime, whether he was singled out in this regard and if so, whether this constituted targeting or

1	discrediting of Garda Keogh by senior officers under	
2	term of reference (p).	
3		
4	Issue 14: Complaints by Garda Keogh in relation to the	
5	alleged delay in the payment of his travel expenses.	11:34
6		
7	Garda Keogh met with Superintendent Patrick Murray on	
8	the 26th March 2015 and the issue of outstanding travel	
9	and subsistence claims arose. Superintendent Murray	
10	states that he was made aware of Garda Keogh's car tax	11:34
11	issue by his predecessor, Superintendent Noreen McBrien	
12	and that "[s]he felt his claims for travelling expenses	
13	were in breach of financial code regulations and could	
14	not therefore be paid in those circumstances.	
15		11:34
16	This is in accordance with the statement of	
17	Superintendent Noreen McBrien who outlines how she	
18	became aware of his car tax issue and the audit she	
19	subsequently carried out. She says:	
20		11:35
21	"I became aware that there was an issue with the type	
22	of tax on Garda Keogh's car. I advised that Garda	
23	Keogh's outstanding claims be withheld until I	
24	investigated the matter."	
25		11:35
26	In his statement to the Tribunal investigators Garda,	
27	Keogh referred to the meeting on the 16th March 2015	
28	and stated that he had never experienced any delay in	

the payment of his travel expenses before and that this

1	delay was at least one year. He states that:	
2		
3	"I recall Superintendent Murray saying to me, you won't	
4	get paid your sub until the car tax is cleared up."	
5	11	1:35
6	These travel and subsistence claims were paid after	
7	Garda Keogh paid the revised car tax rate on 27th March	
8	2015.	
9		
10	The Tribunal will consider whether there was delay in	1:35
11	any or all of Garda Keogh's expense claims and whether	
12	any such delay constituted targeting or discrediting of	
13	Garda Keogh by Superintendent Patrick Murray or any	
14	other senior officer.	
15	11	1:36
16	Issue 15: Complaints by Garda Nicholas Keogh in	
17	relation to the alleged denial of commendations in	
18	respect of an incident involving the stabbing of a taxi	
19	driver on 4th August 2015, the arrest of a person for	
20	burglary on 28th October 2014 and the rescue of a lady $_{ ext{ iny 11}}$	1:36
21	from drowning on 22nd September 2015.	
22		
23	Garda Nicholas Keogh refers to these incidents in his	
24	statement to the Tribunal and says that "it was as if	
25	any successful operation in which I was involved was to $_{ m 11}$	l : 36
26	be airbrushed".	
27		
28	Superintendent Patrick Murray refers to the incident	
29	involving the alleged stabbing of a taxi driver and	

1	states that:	
2		
3	"A meticulous investigation was carried out in relation	
4	to both crimes. It was coordinated by then Detective	
5	Sergeant Eamon Curley and his team. I was not aware of	11:3
6	Garda Keogh's involvement in either of these crimes	
7	which were investigated together."	
8		
9	Garda Keogh states in his statement to the Tribunal	
10	investigators that:	11:3
11		
12	"I was on the Pulse incident on the 3rd August 2015 or	
13	the 4th August 2015 as the investigating member. I was	
14	back in the public office on Saturday 8th August 2015	
15	when I noticed that I had been removed from the Pulse	11:3
16	incident all together in relation to that incident.	
17	The record of my involvement was erased from Pulse."	
18	Sergeant Monaghan confirms in his statement to the	
19	Tribunal that Garda Keogh attended at the scene and	
20	took details from the taxi driver. He states that:	11:3
21		
22	"Garda Keogh's name was apparently removed from Pulse	
23	but I do not know why his name was removed or who did	
24	thi s. "	
25		11:3
26	The Tribunal will hear from Garda Aisling Shankey-Smith	
27	and Brian savage who are involved in the administration	
28	of the Pulse system and who will address the alteration	

of Pulse records. The Tribunal will also consider the

1	evidence of Detective Sergeant Eamon Curley in respect	
2	of why this Pulse record was changed and examine the	
3	Pulse audit records that have been made available to	
4	the Tribunal.	
5		11:3
6	In relation to the burglary in October 2014, Garda	
7	Keogh states that:	
8		
9	"On the 28th October I arrested a burglar in the course	
10	of the Commission of a burglary. This is rare. I	11:3
11	received commendations for less serious cases. I	
12	received no commendation in this case."	
13		
14	In relation to the rescue in September 2015, Garda	
15	Keogh says that:	11:3
16		
17	"Sergeant Monaghan applied for commendations for the	
18	whole unit. Nobody received any commendation."	
19		
20	Sergeant Monaghan states that he:	11:3
21		
22	"Recommended all members present for consideration for	
23	a Seiko Just in Time Award and denied the assertion	
24	made by 'garda Keogh that he was denied a commendation	
25	for this incident and that he single handedly pulled	
26	the female from the water as this was a group effort."	
27	The Seiko award was given out almost one year later on	
28	the 8th September 2016"	

1	Garda Keogh in his statement to the Tribunal	
2	investigators outlines his belief that his	
3	recommendation for this Seiko award was "belatedly	
4	triggered by An Garda Síochána" in response to the	
5	issue of his civil litigation alleging bullying and	11:39
6	harassment by An Garda Síochána.	
7		
8	He says that:	
9		
10	"It is my belief that this was a guise to counteract	11:39
11	the receipt of the said application as it was difficult	
12	for the Gardaí to perform a u-turn of their earlier	
13	position not to follow Sergeant Monaghan's	
14	recommendations for a commendation, hence the unusual	
15	of the sole award from Irish Water Safety."	11:40
16		
17	However Superintendent Patrick Murray states that:	
18		
19	"On 11th November 2015 I nominated even members,	
20	including Garda Keogh, for a Seiko Just in Time award	11:40
21	for their part in the rescue of a lady from the River	
22	Shannon on 22nd September 2015. The awards were	
23	presented to the members on 8th November 2016 at a	
24	ceremony in Dublin Castle. This was the second	
25	occasion on which I nominated members from Athlone for	11:40
26	recognition with the Seiko Just in Time awards scheme.	
27	The members I nominated on the first occasion were also	

recognised, receiving Seiko watches as their rescue

effort put them in greater danger. There was not an

1	ulterior motive for nominating Garda Keogh for this
2	award."
3	
4	The Tribunal will consider whether Garda Keogh was
5	denied commendations alleged and whether he was
6	targeted or discredited by senior officers in this
7	regard under term of reference (p).
8	
9	Issue 16: Complaints by Garda Keogh in relation to the
10	alleged tapping of his phone and/or his post was opened 11:4
11	in 2014/2015.
12	
13	In his statement to the Tribunal Garda Keogh expressed
14	a concern that his post may have been intercepted by An
15	Garda Síochána. He stated that:
16	
17	"There were further problems in terms of interference
18	with my mail. I forwarded Pulse records of death
19	threats to Garda Harrison by post to his address in
20	Letterkenny in 2015. I am advised by Garda Harrison 11:4
21	that my letter had been intercepted and opened."
22	
23	In his statement to the Tribunal investigators, Garda
24	Keogh expressed a concern that his telephone may have
25	been tapped by An Garda Síochána. He stated that:
26	
27	"The only evidence that I have to substantiate this
28	belief is that in a phone call from Assistant
29	Commissioner Ó Cualáin to me on the 15th May 2014 at

1	1100 hours, he advised me twice in the course of that	
2	call not to go into details over the phone. We have	
3	applied for different records through Freedom of	
4	Information in relation to the tapping of my phone. I	
5	believe the Garda Síochána has the technology to do	11:42
6	these things but I do not have the evidence to support	
7	thi s. "	
8		
9	In his statement to the Tribunal, Assistant	
10	Commissioner Ó Cualáin says that Garda Keogh states:	11:42
11		
12	"I advised him twice not to go into detail over the	
13	phone and asserts that this is the only evidence he has	
14	to substantiate his belief that his private phone was	
15	being tapped."	11:43
16		
17	Assistant Commissioner Ó Cualáin says that:	
18		
19	"I may well have advised him in this way, but not for	
20	the reasons outlined by the confidential reporter. The	11:43
21	purpose of the call was to introduce myself to him, to	
22	explain what Commissioner O'Sullivan had appointed me	
23	to do and to make arrangement to meet with him at a	
24	time and place of his choosing to discuss all aspects	
25	of his concerns in detail and take a statement of	11:43
26	complaint from him."	
27		
28	In her statement to the Tribunal Chief Superintendent	

Wheatley says:

1		
2	"I am not aware and have no evidence in regard to the	
3	tapping of Garda Keogh's private phone. I have never	
4	interfered with a member's personal post. I am not	
5	aware that Garda Keogh's private internet is being	11:43
6	monitored. If somebody or organisations were to carry	
7	out what Garda Keogh has alleged, it would not be a	
8	requirement to consult local Garda management and I can	
9	categorically state that I was never consulted on any	
10	such issues in relation to Garda Keogh and was not made	11:44
11	aware of any actions as alleged by Garda Keogh in this	
12	matter."	
13		
14	The Tribunal will consider whether Garda Keogh was	
15	targeted or discredited by senior officers in this	11:44
16	regard under term of reference (p).	
17		
18	If should be noted, however, that a letter dated 4th	
19	October 2019 was received by the Tribunal from the	
20	solicitor acting on behalf of Garda Keogh, stating, and	11:44
21	I quote:	
22		
23	"He does not propose to pursue any such electronic	
24	enquiry before the Tribunal."	
25		11:44
26	Issue 17: Complaints by Garda Keogh in relation to the	
27	criminal investigation carried out by Assistant	
28	Commissioner Dónal O Cualáin.	

1	Garda Keogh maintains that there were "serious and	
2	deliberate flaws with regard to this investigation,	
3	numbering approximately 10, in addition to the matters	
4	that are separately listed for consideration by the	
5	Tribunal. Some of the allegations are inadmissible or	1:4
6	of questionable admissibility, which may have to be	
7	ruled on in by you in due course. The criticisms	
8	include the following briefly summarised complaints	
9	against the investigation team:	
10	11	1:4
11	1. There was a delay in commencing the investigation	
12	during which evidence disappeared;	
13		
14	2. There was a delay in seizing evidence during which	
15	mobile phone evidence was raised;	1:4
16		
17	3. There was a failure to suspend any person suspected	
18	with consequences for potential witnesses;	
19		
20	4. Statements were taken from Gardaí in inappropriate 🔐	1:4
21	circumstances, at a time when a colleague accused by	
22	Garda Keogh was on duty and was able to be seen by	
23	witnesses;	
24		
25	5. There was a failure to revisit a crucial witness	1:4
26	who had come forward with vital information;	
27		
28	6. A Garda under investigation was treated unduly	

favourably in respect of his interview with the

1	investigation team;	
2		
3	7. Garda Keogh and his accused colleague were left in	
4	too close proximity as to workplace and shift times;	
5		11:46
6	8. There was a failure to deal with this complaint	
7	that side investigations were taking place by local	
8	management."	
9		
10	These are the matters listed at 1 to 8 that have been	11:46
11	identified as complaints by Garda Keogh.	
12		
13	Assistant Commissioner Ó Cualáin and his investigators	
14	answered these complaints in detail. It is unnecessary	
15	at this stage to outline their responses to the	11:46
16	individual allegations but two points may be mentioned.	
17		
18	a. The Assistant Commissioner says that when Garda	
19	Keogh complained about the circumstances of interviews,	
20	he directed that they be conducted away from the	11:46
21	station.	
22		
23	b. In relation to the side investigations at no. 8	
24	above, the Assistant Commissioner says that his	
25	inquiries concerned complaints made by Garda Keogh and	11:47
26	not allegations made against him.	
27		
28	The Tribunal will consider whether any of the	
29	criticisms of the investigation are justified and if so	

1	whether they constituted targeting or discrediting of	
2	Garda Keogh by Assistant Commissioner Ó Cualáin.	
3		
4	Issue 18: Complaints by Garda Keogh in relation to the	
5	bullying and harassment investigation carried out by	11:47
6	Assistant Commissioner Michael Finn.	
7		
8	The policy and procedures of the Garda Síochána for	
9	dealing with harassment, sexual harassment and bullying	
10	in the workplace is contained within the document	11:47
11	"Working Together to Create a Positive Working	
12	Environment".	
13		
14	Garda Keogh made a statement to Chief Superintendent	
15	John Scanlan on the 2nd and 27th March 2017 by way of	11:48
16	formal complaint of bullying and harassment.	
17		
18	In his interview with the Tribunal investigators, Garda	
19	Keogh complains that his complaint "went missing for	
20	seven months". He believes that the motive behind this	11:48
21	delay was to facilitate the promotion of Superintendent	
22	Patrick Murray to chief superintendent in late 2017,	
23	early 2018. He says that:	
24		
25	"The combination of general conduct of Assistant	11 : 48
26	Commissioner Finn's unwieldy investigation of my	
27	complaint together with his obfuscation and unnecessary	
28	delay damaged the timely determination of my complaint	
29	and I believe facilitated the promotion of	

1	Superintendent Patrick Murray to my discredit."
2	
3	On the 15th November 2017, Assistant Commissioner
4	Michael Finn was appointed to investigate the matter.
5	In his interview with the Tribunal investigators, Garda 11:48
6	Keogh complains about his meeting with Assistant
7	Commissioner Finn and says that:
8	
9	"AC Finn has discredited me, in saying that he does not
10	know against whom I was making the complaint when to me 11:48
11	it was crystal clear who I was complaining about and I
12	believe this delayed the investigation of my
13	complaint."
14	
15	AC Finn's report on the complaint of bullying and
16	harassment made by Garda Keogh was not finalised until
17	20th December 2018. This report determined that:
18	
19	"In examining each of the complaints and issues raised
20	by Garda Keogh in his statement of complaint, I have 11:46
21	found no evidence to support the allegation that any
22	bullying or harassment has occurred against Garda
23	Keogh. "
24	
25	Assistant Commissioner Finbar O'Brien carried out a 11:50
26	review of the Finn report in January and February 2019.
27	He issued reports dated 7th February 2019, affirming
28	the conclusions of Assistant Commissioner Michael Finn.
29	

1	In a recent statement to the Tribunal, Garda Keogh	
2	states that:	
3		
4	"With reference to item number 18 on the list of items	
5	for consideration by the Tribunal entitled complaints	11:50
6	by Garda Nicholas Keogh in relation to the bullying and	
7	harassment investigation carried out by Assistant	
8	Commissioner Finn, I believe the outcome of this	
9	investigation, as comprised by Assistant Commissioner	
10	Finbar O'Brien, constitutes a failure to uphold my	11:50
11	rights and entitlements as a Garda officer, in that	
12	there is no acknowledgment whatsoever of the	
13	correctness of my complaints of having been longly	
14	harassed by Garda officers which have arisen since I	
15	made my protected disclosures in May/June 2014."	11:51
16		
17	Garda Keogh appealed this review by submission dated	
18	19th March 2019 and a legal expert was engaged by	
19	Deputy Commissioner John Twomey to carry out an audit	
20	of the Finn investigation. This audit was completed on	11:51
21	the 4th June last.	
22		
23	On the 11th July of this year, Deputy Commissioner John	
24	Twomey determined, having examined all of the	
25	documentation submitted to his office together with	11:51
26	this expert report, that the investigation was carried	
27	out "in a thorough, fair and impartial manner" and he	
28	dismissed the complaints of bullying made by Garda	
29	Keogh against the named personnel.	

