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

HELD IN DUBLIN CASTLE
ON TUESDAY, 30TH JUNE 2020 - DAY 151

151

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

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1 THE HEARING RESUMED, AS FOLLOWS, ON TUESDAY, 30TH JUNE
2 2020:

3
4 MS. McGRATH: Good morning, Chairman. The next witness
5 this morning is Assistant Commissioner Michael Finn, 10:29
6 please.

7 CHAIRMAN: Thanks very much. Good morning,
8 commissioner. Thank you.

9
10 ASSISTANT COMMISSIONER MICHAEL FINN, HAVING BEEN 10:29
11 PREVIOUSLY SWORN, WAS DIRECTLY-EXAMINED BY MS. McGRATH,
12 AS FOLLOWS:

13
14 CHAIRMAN: You are already sworn.

15 THE WITNESS: Okay. 10:30

16 CHAIRMAN: So it is just a continuation of your
17 evidence, commissioner: That's right?

18 1 Q. MS. McGRATH: That's right. Chairman, again just for
19 the transcript, the commissioner's statement is at 4105
20 of the book, and on the last occasion the commissioner 10:30
21 gave evidence on Day 142, in relation to primarily
22 issue 18. And, commissioner, I think we are here this
23 morning to continue your evidence and primarily again
24 in relation to issue 20, isn't that right?

25 A. That's it, yes. 10:30

26 2 Q. Now, I think, just in ease of Mr. Kavanagh, I told him
27 that from time to time we will be from time to time
28 referring back to your transcript on Day 142 and I
29 think you may be aware also from the Tribunal

1 transcripts that there were other witnesses who gave
2 evidence on this issue after you had been here on Day
3 142, and again we may refer to those transcripts, from
4 time to time, Commissioner.

5 A. That's fine, Chair. 10:31

6 3 Q. Now, I think again it's been some time since we were
7 looking at this issue, commissioner. I think you will
8 be aware from the papers and from the transcripts that
9 primarily Garda Keogh's complaint in relation to your
10 investigation was that, or one of the primary 10:31
11 complaints was that the promotion of Superintendent
12 Murray should not go ahead until your investigation was
13 completed essentially. I think he said that on Day 104
14 of his evidence. So would you be familiar with that?

15 A. Just repeat that bit there. 10:31

16 4 Q. That the promotion of Superintendent Murray should not
17 proceed until your investigation was effectively
18 finalised?

19 A. If I could just clarify, who is --

20 5 Q. Garda Keogh, this is one of his primary complaints. 10:32
21 You may have seen this in the papers.

22 CHAIRMAN: Ms. McGrath is simply setting the scene, so
23 to speak. And by way of background, she is saying,
24 which is the case that, that one of Garda Keogh's
25 complaints is that the promotion of Superintendent 10:32
26 Murray --

27 THE WITNESS: I understand.

28 CHAIRMAN: -- should not have gone ahead until your
29 investigation was complete.

1 THE WITNESS: Yes, I understand.

2 CHAIRMAN: That's correct, isn't that right.

3 6 Q. MS. McGRATH: Yes. Just to set the scene.

4 A. I understand.

5 7 Q. I can open the transcript reference if you like, 10:32

6 assistant commissioner.

7 A. No, no.

8 CHAIRMAN: I don't think you need to, Ms. McGrath.

9 MS. McGRATH: Okay.

10 THE WITNESS: I understand. 10:32

11 CHAIRMAN: we're all clear now. I hope you can

12 understand what I am saying.

13 THE WITNESS: Oh, I do.

14 CHAIRMAN: with my bank robber's mask.

15 8 Q. MS. McGRATH: Absolutely. I think, commissioner, just 10:32

16 again that's one of his primary complaints, but if we

17 drill it down just a little bit more in relation to

18 yourself and your own role, I think it might be helpful

19 if we look at one or two pages in the brief to

20 orientate ourselves effectively as to where Garda Keogh 10:33

21 was coming from vis-à-vis your own investigation?

22 A. Yes.

23 9 Q. I would ask Mr. Kavanagh if he could open page 95. And

24 this is in the first back. And, commissioner, again,

25 are you happy to look at the screen this morning or 10:33

26 would you like the hard copies of material?

27 A. I will ask as we go along.

28 10 Q. Okay.

29 A. Yeah.

1 11 Q. So at page 95, as stated, you will see there it is the
2 statement of Garda Keogh and it was when he was meeting
3 with the Tribunal investigators. So if you want to
4 open it up there for yourself. And again, I am just
5 going to orientate you as to Garda Keogh's specific 10:33
6 complaint in respect of yourself, okay?

7 A. Yes.

8 12 Q. Now, even just looking at the first paragraph there, he
9 says, in the second line:

10
11 "As stated in my addendum statement, it appears to me 10:33
12 that the processing and investigation of my complaint
13 was delayed purposely."

14
15 Now, he says "the processing and investigation of my 10:34
16 complaint was delayed if purposely whilst the promotion
17 of Superintendent Pat Murray to chief superintendent
18 was proceeded with. That is how it is perceived by
19 me."

20
21 okay? 10:34

22 A. Yeah.

23 13 Q. He goes on, if we can just down there to page 106, if
24 you can just keep going down please, Mr. Kavanagh. Now
25 if you see there, he starts at the top of that page, he 10:34
26 says:

27
28 "Assistant Commissioner Finn discredited me in saying
29 that he does not know against whom I was making the

1 complaint when to me it was crystal clear whom I was
2 complaining about and I believe this delayed the
3 investigation of my complaint."
4

5 Now just to stop there. We spent some time on the last 10:34
6 day in your evidence about that meeting in the hotel in
7 Mullingar, isn't that right?

8 A. Yes.

9 14 Q. On the 1st December 2017?

10 A. Yes, chair, I remember that. 10:35

11 15 Q. Can I ask you to keep looking there at the screen. His
12 next line, he says:

13
14 "It is my belief that the motive behind the delay by
15 Assistant Commissioner Finn was to allow the process 10:35
16 for the promotion of Superintendent Pat Murray to be
17 progressed and for him to be appointed as chief
18 superintendent to go by without issue."

19
20 That essentially sums it up in respect of your 10:35
21 investigation and this issue 20, okay.

22 A. Yes.

23 16 Q. Now, he did repeat a similar stance in his transcript
24 evidence on Day 104 but it is very similar, so I don't
25 think we need to look at it. Now, I am going to come 10:35
26 back to that from time to time, but can I just say, and
27 again for the record just to get into your own and
28 refreshed memories, he is talking about delay there,
29 you were appointed on the 15th November 2017, isn't

1 that right?

2 A. That's correct, Chairman.

3 17 Q. I think your report on the investigation was completed
4 by you on the 20th December 2018, isn't that right?

5 A. That's correct. 10:36

6 18 Q. So we are looking at a period of around 13 months,
7 isn't that correct?

8 A. Yes, Chairman.

9 19 Q. Now, what I would like to do just at the beginning is
10 just to go back just a little bit. So you came into 10:36
11 the picture formally, as we say, November 2017?

12 A. That's correct.

13 20 Q. Just can I ask you to go back though to the previous
14 year. You may have seen this from the papers, but we
15 know from the papers that Superintendent Murray applied 10:36
16 for promotion in early 2016 and we know that in May
17 that year he was successful in his promotion
18 competition. So his promotion trajectory started
19 around that time, okay?

20 A. Yes. 10:36

21 21 Q. Now, we have a diary entry for Superintendent Murray
22 and it's dated 27th July 2016. Now I would ask,
23 Mr. Kavanagh, it is on 16211. I just want to ask you
24 about this. So it's 16211. And these are diary
25 entries for Superintendent Murray, okay? And he has 10:37
26 there:

27

28 "27th July 2016: Attended a PAF meeting Mullingar 9:00
29 to 3:00pm. Spoke to Assistant Commissioner Finn re

1 promoti on. "

2

3 You were superintendent at the time?

4 A. That's right.

5 22 Q. Do you remember this meeting, talking to him, 10:37
6 discussing the issue of promotion?

7 A. I couldn't specifically, but I did a lot of briefings
8 around that time around the country in terms of new
9 stuff we were bringing in about the performance
10 accountability framework, is what PAF stands for, and I 10:37
11 would have met all the supers and chiefs around the
12 country. So I wouldn't be -- I mean, wouldn't have any
13 issue with saying he met me at that briefing.

14 23 Q. Do you remember it? He gave his evidence on Day 146
15 and he simply said it was a general conversation. He 10:38
16 was on a promotion list?

17 A. Yes.

18 24 Q. You were on a promotion list?

19 A. Yes.

20 25 Q. And you both spoke about -- 10:38

21 A. I wouldn't dispute that, Chairman. I wouldn't have an
22 issue with that now.

23 26 Q. So as early as July 2016 you knew the man and you knew
24 he was on a promotion list. Is that a fair summary?

25 A. At the time there was an issue about whether some 10:38
26 promotion lists were going to be finished off. I was
27 on one for assistant commissioner, he was on one for
28 chief superintendent, so it would have been common
29 knowledge I suppose within the organisation.

1 27 Q. Okay. When you gave your evidence the last day, I had
2 asked you vis-à-vis the three people identified by
3 Garda Keogh in December at your hotel meeting, namely,
4 Chief Superintendent Wheatley, Superintendent Murray
5 and Chief Superintendent Curran, you said that you 10:38
6 would have known Chief Superintendent Curran but you
7 wouldn't have known the others?
8 A. Not really, no. I mean I would know who they all are.
9 But you wouldn't know them we'll say in a --
10 28 Q. This meeting or chat in July is not necessarily an 10:39
11 indication of you knowing him, personally or --
12 A. Yeah.
13 29 Q. -- in any forum like that?
14 A. I met, he was there, commonality. You know there was a
15 topic of conversation I suppose. Any news on the list? 10:39
16 Anything happening? What's going to happen? It was
17 probably a big issue for all of us at the time. The
18 lists were there and we didn't know whether we were
19 going to be moved on or not. There was an embargo on
20 promotion, so to speak. 10:39
21 30 Q. Assistant commissioner, I wonder if you could speak in
22 a little closer to the microphone, thank you. Moving
23 on in 2016, you then are promoted on 22nd November
24 2016, isn't that right?
25 A. That's correct. 10:39
26 31 Q. And I think you told me the last day that you went to
27 headquarters initially, isn't that right?
28 A. Yeah, yeah. That's correct.
29 32 Q. Okay. Now, can I ask you this: When Superintendent

1 Murray was giving his evidence and also you will have
2 seen it in his statement in the brief, he talked about
3 media attention that Garda Keogh was getting in the
4 Dáil and in newspapers and the issue of promotion in
5 late 2016, would you have been familiar with any of 10:40
6 this. would you have heard any of this or known it was
7 even rumbling or starting to rumble at that stage?

8 A. I suppose I'd have known about it maybe in the media,
9 it might have been in our press cuttings. We get the
10 press cuttings every day at work, Chair, so you'd see 10:40
11 stuff when you're flicking down through the press
12 cuttings.

13 33 Q. Did you have some awareness that this was a bubbling
14 issue at this time in 2016?

15 A. I was, Chairman, but I suppose it wasn't of particular 10:40
16 interest to me. I wasn't in that region so, you know,
17 it wasn't an issue for me, so to speak, you know.

18 34 Q. Okay. Moving into 2017, again Superintendent Murray
19 gave his evidence in relation to this, that in early
20 2017 you had Deputy Mick Wallace mentioning Nick Keogh 10:40
21 and the issue of promotions in the Dáil and on the
22 radio waves in early 2017, again did you have a
23 peripheral awareness of that?