1		
2	The Tribunal, Chairperson, will consider whether the	
3	criticisms by Garda Keogh of these decisions are	
4	justified and whether the handling of the Finn	
5	investigation, including any review or appeal of the	1:5
6	Finn Report constituted targeting or discrediting of	
7	Garda Keogh.	
8		
9	Issue 19: Whether the disciplinary investigation	
10	carried out by Assistant Commissioner Ann Marie McMahon 1	1:5
11	constituted a discrediting or targeting of Garda Keogh.	
12		
13	Chairperson, as noted at the outset, a disciplinary	
14	process in respect of four members of An Garda	
15	Síochána, including Garda A, under An Garda Síochána 🛚 🕮	1:5
16	(Discipline) regulations 2007 began under Assistant	
17	Commissioner Nolan, and continued under Assistant	
18	Commissioner Ann Marie McMahon on his retirement. It	
19	was completed in respect of Garda A by report dated	
20	27th February 2019, in which Assistant Commissioner Ann $_{ m 1}$	1:5
21	Marie McMahon recommended the establishment of a Board	
22	of Inquiry.	
23		
24	On the 7th May 2019, Assistant Commissioner David	
25	Sheahan considered this recommendation and determined	11:5
26	that a board of inquiry was not warranted. The matter	

28

29

was then referred for a peer review to be carried out

by Assistant Commissioner Orla McPartlin. On the 19th

June 2019, Assistant Commissioner Orla McPartlin issued

1	a report stating that she was satisfied that the	
2	investigation of Assistant Commissioner Ann Marie	
3	McMahon was "thorough and complete".	
4		
5	In her statement to the Tribunal, Assistant	11:53
6	Commissioner Ann Marie McMahon states:	
7		
8	"Whilst I note that I am not personally named by Garda	
9	Nicholas Keogh in his witness statement and in the	
10	absence of any clear differentiation between the	11:53
11	criminal or discipline investigations within the	
12	statements of Garda Nicholas Keogh, I must once again	
13	reaffirm that my investigation was conducted with	
14	absolute professionalism, complete impartiality and	
15	progressed as expeditiously and as diligently as	11:54
16	possi bl e. "	
17		
18	The Tribunal will consider whether any criticism of	
19	Garda Keogh in relation to the disciplinary	
20	investigation are justified and whether the handling of	11:54
21	the McMahon investigation, including any review of her	
22	report, constituted targeting or discrediting of Garda	
23	Keogh.	
24		
25	Issue 20: Complaints by Garda Keogh in relation to the	11:54
26	promotion of Superintendent Patrick Murray to Chief	
27	Superintendent in 2017.	
28		
29	On 18th January 2016, Superintendent Patrick Murray	

Τ	applied for promotion to the rank of chief	
2	superintendent. He was informed on the 25th May 2016	
3	that he had been successful in the promotion	
4	competition but the nomination did not go ahead at that	
5	time. Over 12 months later, on the 29th January 2018, 😘	1 : 55
6	the policing authority informed him that he would be	
7	promoted, with that promotion back dated to the 26th	
8	October 2017.	
9		
10	Garda Keogh states in his interview with the Tribunal	1 : 55
11	investigators that:	
12		
13	"The combination of the general conduct of Assistant	
14	Commissioner Finn's unwieldy investigation of my	
15	complaint together with his obfuscation and unnecessary	1 : 55
16	delay damaged the timely determination of my complaint	
17	and I believe facilitated the promotion of	
18	Superintendent Pat Murray to my discredit."	
19		
20	He continues that:	1 : 55
21		
22	"As stated in my addendum statement, it appears to me	
23	that the processing and investigation of my complaint	
24	was delayed purposely whilst the promotion of	
25	Superintendent Patrick Murray to chief superintendent	1 : 55
26	was proceeded with. That is how it is perceived by	
27	me."	
28		
29	Garda Keogh further states that:	

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"Assistant Commissioner Ó Cualáin was also the Garda point of contact with the policing authority in relation to the promotions whereby Superintendent Pat Murray, who originally came from his area (western region) into Athlone (eastern region) was promoted to chief superintendent, without any determination of my complaint, which I say Assistant Commissioner Ó Cualáin had to be aware of at the time."

11:56

11:56

Assistant Commissioner Ó Cualáin states that he was not aware of the bullying and harassment complaint by Garda Keogh when he signed the clearance forms in respect of Superintendent Murray for the policing authority on the 9th September 2017.

Superintendent Murray complains about an orchestrated campaign to prevent his promotion and of character assassination by politicians.

11:57

11:57

11:56

The Tribunal will consider whether there is any evidence that the commencement of the investigation into Garda Keogh's bullying and harassment complaint was delayed to facilitate or progress the promotion of Superintendent Patrick Murray and/or whether the handling of this complaint constituted targeting or discrediting of Garda Keogh by senior officers within the meaning of term of reference (p).

_	133de 21. Comptatites by datua Reogn that the	
2	Disclosures Tribunal order was deliberately withheld	
3	from him.	
4		
5	The Disclosure Tribunal order was dated the 20th	11:57
6	February 2017. Members of An Garda Síochána were	
7	afforded eight working days from 20th February to make	
8	a application or submission to the Tribunal.	
9		
10	This order was received by Garda Keogh on the 21st	11:57
11	March 2017. Garda Keogh states that he was notified of	
12	this post by Inspector Minnock on the 20th March 2017.	
13	In his statement to the Tribunal, Garda Keogh states	
14	that there was a cover note on the order from	
15	Superintendent Patrick Murray which was dated 6th March	11:58
16	2017.	
17		
18	Garda Keogh says that:	
19		
20	"It would appear that it was curiously withheld from me	11:58
21	by Superintendent Murray in an apparent effort to	
22	obstruct me from complying with the Tribunal order in	
23	relation to evidence I may have. Also, the letter was	
24	then curiously withheld from me for a further two weeks	
25	by Superintendent Murray, in what would appear to be an	11:58
26	effort to bypass Judge Charleton's deadline of the 13th	
27	March 2017, whereby I would be denied any information	

29

and obstructed from complying with section (p)."

T	In a statement to the Tribunal investigators, Garda	
2	Keogh continues:	
3		
4	"I also wish to state here that I note that Garda	
5	management at all times were able to contact me,	11:59
6	whether as in this example by post, and by personal	
7	delivery and in other examples where they have	
8	contacted me either through other Gardaí, the welfare	
9	officer or inspector Minnock. Further, I know that	
10	this documentation, the Disclosure Tribunal Order, was	11:59
11	circulated to all other Gardaí in the district sooner	
12	than it was sent to me."	
13		
14	Superintendent Patrick Murray disputes this allegation,	
15	stating that:	11:59
16		
17	"When that letter was arrived I made inquiries with the	
18	then District Clerk and Inspector Minnock, who dealt	
19	with the issue. I returned a report to Assistant	
20	Commissioner Fanning and have I no knowledge of whether	11:59
21	any reply was sent to Garda Keogh. There was no	
22	intention on anyone's part to withhold anything from	
23	Garda Keogh, who, it appears, was fully aware of the	
24	Tribunal's order in any event."	
25		12:00
26	Inspector Aidan Minnock was tasked with the service of	
27	the order on Garda Keogh and states:	
28		
29	"I served the order at Garda Keogh's residence on	

1	Tuesday, 21st March 2017, having made other previous	
2	unsuccessful attempts to serve it. Prior to service I	
3	rang Garda Keogh and we agreed to leave the Order in	
4	the post at his house. He stated that he was familiar	
5	with it."	12:00
6		
7	The Tribunal will consider whether the Tribunal Order	
8	was deliberately withheld from Garda Keogh and whether	
9	this constituted the targeting or discrediting of Garda	
10	Keogh by senior officers within the meaning of term of	12:00
11	reference (p).	
12		
13	Finally, issue 22: Complaints by Garda Nicholas Keogh	
14	that other material, including the Section 41 report	
15	pursuant to the Garda Síochána Act 2005 was withheld	12:01
16	from him.	
17		
18	Pursuant to the provisions of Section 41 of the An	
19	Garda Síochána Act 2005, the Minister For Justice and	
20	Equality may request a report on a matter from the	12:01
21	Garda Commissioner. A Section 21 report was requested	
22	in respect of Garda Keogh and provided on the 9th	
23	September 2016 (an interim report) and the 11th October	
24	2016 (the final report).	
25		12:01
26	Garda Keogh requested copies of these reports and was	
27	not provided with the same.	
28		
29	The Tribunal will consider whether the alleged failure	

1 and/or refusal of the Department of Justice and 2 equality to provide these reports comes within the jurisdiction of the Tribunal under term of reference 3 (g). 4 5 12:01 6 Chairperson, on the 16th April 2019 we 7 wrote to all the parties with the schedule of the above 8 The parties were requested to confirm that the schedule was a comprehensive list of topics arising for 9 consideration in the module. 10 They were also invited to 12:02 11 suggest any additional matter not included in the 12 schedule or propose the deletion of issues as 13 irrelevant or inadmissible. Garda Keogh's team was 14 concerned that the review of the Finn Report as carried out by Assistant Commissioner Finbar O'Brien should be 15 16 included in the said schedule of issues. This has been 17 incorporated at issue number 18. 18 19 On the 30th April 2019, the Tribunal held a case 20 management meeting in private sitting. Again, this was 12:02 designed to ensure that all the relevant issues were 21 22 captured in the Tribunal's schedule of issues. 23 parties agreed that this was so. 24 25 The parties have been served with some 50 volumes of 12:03 material. We believe that all relevant documentation 26 27 has been disclosed to the parties. As a matter of procedure we would ask parties who wish to produce 28

29

documents during the hearing which are not included in

1	the material to advise counsel for the Tribunal in	
2	advance and to make the document available so that it	
3	may be redacted if necessary to protect third party	
4	rights and be included in our system.	
5		12:03
6	The Tribunal has provided a schedule of work and	
7	witnesses to the parties. It is intended to hear the	
8	evidence on the issues outlined above in three two-week	
9	periods as follows: 14th-25th of this month; from	
10	4th-15th November; 26th November-6th December.	12:03
11		
12	The Tribunal intends to call Garda Nicholas Keogh as	
13	the first witness at 2pm today, Chairperson.	
14	CHAIRMAN: Thank you very much.	
15	MR. McGUINNESS: Chairman, one matter arises as a	12:04
16	consequence of the Tribunal's procedures and its	
17	jurisdiction and its interpretation of the terms of	
18	reference and it relates to the following matters,	
19	Chairman: As will have become apparent from	
20	Mr. Marrinan's opening, Garda A, who is the subject	12:04
21	matter of many of the allegations of wrongdoing, has	
22	been given that designation in the papers as circulated	
23	and also a civilian alleged to be associated improperly	
24	with Garda A has been designated Ms. B.	
25		12:04
26	You, Chairman, obviously in the interpretation of the	
27	terms of reference, have properly concluded that the	
28	wrongdoings alleged in the protected disclosures are	
29	not the subject matter of the inquiry. As a	

1	consequence, there will obviously be no adjudication on	
2	any aspect of the alleged wrongdoing. Garda A, his	
3	identity and Ms. B and, indeed, may I say in passing,	
4	all of the other civilians referred to in all of the	
5	criminal matters touched upon, their identities have	2:0
6	been masked, as it were, redacted.	
7		
8	So I am going to ask you, Chairman, to make an order	
9	prohibiting in any way, directly or indirectly, the	
10	name or identity of Garda A, Ms. B or any of the other $_{ extstyle 1}$	2:0
11	civilians referred to in the documents circulated.	
12	It's obviously hoped to avoid any accidental mention of	
13	the identities in the course of the Tribunal hearing	
14	and any such accidental mention will be expunged from	
15	the transcript and obviously the intention is that it $_{ ext{ iny 1}}$	2:0
16	shouldn't occur. So, Chairman, I would ask you to make	
17	that order.	
18	CHAIRMAN: Very good. I will make an order prohibiting	
19	publication, directly or indirectly, of the names of	
20	Garda A and Ms. B and any other persons accused of any $_{ extstyle 1}$	2:0
21	criminal activity, or of material that would lead to	
22	the identification of such persons. So I propose to	
23	make those orders here and now and everybody knows then	
24	exactly where they stand. All right. Very good.	
25	1	2:0
26	I think we didn't know exactly how long the opening	

28

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statement was going to be or whatever, so we will break

now until two o'clock. Is everybody convenient for two

o'clock? Garda Keogh, are you ready for two o'clock?

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So we will start off at two o'clock then Very good.

and we will have an afternoon session, so it won't be too long a session for anyone.

Just let me mention, if anybody has issues procedural 12:07 or matters of that kind or concerns with documents, the best thing to do is to raise them with counsel for the Tribunal. If they can be sorted out at that stage well If we have to have a hearing about the and good. matter or written submissions or argument or anything like that, we will arrange that in due course. But the best way to do it is by informal contact in the first instance with counsel for the Tribunal. Okay. Thank you very much.

12:07

12:07

THE HEARING THEN ADJOURNED UNTIL 2PM

1	THE HEARING RESUMED, AS FOLLOWS, AFTER LUNCH:
2	
3	CHAIRMAN: Yes, Mr. Murphy.
4	MR. MURPHY: Chairman, before the evidence begins, can
5	I make a short submission before you, arising from our $_{ m 14:0}$
6	comments before lunch, where you invited us to signal
7	if there were any issues that might be worthy
8	attention.
9	CHAIRMAN: Yes. Mr. Murphy, if it's the same issue
10	that you mentioned to Mr. McGuinness and Mr. Marrinan, $_{ m 14:0}$
11	I was proposing, if it's convenient, to deal with that
12	at four o'clock.
13	MR. MURPHY: May it please the Court.
14	CHAIRMAN: So we will get started. We will not have
15	reached any point where your concern is relevant, but 14:0
16	we will deal with it, if that's convenient.
17	MR. MURPHY: Thank you.
18	CHAIRMAN: Are you happy with that, Mr. McGuinness.
19	MR. McGUINNESS: Yes, thank you.
20	CHAIRMAN: It's not a great mystery, Mr. Kelly, we will $_{ m 14:0}$
21	explain it all to you at four o'clock, it's a rather
22	un-mysterious question, but I know what it's about and
23	it has been mentioned before. We won't make too much
24	of it but we will deal with it, if it's convenient, at
25	four o'clock.
26	MR. KELLY: That's fine, thank you.
27	MR. McGUINNESS: As Mr. Marrinan announced just before
28	lunch, Garda Nicholas Keogh is the first witness.
29	CHAIRMAN: Thanks very much.

Τ		MR. MCGUINNESS: So I would ask him to come forward	
2		please to the witness box.	
3		CHAIRMAN: Thank you very much, Garda Keogh. Yes, very	
4		good.	
5			14:01
6		GARDA NICHOLAS KEOGH, HAVING BEEN SWORN, WAS QUESTIONED	_
7		BY MR. MCGUINNESS, AS FOLLOWS:	
8			
9		CHAIRMAN: Thanks very much. Sit down there, Garda	
10		Keogh.	14:01
11	1 Q.	MR. McGUINNESS: Garda Keogh, I will be asking you	
12		questions on behalf of the Tribunal. I should say that	
13		my hope is that I can help you to give the evidence	
14		that you ought to give and that you want to give and	
15		that I know the Chairman is anxious to hear. So you	14:01
16		will be asking you lots of questions. Obviously I will	
17		be proceeding through the issues, dealing with them on	
18		a sequential basis and I think you will understand why	
19		that is.	
20			14:01
21		The other thing I should say is that obviously at	
22		different stages I will be referring to the volumes of	
23		documentation that you have received. You will be glad	
24		to hear, I hope, that I won't be taking you through	
25		every page or even a very large proportion of it, I	14:02
26		will be hoping to focus on a lot of the material pages,	
27		but you are free to refer to any of it at any stage in	
28		the course of your answers, in the course of your	
29		evidence, if you think it's necessary, you understand	

1 that.

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We can deal with the evidence two ways, in the sense if I ask for a document it will be put up, Mr. Barnes, who is acting as registrar there, he will be able to put 14:02 that on the screen in front of you so that you can see it there. You're entitled also obviously to see a paper copy. A lot of witnesses vary in whether they want to see the paper copy or are happy to view it on If you want to see the paper copy, you will be 14:03 assisted by our researcher, behind you, to get the relevant volume and to help direct you to the page in question.

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You follow that?

14:03

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Α. Yes.

CHAI RMAN: Just before you start, Mr. McGuinness, I think, did we agree that Mr. Kelly and his colleagues might like to sit in the row in front. In other words, we had the idea that the witness who is giving evidence 14:03 might be assisted, am I right in this, by having one or more of his team sitting sort of close to him. that's why we left that blank. Am I right? MR. McGUINNESS: well, it's primarily intended as an option for people who want to examine a witness also, Chairman.

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CHAI RMAN: Very good. Okay. Sorry, correction, yes. So when the time comes, Mr. Kelly, for you to examine your client to the extent, whatever extent, then you

2			cross-examining, they can move over there. Sorry, I	
3			got it slightly wrong. Okay. Thanks very much. Now,	
4			Mr. McGuinness.	
5				14:0
6			Also, if you have any problem about something or you	
7			don't understand something, just tell us, okay.	
8	2	Q.	MR. McGUINNESS: And of course, if you need to take a	
9			break at any stage, just signal or ask the Judge and we	
10			can organise that. Garda Keogh, I think you joined the	14:0
11			guards in May of 1999, is that correct?	
12		Α.	Yes.	
13	3	Q.	What age are you at that stage?	
14		Α.	Roughly 21.	
15	4	Q.	A lot of families have a history in the guards when	14:0
16			they join the guards, had you any family background?	
17		Α.	Well, when my grandfather was '51, he would have	
18			joined on the first day and my uncle would have been in	
19			the guards, I would have had granduncles, numerous	
20			granduncles and people yes, I would have had a lot	14:0
21			of history.	
22	5	Q.	That family background, was that sort of influential in	
23			you joining the guards?	
24		Α.	Possibly. Possibly. It was also just a career I would	
25			have been interested in anyway.	14:0
26	6	Q.	Yes. I think you went down to Templemore and you were	
27			attested then in the following year, on the 1st July,	
28			is that correct?	

can move forward and equally, if somebody is

1

29

Α.

Yes.

- 1 7 Q. Did you serve some time during that period in Clonmel,
- was that as a probationer?
- 3 A. No, that was a student garda.
- 4 8 Q. A student garda?
- 5 A. It was Bray then as probationer and I would have stayed 14:05
- 6 on in Bray.
- 7 9 Q. All right. So you went to Bray after being attested?
- 8 A. Yes.
- 9 10 Q. As a probationer?
- 10 A. Yes.
- 11 11 Q. Did you stay, did you pass out then? It was I think a

14 · 05

- 12 year of probation at that time in the force, is that
- right?
- 14 A. Yes.
- 15 12 Q. Then you passed out in Bray the following July, is that 14:05
- 16 right, in 2001?
- 17 A. 2001, yeah.
- 18 13 Q. So as of the date of the events that we will be
- 19 primarily concerned with, 2014 onwards, you had more or
- less 13 years service in the Guards, coming up to that? 14:06
- 21 A. Yes.
- 22 14 Q. What sort of duties did you do in Bray, when you were
- 23 attached there?
- 24 A. When I started off it was regular uniform duties, then
- it was three years in the drugs unit and I would have
- done a year in the detective branch in Enniskerry.
- 27 15 Q. Yes. Were they busy stations? Nothing much to compare
- them to, perhaps?
- 29 A. Well Bray would have been, yeah.

- 1 16 Q. Okay. Was that plain clothes duties in Enniskerry?
- 2 A. It was, yeah.
- 3 17 Q. I think you did some public order training in 2003, is
- 4 that right?
- 5 A. Yes.
- 6 18 Q. You did then training I think in 2005, between April

14.07

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14.08

- 7 and May in the Garda National Drugs Unit, is that
- 8 correct?
- 9 A. Yes.
- 10 19 Q. You decided to apply for a transfer at some stage, was
- there any particular reason or any particular area you
- wanted to go to?
- 13 A. It was just time to move.
- 14 20 Q. Yes.
- 15 A. I was about six years in Bray at that stage and I just
- 16 wanted to move down the midlands.
- 17 21 Q. Yes. You were I think ultimately assigned on transfer
- down to Westmeath, isn't that correct?
- 19 A. Yes.
- 20 22 Q. I think it was quite a small station, Ballynacargy
- 21 west?
- 22 A. That's correct, yeah, Ballynacargy.
- 23 Q. That's a small sub-district of the Granard district, is
- 24 that right?
- 25 A. It is on the Westmeath/Longford border, yes.
- 26 24 Q. Yes. I think that was a two-man station with no patrol
- car, is that correct?
- 28 A. Correct.
- 29 25 Q. Am I correct in saying that the superintendent in

1 charge of Granard at that time was Superintendent 2 Scanlan? That's correct. 3 Α. 26 Is that is the superintendent who became the Chief 4 0. 5 Superintendent Scanlan that you later met? 14:08 In Portlaoise, yeah, he's currently the chief in 6 Α. 7 Portlaoise, yeah. 8 27 Is he the superintendent who ultimately took your Q. 9 statement of complaint in the bullying and harassment 10 case? 14.08 11 Yes, 2017 I think. Α. 12 2017, yes. 28 Q. 13 Roughly. Α. 14 29 Q. I noted in the papers that at the stage when he 15 introduced himself to you, at that point in time the 14:08 16 issue of a conflict of interest was raised and 17 discussed between you and him, is that right? 18 Yes, yeah. Α. 19 30 He ultimately referred that issue upstairs, up to HQ at Q. 20 that time, isn't that right? 14:09 21 Yes. Α. 22 So you had known him obviously from that period, from 31 Q. 23 the year you were in his division? 24 Oh yeah. Α. 25 In his district. You transferred to Athlone then in 32 0. 14 . 09 October 2007? 26 27 Yes. Α.

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29

33

Q.

was that a destination, a district or a station that

you expressed a preference for, or is that possible?

- 1 A. Because I was in Ballynacargy there, I was sort of
- going mad because it was very quiet. So I wanted to go
- 3 to a bigger, busier place.
- 4 34 Q. Yes.
- 5 A. Athlone was the biggest in -- it's just slightly
- 6 bigger, larger than Mullingar, so I looked for Athlone.

14:10

14:10

14:10

- 7 35 Q. Yes. I think you moved there and you were put on unit
- 8 C, is that right?
- 9 A. Yes.
- 10 36 Q. Was that a uniform patrol unit?
- 11 A. Yes.
- 12 37 Q. Presumably you have supervising sergeants on that?
- 13 A. Yeah.
- 14 38 Q. How many did you have?
- 15 A. When I started above it was one in Athlone.
- 16 39 Q. Yes
- 17 A. Yeah.
- 18 40 Q. Was there another one based in Mullingar as well at
- 19 that time?
- 20 A. Mullingar was a different district completely to
- 21 Athlone.
- 22 41 Q. Okay.
- 23 A. There was one sergeant and it would have been seven,
- 24 eight guards on the unit.
- 25 42 Q. Roughly?
- A. Roughly. In Bray it was different; we had two guards
- 27 per unit in Bray.
- 28 43 Q. At the initial stage you were only used to one sergeant
- 29 supervising you, is that right?

- 1 A. Yeah.
- 2 44 Q. I think in September '09 you applied for the drugs
- 3 unit, is that right?
- 4 A. Yes.
- 5 45 Q. That application was successful, is that correct?
- 6 A. Yes
- 7 46 Q. I think you started in that on 28th October 2009, is

14:11

14:11

14:12

- 8 that right?
- 9 A. Yeah.
- 10 47 Q. Am I correct in saying that you in fact had booked a
- 11 break for some holidays at that point in time?
- 12 A. That's correct, yes.
- 13 48 Q. You went away for a number of weeks?
- 14 A. Yeah.
- 15 49 Q. You were back then from your holiday on 12th December
- 16 2009?
- 17 A. Correct. Roughly, yeah.
- 18 50 Q. I think that was a date which gave rise to your
- involvement then in an investigation that started in
- 20 early 2010, isn't that correct?
- 21 A. This is the Operation Loki.
- 22 51 Q. Yes, this is Operation Loki?
- 23 A. Yeah, yeah.
- 24 52 Q. Okay. I am just asking you a few general questions
- about these matters because they gave rise to your
- concerns, which you included in all your PDs, isn't
- 27 that correct?
- 28 A. Yes.
- 29 53 Q. One of your concerns was that this Operation Loki, it

Τ			was a clean streets operation, as it's called, where	
2			people try target people who are dealing, catch them,	
3			prosecute them and I suppose get them off the street,	
4			is the best way of summarising it, isn't that correct?	
5		Α.	Yeah.	14:12
6	54	Q.	I think one of your concerns in a general way was that	
7			some citizens may be induced to get drugs for the	
8			guards and you didn't think that was perhaps proper?	
9		Α.	There was one particular incident that was done very	
10			wrong in that.	14:13
11	55	Q.	Okay.	
12		Α.	There was also a second part with Operation Loki to do	
13			with nomination lists.	
14	56	Q.	Yes.	
15		Α.	Yes.	14:13
16	57	Q.	That's what I was going to come on to. One of your	
17			other concerns, and just to confirm it in a general	
18			way, was that you thought the small fry were being	
19			targeted and big fish, as it were, weren't being either	
20			targeted enough or were being perhaps in some cases	14:13
21			deliberately left alone, off the list?	
22		Α.	Yes.	
23	58	Q.	That's a general concern. The particular concern that	
24			you have referred to there related to one particular	
25			operation, where a suspect was sort of misidentified by	14:13
26			one garda and the wrong address attributed to him.	
27			That led to the wrong arrest, as it were, of another	
28			person with the same name, isn't that correct?	
29		Δ	Wrong address and wrong date of hirth	

- 1 59 Q. Wrong address and wrong date of birth, you're correct.
- I think you were actually the guard who conducted that
- 3 arrest?
- 4 A. Yes.
- 5 60 Q. And the search of the house that preceded it, isn't

14:14

14:14

- 6 that correct?
- 7 A. That's correct.
- 8 61 Q. That led to your concerns thereafter that statements
- 9 were amended which, as it were, glided over the
- misidentification or the misstatement of the address of 14:14
- 11 the first subject?
- 12 A. Yes.
- 13 62 Q. So those statements were changed by way of amendment to
- 14 reflect the same name but a different address for the
- 15 new suspect?
- 16 A. Yes.
- 17 63 Q. Your concern I think developed, I think you say in one
- of your PDs that these weren't disclosed to the
- defence, that the file went missing and that the person
- who was the subject of the ultimate prosecution was
- sort of improperly induced to plead guilty in the
- 22 District Court?
- 23 A. That's correct. Also there was coercion in that and I
- 24 had a DVD of the actual interview.
- 25 64 Q. We will come to that in a moment.
- 26 A. Yeah.
- 27 65 Q. You raised the issue about the prosecution and the
- circumstances of the plea of guilty. The person did in
- fact plead guilty in the end?

- 1 Α. Yes.
- 2 66 Since you mentioned it now, at a stage you got Q.
- possession of the DVD of the interview of this suspect, 3
- you made a number of copies of it, I think. 4
- 5 Α.

14 · 15

14:16

- 6 67 Q. Amongst the copies that you -- I use the word
- 7 distributed in any pejorative sense, but that is one of
- 8 the ones you gave to Judge McMahon?
- 9 Correct. Α.
- 10 68 And you gave it to other people, I think, is that Q.
- 11 correct?
- 12 I gave it to Luke Ming Flanagan, a number of copies, Α.
- 13 TD, a number of copies of it to --
- 14 69 Q. All right, well perhaps we needn't go into that at the
- 15 But just to deal with your other concerns, one 14:16
- 16 of the concerns, perhaps as important as others, you
- 17 thought one particular guard, during searches that were
- 18 being conducted, was taking DVDs from people's houses
- 19 the subject of the searches?
- 20 Α. Yes.

- That was included in your PDs? 21 70 Q.
- 22 That's correct. Α.
- 23 There was an allegation then of sort of inappropriate 71 Q.
- 24 contact between one garda and a female suspect, isn't
- that correct? 25
 - 26 Α. Yes.
- 27 72 That was one of your concerns? Q.
- That's correct. 28 Α.
- 29 73 It developed into a concern that you believed this Ο.

- guard had tipped off the lady suspect in advance of a
- particular search?
- 3 A. That's correct.
- 4 74 Q. There was also a concern that there was some suspicion
- 5 that some evidence might have been planted in a car
- 6 during the search of the car when it was stopped under

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14:17

14:17

- 7 the Misuse of Drugs Act?
- 8 A. That's correct.
- 9 75 Q. Allied to that was a suspicion about preferential
- 10 treatment of a suspect before the courts, who was
- suspected of being assistance to the Gardaí, or one
- 12 particular garda, isn't that correct?
- 13 A. Just bear with me.
- 14 76 Q. Yes.
- 15 A. Just to clarify.
- 16 77 Q. I will repeat that, I think you had some suspicion or
- 17 complaint that some accused got a bit of preferential
- 18 treatment in the course of a prosecution?
- 19 A. Yes, yes.
- 20 78 Q. Okay. Part of the complaint and part of your concern
- was that a suspect in custody had been given drugs
- 22 while they were actually detained in the Garda station?
- 23 A. That was something that was reported to me.
- 24 79 Q. Reported to you?
- 25 A. I just passed it on.
- 26 80 O. Yes.
- 27 A. I had my suspicions on that one myself, but I just
- passed it on to the investigation team.
- 29 81 Q. Yes. There was also a concern that this Ms. B had been

1			allowed, as it were, brazenly conceal some drugs during	
2			the course of a drug search in the presence of a garda,	
3			Garda A, isn't that correct?	
4		Α.	That's correct. That was information that was given to	
5			me from, let's say, a better source than the previous	14:18
6			one.	
7	82	Q.	Yes. But in any event, you would agree that that's a	
8			fair but general summary of the concerns that you had,	
9			that you put in your protected disclosures?	
10		Α.	That's correct, yeah.	14:18
11	83	Q.	Now, obviously, Garda Keogh, you know that the Tribunal	
12			isn't inquiring into the truth or otherwise of those?	
13		Α.	I understand.	
14	84	Q.	You fully understand that. And that it's not the	
15			intention that either Garda A or Ms. B or any other	14:19
16			civilian named in the original files be identified?	
17		Α.	I understand.	
18	85	Q.	Their conduct isn't the subject of the inquiry?	
19		Α.	Yes.	
20	86	Q.	You follow that. I suppose I should say for caution:	14:19
21			That also applies to any informant that we may come to	
22			discuss who you met at one stage?	
23		Α.	Delighted to hear that, yeah.	
24	87	Q.	Yes. That person is entitled to a different species of	
25			anonymity as a potential In any event, as	14:19
26			Mr. Marrinan stated in the opening and as is the case,	
27			you made a protected disclosure by way of affidavit	
28			which you gave to Judge McMahon on 8th May 2014?	

A. That's correct.

29

- 1 88 Q. You had obviously previously contacted him to make such 2 an appointment?
- A. I would have, yeah. I just can't remember the exact -how that happened at the moment, but, yes, I would
 have.

- 89 Q. Yes. The version of the protected disclosure that was initially provided to the Tribunal was, in fact, a draft of the affidavit dated the 28th May of -- sorry, 28th April 2014. You had obviously prepared that in
- 10 advance, isn't that correct?
- 11 A. Possibly, I just can't recall or remember.
- 12 90 Q. Okay. But it appears that you had sworn that affidavit as of the date of 7th May 2014, do you recall that?
- 14 A. I recall getting the affidavit sworn.
- 15 91 Q. Yes.
- 16 A. I recall getting the affidavit sworn from a solicitor 17 in Tullamore, I can't recall her name, but, yes.
- 18 92 Q. If that's the date on it, you would accept that, obviously?
- 20 A. Yeah, yeah.
- 21 93 Q. Now, Mr. Marrinan has referred obviously to the speech 22 of Deputy Flanagan on the 8th?
- 23 A. Yes.
- 94 Q. He appears to have very clearly been aware that you
 were meeting the confidential reporter that afternoon, 14:21
 is that right?
- 27 A. Yes, that's correct, yeah.
- 28 95 Q. Is that a result of a meeting you had with him?
- 29 A. Yes. I had met with Deputy Flanagan, it could have

- been a couple of months prior to that, in relation to
- corruption. At the time you could go to a member of
- 3 the Oireachtas under the Garda Síochána Act. I spoke
- 4 to him in relation to corruption in Athlone, yeah.
- 5 96 Q. Okay. I think you're referring to Section 62 of the

14.22

- 6 2005 Act; is that right?
- 7 A. That's it, yeah.
- 8 97 Q. Had you provided him with the affidavit or with the
- 9 draft affidavit?
- 10 A. No, actually, he asked me to get an affidavit. When
- I told him what was going on, he asked me would I get
- 12 an affidavit.
- 13 98 Q. I see.
- 14 A. Yeah.
- 15 99 Q. Okay. That wasn't something that was required by the
- 16 confidential recipient, Judge McMahon anyway, that was
- 17 Deputy Flanagan's idea?
- 18 A. Yes, that was his idea.
- 19 100 Q. Okay, all right. I suppose it just follows on, did you
- 20 know Deputy Flanagan was going to raise it in that way
- in the Dáil on the 8th?
- 22 A. Yes, we discussed it and the reason for that was, look,
- 23 knowing the history of when the Guards are
- investigating themselves, we felt that it would be
- better if it was out in the open and it would be harder 14:23
- to do a cover up on it.
- 27 101 Q. Okay. So can I take it from that, that you intended
- that it would get the publicity that he would give it?
- 29 Would that be a fair way of putting it?

- A. It wasn't so much about -- it was to have it on the record there.
- 3 102 Q. Okay.
- 4 A. That it would be more difficult for it to be buried.
- 5 103 Q. Yes. This may or may not be relevant to a consideration of later matters, but did you expect him to name you in fact as a...
- 8 A. I didn't -- I think he said he was going to do it, I
 9 didn't particularly want -- I wasn't too enamoured with
 10 that at the time, but he said he was and that was it.

14 · 24

14:24

- 11 104 Q. He had referred to you, it would seem, the previous 12 week in the Dáil in another speech without naming you?
- A. That's right. Myself, Deputy Flanagan and retired

 Garda John Wilson actually tried to make our complaint

 to GSOC originally. What happened on the 8th May

 should have been done prior to that.
- 17 105 Q. Okay.
- A. Only GSOC have basically -- the way the law was at the time, said because the complaint emanates from a guard, that they could not...
- 21 106 Q. That was the state of their jurisdiction based upon the law, the 2005 Act?
- 23 A. Yeah, at the time.
- 24 107 Q. At the time. We needn't go into any discussions around that but the effect of the publication and the speech by Deputy Flanagan to identify you, were you concerned about the effect that that might have in Athlone or on the persons you suspected of being involved in these matters?