24 A. I would have had, yeah.

25 35 Q. What about the people involved, would you have known? 10:41
26 A. I suppose I'd have come across some of those people,
27 we'd be down at some Oireachtas subcommittees, they'd
28 be questioning us about various things so I'd have
29 known some of the members involved.

1 36 Q. Okay. I am only mentioning this by way of refreshing
2 everyone's memory really, that it was around this time,
3 because this document subsequently becomes an issue of
4 discussion or we will get to this, it was in February
5 2017 that Superintendent Murray prepared a very large 10:41
6 document for Chief Superintendent Healy in connection
7 with the civil proceedings. Now, I call it in my own
8 not the 338 document, there are 338 pages.

9 A. Yes.

10 37 Q. So it's around this time he submits this document. I 10:41
11 am just mentioning it in sort of chronological way,
12 because this comes to your attention later on in the
13 year, isn't that right?

14 A. Yes.

15 38 Q. But not around this time, of course? 10:42

16 A. No.

17 39 Q. You wouldn't have had any knowledge of it, is that
18 right?

19 A. That's correct, Chairman.

20 40 Q. Now, we do know also from the papers and I think you 10:42
21 have confirmed it in your statement, that also in early
22 2017, in February, you use the words on Day 142 that
23 Garda Keogh crossed your boughs around this time, I
24 think this is when you were filling in for the eastern
25 assistant commissioner, the Eastern Region; isn't that 10:42
26 right?

27 A. That's correct, Chair, I remember that.

28 41 Q. It's at page 5057. We wouldn't have looked at it in
29 any detail the last time. It's at 5057. Now I think

1 you said that you drafted this yourself, on Day 142 you
2 told the Chairman, and this is quite specific to Garda
3 Keogh and it's relating to an incident concerning
4 something that he said he has told Garda Greene in
5 relation to being stopped at a checkpoint, isn't that 10:43
6 right?

7 A. That's correct, Chair, yeah.

8 42 Q. I suppose I really mentioning this by way of
9 background. So Garda Keogh had come on your radar,
10 let's just say, this early in your position as 10:43
11 assistant commissioner, is that right?

12 A. Correct, yeah. I remember that, yeah.

13 43 Q. So, I suppose at this stage, just to clarify, you know
14 who Superintendent Murray is, you know he is going for
15 promotion, you know who Garda Keogh is. So you know, I 10:43
16 suppose, the main protagonists in the issue of issue 20
17 at this stage; is that right?

18 A. Not as well as if they were in my region, but they're
19 in my periphery I suppose, to be fair.

20 44 Q. Okay. Moving on to March of 2017, we also know from 10:43
21 the papers that it was in March 2017, the 27th March,
22 that Garda Keogh provided his bullying and harassment
23 statement to Chief Superintendent Scanlan, isn't that
24 right?

25 A. That's correct, yeah. 10:44

26 45 Q. This is March 2017 and I think it is your evidence that
27 you would have had no knowledge of that at the time, is
28 that right?

29 A. That's correct.

1 46 Q. And again it's March 2017 when Superintendent Murray
2 has to reapply for a promotion, just the way the
3 process was, and he is actually successful at this
4 stage and he is number 7 on a promotions list by the
5 middle of 2017. Again, would you have knowledge of 10:44
6 that at the time?

7 A. I would have peripheral knowledge of the fact that
8 people who didn't get promoted had to go back again and
9 people in my own protection would have been applying
10 for promotion, so I would have a knowledge of it, yes. 10:44

11 47 Q. Now we get really to your own involvement, where it
12 effectively lands on your desk. This is in September
13 2017. If I can ask Mr. Kavanagh to open up the
14 clearance forms that you sign for Superintendent
15 Murray, they're at page 2021. Sorry, it's at 4020. 10:45
16 Now, if we go on to the next page. Can you see there
17 the Policing Authority clearance form?

18 A. Yeah.

19 48 Q. So effectively now, you're still in headquarters at
20 this stage; isn't that right? 10:45

21 A. That's correct, Chairman.

22 49 Q. I think you said you were the assistant commissioner
23 for policing, you told me on the last day at this
24 stage, is that right?

25 A. Roads policing. 10:45

26 50 Q. Roads and policing?

27 A. Roads policing.

28 51 Q. Roads policing, okay. On Day 142, in your transcript
29 at page 219, you told me how this came effectively

1 across your desk. Now we will just leave it for the
2 moment, if you just stay on the clearance form there,
3 Mr. Kavanagh, please. You explained how it had come
4 across your desk that day?

5 A. Yeah.

10:46

6 52 Q. You effectively said it was one of a few you signed
7 that day, is that right?

8 A. Correct.

9 53 Q. Now, you will see there when we look at the form in
10 some detail, it outlines regulation 12 of the 2016
11 regulations. It says these are dealing with the
12 Policing Authority and:

10:46

13

14 "...it shall not appoint a candidate selected for an
15 appointment to specified rank (amongst other things)
16 unless the candidate undertakes any clearance process
17 that may be required by the Authority and unless the
18 Authority is satisfied as to the outcome of any such
19 clearance process. The regulations provide that
20 clearance process includes any process including
21 vetting to establish the health and character of the
22 candidate."

10:46

10:46

23

24 Okay. Now, can I ask you before we get into the
25 different paragraphs, what was your knowledge or
26 familiarity with the regulations and the process for
27 signing these forms at the time?

10:47

28 A. I suppose, well, I wouldn't -- it's the first time I
29 ever signed a form, Chair, to be honest with you. And

1 I think we were in a new process at this stage, because
2 in the past, all this would have been done internally,
3 whereas we were now in a phase where the Policing
4 Authority were taking over the whole promotions and
5 they were setting the tone and setting the process, I'd 10:47
6 say process more than the tone, they were setting the
7 process for it and they had insisted on the forms. The
8 candidates would have to have a certificate from the
9 commissioner to say there were no issues for them, they
10 weren't subject to any discipline or criminal 10:47
11 investigations. It was sort of an internal clearance.
12 That was my understanding of it, Chair, now.

13 54 Q. If you just go down the form there, Mr. Kavanagh. You
14 have you to sign a declaration of suitability at
15 section 1, do you see that? 10:47

16 A. Yeah.

17 55 Q. A, B and C. If you stay on 4021. You see A, B and C
18 there?

19 A. Yes.

20 56 Q. "Sign a declaration of suitability at section 1, 10:48
21 provide the information sought at sections 2 to 4 and
22 complete the confirmation at section 5 of this form."
23

24 okay?

25 A. Yes. 10:48

26 57 Q. If we go onto the next page. The declaration of
27 suitability there. Now the Chairman has seen these in
28 some detail previously?

29 A. That's fine.

1 58 Q. With other witnesses. You were declaring that:

2

3 "There are no grounds known to An Garda Síochána
4 relating to health, character or otherwise why this
5 candidate is not suitable to be appointed to the 10:48
6 position of chief superintendent at this time. I
7 declare that the candidate is suitable to be appointed
8 to the post of chief superintendent having regard to
9 the candidate's sick record and any relevant sick leave
10 regulations and policies." 10:48

11

12 Is that right? We see your signature and name there,
13 isn't that right?

14 A. That's correct Chair.

15 59 Q. We will come back to the language there in some of 10:48
16 this, because Garda Keogh has taken positions in
17 relation to the language in this form. Section 2,
18 "previous disciplinary actions" you see there?

19 A. Yes.

20 60 Q. To outline previous disciplinary actions. Again. Look 10:48
21 at bullet points:

22

23 "Nature of the breach of discipline, nature of the
24 sanction, date of the sanction and any other matters
25 you wish to bring to the Authority's attention." 10:49

26

27 It tells you what you don't need to include, isn't that
28 right?

29 A. Correct, yes.

1 61 Q. You sign there, you say:

2

3

"In accordance with the provisions of 1.28 of HQ
4 Directive 159/08, the candidate has no previous
5 discipline actions arising from any discipline or
6 complaints investigations within the last three years."

10:49

7

8

Can I ask you, when these landed on your desk and as
9 you say you signed a number that day and it was the
10 first time you had done it, what checking process or
11 analysis of the files do you do before you sign them
12 and to be able to write in there the confirmations?

10:49

10

11

12

13

A. You'd be relying on your staff in the section to have
14 done the preparatory work for you. I mean, it isn't as
15 if the commissioner is going to go down and check all
16 those things. You have staff in your office, they
17 would prepare the documents, they'd have done the due
18 diligence and they'd bring it to you and say, look,
19 yeah, we've checked here, there's nothing in our
20 records there for Pat Murray or who the other people
21 were, to say there would be any impediment to them
22 being promoted to the rank of chief superintendent.

10:49

15

16

17

18

19

20

21

22

23

62 Q. Okay. So is there a report done up for you? It's
24 just, we wouldn't have seen any staff member preparing
25 a formal report?

10:50

26

27

28

29

A. I mean, all the files would be up in governance
accountability, where, we'll say, staff who came to ask
me to sign the declaration form, they'd have done all
the preparatory work for that, yeah.

1 63 Q. Are you told orally that there are no issue?
2 A. Oh no, I'd say there was -- I'd imagine, I can't
3 remember specifically, I would imagine there was a file
4 with each one, to say there's the file, there's nothing
5 on their records to say that they shouldn't be promoted 10:50
6 to the rank of chief superintendent, yeah.

7 64 Q. Okay. When you say there's files, would there be a
8 discipline file which effectively is empty?
9 A. Yeah.

10 65 Q. It would seem or... 10:50
11 A. That would be it, yeah. I mean, they would have their
12 own records, IT records with hard copies of stuff up in
13 Governance and Accountability to say oh, yeah, Mick
14 Finn he got a Regulation 10 for something, whatever, a
15 few years back or he was disciplined for something. If 10:50
16 there was such a thing they'd all be in my file in HQ.

17 66 Q. Okay. Is a similar process followed for the next -- if
18 we keep going down there Mr. Kavanagh, "previous
19 convictions" a similar process, it's checked for you?
20 A. Correct. 10:51

21 67 Q. And you are told here it's not applicable?
22 A. Yeah.

23 68 Q. If you keep going down, "outstanding criminal or
24 disciplinary investigations"?
25 A. Yeah. 10:51

26 69 Q. "The records at this office indicate there are
27 presently no outstanding discipline or complaints
28 investigations in respect of this candidate."
29

1 Now, it says complaints investigations, isn't that
2 right, I mean it's broad language, is that correct?

3 A. Yeah.

4 70 Q. And you're being told that there's nothing at all
5 outstanding in respect of this officer, is that right? 10:51

6 A. If there was something, like, they'd know. I mean
7 everything would go through their section, if there was
8 a discipline proceedings, they'd know about it, because
9 they'd be the ones who would be managing it and making
10 sure it was done properly, etcetera. Keeping oversight 10:51
11 of it.

12 71 Q. Okay. And I mean, we're going to get into this in a
13 little bit more detail in a moment but it says
14 complaints/investigations, but of course you're signing
15 this on 11th September 2017 and he has made a statement 10:52
16 under the policy, bullying and harassment policy, in
17 March 2017. So he has made a complaint a number of
18 months beforehand?

19 A. Yes.

20 72 Q. Is this just not showing up on the system or due 10:52
21 diligence or how is it being missed?