- 1 A. Everyone knew in Athlone at the time what was going on.
- 2 So, it wasn't going to have any impact really.
- 3 Everybody at that time in -- I can't say everybody in
- 4 the town of 23,000 people, but a large amount of the
- 5 population would have known what was going on and they

- 6 knew it for a number of years as well.
- 7 108 Q. Well, I'm not being critical of you, Garda Keogh, in
- 8 any way and don't take it as a criticism, I am anxious
- 9 to get really what you personally knew or did or in
- some cases believed, rather than speaking for everyone. 14:26
- 11 You understand that?
- 12 A. Yeah.
- 13 109 Q. So you spoke to Judge McMahon and he took your
- 14 affidavit and he took your disk I think, is that right?
- 15 A. Yes.
- 16 110 Q. Presumably he told you he would bring it to the
- 17 attention of the Commissioner immediately, is that
- 18 right?
- 19 A. Yes.
- 20 111 Q. Did you subsequently receive a phone call and a letter
- informing you of the appointment of Assistant
- 22 Commissioner Ó Cualáin?
- 23 A. That's right. It could have been around two weeks
- 24 after, or think after, I'm not sure, but it was -- if I
- 25 had my diaries actually, I could be able to tell you
- 26 exactly.
- 27 112 Q. Yes. I think we can ascertain that from the documents
- anyway. The point I am coming to is, you obviously
- knew what the process would be, I take it, before going

- 1 into the confidential recipient?
- A. I didn't really, no. No, it was new to me.
- 3 113 Q. Okay. In terms of any advice you got, did people tell
- 4 you or not tell you that if you go to the confidential

14 - 27

14:27

14:28

- 5 recipient it has to become the subject matter of an
- 6 investigation?
- 7 A. I knew that.
- 8 114 O. You knew that?
- 9 A. Yeah.
- 10 115 Q. Okay. I suppose you couldn't foresee who would be
- 11 appointed obviously?
- 12 A. No.
- 13 116 Q. But you expected an investigation to take place?
- 14 A. Yes.
- 15 117 Q. Okay. Just going back to the meeting with Judge
- 16 McMahon, that took place in Dublin, is that correct?
- 17 A. No.
- 18 118 Q. That first meeting? Or did he travel?
- 19 A. I think he travelled.
- 20 119 Q. Did he travel to Kinnegad?
- 21 A. I think it was Kinnegad, yeah.
- 22 120 Q. Just to be clear, can you give a description of what
- 23 took place during that meeting?
- 24 A. I think I sat into his car and had the affidavit with
- 25 me and I just went through -- there was the incidents
- 26 from the affidavit and then there was the main thing,
- 27 the incident that I was to report, which was the whole
- conspiracy to supply heroin. So I went into basically
- both, the whole lot, as much as I could in the short

- period of time that I was with him.
- 2 121 Q. Do you think you gave him a little more detail than was
- 3 in the affidavit or did you talk him through it?
- 4 A. No, I would have to because the affidavit contained
- 5 certain things but the real bulk of what I was
- 6 ultimately to report was the conspiracy to supply
- 7 heroin. So I would have had to have gone into -- there

14 - 29

14:29

14:29

- 8 was one part, the last part of the affidavit actually
- 9 went into the conspiracy.
- 10 122 Q. Okay. That's where you set out things, so A, B, C, D?
- 11 A. Yeah.
- 12 123 Q. Okay. Judge McMahon, what did he tell you would
- happen, or do you recollect?
- 14 A. I just can't remember exactly what he said.
- 15 124 Q. Okay.
- 16 A. Other than he was very helpful and he advised me as
- 17 well, just from recollection, to get diaries and not to
- use garda notebooks, just to get diaries and to record
- 19 everything down.
- 20 125 Q. Yes.
- 21 A. From that point of view, he was very helpful, because,
- 22 what, six years on, you know, I wouldn't have had a
- clue of dates or anything, you know, over the last
- 24 number of years.
- 25 126 Q. Yes. Okay. Well, presumably he must have told you
- that he would be sending it to the Commissioner for
- 27 investigation?
- 28 A. Oh yeah. He obviously would have had to, yeah.
- 29 127 Q. I think you got his phone number probably?

- 1 A. Yes.
- 2 128 Q. Because you were in touch with him on a number of other
- 3 occasions, isn't that correct?
- 4 A. Yeah, correct.
- 5 129 Q. We will come to those in due course. I think on the
- 6 10th May, which would have been the Saturday, you got a

14:31

14:31

- 7 phone call from Garda turner, isn't that correct, from
- 8 Athlone Garda Station?
- 9 A. I received contact, yeah.
- 10 130 Q. Without going into any names, somebody had phoned the
- station and left a number for you to ring and you rang
- the number and you made an arrangement to meet that
- 13 person?
- 14 A. That's correct.
- 15 131 Q. Without identifying who or whether it's a he or a she
- or otherwise, you met that person in Galway?
- 17 A. That's correct.
- 18 132 Q. On the Saturday night?
- 19 A. Yes.
- 20 133 Q. You took notes of the conversation, isn't that correct? 14:31
- 21 A. Yeah. Firstly I tried to get the person to make,
- volunteer a statement.
- 23 134 Q. Yes.
- 24 A. They didn't want to do that. So I asked the person was
- it okay if I took notes, because it was serious stuff.
- I took the notes then, yes.
- 27 135 Q. Yeah. Now again being very careful just to deal with
- 28 matters carefully, you knew who this person was in
- advance of going to meet them?

1	Α.	Yes.
	~ :	103.

- 2 136 Q. I take you knew this person had some criminal convictions?
- 4 A. I knew this person was well in the know, yes.
- 5 137 Q. And had knowledge of or involvement in the drugs trade 14:32 in Athlone?

14:32

14:33

- 7 A. Yes.
- 8 138 Q. I don't want to go into whether it was big or small or 9 otherwise, but the person, I suppose you could label 10 them criminal and consorting with criminals?
- 11 A. When I met the person in 2014, that person was a number 12 of years finished with any sort of crime or anything 13 like that. But in his previous life, yes.
- 14 139 Q. Yes. You would have known of the person and the fact that the person had some convictions?
- 16 A. Yes.
- 17 140 Q. I suppose a question arises which we will come to
 18 later, but at that stage, having arranged to meet such
 19 a person, did it trigger in your mind whether you might
 20 have obligations in relation to the handling of any
- information coming from that person or any duty in
- relation to the guards in relation to that person?
- A. When I met that person the guards had not contacted me.

 So I met that person, as I said, I tried to take a

 statement, I took the notes.
- 26 141 O. Yes.
- 27 A. When I eventually did meet with the garda 28 investigation, I handed all that over to them.
- 29 142 Q. I do want to proceed in sequence?

- 1 A. Yeah.
- 2 143 Q. I was going to obviously bring that out as a matter of

14:34

14:34

14:34

- fact. You made them aware of that and you gave them
- 4 your handwritten notes and the draft statement.
- 5 A. I gave them everything.
- 6 144 Q. And they became aware of the identity also?
- 7 A. Yes.
- 8 145 Q. Is that right?
- 9 A. Yeah.
- 10 146 Q. You were obviously subsequently concerned to learn
- 11 whether that person might cooperate at a later stage
- and/or provide a statement. You tried to follow up on
- that yourself later, isn't that right, with the
- 14 investigation?
- 15 A. Oh yes, yeah.
- 16 147 Q. But perhaps I am not being clear, at the time when you
- got the phone call and spoke to this person, did you
- 18 consider that you might be in fact going into the
- 19 territory of taking information from someone who the
- garda organisation would regard as an informant?
- 21 A. This person was giving information on incidents that
- were six to seven years previous. And, as I stated,
- this person was no longer -- was a professional person
- when I met them and not involved with anything, but it
- was to do with that person's previous life, previous
- involvement, in what that person was involved in.
- 27 148 Q. Yes.
- 28 A. So not technically an informant, because -- well, it
- 29 was a bit more, it's not as a simple as --

- 1 149 Q. No, I understand your concern. Perhaps we will
- 2 separate out the strands. This person, to your
- 3 knowledge, had left it behind them?
- 4 A. Yes
- 5 150 Q. And didn't perhaps want to revisit that stage or phase
- 6 of their life and said so?
- 7 A. That's correct.
- 8 151 Q. On the other hand, you wanted this investigated
- 9 yourself, isn't that right?
- 10 A. Yes.

14:36

- 11 152 Q. And you wanted the people involved brought to book, as
- it were; I mean that's a fair of putting it?
- 13 A. Yes. But equally, my information at the time --
- 14 153 Q. Yes.
- 15 A. -- was the person that I met actually had far more
- 16 accurate information than what I had at the time as
- well.
- 18 154 Q. Yes.
- 19 A. That person had parts of the jigsaw that I didn't.
- 20 155 Q. Yes.
- 21 A. Yeah.
- 22 156 Q. Well in fact, I don't want to go into the evidence at
- all, but you're making a very good point, you didn't
- have the evidence and they had much more?
- A. No, I had some of the evidence and I had some
- incidents, but that person was able to go into far more
- 27 detail with dates, way more than I would.
- 28 157 Q. I understand that. Obviously respecting their position
- then at the time, you were anxious to get that

Т			information, whether you were able to record it	
2			yourself, you were anxious for the investigation team	
3			to get that information?	
4		Α.	Oh yeah. Yes.	
5	158	Q.	So you wanted an investigation, and you wanted the team	14:3
6			to get that evidence and knowledge from the person that	
7			we're talking about?	
8		Α.	That's correct.	
9	159	Q.	Would that not bring your interaction with the person	
10			within CHIS, as it were, the covert human	14:3
11			intelligence	
12		Α.	No, no. Again, it's a different scenario. This is	
13			where someone is reporting more an incident from years	
14			previous.	
15	160	Q.	Yeah.	14:3
16		Α.	Incidences from years previous. It's not as simple	
17			as	
18	161	Q.	Okay.	
19		Α.	Just for clarification, if I was to have handed that	
20			person over to CHIS, it would have been relevant in a	14:3
21			way because I was already handing that person and I did	
22			hand that person over to the detective superintendent	
23			that was investigating.	
24	162	Q.	Yes.	
25		Α.	It wasn't that I kept that informant or person to	14:3
26			myself. I did hand that person over.	

163 Q.

27

28

29

Yes. Can I just ask you then, do I understand the

trying to solicit this person to become a current

distinction you're making correctly; that you weren't

- source and provide you with information on an ongoing
- 2 basis into the future as to what might be doing or what
- 3 might be going on?
- 4 A. As I stated, that person, when they came forward and
- told me about their life now, let's say back in 2014,

14:38

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14:39

- 6 where that person was at in their life now compared to
- 7 where they were at when they were living in the
- 8 midlands.
- 9 164 Q. Yes.
- 10 A. How that person's life had transferred so much. That
- 11 person, I was happy enough, was not involved in
- anything and, as I said, was working and wasn't engaged
- in criminality when I met that person.
- 14 165 Q. Yes. But to be a little more explicit in my
- 15 questioning: You weren't intent on developing a
- relationship with that person to enable a continuing
- 17 flow of information about what was then happening going
- forward into the future, you weren't going to be
- 19 handling any other information from that person?
- 20 A. No, no, anything I got from that person I gave to the
- 21 investigation team.
- 22 166 Q. Yes.
- 23 A. For short periods of time that person would make
- contact via phone and all that, I passed it over.
- 25 167 Q. You referred to it as historic, you were getting
- 26 historic information which would then be handed over,
- is that right?
- 28 A. In a sense, yeah.
- 29 168 Q. Historic from that person's involvement.

- 1 A. Yes.
- 2 169 Q. But unfortunately it was still ongoing in Athlone?
- A. Yes.
- 4 170 Q. I think you're making the point that your duties under

14 · 40

14:40

14:41

- 5 CHIS couldn't or didn't kick in because the person
- 6 wasn't involved any more, is that what you're saying?
- 7 A. According to CHIS, I don't know anyone is supposed to
- 8 be involved in crime to be a source in CHIS. But I
- 9 believe that person was, in 2014, not involved in any
- 10 criminality.
- 11 171 Q. Yes.
- 12 A. They volunteered information, which I ultimately passed
- onto the relevant investigation team.
- 14 172 Q. Yes. Well, it may not be necessary to go into the CHIS
- document in any detail, but would you accept from me
- that CHIS does deal with the recruitment of persons to
- 17 give evidence to the police about criminal activities?
- 18 A. Yes.
- 19 173 Q. It does appear to require a referral of a potential
- source for assessment, am I right about that?
- 21 A. Correct. I have handed persons, other persons over to
- 22 CHIS.
- 23 174 Q. Yes.
- A. This person was in a different category.
- 25 175 Q. Okay. I'm not trying to disagree with you or
- otherwise, I'm just trying to establish -- the
- 27 understanding of what CHIS may require in the right
- circumstances is correct, whether it applied in this
- case is an entirely different matter. Do you follow

1			that?	
2		Α.	Yeah.	
3	176	Q.	So it would involve a referral for assessment, a	
4			preliminary assessment of the source, isn't that	
5			correct?	14:41
6		Α.	Yes.	
7	177	Q.	The assignment of two handlers, isn't that correct?	
8		Α.	Yes.	
9	178	Q.	The approval of the registration of the source and the	
10			actual registration of the source then, isn't that	14:42
11			correct?	
12		Α.	I can't even it's years since I've, as I said,	
13			handed somebody over to CHIS, so I can't fully remember	
14			the procedure.	
15	179	Q.	Yes.	14:42
16		Α.	All I know is that person was in a different category.	
17	180	Q.	No, I understand your position, but there was some to	
18			and fro about your knowledge of CHIS at the time.	
19			That's what I am just asking about it now. It did	
20			layout a sequential process for how somebody became a	14:42
21			source, was assessed, registered, handled and recorded?	
22		Α.	It wasn't like that, this person came forward of their	
23			own free will.	
24	181	Q.	I understand that.	
25		Α.	Once they volunteer information of a historical event	14:42
26			and I duly passed that on to the relevant authorities.	
27			If they felt the need that that person should have been	
28			CHISSed, they could have done it, I passed it on in the	
29			appropriate time.	

No, I understand your answer, Garda Keogh. I think 1 182 Q. 2 we're not differing, I am just asking you to confirm: 3 You did have an understanding of the process of CHIS and how it was meant to work in a case in which it was 4 5 meant to work? 14:43 6 Yes. But this was not --Α. 7 183 No, I understanding your reservation. Q. 8 This was not a CHIS matter. Α. well, I don't think I need to open the documents about 9 184 Q. 10 CHIS to you at this stage. You got this information 14 · 43 11 and you made your own notes of it on the 9th or the 12 10th. 13 Yeah. Α. 14 185 Q. The person wouldn't sign a statement? 15 Α. Correct. 14:43 16 I think you left it open to keep in touch with them 186 Q. 17 about reviewing that, as it were? 18 Yeah. Α. 19 187 And cooperating? Q. 20 Α. Yes. 14:44 21 188 I think the person came back to you and told you that Q. 22 they didn't want to get involved, a couple of days 23 later? That's correct. 24 Α. 25 Isn't that correct? 189 0. 14 · 44 26 I understood, because the person, as I said, had told Α. 27 me how that person's life had changed so much, you 28 know, and everything was -- that person's life was 29 going great in 2014 in comparison to where it was and

- really that person didn't want to -- wanted to pass on information, but not to get involved really.
- 3 190 Q. Okay. But in any event, whatever about whether the 4 person was going to come back to you or cooperate, you
- 5 presumably must have regarded this information as hard

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14:45

14:45

- 6 intelligence?
- 7 A. Oh it was rock solid, because, as I stated, I had some
- 8 of it, but what I had was nowhere near as accurate as
- 9 what I learnt on the 10th.
- 10 191 Q. Yes. But can I ask you this: Is that intelligence
- that you could have brought, or I don't know whether
- 12 you ought to have brought it to, as it were, district
- intelligence officer or divisional intelligence officer
- of some sort?
- 15 A. No. There's something I'm after forgetting to say.
- 16 192 Q. Yes.
- 17 A. One thing Judge McMahon did say was not to discuss the
- investigation with anyone other than the investigation
- 19 team. So like, I passed that person on to the
- 20 investigation team.
- 21 193 Q. Yes.
- 22 A. And that was it.
- 23 194 Q. Yes. But we're just dealing with the period before
- 24 when you made the Pulse entry.
- 25 A. Right.
- 26 195 Q. And before you met the investigation team?
- 27 A. Yeah.
- 28 196 Q. Obviously Judge McMahon didn't know and you couldn't
- 29 have foretold that you were going to meet this person

- 1 on the 10th?
- 2 A. Correct.
- 3 197 Q. As far as you knew the investigation hadn't started.
- 4 So what was your purpose in meeting the person then on
- 5 the 10th?

14 · 46

14:46

14:47

- 6 A. Because I wanted to find out as much information as I
- 7 could.
- 8 198 Q. Okay.
- 9 A. That's my job.
- 10 199 Q. Okay. Having got that information, what did you think
- 11 you ought to do with it then at that stage?
- 12 A. What I did. I can't see a problem with the way I did
- deal with it, I had the notes, I had the statement.
- 14 200 Q. Yeah.
- 15 A. Then I ultimately met the investigation team, I think
- was it on the 7th July 2014, I passed everything to
- them; phone numbers, contact details, the notes,
- 18 everything.
- 19 201 Q. Yeah.
- 20 A. And I pulled away. Now that person did ultimately
- contact me at some stage months later, just out of the
- 22 blue with more contact numbers -- relevant numbers and
- things like that. Again, I passed them on. That
- 24 person ultimately dropped phones and I never had
- 25 contact with that person again.
- 26 202 Q. Obviously this first issue that we are concerned with
- is the creation of the Pulse record on the 18th May?
- 28 A. Yes.
- 29 203 Q. You recall that obviously. Perhaps we better look at a

1			copy of that. There's a very good copy, Chairman, at	
2			Volume 7, page 1802?	
3			CHAIRMAN: Thank you.	
4	204	Q.	MR. McGUINNESS: If parties want to look at it on the	
5			screen, they can perhaps do that. I don't know, can	14:48
6			you see that on the screen? It will be coming up in a	
7			moment?	
8		Α.	I know what's on it.	
9	205	Q.	You know what's on it?	
10		Α.	Yeah.	14:48
11	206	Q.	Okay. Obviously, at the top left-hand side corner, as	
12			it were, where the blue is, that's space for putting in	
13			personal details relating to the person to whom the	
14			entry relates?	
15		Α.	That's correct.	14:48
16	207	Q.	So was it your intention then to create this entry only	
17			in relation to that person?	
18		Α.	Judge, that	
19			CHAIRMAN: Mr. McGuinness, I am a little concerned	
20			about the information that's on this. I thought it was	14:48
21			more redacted than it is. So I think we should take	
22			that down and redact it a bit more.	
23			MR. McGUINNESS: we will take that down.	
24			CHAIRMAN: I don't think anybody would have much	
25			difficulty, notwithstanding my comments earlier.	14:49
26			MR. McGUINNESS: I wasn't going to ask the witness	
27			about it.	
28			CHAIRMAN: Oh no, I appreciate that, it's simply the	
29			information that exists on the document, it gives the	

1 make and model of the car and it gives a location and I 2 am a little concerned, I would have preferred, now that 3 I see it, I mean I would prefer to black it out because I think that would be -- do you understand what I am 4 5 saying. 14:49 6 Oh yeah. Α. I can deal with this. This incident 7 208 MR. McGUI NNESS: 0. 8 happened when you saw somebody driving? 9 No. Α. Tell us what happened. 10 CHAI RMAN: 14 · 49 11 209 MR. McGUI NNESS: Somewhere in a car somewhere? Q. 12 No, Judge. I think the date on the incident, just from Α. 13 recollection, is it the 18th May. 14 210 Q. Yes. 15 CHAI RMAN: May 2014. 14:50 16 Judge, if you look, the first line of what's on that. Α. 17 CHAI RMAN: Yeah. 211 Q. 18 It was at a petrol station. Α. 19 212 CHAI RMAN: Yeah, about three in the morning. Q. 20 And Ms. B --Α. 14:50 21 213 CHAI RMAN: Yeah. Q. 22 -- at the petrol station stuck her tongue out at me. Α. 23 214 CHAI RMAN: Right. Q. 24 I took that up, this was common, it had been in the Α. 25 news and that, I took that up as that this person is 14:50 26 saying to me that she is untouchable. So I then went

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28

29

215

Q.

Α.

CHAI RMAN:

oh yeah.

back to the station then and I said right, and --

It was early in the morning?

1	216	Q.	CHAIRMAN: In the very early hours of the morning	
2			sometime; is that right?	
3		Α.	I just remember it was dark, I can't remember the time.	
4	217	Q.	MR. McGUINNESS: Can we just do one thing, Garda Keogh,	
5			can we exclude the location? It wasn't at the person's	14:51
6			house or on the road, it was in a public place?	
7		Α.	Yeah. I didn't name the petrol station or anything.	
8			CHAIRMAN: Sorry, am I being too concerned.	
9			MR. McGUINNESS: No, Chairman, it's always good to be	
10			vigilant.	14:51
11			CHAIRMAN: No, no, I mean it's fair, but anyway, there	
12			it is, you can proceed, Mr. McGuinness, sorry.	
13	218	Q.	MR. McGUINNESS: Were you in the patrol car yourself?	
14		Α.	I wasn't on my own and I can't remember who was with	
15			me.	14:51
16	219	Q.	Were you on foot duty, as it were, or in a patrol car?	
17		Α.	No, no, it was at a petrol station, I think it was just	
18			coincidence, I think. I don't know what we were	
19			getting, petrol I can't remember, perhaps both cars	
20			happened to be getting petrol or whatever at the same	14:51
21			time. But Ms. B stuck her tongue out at me.	
22	220	Q.	Yes.	
23		Α.	I took that very much as, you know, she was making a	
24			point that she was untouchable. Of course, she was	
25			probably correct in hindsight, but	14:52

221 Q. Just to go back to the question that I had asked

26

27

28

29

Yes.

Α.

her, to go on the Pulse record relating to her?

originally: This was an entry created in relation to

Т	222	Q.	Did you intend it to relate to any other person, a	
2			member of the guards and to go on file in relation to	
3			them?	
4		Α.	Obviously it had crossed my mind, because only eight	
5			days previous I had received the information, the	14:52
6			confidential information in Galway.	
7	223	Q.	Sorry, are you telling me you did contemplate putting	
8			it on somebody else's Pulse record?	
9		Α.	I mean, it probably went through my mind for a moment.	
10	224	Q.	Okay.	14:53
11		Α.	The fact is I didn't.	
12	225	Q.	No, I understand that, but just in terms of what you	
13			did enter, there's a thing called source there, A is	
14			always reliant?	
15		Α.	Yes.	14:53
16	226	Q.	Was that one of the drop down options?	
17		Α.	It probably was.	
18	227	Q.	Okay. I mean, had you received information previously	
19			from the source?	
20		Α.	No. But as I have stated, I knew a lot of stuff and	14:53
21			the source had it more accurate than I had. So I knew	
22			the source was reliable.	
23	228	Q.	Just as of this time when you created the record, you	
24			hadn't handed over the material to the Ó Cualáin	
25			investigation?	14:54
26		Α.	Correct, because where were they? I don't meet them	
27			until the 7th July.	
28			CHAIRMAN: I thought it was the 7th June. I may be	
29			wrong.	

Т		Α.	Sorry, no, no, you are correct, the /th June. The /th	
2			June.	
3	229	Q.	CHAIRMAN: Don't just agree with me because I say it.	
4			But I think it's the 7th June.	
5		Α.	No, no, you're correct.	14:54
6	230	Q.	CHAIRMAN: When you met the Ó Cualáin team, isn't that	
7			right? Okay.	
8	231	Q.	MR. McGUINNESS: Mr. Marrinan in his opening referred	
9			to a portion of Assistant Commissioner Ó Cualáin's	
10			statement saying that he rang you and offered to meet	14:54
11			you at a time and place of your choosing?	
12			CHAIRMAN: Yes.	
13	232	Q.	MR. McGUINNESS: And that you nominated the 7th June,	
14			is that accurate?	
15		Α.	That part is accurate.	14:54
16	233	Q.	CHAIRMAN: You met him at Portumna?	
17		Α.	Portumna, that is correct.	
18	234	Q.	CHAIRMAN: We have the 7th June anyway, we are clear on	
19			that?	
20		Α.	If I perhaps could have my diaries.	14:54
21			CHAIRMAN: There is no problem with that.	
22			MR. McGUINNESS: Yes, we will get the original diaries.	
23			CHAIRMAN: No problem.	
24			MR. KELLY: It's the original diaries the witness	
25			wants.	14:55
26			CHAIRMAN: Have we got the original diaries?	
27			MR. McGUINNESS: we have them, yes.	

28

29

CHAIRMAN: We will find those for you, don't worry, we

clarified it for you, it's June, not July and that was

Т			in Portumna Garda Station, okay. So we're back to the	
2			18th May.	
3	235	Q.	MR. McGUINNESS: Yes.	
4	236	Q.	Is this intelligence that you reported to anyone within	
5			Athlone Garda Station or within the district or	14:55
6			division, prior to making the entry?	
7		Α.	Sorry?	
8	237	Q.	Prior to making this entry?	
9		Α.	Prior?	
10	238	Q.	Yes.	14:55
11	239	Q.	CHAIRMAN: Before you made the entry?	
12		Α.	No.	
13	240	Q.	MR. McGUINNESS: Okay. Content, you seem to have	
14			entered in there:	
15				14:55
16			"Content: 1. True without reservation."	
17				
18			Is that one of the options that's given on drop down?	
19		Α.	Yes.	
20	241	Q.	That was your conclusion obviously then, is that right,	14:56
21			by adopting that?	
22		Α.	That's correct. I based that on, as I previously	
23			stated, I already knew certain things and the source	
24			that I met on the 10th was able to pinpoint in finer	
25			detail than what I knew. So I knew the information was	14:56
26			correct.	
27			CHAIRMAN: Mr. McGuinness, would it help, I was going	
28			to suggest leaving out the first line and simply saying	
29			that what Garda Keogh said was that he observed the	

Т			person in her car, on seeing him then, it you want to	
2			read the rest of that.	
3			MR. McGUINNESS: Yes.	
4			CHAIRMAN: It would make sense, so people would	
5			understand. Does that make sense?	14:56
6			MR. McGUINNESS: Yes, Chairman.	
7	242	Q.	CHAIRMAN: Do you understand what I am saying?	
8		Α.	Yes.	
9			CHAIRMAN: It leaves out the make and model of the car,	
10			it leaves out the number and it leaves out the	14:56
11			location, not that that's vital and so on.	
12	243	Q.	MR. McGUINNESS: In any event, it records you observed	
13			Ms. B in her car:	
14				
15			"On seeing member, she smiled and stuck out her tongue.	14:57
16			Ms. B is seriously involved in the heroin trade in	
17			Athlone with a turnover of approximately €2,500 per	
18			week. She has no previous convictions for drugs due to	
19			the fact that she has been aided and abetted for years	
20			by a senior member of the drugs unit, who himself is a	14:57
21			close associate of a high ranking garda officer.	
22			Fact."	
23				
24		Α.	Yes.	
25	244	Q.	You appear to have entered that, if I am interpreting	14:57
26			this correctly at 23:38, is that right?	
27		Α.	That's	
28	245	Q.	The date occurred is said to be 18/5/2014, time 03:09.	

That's nearly ten past three in the morning, is that

1			when you observed this?	
2		Α.	Can I just see the document?	
3	246	Q.	Yes. Volume 7, 1802, we will give you the actual	
4			volume.	
5		Α.	Thank you.	14:58
6	247	Q.		
7			CHAIRMAN: Is that a clear enough copy?	
8		Α.	It is crystal clear, I am just trying to figure it out,	
9			Judge, that's all.	
10	248	Q.	CHAIRMAN: Okay.	14:58
11		Α.	The only way I can explain this, I think I understand	
12			where you're coming from.	
13	249	Q.	MR. McGUINNESS: Yes.	
14		Α.	It has to be that the incident itself happened at 23:38	
15			and that I put on the incident on Pulse at	14:59
16			CHAIRMAN: No, it would be the wrong date.	
17		Α.	No, no, no, we're in a different day, yeah, sorry.	
18	250	Q.	CHAIRMAN: Mr. McGuinness is suggesting the way it	
19			makes sense, now this may not be right, but the way it	
20			makes sense is, you're on night duty, it would appear?	14:59
21		Α.	Yeah, midnight.	
22	251	Q.	CHAIRMAN: we have two times, we have 03:09, the	
23			observation takes place, the event takes place that	
24			you're recording?	
25		Α.	That's correct, and I put it on the	14:59
26	252	Q.	CHAIRMAN: 23:38. So it's within the same 24-hour	
27			period, it's the same date. Presumably you're on night	
28			duty. It happens last night and I put it on Pulse next	
29			night?	

1 Α. Yes. 2 CHAI RMAN: Okay, that's what happened. That seems to 3 be it. MR. McGUI NNFSS: 4 Yes. 5 MR. KELLY: Chairman, I wonder --15:00 6 CHAI RMAN: Sorry, Mr. Kelly, are we getting this wrong? 7 MR. KELLY: No, I am just suggesting that at the top of 8 that entry. CHAI RMAN: 9 Yes. The original one, there is material which 10 15:00 11 should also be redacted. There is already a redaction, 12 we then see the whole vehicle. That's right, absolutely. Thank you. 13 CHAI RMAN: I am 14 uneasy about the thing, absolutely. So that's why 15 Mr. McGuinness read out the relevant part, we will deal 15:00 16 with the redactions in due course, Mr. Kelly, but I 17 think you're absolutely right. 18 MR. KELLY: There is also the first line. 19 Yes, absolutely. Sorry, glitches happen, 20 sometimes thing make their way through the system, 15:01 we've 51 volumes of materials. 21 22 I thought it best to point it out. MR. KELLY: 23 You're very good, thank you very much. CHAI RMAN: 24 anyway, as to the time, we seem to be agreed, happened just after three in the morning. It would seem that 25 15:01 26 when you're next on duty at whatever it is, 11:38, 27 23:38. 28 MR. McGUINNESS: You probably don't recollect the time 253 Q.

29

that you saw this incident, as it were, but would you

1			have made a note of that in your official diary or your	
2			notebook?	
3		Α.	I can't remember.	
4	254	Q.	Okay. It seems very precise anyway, 3:09. You've no	
5			recollection of who you were on duty with on that	15:01
6			occasion?	
7		Α.	No.	
8	255	Q.	I am not criticising you at all, but obviously you	
9			would normally return to the station to go off your	
10			tour of duty by seven in the morning, is that right, if	15:01
11			you are doing night duty?	
12		Α.	Yeah.	
13	256	Q.	Okay. Then you would be coming, would you come at	
14			seven the next night?	
15		Α.	Just for clarification, the hours have changed. At the	15:02
16			time I think it was 6am duty changed, it's now 7am,	
17			there was a change of the rosters. But, yes, it would	
18			have been finished at roughly 6am.	
19			CHAIRMAN: Ten to two, is that right. 10pm, 2200 to	
20			0600.	15:02
21		Α.	Yes.	
22			CHAIRMAN: Okay.	
23	257	Q.	MR. McGUINNESS: In any event, did it strike you as an	
24			alternative way of proceeding, that if you were going	
25			to publish on the Pulse within the force, as it were,	15:02
26			that the alternative would perhaps be to write a report	
27			that you could control the distribution of?	
28		Α.	Yes. Now there's something that's missing here from	

all this. I understand where you are coming from now.

1			At the time, 8th May 2014 I had come out as a	
2			whistleblower. So I had hadn't met the investigation.	
3			I don't meet them for a period of a month. That first	
4			month was difficult in the station for me, because a	
5			lot of guards didn't know what I was going on about.	15:03
6			Therefore, at the time, for self preservation as well,	
7			I had to put this on to make sure it was that some	
8			guard thought, oh is this lad going to report that I	
9			let some lady go because she wasn't wearing a seatbelt	
LO			or Mickey Mouse things like that. That was for part	15:03
L1			of it was for survival in a way for me because things	
L2			in that week start occurring, which I am sure people	
L3			will be getting on to. But that was a difficult	
L4			period, that first month, because I was a sitting duck	
L5			in the station at that stage, but a lot, a lot, not	15:04
L6			all, but a lot of the guards didn't know, in particular	
L7			junior guards, for some reason, the older guards would	
L8			have had some idea, junior guards didn't know what was	
L9			going on, and so it was important to have a record on	
20			Pulse so that everyone knew I wasn't going to be firing	15:04
21			stuff about any sort of Mickey Mouse stuff that went	
22			on. It was serious stuff. It was concentrated to	
23			you know.	
24	258	Q.	I am not suggesting that members of Gardaí should or	
25			shouldn't read the Dáil debate. What you had alleged	15:04
26			had been announced by Deputy Flanagan in the first	
27			instance, isn't that right?	
28		Α.	That's correct. What was in an affidavit and announced	

in the Dáil, it was the small stuff, the big stuff was

1			the collusion in the heroin supply. Ironically as	
2			well, that report has not been handed in to this	
3			Tribunal. It's not in those 51 documents or anywhere	
4			there.	
5	259	Q.	We're not quite sure about that, Garda Keogh, and we're	15:05
6			addressing any concerns you have to see is there some	
7			misunderstanding. So we are going to just leave that	
8			aside for the moment. But I think after you had come	
9			on duty, after Deputy Flanagan had made his speech, I	
10			think you were given an opportunity to parade before	15:05
11			your unit and speak to the other colleagues you were	
12			working with?	
13		Α.	That's right, yeah.	
14	260	Q.	I think you did take the opportunity to outline to	
15			them what your disclosure was about?	15:05
16		Α.	That's correct, yes.	
17	261	Q.	I think, without naming names, you gave them a clear	
18			picture of what was involved?	
19		Α.	I did.	
20	262	Q.	So your colleagues, how many would there have been at	15:06
21			that stage?	
22		Α.	You see again, because it's shift work, not everyone in	
23			the station was there. It was probably just my unit	
24			really and whoever else would have been working at the	
25			time. More or less I just said to them, none of ye	15:06
26			have anything to worry about, it's nothing to do with	
27			ye. That was it. But there would have been others	
28			from other units that would have been resting or on	
29			different shifts that weren't there for that, so I	

1 didn't g	et to	you	know.
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- So I mean, the question I had asked is: 2 263 In terms of Q. 3 reporting this, is it the case that you, as it were, deliberately chose not to put this on a piece of paper 4 5 and either keep it for the investigation team or for 15:06 6 the criminal intelligence officer or some superior you 7 could trust? You decided to put this up as a public 8 flag, as it were?
- A. Again, as you just said there, a superior you can trust. When you come forward in the guards, that's a rare thing to find. Ironically, that is the only thing on Pulse about the whole investigation and I think that's why they were quite upset, that it's on Pulse.

15:07

- 14 264 Q. I don't know whether that's right or not, I am not arguing with you.
- 16 A. Yeah.
- 17 265 Q. I am just trying to work out, was that your intention;
 18 did you deliberately decide not to make a written
 19 report to anyone, but to put this up on the Garda Pulse
 20 system which could be viewed by anyone?
- A. Look, I'd say just reading them, the dates and that,
 obviously I put it on the next evening. I obviously
 stewed over it as well the following day and you know,
 obviously gave it a lot of thought. I put it on Pulse,
 that's it and I stand by it.
- 26 266 Q. I'm not going into it one way or the other and neither 27 is the Chairman, but in terms of what occurred then, I 28 think Inspector Farrell had his attention drawn to it 29 the following morning, isn't that correct?