22 A. Well, I don't think it ever got to their section, the
23 fact that he had made a complaint. I'm saying that
24 now, Chair, because I have knowledge, I suppose, and we
25 all have absorbed a certain amount from reading 10:52
26 everything, but I can tell you now that I know that it
27 never got to that section because I think it went from
28 Chief Scanlan over to assistant commissioner Eastern
29 Region and there was issues about what was going to

1 happen, how it was going to be investigated. So they
2 didn't have it obviously.

3 73 Q. So is it a case it just wasn't picked up?
4 A. Well it wasn't being dealt with as a discipline matter,
5 is my understanding. 10:52

6 74 Q. Okay. But just the language there in the box is
7 "complaints investigations" it says "discipline or
8 complaints investigations" it keeps quite broad. I
9 don't know if you would agree with me?

10 A. That wouldn't be my interpretation of it now, to be 10:53
11 honest with you.

12 75 Q. Okay. Well, we will keep going then. If you go down
13 to the next --

14 A. On the heading is:
15 10:53

16 "Section 4: Outstanding criminal or disciplinary
17 investigations."
18

19 So if there was something of that nature bubbling
20 along -- 10:53

21 76 Q. And that's how you understood that?
22 A. Yeah.

23 77 Q. We will come back to that in a moment. If we keep
24 going down, please, Mr. Kavanagh. And then you fill
25 out the confirmation. You say: 10:53
26

27 "I confirm that the information provided in section 1
28 to 4 is complete and that I will notify the Policing
29 Authority without delay of any change or update of that

1 information until the panel of candidates arising from
2 this selection competition expires and if requested."

3
4 And you sign it off and date it, isn't that right?

5 A. Correct, yeah.

10:53

6 78 Q. Now --

7 A. I would, Chair, that it's normally -- I think my
8 understanding of the procedures is that they don't look
9 for that until they are pretty close to launching,
10 shall we say, that you are getting near to your being
11 appointed, you know. They don't look for that first
12 day, we'll say, when you get on the list.

10:54

13 79 Q. Now, I am going to come back to the content of it in a
14 moment, but just over all, when former Assistant
15 Commissioner Ó Cualáin gave his evidence to us, he said
16 that it was effectively an error, that you shouldn't
17 have signed those that day?

10:54

18 A. That's correct.

19 80 Q. He used the phrase, he said:

20
21 "The section, they saw it as urgent and they got
22 Assistant Commissioner Finn to sign it."

10:54

23
24 Now, just for my Friends, that's on Day 149, page 75.

25
26 "They saw it as urgent and they got Assistant
27 Commissioner Finn to sign it."

10:54

28
29 Do you remember that? Was there a degree of urgency

1 attaching to all of this?

2 A. Well, I suppose it wouldn't be uncommon. If you go
3 back up a few pages to the start of it, to the letter
4 to the Policing Authority, if I can refer to that.

5 81 Q. Okay. If you scroll back up. This is the cover 10:55
6 letter?

7 A. Yeah.

8 82 Q. Enclosing it to the -- yeah?

9 A. Yeah.

10 83 Q. There we go? 10:55

11 A. Yeah. As you will see, Chair, I was filling in
12 actually for Assistant Commissioner Corcoran on the
13 day. I probably would have been asking him to do it
14 because he would have been over that section. But I
15 think I gave my evidence on a previous occasion, both 10:55
16 of us were sharing -- we were both, I suppose, based in
17 the bureau section of HQ, you know, so our offices were
18 next door to each other, so if he was off, you know, I
19 would often have other correspondence, you know, on his
20 behalf signed something. So, as you see here, I was 10:55
21 signing for him effectively I think. So that would
22 sense to me reading it now that there was a sense of
23 urgency, that they couldn't wait for him to come back
24 so they asked me to do it.

25 84 Q. Okay. He says then that you shouldn't have been 10:55
26 signing them and in fact he signed fresh forms a couple
27 of days later?

28 A. Yeah.

29 85 Q. Is that right?

1 A. Correct, yeah. As I say, Chair, this process was
2 pretty new to us in terms of the Policing Authority
3 taking over and, you know, I think we now know that
4 they actually want the Commissioner to sign it, not one
5 of the commissioners, as such, you know. 10:56

6 86 Q. When Assistant Commissioner Ó Cualáin made his
7 statement to the Tribunal, he said, and this is at page
8 3967, now we don't need to open it for the moment but
9 he said:
10
11 "Having considered the report submitted by Assistant
12 Commissioner Michael Finn, which showed that there was
13 nothing unfavourable on Superintendent Pat Murray's
14 record, I signed the clearance forms for the three
15 candidates." 10:56
16
17 So he effectively was guided by what you just did
18 there, is that right?

19 A. I would imagine so, yeah.

20 87 Q. Okay. So let's just talk about then that for a moment. 10:56
21 I am sure you're aware from Garda Keogh's evidence that
22 he attacks the bona fides of these forms, isn't that
23 right?

24 A. Yeah.

25 88 Q. I think he uses quite a strong language and I think, 10:56
26 just to refer you to it specifically because I think it
27 is important, on Day 111, at page 108, he says they
28 kept the Policing Authority in the dark. Now, he is
29 talking about his civil litigation, he is talking about

1 his bullying and harassment complaint, doesn't appear
2 in this form, it's not disclosed and he says that you
3 kept the Policing Authority in the dark. What do you
4 have to say to that?

5 A. I don't think there'd be any deliberate conscious 10:57
6 effort to keep the Policing Authority in the dark. I
7 think, you know, we have a good, open relationship with
8 the Policing Authority. Say if there was something
9 that merited the Policing Authority's attention, I
10 imagine we would have told them. In fairness to the 10:57
11 Policing Authority, they have pretty good antenna
12 themselves, they pick up things more often, you know,
13 than we do. They're coming to us asking us about stuff
14 that they've picked up, so.

15 89 Q. Just to be very specific on this? 10:57

16 A. Yes.

17 90 Q. Did you know when you signed that on the 11th September
18 2017, did you know that there was civil litigation
19 where he was personally named as a defendant?

20 A. No. I wouldn't have been aware of that. 10:58

21 91 Q. Okay.

22 A. Yes.

23 92 Q. And did you know that there was a bullying and
24 harassment statement made in March to Chief
25 Superintendent Scanlan? 10:58

26 A. No.

27 93 Q. Okay?

28 A. No.

29 94 Q. So you didn't know?

1 A. No.

2 95 Q. Can I ask you, do you consider that as being
3 satisfactory? Should you have known? Should it have
4 been checked?

5 A. Oh, I don't know. I mean, I suppose it was an 10:58
6 allegation at the time. Some people start off
7 something, they don't necessarily keep going with it.
8 So, I mean, somebody could have started it and it fell
9 by the wayside for want of a myriad of reasons. I
10 mean, I could start off something against the 10:58
11 commissioner and decide I'm not going to do that or
12 whatever, or somebody could do that against me, vice
13 versa as well. It wouldn't be uncommon for something
14 like that to happen, we'll say, that somebody starts
15 off doing something. So, you know, it wouldn't 10:59
16 necessarily get on the radar then when it doesn't turn
17 out to be an issue afterwards. I am saying it in a
18 roundabout way, Chair. I'm not sure if I am making my
19 point here.

20 CHAIRMAN: I understand. 10:59

21 96 Q. MS. McGRATH: Absolutely, assistant commissioner. I
22 want to be fair to you and say that when Assistant
23 Commissioner Ó Cualáin was giving his evidence on this
24 point, he was unequivocal that if he had known it would
25 have been put on the form, do you agree with him? 10:59

26 A. If what had been on now exactly?

27 97 Q. If he had known about the bullying and harassment
28 complaint.

29 A. I probably would have. I suppose in today's world we

1 would be more -- I suppose these things are a lot more
2 contentious now I suppose -- I wouldn't say
3 contentious, but, you know, we are certainly more
4 attuned that we should include everything, maybe from
5 the experience of this, but certainly in today's
6 currency you would alert, I'd say. If it was happening
7 today we probably would.

10:59

8 98 Q. But can we go back to, whatever about today, can we go
9 back to September 2017. It is Commissioner Ó Cualáin's
10 evident, and I think we might look at this transcript,
11 at Day 149, page 78?

11:00

12 A. Yeah. I'd have to say my answer would be that you
13 would have to put in context, we'll say, whatever that
14 was. I mean, if it was a squabble --

15 CHAIRMAN: Ms. McGrath says look at 149. Let's look at
16 that to see what Commissioner Ó Cualáin said.

11:00

17 THE WITNESS: Very good.

18 CHAIRMAN: And then she will have a question and then
19 we will deal with that.

20 THE WITNESS: Very good, Chair.

11:00

21 99 Q. MS. McGRATH: Now, if you go down there to line 12
22 please. This is his answer he says:

23
24 "But I was aware when signing these forms that there
25 was a requirement on me, if I knew about it, to report
26 on a bullying and harassment complaint if such was the
27 case."

11:00

28
29 And then I think it's Mr. McGuinness says right and he

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says:

"A. I was well aware when I signed those forms that that was a requirement."

11:01

And if you keep going on down to page 80, stop there:

"And then it is signed by you."

Now this is his own ones:

11:01

"On the 19th September. So to be clear about this, had you known of a bullying and harassment allegation, you would have included it on this form?"

11:01

And he answers:

"Yes."

Now, is that your position? Are you at one on this? Or, are you of the view that it wasn't required by the form?

11:01

A. I am of the view that it wasn't required of the form, we'll say, that would have been my position back then. That when I signed that form I was of the view that it wasn't required. Even though I didn't know it was there now. But that would have been my answer if you asked me back then, like you know.

11:01

100 Q. Okay. So when Garda Keogh gave his evidence and said

1 that you were obliged to inform the Policing Authority
2 of such a complaint at that time, in September 2017,
3 you dispute that, is that right?

4 A. well, I would say -- I don't think we had that clarity,
5 as that they wanted to know the granular of everything 11:02
6 that would have been there. I don't think a bullying
7 and harassment complaint at the time might have been
8 something that I would have felt at the time we should
9 have told the Policing Authority. I was going to say
10 Chair, if I may. 11:02

11 CHAIRMAN: Yes.

12 A. A bullying and harassment complaint could be something
13 very minor. Like, you know, some two staff members
14 maybe having a dispute about whether a window should be
15 open or not. I mean, whether you would tell the 11:02
16 Policing Authority everything about every sort of
17 thing, you know, as opposed, we'll say, maybe over here
18 with Garda Keogh you're on a different scale in terms
19 of bullying and harassment. But, you know, if you are
20 asking me that, would we be obliged to tell them about 11:02
21 every bullying and harassment, did that make sense to
22 me? Genuinely, when I signed the form then, Chair, I
23 wouldn't have been of that view at the time.

24 101 Q. MS. McGRATH: So you differ from Commissioner
25 Ó Cualáin. He says if he had known he would have 11:03
26 written it down?

27 A. Yeah.

28 102 Q. But you are saying if you would have known you wouldn't
29 have considered yourself obliged to write it down?

1 A. Genuinely, when I signed the form I wouldn't have felt
2 that we had to tell the Policing Authority about -- I
3 mean, I would look down through the form, it says about
4 criminal, discipline stuff, would I have put in a
5 bullying and harassment? Genuinely, I don't think I 11:03
6 would have. Now it didn't happen, because I wasn't
7 aware of it. But if you are asking me to answer the
8 question, honestly I don't think I would have felt --
9 it wouldn't have flagged with me that I should have
10 told them there was a bullying and harassment 11:03
11 complaint.

12 103 Q. Okay, so that is your evidence on that point?