1		Α.	Yeah.	
2	267	Q.	We have your diary now, if you want to refer to it at	
3			any stage. Would you like to see it now in the context	
4			of one of your previous answers?	
5		Α.	Thanks. Okay.	15:08
6	268	Q.	Inspector Farrell's attention was drawn to the entry on	
7			the following day, on the 19th and he received	
8			instructions to meet and enquire with you whether you	
9			had information from a specific source and to advise	
10			him on contents of HQ Directive 126/10?	15:09
11		Α.	The HQ circular is not relevant, as is stated in	
12			relation to this, this information.	
13	269	Q.	That may be your opinion. I am going to ask you what	
14			happened during that meeting? Do you understand that?	
15		Α.	Yeah, yeah.	15:09
16	270	Q.	So he said at 9:45 in the meeting he spoke with you in	
17			the office. He drew your attention to the entry and	
18			you asked him had he solid information to the effect	
19			that this person was seriously involved in the heroin	
20			trade, is that right?	15:09
21		Α.	I don't have a note of that part, but I can't	
22			dispute I'm not disputing it, it sounds	
23	271	Q.	He said that he informed you that if you had an	
24			informant that they should be registered with CHIS in	
25			accordance with Directive 126/10?	15:10
26		Α.	Yeah, yeah.	
27	272	Q.	Is that right? He did say that?	
28		Α.	He did ask about an informant and CHIS. I am not sure	
29			what the	

1	273	Q.	Perhaps we should look at his note of the meeting, the	
2			contemporaneous note, it's at page 640 of our	
3			documents, which is in Volume 3. We will get you that.	
4			CHAIRMAN: Can you see it? Oh, it's up on the screen.	
5			I am sorry. You don't need that, it's up on the screen	15:11
6			in front of you, I am sorry, I was forgetting that it	
7			was going up on the screen. Yes, Mr. McGuinness, sorry	
8			about that.	
9	274	Q.	MR. McGUINNESS: Four lines down then it continues:	
10				15:11
11			"He stated that he was due to meet AC Ó Cualáin and	
12			couldn't discuss the entry with me."	
13				
14			Is that correct?	
15		Α.	Yeah.	15:11
16	275	Q.		
17			"He stated that it was advised by the confidential	
18			recipient he didn't need to talk to anyone else except	
19			AC Ó Cual ái n. "	
20				15:11
21		Α.	Yeah.	
22	276	Q.		
23			"I explained that any entry had to be supported by	
24			strong information to withstand scrutiny from a	
25			credibility perspective."	15:11
26				
27			Do you recall him saying that?	
28		Α.	If he says that, I would accept it.	
29	277	Q.	Yes.	

Т				
2			"I then asked him about the entry relating to Ms. B	
3			being aided and abetted by a senior member of the drug	
4			squad. He again stated he couldn't talk to me about	
5			that as I friendly with the persons who were friendly	15:12
6			with the person involved."	
7				
8		Α.	That's correct.	
9	278	Q.		
10			"He went on to say that he doesn't believe that the	15:12
11			senior officer knew what was going on."	
12				
13			Is that correct?	
14		Α.	That's correct.	
15	279	Q.		15:12
16			"I put it to him that would it not have been better for	
17			him to have spoken to AC Ó Cualáin before creating the	
18			entry. He said it's done now, what can I do, everyone	
19			has seen it."	
20				15:12
21		Α.	Yeah.	
22	280	Q.		
23			"he then went on to say if this referred to an employee	
24			in Tesco."	
25				15:12
26			We don't have the rest of that there.	
27		Α.	Yeah. I know what I meant by that, yeah, yes. That is	
28			correct. If this referred to anybody else, that would	
29			never have been questioned on Pulse. The fact, the	

1			thing about a senior officer involved is what they went	
2			bananas over.	
3	281	Q.	well, the continuation of the note is at page 642, it	
4			continued on:	
5				15:12
6			"He went on and said, if this referred to an employee	
7			at Tesco and a manager at Tesco, there wouldn't be a	
8			word about it."	
9				
10			He records himself as saying to you:	15:13
11				
12			"When you say that persons are aiding and abetting in	
13			the drugs trade, it is a serious allegation that would	
14			have to be investigated further."	
15				15:13
16			Do you recall him saying that?	
17		Α.	I don't remember, but I would accept it.	
18	282	Q.	Yes.	
19		Α.	I would accept it, yeah.	
20	283	Q.	But just at this stage, I wonder could I ask you to	15:13
21			comment on this suggestion to you, that obviously you	
22			hadn't discussed the creation of the Pulse entry with	
23			anyone?	
24		Α.	Correct.	
25	284	Q.	You hadn't reported the information to anyone?	15:13
26		Α.	Well, I was still waiting to report it.	
27	285	Q.	I understand that, yeah. You have put it in a form on	
28			the Pulse entry, which implies that you have got an	
29			always reliable informant, isn't that right? That's	

- 1 what the form has on it?
- 2 A. Well, they have tabs and you can only click down on
- 3 whatever they have and that was obviously the most
- 4 accurate one to the situation.
- 5 286 Q. Yes.
- 6 A. It wasn't that I typed in "always reliable", it would

15:14

15:14

- 7 have cropped up on a tab.
- 8 287 Q. I understand that. I'm asking you, would you agree
- 9 that the way it would appear to persons reading it
- might lead them to wonder well, had you an informant
- that was always reliable. That's a reasonable
- interpretation of the entry, isn't it?
- 13 A. Yeah.
- 14 288 Q. Okay. In terms of the content of the entry, referring
- to the lady, the amount of the trade and then being
- 16 aided and abetted, you hadn't previously reported that
- 17 within the force?
- 18 A. I hadn't got the opportunity, I am still waiting to
- 19 report it.
- 20 289 Q. I am not criticising you, Garda Keogh, I am just trying 15:15
- 21 to establish how the facts were on that day or how they
- 22 might have appeared to persons. Do you understand
- 23 that?
- 24 A. Yeah.
- 25 290 Q. So would you agree that that could give rise to a
- concern that you had information relating to a senior
- 27 member in the drugs squad about their involvement?
- 28 A. Yes.
- 29 291 Q. Okay. Would you expect that to give rise to any

Т			enquiry to be made of you about who or what the source	
2			was, whether they were registered or who or how, what	
3			information you have?	
4		Α.	Wasn't that all to be dealt with when I was to meet the	
5			investigation team, it took them a month to come to me.	15:15
6	292	Q.	CHAIRMAN: Had you made an appointment with them at	
7			this stage?	
8		Α.	Well, we find out when Donal Ó Cualáin first rings me.	
9	293	Q.	MR. McGUINNESS: I think it's suggested he rang you on	
10			the 14th.	15:16
11			CHAIRMAN: Anyway, if you don't remember, you don't	
12			remember, that's okay?	
13		Α.	The 15th I think. 15th May 2014.	
14	294	Q.	CHAIRMAN: What did you think was the effect of putting	
15			this on Pulse?	15:16
16		Α.	Well, I would have liked everyone to know this is what	
17			I am reporting as opposed to not, I am not going in	
18			with a machine gun firing allegations at everyone, you	
19			know, I am going in on a specific thing.	
20	295	Q.	CHAIRMAN: This isn't reported as an allegation, it's	15:17
21			reported, as you say yourself, fact. This is an	
22			allegation. You have information that's very serious	
23			allegation, as a policeman would you expect that to be	
24			investigated?	
25		Α.	Yes, but it ultimately was to be investigated.	15:17
26	296	Q.	CHAIRMAN: I am not understanding why you are, so to	
27			speak, jumping the gun for self preservation, as you	
28			say yourself, by putting it as a fact, when it is an	
29			allegation, admittedly a very serious allegation and as	

1			far as you are concerned from a very reliable source.	
2			That's your state of mind.	
3		Α.	I had evidence, other evidence, circumstantial, a lot	
4			of it circumstantial evidence, Judge.	
5			CHAIRMAN: Okay.	15:17
6	297	Q.	MR. McGUINNESS: One of the matters that you have	
7			included in your statement, you say that Inspector	
8			Farrell asked you to change the entry?	
9		Α.	Yes.	
10	298	Q.	You noted that in your diary?	15:18
11		Α.	Yeah.	
12	299	Q.	Inspector Farrell doesn't agree with that suggestion?	
13		Α.	I remember saying to him: What part do you want me to	
14			change?	
15	300	Q.	Well, he doesn't recollect any discussion of change.	15:18
16			He made a report to Chief Superintendent Curran the	
17			following day, it's at 1806. You have probably seen	
18			that report yourself, have you, previously?	
19		Α.	I am sure I have. I have seen it.	
20	301	Q.	It's in Volume 7, I should have said, 1806?	15:18
21			CHAIRMAN: Can we put that up?	
22	302	Q.	MR. McGUINNESS: Yes. At the bottom, the second	
23			paragraph there, sort of five lines or let's start	
24			three lines in:	
25				15:19
26			"He went on to say that he does not believe the senior	
27			officers knew what was going on. I put it to him would	
28			it not be more appropriate for him to have spoken to	
29			Assistant Commissioner Ó Cualáin before creating the	

Т			entry. He sard, it's done now, what can i do, everyone	
2			has seen it."	
3				
4			Is it possible that you interpreted what Inspector	
5			Farrell was saying to you as a desire on his part to	15:19
6			change it, but that he didn't actually ask you to	
7			change it?	
8		Α.	No, no, no.	
9	303	Q.	Is that possible?	
10		Α.	I clearly remember, when he said about changing it, I	15:19
11			said, what part do you want me to change? You know.	
12	304	Q.	Right.	
13		Α.	I still stand by every word what's on that now.	
14	305	Q.	Okay. If we could go to page 165, which is in Volume	
15			1, you were asked by Superintendent McBrien on the 27th	15:20
16			July we should probably go to page 163 first, my	
17			apologies. I think this was copied to you and	
18			Superintendent McBrien	
19			CHAIRMAN: It's actually 23rd July.	
20			MR. McGUINNESS: I am sorry, the 23rd, it's stamped on	15:2
21			the 27th.	
22			CHAIRMAN: Yes.	
23	306	Q.	MR. McGUINNESS: It says:	
24				
25			"Regard to intelligence report 48549, created on 18th	15:2
26			May 2004, I require a report from you indicating	
27			whether the informant had been registered with CHIS in	
28			accordance with HQ Directive 126/10 for attention and	
29			report."	

1				
2			I think you endorsed a rely on that to the	
3			superintendent.	
4				
5			"This is not a CHIS matter. The information is in the	15:21
6			care of Assistant Commissioner Donal Ó Cualáin."	
7				
8			I think you have explained why you thought it wasn't a	
9			CHIS matter.	
10		Α.	Yeah. And as I stated, when I do meet the	15:21
11			investigation team I ultimately give them everything.	
12	307	Q.	Yes.	
13		Α.	Pass everything on to them.	
14	308	Q.	Yes. Just one final question, just on this point of it	
15			at this stage: Would you agree that at that stage in	15:22
16			time that we're talking about, after you had created	
17			the entry, it could give rise to a reasonable belief	
18			that you had a CHIS source?	
19		Α.	I mean, look, it's possible. The fact is, I handed	
20			I have passed persons, put persons how would I put	15:22
21			it? Forwarded persons into the CHIS system previously.	
22			This was a person that's in a different category	
23			completely.	
24	309	Q.	Okay.	
25		Α.	It's a different situation.	15:22
26	310	Q.	Okay. But at all events you didn't as a fact explain	
27			that to anyone who was enquiring with you about it at	
28			this time?	
29		Α.	Well, I would have explained it, I am sure, to the	

Т			investigation team.	
2	311	Q.	Okay. We then have a document at page 164, it's from	
3			Superintendent McBrien to Sergeant Haran. She has	
4			passed on your report. She says:	
5				15:23
6			"Please see attached report from Garda Nicholas Keogh	
7			dated 27th July 2014 which was forwarded to Chief	
8			Superintendent Curran divisional officer. Chief	
9			Superintendent is not satisfied that this negates our	
10			responsibilities as outlined in HQ Directive 126/10 has	15:23
11			requested that the source be referred in line with	
12			Garda policy. Garda Keogh should comply with this	
13			request and report by return."	
14				
15			I think you got that from Sergeant Haran?	15:24
16		Α.	Yeah.	
17	312	Q.	I think that's the second, as it were, letter from her	
18			then, asking you to address this issue?	
19		Α.	Yes.	
20	313	Q.	I think you did address that then and that's on page	15:24
21			165. I think there was no typed version of it, this is	
22			the only report. It says:	
23				
24			"With reference to above, Chief Superintendent Curran,	
25			divisional officer Westmeath division, is fully aware	15:24
26			that there is ongoing investigation into alleged	
27			criminality involving members of An Garda Síochána in	
28			the south Westmeath division. I believe it's	
29			inappropriate while the investigation is ongoing for	

1	Chief Superintendent Curran to seek the source relating
2	to the intelligence report 48549 which is directly
3	linked to this investigation at this stage at least as
4	it could jeopardise the said investigation. I believe
5	the investigation team under Assistant Commissioner Ó 15:2
6	Cualáin should be left do their job without any
7	internal interference. At some point they will make a
8	finding and it can deal with the intelligence report
9	then in relation to the HQ Directive 126/10. This does
10	not appear to cover this particular situation. Perhaps 15:2
11	Chief Superintendent Curran could furnish to me the
12	exact wording that refers to outlined in Directive
13	126/10. I wish to add that I have been advised by
14	Judge Patrick McMahon not to speak with any member of
15	An Garda Síochána about any part of this investigation 15:2
16	with the exception of the investigation team under
17	Assistant Commissioner Ó Cualáin. Therefore, I request
18	that any dealings between myself and Superintendent
19	Curran, divisional officer, Westmeath division, should
20	not be informal. I intend to be compliant once the 15:2
21	investigation has been concluded. Forwarded for your
22	information please."
23	
24	Now, that went up to your superiors obviously. I think
25	one of the issues is whether you perhaps misunderstood 15:2
26	the request, that you were being asked to identify the

A. I do recall when I asked for copy of 146/10 circular, from recollection, I didn't get one.

27

28

29

source?

1	314	Q.	Well, what Superintendent McBrien and, it would seem,	
2			Chief Superintendent Curran wanted was the source to be	
3			treated in accordance with Garda policy, which wouldn't	
4			necessarily require the revelation of the source to	
5			them, isn't that correct?	15:26
6		Α.	Unfortunately, sometimes officially what was is	
7			supposed to be done in the guards and with whispers and	
8			that, at the end of the day I had passed all this over	
9			to the D Super at that point, Declan Mulcahy, who was	
10			actually investigating the thing. So like he had all	15:27
11			the stuff.	
12	315	Q.	Okay. The second thing is: Had you gone to Judge	
13			McMahon in the interim before you wrote this and said,	
14			look, they're trying to find out the source?	
15		Α.	I just don't recall if I had, I may have said it,	15:27
16			mentioned it to him.	
17	316	Q.	Yes.	
18		Α.	But I can't remember. Now if I did, it was by way of	
19			phone call.	
20	317	Q.	Yes.	15:27
21		Α.	I don't think we would have notes or anything in	
22			relation to that, I don't know.	
23	318	Q.	Okay. But you made the investigation team aware of it,	
24			isn't that correct?	
25		Α.	Oh yeah.	15:27
26	319	Ο.	Okav. I think they made it clear, both to you and to	

28

29

Α.

creation of the source or the validity of it?

your superiors, that they weren't investigating the

They said that at the start but later on they do say,

- 1 yes, we are investigating this.
- 2 320 Q. No, they were investigating the content of it in terms
- of an allegation, but they weren't investigating any
- 4 issue concerning the creation of the Pulse entry?
- 5 A. Oh yeah.
- 6 321 Q. Isn't that right?
- 7 A. Yeah.
- 8 322 Q. So, when you were told that, did that not leave it open

15:28

15:29

15:29

- 9 to your superiors to raise the issue as to whether you
- 10 were acting in accordance with the policy, as it were?
- 11 A. It goes into the garda intelligence, I would have put
- on over 500 and something pieces of intelligence over
- the years and not one of them was ever questioned. And
- some of them, you know, would have been -- a lot of
- them would have been to do with drugs and this fella,
- that fella, whatever, selling X or whatever, and
- 17 there's no issue. The thing is, it's because there's a
- senior garda, that really is the crux of the matter
- there that there's always this stuff over.
- 20 323 Q. You've probably seen that Sergeant Curley did an
- 21 analysis of your intelligence created on Pulse at a
- later stage in the year, which was reported up. Di you
- 23 see that?
- A. He'd a couple of snippets for previous...
- 25 324 Q. You apparently, it would seem and we will hear
- obviously from Sergeant Curley, that you hadn't created
- on Pulse such an entry before, relating to a perceived
- informant and relating to a Garda Síochána, that's I
- 29 think factually right?