13 A. Yeah.

14 104 Q. So, as we know, you signed those forms and as we know,
15 I put it to you earlier there, that Commissioner 11:03
16 Ó Cualáin relies on what he calls your report, that
17 there was nothing unfavourable, so he signs the forms
18 and that is where the process gets to at that
19 particular point.

20 A. Yes. 11:03

21 105 Q. Now, after the clearance process, well, when I say the
22 clearance process, I'm talking about that September and
23 the signing of the forms, we know from Superintendent
24 Murray's evidence that he has quite an issue about what
25 he called the noise that was going on then around that 11:04
26 time. When I say noise, he is talking about the issue
27 of his promotion on radio, in the Justice Committee and
28 in newspapers, okay? And this is all happening, he
29 outlines the various newspaper reports and radio

1 interviews in September and October. Are you aware of
2 any of this noise? Is this passing you by?

3 A. I think I probably heard it. I was listening to the
4 News at One one Sunday when I heard mention of it. I
5 think that was -- that's one example of something where 11:04
6 I could have recalled it, you know. As I said, Chair,
7 we get the press cuttings every day, you might flick
8 down, it wasn't of great concern to me because I
9 suppose I wasn't responsible for that region or it
10 wouldn't have been a significant issue for me 11:04
11 personally.

12 106 Q. During that October, this has been gone through
13 previously with other witnesses, there was a lot of
14 correspondence in October, you had Superintendent
15 Murray writing to the Policing Authority, you had John 11:05
16 Gerard Cullen solicitors writing to the Policing
17 Authority and effectively on the 12th October you had
18 the Policing Authority asking for clarification as to
19 whether there is any bullying and harassment complaint.
20 You will have seen that from the papers; is that right? 11:05

21 A. Yes, I am familiar, yes.

22 107 Q. You will also have seen from the papers that by the
23 time we get to the end of October 2017, Superintendent
24 Murray was told that he would not be promoted at that
25 time. Again, are you familiar with that? 11:05

26 A. Yeah, from the papers.

27 108 Q. Okay. So then what happens is, October, we move into
28 November and this is where you're appointed on the 15th
29 November, isn't that right?

1 A. Yeah.

2 109 Q. Now, we open the letter of your appointment on the last
3 day, page 4127, and again, no need to go through it, we
4 have been through it on the last day, but I think it
5 was your evidence that this is all you got on the day, 11:06
6 is that right?

7 A. That's correct, Chair, yeah.

8 110 Q. You were given effectively no prior knowledge of any
9 issues or any of these issues that were brewing, as we
10 might say, during the previous couple of months, is 11:06
11 that right?

12 A. That's right, that's correct yeah.

13 111 Q. Okay. Now, you're appointed on that date and one of
14 the things Garda Keogh says and again just trying to
15 breakdown his issues in this regard, he took the view 11:06
16 on Day 104 that you're appointed, you see the name
17 Garda Nicholas Keogh, and you have signed the -- you
18 have seen the correspondence which has been sent out by
19 Assistant Commissioner Fanning to the various people,
20 including Superintendent Murray. Garda Keogh took the 11:06
21 view that, well, you should have thought, well, I
22 signed the clearance forms here, I've had some
23 involvement here, should you have flagged this to
24 anyone? This is a point that he makes. Should this
25 have been a red flag to you, that I have previously 11:07
26 signed clearance forms, I have had some type of
27 involvement? Did it cross your mind on the day or
28 anything to that effect?

29 A. It certainly didn't cross my mind, Chair, because I

1 don't think I can even remember the fact that I even
2 signed clearance forms for three people in the weeks,
3 months ahead.

4 112 Q. We know you're appointed on the 15th and on the 19th
5 November there is a Radio 1 programme about your 11:07
6 appoint; is that right?

7 A. I remember that. I heard that, that

8 113 Q. Do you remember that?

9 A. I was quite surprised.

10 114 Q. I think it mentioned you directly, isn't that right? 11:07
11 A. Yes.

12 115 Q. It mentioned you by name?

13 A. Yeah.

14 116 Q. Again, Garda Keogh took the view, why aren't you
15 contacting the Policing Authority to tell them that I 11:07
16 have signed the forms, I didn't include bullying and
17 harassment, but now this is a live issue. He seems to
18 think there was some kind of an obligation on you to go
19 back at this stage, do you accept or reject that?

20 A. I reject it, I suppose, Chair, in the context I met him 11:08
21 on the 1st December, he never said it, he never
22 mentioned this to me.

23 117 Q. If we do move to the 1st September, we spent a lot of
24 time on the meeting on the 1st December the last time,
25 but he did hand you an addendum, isn't that right, that 11:08
26 date?

27 A. He did.

28 118 Q. This was an addendum to his bullying and harassment
29 complaint. We might look at that addendum at page 322.

1 If you look at that addendum, page 322, if you keep
2 going down there?

3 A. Can I have the hard copy?

4 119 Q. Sure. 322 would be in volume -- do you want the hard
5 copy, commissioner. 11:08

6 A. Please.

7 120 Q. Mr. Barnes. It's in volume 1. Now, this is the
8 addendum which he is outlining his issues regarding
9 that he has made a complaint, he feels it's gone
10 missing, he doesn't know where it has been etcetera. I 11:09
11 am paraphrasing very much so there, but that is an
12 addendum that's handed to you on the 1st December,
13 isn't that right?

14 A. I don't -- page 322?

15 121 Q. Do I have the right page? 322. Yes, on the 2nd March 11:09
16 2017.

17 A. volume 2.

18 122 Q. Sorry.

19 A. I have it here, Chair.

20 123 Q. You see he hands you this addendum and in the second 11:10
21 paragraph he says:

22

23 "On 2nd March 2017, I met Chief Superintendent John
24 Scanlon at Portlaoise for the purposes of making a
25 statement. It became evident that I should make a 11:10
26 written statement. I gave such written statement to
27 Chief Superintendent Scanlon on the 27th March 2017. I
28 heard nothing further about the processing of my
29 complaint at such time. I didn't realise that the

1 complaint had gone missing until I found out that
2 Superintendent Patrick Murray, who had come to Athlone
3 from Donal Ó Cualáin's Western Region, was on a
4 promotion list."

11:10

6 So, he is mentioning promotion and he is mentioning him
7 being on the promotion list. Did you read this? Did
8 you see it? Did it stand out to you?

9 A. Yeah, I knew. But he didn't say anything -- I mean, if
10 you are -- my answer is to the point, did he raise the
11 issue about I shouldn't have signed the promotion form
12 or the clearance, he didn't say that. That wasn't an
13 issue on the 1st December, shall we say.

11:10

14 124 Q. Okay. But he wouldn't have been aware you signed the
15 promotion forms, you accept that. He wouldn't have
16 seen those?

11:11

17 A. Yeah.

18 125 Q. He wouldn't see clearance forms of that nature?

19 A. Correct, yeah.

20 126 Q. Okay. But he is mentioning this issue of promotion and
21 talking about his complaint having gone missing. Did
22 this stand out to you again, I am simply asking, did
23 you think, well, I have actually signed the promotion
24 forms for that officer? Did you know that? Or did it
25 strike you? I am only asking you was it a red flag?

11:11

11:11

26 A. I didn't even remember the fact that I signed the
27 promotion form for Superintendent Murray, to be honest
28 with you.

29 127 Q. Okay, you didn't recall?

1 A. Yeah.

2 128 Q. Okay. So when he meets you on the 1st December he puts
3 this issue on the table, isn't that right, about the
4 missing complaint?

5 A. Yeah. 11:11

6 129 Q. And he is talking about the promotion?

7 A. Correct, yeah.

8 130 Q. Okay. Now, that's on the 1st December. We know from
9 the last day that there was a robust meeting, if we
10 call it that, between you on the day on the 1st 11:12
11 December about who was the focus of his complaint,
12 isn't that right?

13 A. I actually didn't think it was a robust meeting at all.

14 131 Q. Okay.

15 A. To be fair. I thought we got on fine. 11:12

16 132 Q. Perfect. That's your evidence.

17 A. Yeah.

18 133 Q. There was a discussion --

19 A. Yeah.

20 134 Q. -- about who was the focus of the complaint, we will 11:12
21 call it that. I will use the word discussion?

22 A. Correct, yeah.

23 135 Q. Okay.

24 A. It wasn't heated or debated. It sounds complicated
25 when you hear evidence afterwards but it certainly 11:12
26 didn't feel like that on the day from my perspective
27 anyway. I didn't think there was any animosity
28 whatsoever. I thought we got on fine, yeah.

29 136 Q. Okay. Then if you look at the couple of weeks after

1 that, we went through a lot of letters on the last day,
2 the 5th December, the 13th December, the 15th December
3 and the 21st December, between yourself and John Gerard
4 Cullen solicitors; isn't that right?

5 A. Yes. 11:12

6 137 Q. And a lot of the focus was on this issue as to who was
7 the subject-matter of the complaint?

8 A. Correct.

9 138 Q. Okay.

10 A. There was an issue about, I wasn't clear coming away 11:13
11 from the meeting exactly who he was making the
12 complaint against, because I think there was about 23
13 people mentioned in it, and, you know, I wanted to get
14 in writing, please tell me who those people are you are
15 making the complaint against so I can go off and do my 11:13
16 business.

17 139 Q. Okay.

18 A. That became protracted, Chairman, I remember that.

19 140 Q. Now, just to give you an opportunity then to answer
20 this: At the very outset this morning I opened the 11:13
21 Tribunal investigator interview Garda Keogh gave and he
22 used the words "the motive behind the delay by
23 Assistant Commissioner Finn was to allow the process
24 for the promotion of Superintendent Patrick Murray to
25 be progressed", okay? 11:13

26 A. Yes.

27 141 Q. That was what he told the investigators?

28 A. Yes.

29 142 Q. Just to give you an opportunity to answer that then,

1 because during December we have, if you call it delay,
2 if you call time passing by with this correspondence,
3 he is saying the motive was to allow the process of the
4 promotion to proceed. What is your answer to this? I
5 think you effectively gave it on the last day, but just 11:14
6 to repeat in the context of the promotion?

7 A. I deny that I did anything deliberately to try and
8 delay the promotion, you know -- or that I
9 deliberately, in terms of delaying my investigation so
10 that Superintendent Murray could get promoted. 11:14

11 143 Q. But it is the case, isn't it, commissioner, that you
12 flagged very early on, on the 15th December, that you
13 can't do this investigation within 28 days, isn't that
14 right?

15 A. Correct, yeah. 11:14

16 144 Q. And do you want to tell the Chairman why by the 15th
17 December you were saying that?

18 A. It became clear, it was obvious to me at that stage
19 like that this was going to be, you know, extensive,
20 there was a lot of work on it, and there was no way you 11:14
21 could get it done in 28 days. It would be an injustice
22 to everybody if I was trying to do it in 28 days, you
23 know.

24 145 Q. Okay. What happens then, can I just bring you back, to
25 try and strictly stay with the promotion issue. On the 11:14
26 8th December, so you're having corresponded with John
27 Gerard Cullen, you are telling people you will not be
28 done within 28 days. But can I ask you to look at
29 something that happened on the 8th December, which is a

1 couple of days after your meeting with Garda Keogh. If
2 Mr. Kavanagh can open up page 12533. So it is 12533.
3 Do you see there, it is to Helen Hall. It's from
4 Helena Reddy, the 8th December, to Helen Hall, cc
5 Joseph Nugent. Now we know Mr. Nugent was the CAO, 11:15
6 isn't that right?

7 A. Correct, Chair.

8 146 Q. This is effectively an e-mail from Mr. Nugent, it is
9 being sent on on his behalf by Ms. Reddy?