- 1 A. Garda stuff, oh no.
- 2 325 Q. Just the final sort of line of this letter, in which
- 3 you say you intend to be compliant once the
- 4 investigation has been concluded. One interpretation
- 5 might suggest that you knew you weren't complying with
- 6 what was required of you at the time?
- 7 A. From my recollection, HQ Circular 126 doesn't cover
- 8 this.
- 9 326 Q. Okay. That's your position, is it, on that?
- 10 A. Mm-hmm. Just from my recollection, I will have to look 15:30
- it up and see, I could be wrong but.
- 12 327 Q. 126 Circular, it's a one-page circular, isn't it?
- 13 A. I can't even remember when I read it, I would have read
- it around this time a couple of years ago.
- 15 328 Q. Yes. But it simply informs everyone, all and sundry,
- and it's to be brought to everyone's attention that the

15:31

- 17 CHIS policy has been amended and updated and is now on
- the Garda portal, is that correct?
- 19 A. I can't disagree.
- 20 329 Q. Well, I suppose it begs the question: When you got
- 21 these queries, did you look at the directive to see
- 22 whether it was applicable?
- 23 A. I would have had to have because I remember I wrote to
- 24 Chief Superintendent Curran looking for it and he
- 25 didn't give it.
- 26 330 Q. But if we look at perhaps Volume 28, it's page 8122.
- 27 It does appear to be a one-page circular, which refers
- you back to the amended CHIS document. Do you see
- 29 that:

Т				
2			"CHIS intelligence sources came into effect on 3rd	
3			April."	
4				
5			Second paragraph:	15:32
6				
7			"Revised code has been placed on garda portal to be	
8			accessed and perused by all members. CHIS included	
9			compliance with code of practiceregular item	
10			district management, accountability meetings. Managers	15:32
11			and supervisors will ensure that instructions contained	
12			in the code of practice are strictly complied with."	
13				
14			Then it's to be construed with another HQ directive.	
15			Did you read that at the time that you were responding	15:32
16			to these issues?	
17		Α.	No. I asked for sorry, excuse me, I must have,	
18			because I asked, in the previous letter do I not ask	
19			what part where in HQ circular and can I have a copy of	
20			what lines in HQ circular 126, and nothing comes of it.	15:32
21	331	Q.	Yes. This reply that you wrote of the 26th September,	
22			it's stamped on that date, received by the public	
23			office, I think that was your last response to the last	
24			communication to you in connection with this, isn't	
25			that correct?	15:33
26		Α.	I haven't a note of that but I would accept	
27	332	Q.	Yes. It would appear both from Superintendent McBrien	
28			and Chief Superintendent Curran, it was never followed	
29			up directly with you, isn't that correct?	

- 1 A. This is the CHIS matter.
- 2 333 Q. Yes.
- 3 A. You see, at that stage the main investigation is full
- 4 steam.
- 5 334 Q. Yes.
- 6 A. I think at some point and I could be wrong, but I think

15:34

15:34

- 7 Detective Superintendent Mulcahy at some stage, I may
- 8 be wrong, but I think he states somewhere that this is
- 9 not a CHIS matter as well.
- 10 335 Q. CHAIRMAN: Can I just ask you, Garda Keogh, as far as
- 11 you were concerned, from the beginning you said, I am
- 12 either in the course of making a statement or I am
- going to be making a statement very soon, there's going
- to be a big investigation and all of this is a matter
- for that investigation. And more or less whatever it
- said in CHIS, that was your position. That seems to me
- 17 to be the situation.. is that right?
- 18 A. Yeah.
- 19 336 Q. CHAIRMAN: And that was your response, rightly or
- 20 wrongly, that was your response to those queries?
- 21 A. And Judge --
- 22 337 Q. CHAIRMAN: When I say rightly or wrongly, I mean you
- 23 were taking a clear position as far as you were
- 24 concerned?
- A. Like that's back, we're going back 2014 and this is now 15:34
- 26 2019 and there's a lot of things I wish I could change
- 27 but that's not one of them.
- 28 338 Q. CHAIRMAN: Okay.
- 29 A. I'd put that back on the same --

Т	339	Q.	CHAIRMAN: That's a reasonable position, that's a	
2			summary of your position?	
3		Α.	Yes.	
4	340	Q.	CHAIRMAN: Look, whatever the situation, I have put	
5			this on, yes, I have, and it's a matter for the	15:3
6			upcoming investigation or the ongoing investigation, is	
7			that right?	
8		Α.	Yes.	
9			CHAIRMAN: Okay. Thank you. Sorry, Mr. McGuinness, I	
10			just wanted to	15:3
11	341	Q.	MR. McGUINNESS: You mentioned Detective Superintendent	
12			Mulcahy there?	
13		Α.	Yes.	
14	342	Q.	One of the lead investigators on behalf of the	
15			assistant commissioner?	15:3
16		Α.	Yes.	
17	343	Q.	According to his statement, he phoned you following the	
18			receipt of a text from you on the 16th July and he told	
19			you that they were not investigating the creation of	
20			the Pulse entry. You told him where the information	15:3
21			came from and he says he explained that your supervisor	
22			had an obligation to ensure that intelligence placed on	
23			the system was correct. Do you recall him saying that	
24			to you?	
25		Α.	Yeah. Oh I'd accept what he says. I think later on, I	
26			think there's a lot of bouncing back, the intelligence	

28

29

report seems to bounce around to a couple of offices.

with the contents of the intelligence report and I

I think in the end, I think he said that he was dealing

1	think	that	kind	٥f	iust -	- that	was	the	end	٥f	i+
T	LIIIIIN	tiiat	N I I I U	Οı	Tust -	- tiiat	was	LIIC	CIIU	Οı	ı.

- 2 344 Q. You may be referring to the fact that he communicated
 3 with Chief Superintendent Curran to assure them that
 4 they were aware of the informant and that he, for his
 5 part, Chief Superintendent Curran, didn't need to worry 15:36
 6 himself about any issue of compliance from then on?
- 7 A. Yes. And my understanding again is that this was not a CHIS matter.

15:37

15:37

15:38

- Well, I'm not sure if he went that far, we will hear 9 345 Q. 10 from him in due course. We received a great deal of 11 papers from HQ and from the division to and fro and 12 within HQ, which seems to show that a number of issues 13 were being considered as emanating from the creation of 14 the Pulse entry, relating to data protection, whether 15 the creation of it was appropriate and proportionate 16 and supportive. Presumably you'd agree that no one 17 brought any other concern to you at any later stage, 18 whatever their concern was? Nobody came back to you 19 after this last response that we have seen, isn't that 20 correct?
 - A. Well, it just finished off then at some point, just that was it. That's where why my recollection is, and as I said, I could be wrong, is that Detective Superintendent Mulcahy said it wasn't a CHIS matter, they were dealing with the substance of it, that was the end of it, from recollection now.
- 27 346 Q. Yes. But you weren't aware that issues were being 28 considered of either discipline, redaction of it, 29 investigating it further?

21

22

23

24

25

26

- A. I don't know, I mean, I have read notes now, but at the time it didn't matter to o me. Once the main investigation was moving at that stage.
- 4 347 Q. But what does seem clear is that you made at a later 5 stage a complaint of bullying and harassment in 15:38 6 relation to this issue, isn't that correct?
- 7 A. Yeah.
- 8 348 Q. We have looked at what your superiors had required of
 9 you, both through Inspector Farrell, Superintendent
 10 McBrien in the first request of you of the 23rd July
 11 and the second request of the 28th September 2014, and
 12 the way you answered them, but are you construing those
 13 two requests as bullying and harassment?
- 14 Α. There was a number of -- there was a lot of paperwork 15 in relation to this. The contents of that were being 15:39 16 investigated by Donal Ó Cualáin's investigation team. 17 The chief in Mullingar, who at the time was -- it 18 wasn't just that, there was a number of other incidents that we will yet get on to. There was a whole lot of 19 20 things that there were. A lot of those different 15:40 things should have just been put into the main 21 22 investigation by the appointed investigation team. 23 Because it ended up it started to mount all these 24 miniature little investigations into, whether it's Pulse or whether it's to some of the other matters we 25 15:40 26 will get to. So they all started to mount up.
- 27 349 Q. But in one of your statements to the Tribunal, you 28 describe this as an attempt to manufacture complaints 29 against you and this is one of the instances.

Т		Α.	I know the two next instances, but I mean, this is	
2			fairly straightforward. As I said, if this was a Tesco	
3			worker or anybody else, there wouldn't be a word about	
4			this. I mean, if one was to look through the	
5	350	Q.	CHAIRMAN: I don't understand that. What do you mean	15:41
6			by a Tesco worker? Explain that to me.	
7		Α.	The big deal with this is because I have guards	
8			involved in criminality. That's what they go bananas	
9			over. That's why, if it was any other profession or	
10			anything like that, there wouldn't be an eyelid blinked	15:41
11			to it. That's really the crux of the matter there.	
12			It's because it's guards. If I had put in, I used	
13			Tesco, but any, in any employment or whatever,	
14			anywhere.	
15	351	Q.	CHAIRMAN: So if anybody else, anybody else was	15:41
16			involved.	
17		Α.	Yes.	
18	352	Q.	CHAIRMAN: Or any other job, you say, okay.	
19		Α.	Yes. There wouldn't be a word about it.	
20	353	Q.	CHAIRMAN: Okay. But Mr. McGuinness is asking you, do	15:41
21			you say, whether the queries were entitled to be done	
22			under CHIS or not, do you say that was bullying and	
23			harassment or targeting and discrediting?	
24		Α.	I have already said this is not a CHIS the matter, I	
25			have said that.	15:42
26	354	Q.	CHAIRMAN: No, I understand that. But what he is	

bullying and harassment, and if so, why?

27

28

29

saying is, these queries that the guards made about

this, the authorities made, do you say that was

- A. I mean, okay, they're entitled to ask obviously, you know, was there -- they're entitled to ask was it CHIS.
- 3 355 Q. CHAIRMAN: Sorry, let me explain for a moment.
- 4 A. Yes.
- 5 356 Q. CHAIRMAN: I can understand that you or your team can say, look here, it's not just one particular incident.
- 7 I can understand that you or your team can say, look,
- 8 it's not just one, you have to look at the whole
- 9 context. That, I have no difficulty with. But
- obviously we do have to look at each specific incident. 15:42
- 11 We can't just ignore them. It's clearly possible that
- the answer might be, no, this particular incident on
- its own does not amount to something but when seen as a
- pattern might be something. Okay. So it doesn't seem
- to me to be unreasonable for Mr. McGuinness to say, in

15:43

15 · 43

- 16 what way do you say these particular queries, expressed
- 17 as they were in the form of letters, how do you make
- them out to be bullying and harassment? That's what he
- says to you, if I am understanding him.
- MR. McGUINNESS: Yes, Chairman.
- 21 357 Q. CHAIRMAN: So, what do you say to that?
- 22 A. I explained at the start this wasn't a CHIS matter.
- 23 358 Q. CHAIRMAN: I understand that.
- 24 A. The letters kept coming.
- 25 359 Q. CHAIRMAN: Let's say they were wrong, let's say it's
- 26 not a CHIS matter, but the chief superintendent thought
- it was a CHIS matter. Let's say he was wrong about it.
- Is that bullying? Because he gets it wrong and he
- thinks maybe it is a CHIS matter, I better check this

- 1 out, do you say that's bullying? 2 I understand, Judge, yeah, what you mean. I mean, I Α. wouldn't call it bullying, but I don't know --3 Do you see where I'm coming from? 4 360 Q. 5 Yeah, I do, of course, Judge, yeah, yes. Α. 15:44 6 361 I'm sort of saying, look, there's two Q. 7 possibilities, A, it was a CHIS matter; B, it wasn't a 8 CHIS matter. So A, if it is a CHIS matter, then he is raising a proper question, but it may be that you're 9 entitled to say ah no, it's a matter for the general 10 15 · 44 11 investigation. Okay? So it's not actually a whole lot 12 of difference whether it was strictly speaking a CHIS 13 matter or not, do you understand me? So if this was 14 the only thing, I am getting the sense that if this was 15 the only thing we wouldn't be here, you wouldn't be 15:44 16 saying, I was bullied and harassed because they wrote me off about CHIS, is that correct? 17 18 Yes. Α. 19 362 CHAI RMAN: Okay. But you say, well, that's all very Q. well but wait until we hear about all the other ones? 20 15:45 Yes, but they do on this one, even after I looked for 21 Α. 22 the HQ 126, I said, please can I have the lines in that
- 24 363 Q. CHAIRMAN: Chapter and verse?

25 A. Correct. And I don't get it.

26 364 Q. MR. McGUINNESS: Garda Keogh, I don't know whether it's
27 unfortunately fortuitous or not, but Superintendent
28 McBrien unfortunately, she did go ill in early October
29 and she was out for some considerable period. The

15 · 45

that refer to what you're on about.

1			matter had been escalated up the line and was orbiting	
2			around headquarters for a number of years, but these	
3			documents that I have opened to you, which were	
4			directed to you, they were the only documents which	
5			were asking for a response and you were never	15:45
6			subsequently asked for any other response about them,	
7			isn't that correct?	
8		Α.	I would have to accept that.	
9	365	Q.	Yes.	
10		Α.	Yes.	15:46
11	366	Q.	But that's why I am just asking you the question in a	
12			direct way. You included these requests that were made	
13			of you by Superintendent McBrien as part of a bullying	
14			complaint?	
15		Α.	I think, just to clarify, I never made I didn't make	15:46
16			an allegation ever against Superintendent McBrien for	
17			bullying or harassment or anything like that.	
18	367	Q.	No, but you took it that these were emanating from and	
19			reflecting Chief Superintendent Curran's concerns?	
20		Α.	From higher up.	15:46
21	368	Q.	He was aware and was requiring these responses and you	
22			did complain about Chief Superintendent Curran?	
23		Α.	Yeah.	
24	369	Q.	Are you, in fact, maintaining that what was required of	
25			you here, and nothing further was ever required,	15:46
26			amounts to bullying and harassment?	
27		Α.	I'd accept not bullying but harassment, if you put it	
28			in with a few other things that they're doing, cooking	
29			at the same time, you know, they're sending me down	

1			this HQ 126 and all the rest, you know, and from	
2			recollection, it doesn't contain the lines, you know.	
3			They have read that circular themselves, I mean they	
4			could have quoted the line or whatever out to me, they	
5			certainly didn't, that I was getting anyway.	15:47
6	370	Q.	I do want to deal with each of your complaints in a	
7			fair but separate manner?	
8		Α.	Mm-hmm.	
9	371	Q.	It is the case that you isolated these requests, albeit	
10			that they came through Superintendent McBrien, you did	15:47
11			identify these as bullying and harassment and put it	
12			into your statement to that effect, isn't that correct?	
13		Α.	Yes.	
14	372	Q.	Assistant Commissioner Finn was appointed to enquire	
15			into them and he reached his findings in relation to	15:48
16			them in his report, which you have seen. I suppose the	
17			simple question is, do you accept that his findings are	
18			a reasonable interpretation of what your superiors were	
19			requiring of you?	
20		Α.	I don't accept anything in Mick Finn's investigation	15:48
21			as anything. In fact, I think it's questionable as	
22			to what sort of investigation he even conducted.	
23	373	Q.	well again, that's obviously a separate complaint, as	
24			to the conduct of it?	
25		Α.	Yes.	15:48
26	374	Q.	Perhaps we will leave the findings over in that respect	
27			until then. There was an independent expert, a	
28			Mr. deBruir commissioned to sort of do an audit review.	

He appears to have thought that it was reasonable

- 1 requirement being made by your superiors at the time?
- 2 A. I would have loved to have met him to maybe explained
- 3 my -- I never met that man. So he did a review, he
- 4 didn't even come to me to ask me for anything.
- 5 375 Q. But your solicitor put in very extensive submissions
- 6 which are recorded in relation to the whole of the Finn

15:50

15:50

- 7 Report. They're recorded and Mr. deBruir refers to
- 8 your solicitor's submissions in that regard also. You
- 9 had an opportunity, I am not saying anything good or
- 10 bad or indifferent about it, but you had an opportunity 15:49
- 11 to speak to Assistant Commissioner Finn's conclusions,
- isn't that correct, in the appeal?
- 13 A. When I made the appeal, to my recollection, I didn't
- 14 get to speak to anyone.
- 15 376 Q. CHAIRMAN: What Mr. McGuinness means is: You had the
- opportunity -- rightly or wrongly -- there's a bit of
- 17 confusion. He is saying that rightly or wrongly, you,
- through your solicitor, had an opportunity to comment?
- 19 A. Sorry.
- 20 377 Q. CHAIRMAN: Through your solicitor you had an
- opportunity to -- this is only what he is saying, I'm
- 22 not saying this?
- 23 A. Yes.
- 24 378 Q. CHAIRMAN: He's saying, didn't your solicitor have an
- opportunity to comment on the Finn Report which he put
- forward counsel, Mr. deBruir. Nobody says that you
- 27 spoke to him?
- 28 A. Oh yeah, but I think it's --
- 29 379 Q. CHAIRMAN: He said you had an opportunity to speak to

Т			it, by which he meant, you had an opportunity to	
2			comment on it. Do you understand?	
3		Α.	On the Finn?	
4	380	Q.	CHAIRMAN: You were given an opportunity to comment,	
5			that's what I think Mr. McGuinness is asking you?	15:50
6			MR. McGUINNESS: Yes.	
7	381	Q.	CHAIRMAN: He is putting that to you and asking you	
8			what your response is?	
9		Α.	Yeah. I mean, my instructions to my solicitor were	
10			that the whole Finn investigation was a joke. As I	15:51
11			said, it's questionable what sort of investigation	
12	382	Q.	CHAIRMAN: Okay. You weren't happy with any part and	
13			you're not going to agree to any part of the Finn	
14			Report?	
15		Α.	Yeah.	15:51
16	383	Q.	CHAIRMAN: Okay.	
17	384	Q.	MR. McGUINNESS: Now, you did bundle together these	
18			enquiries that were being made of you together and you	
19			complained in a number of different documents that you	
20			were subjected to five internal investigations to date,	15:51
21			four of which went nowhere. You categorise this as an	
22			investigation into you. Is that the way you still see	
23			it?	
24		Α.	You see, this was the first month again, as I said, all	
25			these things	15:51
26	385	Q.	Yes, I understand that.	
27		Α.	the first five came in that first month, when I'm	
28			waiting to meet the investigation team, all this stuff	
29			starts coming down, you know.	