10 A. Yes. 11:15

11 147 Q. If we just go down there?

12 A. Yeah.

13 148 Q. We know, I mentioned to you in October that the
14 Policing Authority have come back and looked for detail
15 on the bullying and harassment, isn't that right? 11:16

16 A. Correct, yeah.

17 149 Q. If you go down, please, Mr. Kavanagh. So he is talking
18 about the supply. Now you're a little bit removed,
19 this is an e-mail between Ms. Hall and Mr. Nugent?

20 A. Yes. 11:16

21 150 Q. But just in relation to you, he says:
22
23 "I note your comments in respect of matters in the
24 public domain suggesting that a formal complaint under
25 An Garda Síochána bullying and harassment policy was 11:16
26 lodged in March 2017. In that regard I can confirm
27 that difficulties were experienced in progressing an
28 investigation in respect of the complaint under this
29 policy. Specifically, difficulties were experienced as

1 the complaints were broad in nature and extended to
2 Garda members other than Superintendent Murray, covered
3 periods before Superintendent Murray was working with
4 Garda A and related to matters not covered by the
5 policy. "

11:16

6
7 Now, are you assisting him in relation to this? Is
8 this coming from you, or is this Mr. Nugent, his own
9 assessment of the bullying and harassment complaint
10 that has come in?

11:17

11 A. I think it's his own assessment, Chair. I don't think
12 I have given him anything at that stage.

13 151 Q. At that stage you hadn't given him any assessment?

14 A. No.

15 152 Q. Okay?

11:17

16 A. I don't recall it, no.

17 153 Q. It goes on in the next paragraph, he says:

18
19 "I can also confirm that Assistant Commissioner Michael
20 Finn has been appointed to investigate the bullying and
21 harassment complaint. The first part of his work has
22 been to formalise the complaint by separating those
23 matters which Garda A accepts extend beyond the remit
24 of Assistant Commissioner Finn's investigation. This
25 process has commenced and the assistant commissioner
26 has met with Garda A and his legal representatives
27 earlier this week. The outcome of the meeting is for
28 Garda A. "

11:17

11:17

1 Now Garda A in this context is Garda Keogh, okay?

2 A. Yeah.

3 154 Q. "To specifically confirm the exact matters of his
4 complaint that relate to Superintendent Murray which
5 are covered by the organisation's bullying and 11:17
6 harassment policy. Assistant Commissioner Finn expects
7 this work to be completed shortly and the formal
8 investigation of the relevant issues will proceed."
9

10 Again can I ask you, is this coming from you? Have you 11:17
11 informed him that this is the status of your
12 investigation at this stage?

13 A. I genuinely don't recall whether I did, but it could
14 very well have come from me, Chair.

15 155 Q. I suppose what I really want to clarify, were you in 11:18
16 direct contact with Mr. Nugent at this stage, on the
17 8th December?

18 A. I don't think so.

19 156 Q. Okay. Because what I want to ask you is, can we just
20 clarify, and I just want to give you an opportunity to 11:18
21 comment?

22 A. Yeah.

23 157 Q. Did you confirm the nature of the complaint, the
24 character of the complaint, whether it was wide or
25 sweeping or non-specific, did you use any of those 11:18
26 words or have any discussion to that effect with
27 Mr. Nugent around this time?

28 A. I can't actually -- I can't recall, to be honest with
29 you, Chair.

1 158 Q. Okay.

2 A. I know I started corresponding with him to get legal
3 advice and all that stuff, but...

4 159 Q. Okay. But do you recall dealing with Mr. Nugent as
5 early as that, as the 8th December, yes or no, 11:19
6 assistant commissioner?

7 A. I don't, honestly.

8 160 Q. Okay.

9 A. Yeah, yeah.

10 161 Q. Now, I think we move along later on in the month and I 11:19
11 think at this stage you are dealing with him and in
12 particular can I just ask you to look at -- sorry, he
13 asks you for -- I just lost my notes here for a moment.
14 I think I might come back to that in a moment,
15 commissioner. But, I think you do start your 11:19
16 correspondence with Mr. Nugent during that month,
17 perhaps later in the month, isn't that right?

18 A. Yeah. I am just trying to find it here myself now,
19 Chair.

20 162 Q. Sorry, I mislaid the page? 11:20

21 A. 20th December. Yeah, 20th December. I forwarded
22 Superintendent Murray's corresponded to Mr. Joe -- oh
23 yeah, because Mr. Murray had come back to me raising an
24 issue about whether -- I recall that Superintendent
25 Murray wrote back to me saying he had an issue about 11:20
26 the fact that I was now conducting this bullying and
27 harassment investigation at a time when there was
28 another civil proceedings going on and he was saying
29 that I should stop, there was ultra vires. So I went

1 to Mr. Nugent to get -- I forwarded his letter to
2 Mr. Nugent, it was the 20th December.

3 163 Q. So you were in contact with Mr. Nugent at that stage?
4 A. Yes.

5 164 Q. So if you were to pinpoint it in around the time, it's 11:20
6 around that time?
7 A. Yeah.

8 165 Q. Is that right?
9 A. Yeah, correct.

10 166 Q. Okay. what I would like you to do is, I know at this 11:21
11 stage you had sent out e-mails, we have gone through it
12 on the last day, you sent out e-mails to all of the
13 people who you felt were the subject-matter of the
14 complaint?
15 A. Yes. 11:21

16 167 Q. And you notified them of it, isn't that right?
17 A. Yeah.

18 168 Q. So, to some extent, I suppose, you had started a
19 process of contact?
20 A. Yes. 11:21

21 169 Q. And you had started a process of contact that included
22 Superintendent Murray in that way, as well, isn't that
23 right?
24 A. Correct. I was appointed on the 15th, as I recall. I
25 had difficulty contacting Mr. Keogh initially and I had 11:21
26 to write to him again or I get a hand delivered letter
27 and then I think he contacted on the 28th, which is a
28 Monday, and on the Friday I met him, on the 1st
29 December I think I met him in the Mullingar hotel, is

1 my recollection of how it went. And then it took
2 another period of time between I corresponding with his
3 solicitor to find out exactly, to pin down who were
4 parties involved and I think I knew by the 15th and
5 then I wrote out the three parties involved. So that 11:22
6 took me up to the 15th December.

7 170 Q. Okay. And, as I say, you're saying there by the 20th
8 December you're in contact with Mr. Nugent in this
9 regard?

10 A. Yeah. Because Superintendent Murray had come back to 11:22
11 me, alerting me to the civil matter, which I wouldn't
12 have been - I wasn't aware of, we'll say, but he was
13 alerting me saying he felt I had an issue, so then I
14 went to Mr. Nugent to say, I want to get cover here
15 legally, give me some advice in terms of if there is an 11:22
16 issue.

17 171 Q. If I can bring you on, two days later, on the 22nd
18 December 2017. We know from the papers and from
19 Superintendent Murray's evidence that he was in contact
20 on the 22nd December with Ms. Hall from the Policing 11:22
21 Authority, who was expressing some frustration about
22 the information that was coming through. We know that
23 from the records that he had a conversation with her
24 and that he also received an e-mail from her. You then
25 have a phone call with Superintendent Murray on that 11:23
26 day, on the 22nd December?

27 A. Yes.

28 172 Q. If we can just look at that, he has kept a note of it,
29 okay? It's at 12309. 12309. Do you see that note

1 there?

2 A. Just bear with me, Chair. Yes, Chair, I have it here.

3 173 Q. Now, to be fair to you, commissioner, we mentioned this
4 the last day when you were giving your evidence?

5 A. Oh yeah. 11:24

6 174 Q. Just in general terms. We didn't go into the call in
7 any detail because it did touch on Issue 20. But I
8 think you said you didn't recall this call, is that
9 right?

10 A. Correct, Chair, I do remember this now. I remember the 11:24
11 context that I had been out of work, my back had acted
12 up and I had gone to the doctor and I overmedicated and
13 I remember I explained to you that a number of months
14 later my wife and daughter were saying about they had
15 taken me to see a consultant and I was saying I had no 11:24
16 memory of going to see a consultant. And it was just
17 that, I was putting the context that I didn't recall
18 Superintendent Murray's phone call but I'm saying there
19 was stuff happening at that time, other stuff that I
20 didn't remember, because I felt I had overmedicated, 11:24
21 which I was embarrassed about, Chairman.

22 175 Q. Okay. In fairness, on Day 142 you very fairly said
23 that was the position in relation to the call. But, as
24 I said, we didn't go into it in any detail because it
25 does touch on Issue 20. Can we just look at it to see 11:25
26 if it jogs any memory or see if you recall anything
27 about it. This is a note that is kept by
28 Superintendent Murray and it says phoned him, and
29 that's yourself at 15:56. Now you speak for 23 minutes

1 and 39 seconds. He says:
2
3 "Discussed various linked issues with him."
4
5 would you have any knowledge what he meant by that; 11:25
6 discussed the various linked issues?
7 A. I assume now it's the civil proceedings.
8 176 Q. "He said he was unaware of the civil case, my promotion
9 issues and that another AC had refused the
10 appointment." 11:25
11 A. Yeah.
12 177 Q. Is it a correct reflection of fact, that you were
13 unaware of the civil case?
14 A. Yes.
15 178 Q. The promotion issues? 11:25
16 A. Yeah, correct.
17 179 Q. You became concerned, he records you as being concerned
18 about this?
19 A. Yeah.
20 180 Q. Again, I'm just asking if it jogs your memory in this 11:25
21 regard?
22 A. I mean, I know all this now, like do you know what I
23 mean, I know it now.
24 181 Q. "Also said that he was unaware that we had received all
25 Garda Keogh's material." 11:25
26
27 could that be correct?
28 A. Yes. I didn't know actually that AC Fanning had given
29 them probably what he gave them.

1 182 Q. Okay. "He said he explained the legal issues to you
2 and that PA views as outlined by Helen Hall to me
3 today."
4
5 Does that ring a bell, jog your memory in any respect? 11:26
6 A. No, Chair, I mean I had no dealings with -- apart from
7 signing the form in September, I had no dealings with
8 the Policing Authority.

9 183 Q. He says he explained the legal issues to you and the PA
10 views as outlined by Helen Hall? 11:26
11 A. No, Chair.

12 184 Q. "He said he could look at my 338-page document and
13 might bring clarity to PA about issues through the
14 organisation and Joe Nugent."
15 11:26
16 Does that ring a bell or refresh any memory?
17 A. No, Chair, but I do know about the 338-page document,
18 yeah.

19 185 Q. So looking at the note now in detail, does it bring
20 back any memory of that conversation? 11:26
21 A. I genuinely couldn't -- you asked me that the last day,
22 I couldn't remember getting that call. I couldn't say
23 where I was, when it happened. Do I have any memory of
24 it? I genuinely didn't, you know.

25 186 Q. Okay. 11:27
26 A. I mean, I'm not disputing the contents of it. I don't
27 think there's anything contentious in it that I would
28 have massive issue with, Chair, I mean they're all
29 probably facts.

1 187 Q. Okay. So you're not -- I think that's important there,
2 commissioner, you say you're not disputing the contents
3 of the note, is that right?
4 A. No, I mean, I don't see anything here that I don't know
5 now, shall we say. 11:27
6 188 Q. Okay. I think over the Christmas period then there's
7 further correspondence between the Policing Authority
8 and Mr. Nugent looking for material, but I think if I
9 can bring you just into early January in this regard
10 and again I just wanted to put one or two matters to 11:28
11 you. Again I don't wish to try -- I don't want to
12 repeat things, we did touch on things briefly but we
13 did tried to stay away from Issue 20, so that's why I
14 just need to bring you back to a couple of things,
15 okay? 11:28
16 A. Okay.
17 189 Q. CHAIRMAN: Just before you leave that last one,
18 Ms. McGrath, you do refer to your bad back, you were
19 off with a bad back.
20 A. I definitely vouch for that, Chair. 11:28
21 190 Q. CHAIRMAN: And you were expecting to be back in the new
22 year.
23 A. Yeah.
24 191 Q. CHAIRMAN: So that part is absolutely right.
25 A. Yeah. 11:28
26 CHAIRMAN: Okay. Sorry thanks very much.
27 192 Q. MS. McGRATH: So then, as you say, you're accepting the
28 note in question, you're not disputing any particular
29 line there?

1 A. No, it's not -- it's his note I suppose of what he said
2 to me, I'm not -- I don't recall the conversation,
3 Chair, but I am not disputing it.

4 193 Q. CHAIRMAN: Just so we are clear, you are not confirming
5 that this is correct. You say, I don't remember this 11:28
6 call?

7 A. Yeah.

8 194 Q. CHAIRMAN: But you're not disputing it by saying I am
9 not offering an alternative version. But what you are
10 actually saying is, I don't remember this call? 11:29

11 A. That's correct.

12 195 Q. CHAIRMAN: Is that correct?

13 A. That's fact. That's a fact.

14 196 Q. CHAIRMAN: So it would be a mistake to think that you
15 were confirming the contents of it? 11:29

16 A. Yeah. As a recollection of the call.

17 197 Q. CHAIRMAN: I understand that.

18 198 Q. MS. McGRATH: Okay. Now, if we move into early
19 January, I want to bring you into another telephone
20 call that you had with Superintendent Murray. 11:29
21 Specifically I want to go to the 11th January first.
22 Just the day in question itself.

23 A. Yeah.

24 199 Q. I think you will remember from the last time that this
25 was the day that your investigator, Chief 11:29
26 Superintendent Myers went to Athlone Garda Station,
27 isn't that right?

28 A. Oh yeah, yeah, yeah, yeah.

29 200 Q. If we can just look at a note that Superintendent

1 Murray had of that date, 16221, okay. It says:
2
3 "CS Myers and inspector called to station and met and
4 gave documents to DA Drea, Inspector Farrell, Sergeant
5 Harron, Moylan, Monaghan, Martin and Guinan. I am also 11:30
6 aware of Inspector Baker."
7
8 This is what Superintendent Murray records, he said:
9
10 "I had no prior knowledge of them coming. He called 11:30
11 into my office and said he was aware of my document and
12 the legal issues."
13
14 So, this is all on the table now very clearly, isn't
15 it, at this stage in the investigation, the civil 11:30
16 issues and the legal issues that were surrounding it,
17 is that right? He says:
18
19 "He was aware of my document and the legal issues."
20 11:30
21 That's your investigator saying that, is that right?
22 A. Oh yeah, sorry. When you say the legal issues, you're
23 talking about his difficulty about --
24 201 Q. The civil litigation.
25 A. -- 28-page document, yeah, yeah. 11:31
26 202 Q. Yes.
27 A. Because he had already wrote, Superintendent Murray had
28 already written to me about highlighting that issue.
29 203 Q. That's right?

1 A. Yeah.

2 204 Q. I think quite early on, the 20th December he had
3 brought that to your attention?

4 A. Correct yeah.

5 205 Q. It's recorded there that -- now this is Chief 11:31
6 Superintendent Myers:
7
8 "Said they hoped to deal with this quickly, spoke of my
9 promotion and praised the people they met. Discussed
10 the context of the complaint around problems in 11:31
11 Athlone. Emphasised that M Finn was honest and ethical
12 and would make sure everything was done right, that
13 there was nothing to worry about, spoke about an extra
14 pip on my shoulder."
15 11:31
16 And then Superintendent Murray:
17
18 "Felt I am being belittled in my workplace with the
19 nature of the visit, its purpose and no courtesy call
20 to me." 11:31
21
22 What I want to ask you about, this is your investigator
23 at Athlone Garda Station. Can I ask you --
24 A. Yes.

25 206 Q. -- do you have a view on this? He was your lead 11:31
26 investigator, am I right?

27 A. Yeah.

28 207 Q. And he is speaking to one of the subject of the
29 complaint and he is talking openly with one of these

1 officers about the promotion and an extra pip on his
2 shoulder. Do you have comfortable about that? Do you
3 have any view on your lead investigator discussing the
4 issues of your promotion with Superintendent Murray at
5 that time?

11:32

6 A. My recollection is that he just went to Athlone that
7 day to, you know, serve papers on witnesses that I had
8 already written to so say, look, we're going this
9 investigation, somebody will be calling to see you and
10 this was the subsequent -- somebody is calling to see
11 is you, Chief Superintendent Myers went to Athlone, he
12 met the witnesses and told them what we were at, like,
13 you know. I think he bumped into Superintendent Murray
14 while he was there, even though we weren't -- he wasn't
15 dispatched to meet Superintendent Murray, I didn't tell
16 Superintendent Murray that they were going up there.
17 We just told the witnesses that, you know, this team
18 will be coming, they'll meet you and they'll explain to
19 you what we are at, like you know. So I don't think,
20 it wasn't a planned meeting with Superintendent Murray.
21 I think they just bumped into him or maybe a courtesy
22 call to say, look, we're in the station.

11:32

11:32

11:33

23 208 Q. Well I suppose I am just asking for your view,
24 commissioner. Here's your lead investigator discussing
25 with Superintendent Murray issues like his promotion
26 and having an extra pip on his shoulder, do you have a
27 view on that? Are you comfortable or uncomfortable
28 with conversations like that?

11:33

29 A. I suppose you have to put it in the context of what

1 happened, what was happening, you know. Chief
2 Superintendent Myers was a chief, he's involved in the
3 chief superintendent association, maybe he was just
4 trying to be pleasant or acknowledge the fact that
5 Superintendent Murray was due to be promoted you know, 11:33
6 because obviously everybody in the job knew that was
7 the scenario, as they would say.

8 209 Q. Well, can I ask you, you make a phone call after that
9 to Superintendent Murray and the record that he kept of
10 it is at 12311? 11:34

11 A. Yeah, I have it here, sorry.

12 210 Q. It's later on in that afternoon, it's a 3 minute phone
13 call. Superintendent Murray says, this in the middle
14 of the paragraph, "he said", this is yourself:

15 11:34
16 "He said he knew my promotion situation and wanted to
17 do it quickly. I asked if the Policing Authority were
18 waiting for the result and he said they were and it was
19 holding my promotion."

20 11:34

21 Do you remember that phone call and that discussion?

22 A. I can't -- oh yeah, I rang him to say that I got legal
23 advice from Ken Ruane, I think that was the context, to
24 say, look, I've got something back from Ken Ruane,
25 because I saw something and I was saying to him, look, 11:34
26 these are my advices, you might get to your advice from
27 Ken Ruane but I am giving you or I am sending you a
28 letter on the basis of the advice that I had got, which
29 was that I could proceed with my investigation.

1 211 Q. Okay.

2 A. So I probably rang him as courtesy to say, look, I'm
3 going to send you an e-mail to that effect, which I
4 did.

5 212 Q. But he records you as saying, and this is what I would 11:35
6 like you to concentrate on, commissioner?

7 A. Yes.

8 213 Q. "He said he knew my promotion situation and wanted to
9 do it quickly", did you say that?

10 A. I can't recall, you know. Obviously I was aware of it, 11:35
11 Chair, I mean it was a big issue for him.

12 214 Q. Commissioner, can I ask you to address yourself to the
13 actual words, that he said he knew my promotion
14 situation and wanted to do it quickly, did you say
15 that? 11:35

16 A. I have no recollection of whether I said that, Chair.
17 I mean, I didn't make any note of it, you know, it
18 wouldn't be something that struck me. He made a note
19 of it because it was relevant to him but his promotion
20 wasn't relevant to me in the context of what I was 11:35
21 doing. What I was doing was probably relevant to him
22 because he felt that, you know, it was holding up his
23 promotion, we'll say, you know. But it wasn't of
24 relevance to me in terms of what I was tasked to do, I
25 was tasked to do a bullying and harassment 11:36
26 investigation.

27 215 Q. Commissioner, can I bring you back to the sentence
28 again, please?

29 A. Yeah.

1 216 Q. He records you as saying that and I would like you to
2 clarify for the Chairman; is that correct?
3 A. My official response is, I don't recall whether I said
4 that or not.
5 217 Q. Okay. 11:36
6 A. So I can't comment if I don't recall if I said it
7 Chair.
8 218 Q. Okay. The next line. He says:
9
10 "I asked if the Policing Authority were waiting for the 11:36
11 result and he said they were and it was holding my
12 promotion."
13
14 Did you say that?
15 A. I don't recall if I said that, Chair. 11:36
16 219 Q. Okay. would you dispute it?
17 A. No.
18 220 Q. Okay.
19 A. But I'd put it in the context, Chair, that this was a
20 big issue for him, we'll say, at the time you know. Of 11:36
21 course the conversation was probably going in that
22 direction, but while it was a big issue for him, it
23 wasn't an issue for me, if I am putting it from my
24 perspective, we'll say.
25 221 Q. Can I ask you, commissioner, if you were Garda Keogh 11:37
26 reading that note, it may suggest to him that your
27 investigation is now being heavily influenced by moving
28 it along, getting it out for the purposes of -- getting
29 it out of the way maybe for the purposes of the

1 Policing Authority so that they can go ahead. I'm just
2 saying if you are Garda Keogh and reading that?

3 A. Yeah.

4 222 Q. What would you have to say to that?

5 A. I don't know. You'd have to ask Garda Keogh. I can 11:37
6 only give you my opinion and show you where I was at
7 and where I was coming from, from my perspective
8 Superintendent Murray's promotion was of no great
9 concern or business to me. I wasn't tasked with doing
10 anything in relation to him, apart from giving a CAO an 11:37
11 update at one stage. It was of no relevance as such to
12 me. I had a task to do, I had started the process
13 and I think my records will show what I did through
14 each stage of that process. I understand where
15 Superintendent Murray is coming from, because, as I 11:38
16 say, it was obviously to the forefront of his mind, his
17 conversations and everything. I mean, you could not, I
18 suppose, engage with him without sensing that this was
19 significant for him. But, as I said, it wasn't
20 significant for me, Chair, so I wouldn't have made 11:38
21 notes about it or wouldn't have commented on it.

22 223 Q. Commissioner, for the purposes of the Chairman, are you
23 or are you not having conversations with Superintendent
24 Murray about how you're going to run the investigation
25 vis-à-vis the promotion and all that is happening in 11:38
26 the background?

27 A. No.

28 224 Q. Okay.

29 A. No.

1 225 Q. Now, if I can ask you to go to the following day, on
2 the 12th January there's a conversation between
3 Superintendent Murray and Mr. Nugent. And again, it's
4 on 12413. Again, this is a note kept by Superintendent
5 Murray and I would like you to look at the middle of 11:39
6 the page, you see there:
7
8 "He said he is working with M Finn."
9
10 Now this is Mr. Nugent who is working with you? 11:39
11 A. Correct.
12 226 Q. "He said he is working with M Finn to provide a report
13 to allow the Policing Authority an understanding of
14 where M Finn is with the investigation by way of
15 providing an update re allegations, possible outcome, 11:39
16 timelines etcetera."
17
18 Now, is that correct; was Mr. Nugent working with you
19 in that regard at that time?
20 A. He was looking for an update for me, Chair, he did, 11:39
21 yeah.
22 227 Q. Was he looking for possible outcomes?
23 A. No. Well, outcomes in terms of when I would be
24 finished maybe is what the Policing Authority I think
25 wanted to know. 11:40
26 228 Q. Would that fall into the category of timelines?
27 A. Yes.
28 229 Q. But he says "update re allegations, possible outcomes"
29 I have to ask you, is that the possible outcome at that

1 stage of your investigation?