- 1 386 Q. Yes.
- 2 A. At the same time, in one month, in the first -- like,
- you know -- as I said, nothing was ever gueried before,
- 4 either as intelligence or doing a check on Pulse or
- 5 anything like that, it was just within the first few

15:52

15:52

15:53

- 6 weeks from me making my protected disclosure I was
- 7 getting all this sort of stuff.
- 8 387 Q. I can understand how you believe you felt at the time
- and how it seemed to you. Were you getting support,
- though, locally at that time during this period?
- 11 A. I don't know, how do you mean support?
- 12 388 Q. Well, did Superintendent McBrien speak to you and offer
- you support?
- 14 A. Yes.
- 15 389 Q. Through a number of different guises?
- 16 A. Yes, Superintendent McBrien did, yeah.
- 17 390 Q. Did you avail of those as well?
- 18 A. I didn't at the time. I did ultimately later, at a
- 19 certain point I do recall I rang Detective
- 20 Superintendent Mulcahy and I said, if you're still
- offering the Garda Welfare service then I will take it.
- 22 And they have been very good, yeah.
- 23 391 Q. It's not the subject matter of a separate complaint
- that you didn't get support either at any stage or
- 25 throughout, isn't that right? You never complained
- about the lack of support?
- 27 A. Oh no, I didn't. No, no, no. On the contrary, the
- 28 Garda Welfare Service have been excellent. Yeah.
- 29 392 Q. Just on this point, you're making the point that at

- this time these things were all happening in a short space of time?
- 3 A. Yes, correct, yes.

4 393 Q. And I suppose the Gardaí might say the same, I don't know whether they will or not.

15:53

15:54

15:54

15:54

15:54

- A. You see, I saw myself as a sitting duck at that time, as well.
- 8 394 But coming on from that, and looking at events from Q. 2015, 2016, 2017, you did bundle this matter in as an 9 investigation that had been mounted against you and it 10 11 would seem that you're implying that it was totally 12 unjustified and unwarranted and unreasonable. 13 the way you still regard these requests that were made 14 of you at that time?
- 15 I mean, I am sure it was very simple for somebody at Α. 16 the top to say, look, ye guys, for example, Donal Ó Cualáin's investigation, there's this Pulse incident, 17 18 you're dealing with, investigating this stuff, just 19 deal with that as well, end of story. And all of that should have just gone in to there. And we wouldn't 20 have had to have been bouncing it around to each other 21 22 and generating all this paper. Someone could have made 23 the decision, you're dealing with this lad, he is you're a confidential reporter, just deal with it. 24 25 They could have done that. I had already passed all
- 27 395 Q. Just one matter: Did you speak to Judge McMahon about the intelligence entry?

the information in relation to it anyway.

29 A. I can't remember. I just, I can't remember -- oh, I

- did. I did. Yes. And he did say I shouldn't have done that.
- 3 396 Q. Okay. And why did he say that or what discussion did 4 you have?
- 5 His thing was that you're meeting, you're due to meet Α. 15:55 6 the Ó Cualáin investigation team, you know. I had explained to him what I've told you. Obviously, 7 8 the Ms. B sticking the tongue out at me, you know, in defiance, that she was untouchable, and obviously I 9 stew over it the next day. What is going on around me 10 15:55 11 in the station, where I do feel like a sitting duck at 12 that stage and I put it, ultimately put the 13 intelligence on the system and...
- 14 397 Q. I mean, that might well reflect, I think, some advice
 15 that Superintendent McBrien gave to you; that you
 16 shouldn't get involved in doing any investigating
 17 yourself, is that right? Do you recall any such matter
 18 being --

15:56

- 19 A. I think, yeah, but I think that was to do with a
 20 different matter, I think. I don't think that was to
 21 do with this particular matter.
- 22 398 Q. Okay. But your answer there, is that how you saw how
 23 this entry came about; that you were in fact doing a
 24 bit of the investigating yourself and putting it on
 25 Pulse, in the way that you would do if you were an
 26 investigating member? Is that part of it?
- A. I don't think so. No. Well, I certainly didn't look at it like that. To think, to try and comprehend what you are saying there. Because I didn't look at it ever

1	like that.	
2	MR. McGUINNESS: Yes, okay. Chairman, that is as far	
3	as I want to take that issue today.	
4	CHAIRMAN: Very good. Thanks very much. Well, that is	
5	probably a convenient time to I am not forgetting	15:57
6	you, Mr. Murphy. That is probably a convenient time,	
7	you will have a break and we will see you back here at	
8	10:30 in the morning. Very good. And you're proposing	
9	to move on then to the next issue. That's as far as	
10	you want to go.	15:57
11	MR. McGUINNESS: I think. I may have one.	
12	CHAIRMAN: I understand. Broadly speaking, okay.	
13	Thank you very much.	
14		
15	THE WITNESS THEN STOOD DOWN	15:57
16		
17	CHAIRMAN: Now, Mr. Murphy, you have a	
18	MR. MURPHY: Thank you.	
19	CHAIRMAN: We will give Garda Keogh a chance to get	
20	himself out. Yes.	15:57
21		
22	SUBMISSION BY MR. MURPHY	
23	MR. MURPHY: Chairman, I have a short submission. I am	
24	very grateful for you allowing me to made it at this	
25	time. Just in aid of the submission, could I ask if it	15:57
26	is possible for document 14176 to be put on the screen?	
27	CHAIRMAN: Thank you. Do you want to tell us, I	
28	probably know what it is and we will be able to see it.	
29	MR. MURPHY: This is the letter which Mr. Marrinan	

1	referred to in his letter this morning; a letter of the
2	4th October, from Garda Keogh's solicitor.
3	CHAIRMAN: Yes.
4	MR. MURPHY: Dated 4th October 2019.
5	CHAIRMAN: Thank you.
6	MR. MURPHY: And that related to issue 16, a part of
7	issue 16 that is a previously asserted allegation of
8	phone tapping. And this morning the letter confirmed
9	in the following terms, if I can read it for the
10	record:
11	
12	"Garda Keogh doesn't remember who told him whose phone
13	could be tapped. The latter is of no evidential value.
14	Garda Keogh has not made an allegation of phone tapping
15	in his statements to the Tribunal. As he says, it is 15:50
16	virtually impossible to prove and would therefore be a
17	waste of the Tribunal's time."
18	
19	And I welcome that realistic assessment by Garda Keogh
20	of that issue. However, in our respectful submission, 15:50
21	a similar position arises in relation to issue number
22	8. And in that regard I wonder if we could bring up on
23	the screen please for the assistance of the Chairman,
24	page 49, Volume 1.
25	CHAIRMAN: Yes.
26	MR. MURPHY: Chairman, this relates to a question in
27	the statement that Garda Keogh made to the Tribunal
28	investigators in 2018. And at page 48 the question was
29	asked, in relation to the allegations that Nóirín

1	O'Sullivan personally telephoned Superintendent Pat	
2	Murray	
3	CHAIRMAN: Yes.	
4	MR. MURPHY: and he is asked to indicate what	
5	evidence did he have to support this. At the top of	16:00
6	page 49 Garda Keogh says as follows:	
7		
8	"All I can say is that I have no direct evidence, other	
9	than saying that guards in the station told me this,	
10	that's as far as I can go. I am not willing to name	16:00
11	the guards concerned for fear they will be targeted."	
12		
13	Then next, if I can ask the Chairman to be shown	
14	document 5971, please. And what happens here,	
15	Chairman, is there is a progression.	16:00
16	CHAIRMAN: Yes.	
17	MR. MURPHY: The Tribunal actually can't accept a	
18	statement that a person is willing to rely upon a third	
19	party without identifying that party. And so, in	
20	correspondence on the 23rd May of this year, you will	16:01
21	see, if I can ask you to turn up to the phrase where it	
22	says "he believes", just scroll please down further,	
23	yes. Yes. Just pause there, please.	
24	CHAIRMAN: Thank you.	
25	MR. MURPHY: "On my client's instructions, I can	16:01
26	confirm that the identity of my client's informant is	
27	Sergeant Andrew Haran. My client confirms to me that	
28	Sergeant Haran was the person who advised him."	

1	And it goes on to talk about the other issues which are	
2	present.	
3		
4	So at this point, Sergeant Haran is identified by Garda	
5	Keogh as the person who told him that Nóirín O'Sullivan	6:01
6	had made a phone call. And that is the evidence.	
7		
8	Moving forward then please, if I can ask you to be	
9	shown page 11764, and this is the statement of Sergeant	
10	Haran produced on the 19th June 2019.	16:01
11	CHAIRMAN: Yes. Carry on, while we are getting it up,	
12	yes.	
13	MR. MURPHY: Sergeant Haran unequivocally denies that	
14	he was the person who presented that information to	
15	Garda Keogh.	16:02
16	CHAIRMAN: Yes.	
17	MR. MURPHY: So ultimately, a progression has developed	
18	whereby at first Garda Keogh says he doesn't wish to	
19	disclose the informant, then he does, then that person	
20	is approached and that person says no, that never	16:02
21	happened. And thereafter, we are stuck in a situation	
22	where in effect Garda Keogh's perception and beliefs	
23	are the only evidential basis being put forward to	
24	support the proposition contained in issue number 8.	
25	CHAIRMAN: Yes.	16:02
26	MR. MURPHY: And to paraphrase the words used by Garda	
27	Keogh through his	
28	CHAIRMAN: Sorry, we have Sergeant Haran now up.	
29	MR. MURPHY: Yes. And at page 11764	

1	CHAIRMAN: Right.	
2	MR. MURPHY: can I ask you to draw attention to line	
3	231?	
4	CHAIRMAN: Thank you very much.	
5	MR. MURPHY: And it says:	16:02
6		
7	"I take issue with being characterised as an	
8	informant."	
9		
10	And goes on then to talk about various issues to do	16:03
11	with the station itself. But further down he says,	
12	towards the end:	
13		
14	"I didn't tell Garda Keogh any of telecommunications	
15	between the Commissioner and Superintendent Pat Murray.	16:03
16	I didn't know of any. Had I known that it would have	
17	been hugely important to Garda Keogh, so I would	
18	definitely remember it."	
19		
20	So unequivocally he denies that conversation ever took	16:03
21	place or that he said it.	
22		
23	Thereafter in terms of the actual position, we have,	
24	coming back to the letter that was written on the 4th	
25	October, Garda Keogh confronted with a situation where	16:03
26	he accepted that, in his words, "it's virtually	
27	impossible to prove and would therefore be a waste of	
28	the Tribunal's time". We respectfully submit that	
29	looking at this progression that the position	

1 confronting the Tribunal today is akin to that which 2 applied to the phone tapping issue. That is to say, there is no evidence. 3 CHAI RMAN: 4 Okav. 5 MR. MURPHY: And in those circumstances we respectfully 16:03 ask the Tribunal at this stage to consider acting, as 6 7 Mr. Justice Charleton did in one of the earlier 8 modules, where he, of his own motion, without even any application being made, having looked at the 9 documentation, indicated that he believed there was no 10 16:04 11 evidence to show that in that case a false allegation 12 of sexual assault had been made against the 13 whistleblower in that case and as far as he was 14 concerned unless there was any evidence he did not 15 proceed, he would not proceed any further. And we 16:04 16 respectfully say that is a safe precedent for this 17 Chair to considerably rely upon. 18 CHAI RMAN: Okay. Because we say the evidence at this stage 19 MR. MURPHY: 20 indicates that there is no evidential basis for that 16:04 particular clause. And to save time, I would 21 22 respectfully say that you, Chairman, consider that it 23 is not necessary to proceed to deal with that clause. 24 CHAI RMAN: Okay. Mr. Kelly, this comes as a -- you 25 haven't known anything about this. You probably are 16:04 aware that there was a preliminary discussion. The 26 27 situation was originally that the -- and which is why it was issue number 8, there was an issue. 28 29 counsel, Mr. Murphy suggested that there should be some

1	evidential basis for it, and that it was legitimate to	
2	ask your client what's the source of this information,	
3	where does it come from and so on. So, that is the	
4	background to this. Here we are. What do you say to	
5	Mr. Murphy's application?	16:0
6	MR. KELLY: Judge, I need	
7	CHAIRMAN: Or do you feel comfortable in answering it	
8	not having been aware of it until this minute?	
9	MR. KELLY: The latter, Judge. I will need to just	
10	speak to my instructing solicitor. I can see where	16:05
11	Mr. Murphy is coming from, but	
12	CHAIRMAN: I want to be fair to everybody, and I don't	
13	want to spring this on you and then demand that you	
14	make a submission about it. Can I tell you what my	
15	thinking is? I am wondering, if there's no suggestion	16:05
16	of a source whereby Sergeant Haran might have had it or	
17	whatever it is, I am wondering about the fairness of	
18	putting an allegation to the former Commissioner and	
19	let's say saying, ah well, you have to come in here,	
20	you have to be examined and be represented and	16:06
21	cross-examined and then we will see about all of that,	
22	I am just wondering whether it's reasonable to say	
23	there should be admittedly even a low threshold of	
24	proof, a standard. But I am happy to leave that. That	
25	is a concern I would have. In other words, that the	16:06
26	rights and obligations of the Tribunal somebody	
27	if we go back as far as Lord Salmon, he said somebody	
28	isn't to be dragged he didn't say dragged into an	
29	inquiry but he said somehody isn't to be brought	

1	before an inquiry without a good reason to do so. And	
2	I think that has been echoed more or less directly or	
3	indirectly. So I would be a little concerned about	
4	that as much as the specific point. But I am happy to	
5	leave that over.	16:07
6		
7	Mr. Murphy, we're not going to be at that for some	
8	time. If we do reach that one, we can put it back	
9	until such time, it is only fair to you, Mr. Kelly, to	
10	give you a chance to consider it. And if you look at	16:07
11	the thing, look at the evidence and then see what your	
12	position is. And if we said that maybe we would	
13	mention it on Wednesday maybe.	
14	MR. MURPHY: Yes, Chairman. And, Chairman, I should	
15	say that I would respectfully suggest this is an	16:07
16	opportunity for Garda Keogh to consider taking a course	
17	of action that will save time.	
18	CHAIRMAN: Absolutely. But I mean that is a matter	
19	for Mr. Kelly, if I said we will look at it on	
20	Wednesday, is that comfortable to you?	16:08
21	MR. KELLY: Yes, that is fine. I would like an	
22	opportunity to take instructions from two people. One,	
23	my instructing solicitor, which I can do, but then	
24	there's Garda Keogh, but clearly he is giving his	
25	evidence at present. What I would suggest is that we	16:08
26	put it back until I can speak to him.	
27	CHAIRMAN: well, I am sure let me stop you for one	
28	second. I appreciate that. Nobody will have any	
29	difficulty, I will have no difficulty and neither will	

1	anybody else, because I won't allow them	
2	MR. MURPHY: I have no difficulty, Judge.	
3	CHAIRMAN: nobody will have any difficulty if you	
4	speak to Garda Keogh, Mr. Kelly, on this particular	
5	topic. That would not a problem. In fact, I would	16:08
6	welcome the opportunity that I would invite you to	
7	speak and take instructions from your client, because	
8	he may be some considerable time and this may be and	
9	obviously you need to know what he thinks about it.	
10	MR. KELLY: Yes.	16:08
11	CHAIRMAN: You will want to advise him about it and	
12	then you will want to reflect and tell me what the	
13	situation is.	
14	MR. KELLY: Yes.	
15	CHAIRMAN: So, feel completely free to talk to Garda	16:09
16	Keogh Mr. Kelly on this topic.	
17	MR. KELLY: Yes.	
18	CHAIRMAN: Are you happy with that?	
19	MR. KELLY: Well, I would prefer not to speak to him at	
20	all whilst he is giving his evidence but I will at the	16:09
21	request of the Tribunal speak to him.	
22	CHAIRMAN: Thank you very much. That would be greatly	
23	appreciated. And I appreciate your reticence to do so,	
24	Mr. Kelly. Quite understandable. Mr. McGuinness, you	
25	have nothing to add to any of that, do you?	16:09
26	MR. McGUINNESS: Nothing to add, Chairman.	
27	CHAIRMAN: And we can hear then what we have to say or	
28	what my team have to say in light of views that are	
29	expressed. Okay. Thanks very much. So we will that	

1	over and we will discuss it on Wednesday at a
2	convenient time when there's a break, okay. Thanks
3	very much. Very good.
4	
5	THE HEARING THEN ADJOURNED UNTIL TUESDAY, 15TH OCTOBER 16:16
6	2019 AT 10: 30AM
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