2 A. No. No, Chair, No. Sure I couldn't possibly, I was
3 only starting off, I think I had only written to the
4 witness as couple of days before that. And we only met
5 -- I think it was the day before Chief Superintendent 11:40
6 Myers was in Athlone meeting the witnesses for the
7 first time, so...

8 230 Q. Now, talking about that report, so do you dispute that
9 you are talking to Mr. Nugent about the possible
10 outcome of your investigation? Is that incorrect, that 11:40
11 note?

12 A. That's incorrect, yeah.

13 231 Q. Okay.

14 A. It's not my note. This is not my note.

15 232 Q. I know. In the sense of this is what Superintendent 11:40
16 Murray has recorded?

17 A. Yeah.

18 233 Q. But you are disputing that you were dealing with
19 Mr. Nugent in that regard?

20 A. Yes. 11:41

21 234 Q. Okay. On the 15th January you do provide that report
22 we are talking about?

23 A. I remember that.

24 235 Q. And it's 4540. Sorry, that is what I was looking for
25 earlier and I couldn't locate it, so it's 4540. 11:41
26 Apologies that it's a bad copy there. If you have the
27 original, it might be better or the hard copy. Now
28 this is:
29

1 "Joe, the current situation pertaining to the issue is
2 as follows."

3
4 So this is your report update to Mr. Nugent; is that
5 right?

11:41

6 A. Yes, Chair, yeah.

7 236 Q. You confirm, paragraph 1 you're appointed, 2, you
8 confirm you met him on the 1st December, 3, 4 and 5
9 really is the correspondence during that month between
10 you, isn't that right, yourself and the solicitors?

11:41

11 You talk at 5 there that you have sought clarification
12 on the issue with the Head of Legal Affairs and have
13 shared this with Superintendent Murray on the 10th
14 January, you see that?

15 MR. O'BRIEN: Sorry to interrupt, Ms. McGrath, but the
16 document is not up on the screen.

11:42

17 A. You can't read it.

18 237 Q. MS. McGRATH: Can you read it on your hard copy there,
19 Commissioner?

20 CHAIRMAN: Mr. O'Brien, would you like to look at a
21 hard copy of this so you can make sense of it.

11:42

22 MR. O'BRIEN: Yes, please.

23 CHAIRMAN: Can we get Mr. O'Brien a hard copy of that?
24 Can you read it, commissioner?

25 A. I can read it.

11:42

26 CHAIRMAN: Okay. We will get a hard copy.

27 MS. MULLIGAN: Just the volume.

28 CHAIRMAN: Volume 15. It's okay, Ms. Mulligan, it's
29 okay, Mr. Barnes has solved the problem. It's page

1 4540, Mr. O'Brien.

2 MR. O'BRIEN: Thank you.

3 CHAIRMAN: You're okay now, Mr. O'Brien?

4 MR. O'BRIEN: Yes.

5 CHAIRMAN: Thanks very much. 19/2. 11:43

6 MS. McGRATH: That is an auto print date that you are

7 seeing at the top.

8 A. The date from the previous page, 15th January 2018.

9 238 Q. MS. McGRATH: That's right. So at 4539 it records that

10 it is from Michael Finn to Joe Nugent, 15th January 11:43

11 2018, at 15:48, isn't that right, Commissioner?

12 A. That's correct.

13 239 Q. This is the report you provide and there at paragraph 1

14 you confirm you're appointed. 2, you confirm you have

15 met him on the 1st December? 11:43

16 A. Yeah.

17 240 Q. 3, you confirm correspondence?

18 A. Mm-hmm.

19 241 Q. And 4 the same, isn't that right?

20 A. Yes. 11:44

21 242 Q. 5, you confirm that you got correspondence on the 20th

22 December from Superintendent Murray?

23 A. Yes.

24 243 Q. Raising a query in relation to his:

25 11:44

26 "... participation in my investigation, bearing in mind

27 that many of the issues raised in the bullying and

28 harassment. I have sought and received a clarification

29 of this issue with the Head of Legal Affairs and I have

1 shared this with Superintendent Murray on the 10th
2 January 2018. "

3

4 isn't that right?

5 A. That's correct.

11:44

6 244 Q. "6. Garda Keogh has confirmed that Superintendent
7 Murray is one of the three senior officers that are the
8 subject of this complaint.

9 7. I have commenced this investigation and I have a
10 team under Chief Superintendent Myers, Kerry, who are
11 conducting most of the enquiries and interviewing the
12 persons who are not the subject of the complaint. "

11:44

13 A. Yeah.

14 245 Q. "8. I have a meeting with Superintendent Murray in
15 Athlone on Thursday, 18th January 2018, and I
16 anticipate that he will provide a volume of information
17 to me.

11:44

18 9. The complaint pertaining to Superintendent Murray
19 relates exclusively to his tenure as district officer
20 in Athlone.

11:44

21 10. The other parties complained of all served in the
22 Westmeath garda division at some period during Garda
23 Keogh's tenure in Athlone.

24 11. It is anticipated that it will take a number of
25 weeks to complete the investigation. "

11:45

26

27 okay. So that is the report that you give him. And we
28 know that he eventually sends that on to the Policing
29 Authority, isn't that right?

1 A. I'm not sure what he did. I gave him that anyway,
2 Chair. That was my update to him, Chair.

3 246 Q. Okay. So that's effectively your report and that's on
4 the 15th?

5 A. Correct. 11:45

6 247 Q. I think in fairness, that is purely relating to the
7 status of your investigation that you are doing, isn't
8 that right?

9 A. Yeah.

10 248 Q. Now can I ask you, and I don't have too much -- I just 11:45
11 have two real issues that I want to concentrate on, two
12 more issues, commissioner. I want you to go back two
13 days. On the 13th January there is a phone call
14 between yourself and Superintendent Murray. This is
15 the 5 minute 55 second phone call. Maybe we will start 11:46
16 with the note of page 12380. Now, we actually spent
17 some time on this the last day. To refresh your
18 memory, this was a call where I was asking you about
19 whether you had had this phone call or not and if you
20 remember you said you had taken the phone call in Kerry 11:46
21 and the reception was quite poor. So that's the phone
22 call we are talking about here.

23 A. Yeah.

24 249 Q. I don't know if you recall that?

25 A. I do, yeah. Saturday. 11:46

26 250 Q. Yes, it was a Saturday morning?

27 A. Yeah. I was down there, Chair, because I mentioned
28 that my brother passed away at Christmas time and we
29 were arranging a months mind mass.

1 251 Q. That's right. I don't wish to go over it again in any
2 great detail, but I do want to ask you one thing. In
3 relation to this, the note is at 12380 and if you see
4 there, what we spent some time on the last day was it
5 said:

11:47

6

7 "Keogh and solicitor looking for money."

8

9 Do you see that?

10 A. Yeah.

11:47

11 252 Q. He also has a further note on that, at 16222?

12 A. Yes.

13 253 Q. 16222. And if you see there, at the end of the first
14 paragraph it says:

15

16 "AC Finn offered a view that Garda Keogh and his
17 solicitor were only looking for money in a civil
18 claim."

11:47

19 A. Yeah.

20 254 Q. Now, we looked at this on Day 142, and the reason I am
21 just going over this territory again is, I want to give
22 you an opportunity to deal with something quite
23 specific. It was put to you on Day 142 did you say
24 that and you denied that you said that?

11:47

25 A. Yes.

11:47

26 255 Q. Isn't that right?

27 A. Yes.

28 256 Q. I think you took a very strong position?

29 A. Yeah.

1 257 Q. You said it was a very derogatory comment to make?
2 A. Yes.

3 258 Q. And it would be highly inappropriate and unprofessional
4 for you to say that, isn't that right?
5 A. Mm-hmm. 11:48

6 259 Q. Now that was your evidence on Day 142?
7 A. Yeah.

8 260 Q. Now, when Superintendent Murray was in the witness box
9 a couple of days later, on Day 146, this issue came up
10 again. He said that the way he -- he sought to clarify 11:48
11 how he had recorded it on the second note, remember,
12 you had offered a view, 16222. He wanted to clarify
13 that it wasn't you saying it but you did agree with
14 him. Now, I wanted just to give you an opportunity to
15 comment on that. So, he corrected really how you had 11:48
16 phrased it but he maintained a position that although
17 you had hadn't offered it or volunteered it as a view
18 but that you had agreed with him. And I just want to
19 give you an opportunity in relation to that to comment
20 on it, is it still your position that you have no 11:49
21 recollection of either saying it or agreeing with it?
22 A. Correct. It's still my position and I would be very
23 adamant of that, Chair. Yeah. I never said that. I
24 mean, as I said, that's a very derogatory comment to
25 say about somebody and I would be one hundred percent 11:49
26 sure I never said that, Chair.

27 261 Q. And it's put to him specifically at Day 146, on page
28 47, was he agreeing with you, as in you, and he said
29 yes. Now, do you accept or reject that?

1 A. I don't understand.

2 CHAIRMAN: Sorry, accept or reject what?

3 262 Q. MS. McGRATH: I might just open the exchange, I think
4 it's easier, rather than me summarising it. If you go
5 to Day 146, and page 47 there. 11:49

6 A. Page 47?

7 263 Q. Page 47.

8 CHAIRMAN: Have you got that, commissioner?

9 THE WITNESS: Page 47.

10 CHAIRMAN: Are you okay, have you got it, Mr. O'Brien? 11:50

11 MR. O'BRIEN: Yes.

12 CHAIRMAN: Okay.

13 MS. McGRATH: Now, I just hope I have the right extract
14 there. I am trying to bring it up myself, so I can see
15 it. You can't bring it up, Mr. Kavanagh McGrath, no. 11:51

16 CHAIRMAN: Sorry, it's Day 146, Mr. Kavanagh, page 47.
17 Thank you very much, well done.

18 264 Q. MS. McGRATH: Okay. So if we just look at -- if you go
19 to the next page, page 48, it's put to Superintendent
20 Murray, you see line 15 there: 11:51

21

22 "Assistant Commissioner Finn offered a view that Garda
23 Keogh and his solicitor were only looking for money in
24 a civil claim."

25 11:52

26 Then he says:

27

28 "No, that's my view, yeah.

29 Q. Pardon?

1 A. It's my view and I was attributing it to him after
2 we had the discussion about that and I suppose I felt
3 that he was agreeing with it in the empathetic way that
4 he had listed to me in that call.

5 Q. Chief superintendent, a moment ago you said that 11:52
6 this had been said by both you and --

7 A. It was said by both of us. But, like, I suppose
8 when you read that it's as if he offered it entirely
9 unannounced, as it were, and it wasn't like that."

10 11:52

11 And he is asked:

12

13 "Q. So what was it? I mean, was it you saying look,
14 they're only after you for answer?

15 A. And he agreeing. 11:52

16 Q. And he agreed with you?

17 A. Yeah."

18

19 So that's his evidence in relation to that. Do you
20 accept that record? 11:52

21 A. Well, I am emphatic that I never said that, one hundred
22 percent.

23 265 Q. So you never said it and you never agreed with it in
24 relation to that?

25 A. I never said it, that's for sure anyway, and I don't 11:53
26 think he said it to me either, you know. I don't
27 recall, you know, he saying it to me. But, I mean, I
28 would be one hundred percent sure I never said that. I
29 would not say that, you know, I am quite happy I never

1 said that.

2 266 Q. Okay. In his evidence it has moved a little bit, where
3 he is saying that he said it and you agreed with him?

4 A. I don't recall agreeing with him. I don't recall
5 saying it. Definitely I'm emphatic I never said it, 11:54
6 you know. Whether he picked it up or he thought I said
7 it, Chair, I don't know, that would be his take. But I
8 am quite happy, a hundred percent, I never said that.

9 267 Q. Okay.

10 A. I mean one thing I would say I am very emphatic about. 11:54

11 268 Q. Okay, commissioner, can we move on a couple of days
12 then to the 18th January and we know that that is the
13 date you went to Athlone and had the meeting with
14 Superintendent Murray, isn't that right?

15 A. That's correct, Chair. 11:54

16 269 Q. Okay. Now, we also know that -- and just to have it on
17 the screen while we are just talking about it. We did
18 talk about it in some detail but we didn't talk about
19 the promotion aspect of this, okay. The detailed note
20 is at 12313 and this was a note kept by Superintendent 11:54
21 Murray on the date, isn't that right?

22 A. I have it, Chair, yeah.

23 270 Q. It's 12313?

24 A. Yeah, I have it.

25 271 Q. Now, again this is Superintendent Murray's note. You 11:55
26 confirmed to the Chairman on the last day,
27 commissioner, that you didn't have any notes of this
28 meeting, isn't that right?

29 A. Correct, Chair, yeah.

1 272 Q. You also confirmed in your evidence on Day 142, that
2 the purpose of this meeting was to hand over the
3 documentation for the bullying and harassment
4 complaint, isn't that right?

5 A. Yeah. That was the purpose of my journey there. 11:55

6 273 Q. Okay. Now, you described on the last day, I'm sure the
7 commissioner will remember it, you described it as a
8 long meeting but a cordial meeting, talking about
9 family and lunch, having lunch etcetera, isn't that
10 right? 11:56

11 A. Yes, Chair yeah.

12 274 Q. I think you accepted that the meeting was of a duration
13 for around four and a half hours, as recorded by the
14 superintendent, is that right?

15 A. I was somewhat surprised, Chair, but his notes say it 11:56
16 was four hours 15 minutes or something like that, yeah.

17 275 Q. Now you said that you didn't keep any notes, and again
18 I am paraphrasing your evidence and you can correct me
19 if you need to, but you said you didn't keep any notes
20 because there was nothing of any evidential value to 11:56
21 your investigation coming out in that meeting?

22 A. Yeah. Like I was saying to the Chair the last day, I
23 only went there to serve the documents on him, there
24 was no -- I hadn't planned to do anything more than
25 that. If I was going to take a statement or something 11:56
26 from him, I would have thought some of my team to
27 facilitate that. So I was just purely, from my
28 perspective, Chair, going there to give him the
29 documentation. That was my sole purpose in doing that.

1 276 Q. Okay. Now, can I ask, to give you an opportunity, when
2 I asked you on Day 142 what was the purpose of the
3 meeting and again like you said, it was to hand over
4 the documents and it wasn't to get a response from him
5 there and then? 11:57

6 A. Correct.

7 277 Q. That's what you said in your evidence?

8 A. Yeah.

9 278 Q. Isn't that right?

10 A. Yeah. 11:57

11 279 Q. Now, Mr. Marrinan went through this note with
12 Superintendent Murray in a lot of detail on Day 146, at
13 page 56. So it's Day 146, page 56, going down to line
14 19, and he is talking there, he says:
15 11:57

16 "So I went through the myriad of files that I had."
17
18 Okay?

19 A. Yes, Chair, yes.

20 280 Q. And if we can go down to the end of that paragraph, he 11:58
21 is talking there about his position with Helen Hall and
22 what she was looking for and discussions he had with
23 her, but if I can ask you to go to the end of that
24 paragraph on the next page, please. Keep going,
25 please. And you see there on line 20, he said: 11:58

26
27 "And I wanted to get that information provided to the
28 Policing Authority through Mr. Nugent and the
29 organisation by way of Assistant Commissioner Finn.

1 Not in connection with the bullying investigation but
2 in connection with my promotion."

3 A. Yeah.

4 281 Q. Now, I will ask you to come back to all of this in a
5 moment?

11:58

6 A. Yes, Chairman.

7 282 Q. He is then referred, keep going please, Mr. Kavanagh,
8 he is then referred to the note I am talking about,
9 12313, and if you go on to the next page, he confirms
10 on the next page that he has gone through the various
11 files. If we keep going down. And you see there, at
12 the end of just the page, 58, he says he gave you the
13 letter he sent to the Commissioner, isn't that right?

11:58

14 A. Yes.

15 283 Q. On the 28th November. We will come back to that in a
16 moment. If you keep going. Stop there. The question
17 from Mr. Marrinan is:

11:59

18

19 "I suppose Assistant Commissioner Finn was the chief
20 investigating officer in relation to a complaint of
21 bullying and harassment. This wasn't a formal
22 interview, isn't that right?"

11:59

23

24 And you say:

25

11:59

26 "No.

27 Q. No notes were kept which him.

28 A. Yeah, I did.

29 Q. But you have some notes.

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A. Yeah.

Q. Which of course couldn't cover the four hour period. . . "

And if you keep going on down, sorry. He says there in one of his answers he says: 11:59

"No, because I suppose Mr. Nugent had indicated to me that he was talking to Assistant Commissioner Finn. And my interpretation was that Assistant Commissioner Finn was providing the information and assurances and views to Mr. Nugent so that the Policing Authority could be properly informed in a credible way through the organisation that -- you know, those things I mentioned there." 12:00

Now, that is Superintendent Murray's own evidence and he sees your role as providing information, assurances and views to Mr. Nugent. What could he be talking about there? Can you help the Chairman as to what you were telling Mr. Nugent about the bullying and harassment complaint? 12:00

A. I genuinely think that Superintendent Murray misinterpreted what my role was in all this. I had no role, we'll say. My role was simply to update the CAO, which I done. But I think Superintendent Murray was of the view that I was going to be this conduit back to the Policing Authority with all this information, but I had actually done my work for CAO in terms of I 12:00

1 responded two days earlier, 12th January or whatever it
2 was, before I ever went to see Superintendent Murray.
3 So as far as I was concerned I had updated the CAO and
4 I had finished my piece of the jigsaw in that context.
5 But I think Superintendent Murray wasn't of that 12:01
6 mindset. He seemed to think that he was going to tell
7 me all the stuff and I was going to tell all the stuff
8 to Joe Nugent and going to go back to the Policing
9 Authority. which wasn't the case at all.

10 284 Q. Superintendent Murray talks about -- just coming on 12:01
11 from what you said, he talks about the purpose of this
12 meeting and how he saw the purpose of this meeting.
13 And if you just keep going down --

14 A. Well, I'm just saying, that was his perception of what
15 this meeting was about, which was totally at odds to my 12:01
16 perception of what this meeting was about. I was only
17 going there to serve these papers on him.

18 285 Q. Well, if I can ask you then to comment on this, if you
19 look at the question from Mr. Marrinan there at line
20 14: 12:02
21

22 "I suppose, chief superintendent, I mean, I suppose a
23 complaint could be made by Garda Keogh that, for
24 instance, if you were to discover that Assistant
25 Commissioner Finn had sat down and visited Garda Keogh 12:02
26 in his home and spent four hours discussing his
27 allegations against you and none of it was recorded,
28 you might be quite either suspicious of that or angry
29 about it. Can you con understand that perception, that

1 there may be a sort of --" and then he answers:
2
3 "Yeah, but I think it's a sinister perception that's
4 being made but there wasn't a sinister motive on my
5 part or indeed I would say his. This wasn't about 12:02
6 Garda Keogh's complaints."
7
8 You're in agreement there, you're saying the meetings
9 was not about Garda Keogh's complaints?
10 A. Well it was in the context I was giving him the papers 12:02
11 about it.
12 286 Q. He goes on and says:
13
14 "This wasn't about Garda Keogh's complaints this, was
15 about my promotion and having what I felt were the 12:02
16 impediments and assurances the Policing Authority
17 needed to delivered to them in a proper fashi on."
18
19 So it is his evidence that you were having a four and a
20 half meeting that centred around his promotion. What 12:02
21 is your reply to the Chairman about that?
22 A. That that is his perception. He thinks I'm here to
23 hear his version of whatever he wants relayed back to
24 the Policing Authority, which to me wasn't the purpose
25 of my journey there. In fact, as I said, I had already 12:03
26 dealt with that in my head, I had responded to the 12th
27 CAO because he asked me for an update, I had done that,
28 I had already done that before I ever went to see
29 Superintendent Murray. So this is not my mindset going

1 there. It might have been his mindset, he thought that
2 he could use me as conduit or he could use this meeting
3 as an opportunity to convey something back to the CAO
4 who would convey it back to the Policing Authority.
5 But that was not my mindset.

12:03

6 287 Q. He continues:

7
8 "And I didn't -- like Assistant Commissioner Finn's
9 investigation I knew I would have to deal with further
10 on down the line. I had a probe with it. It was put
11 aside. The meeting wasn't really about that, other
12 than he gave me Garda Keogh's complaint, which I
13 already had from Assistant Commissioner Fanning. But
14 apart from that, that was left aside. This focus of
15 this meeting, was, I suppose my promotion insofar as I
16 was concerned."

12:04

12:04

17
18 So I suppose the question have I to ask you --

19 A. Insofar as he was concerned. Again I emphasised that,
20 Chair. Sorry.

12:04

21 288 Q. Did you have a four and a half meeting with
22 Superintendent Murray about his promotion on the 18th
23 January? And that is his evidence effectively.

24 A. I am giving you -- I have no difficulty articulating
25 now it happened and what happened. I went there on
26 that day to give him the documentation. That is what I
27 had planned to do, that is what I told him I was going
28 to do and that's what I had. I have no note taker with
29 me, and nobody with me. My sole purpose to go there

12:04

1 was to do that. Obviously when I was there, I can now
2 know he is of the mindset that, yes, I have the AC
3 here, I'm going to tell him this stuff in the hope that
4 he is going to go back and tell the CAO. Was that my
5 purpose? No. Did the CAO ask me to do that? No. Did 12:05
6 I report back to the CAO? No. That was his
7 perception. That might be his perception, it wasn't my
8 perception.

9 289 Q. CHAIRMAN: Did you report back to the Policing
10 Authority? 12:05

11 A. No, Chair no. I had actually done that two days before
12 I went there, like it wasn't on my radar at all. Yes,
13 when I got there, had I a curiosity in terms of what he
14 was tell me? Yes I did. Did I sit there and listen to
15 him tell me all this stuff? Yes, I did, Chair. It was 12:05
16 a curiosity to me, because I was learning stuff I
17 suppose that would be useful to me in terms of going
18 off and doing my investigation. But apart from my
19 sitting there and absorbing this, Chair, we'll say, as
20 a curiosity for me, yes, I am an investigator, he was 12:05
21 telling me stuff I wanted to know, I certainly absorbed
22 it all, Chair, but I didn't make any note of it. I
23 didn't go there to make a note of it. I think it would
24 have been inappropriate for me to be taking notes.
25 Because that wasn't the purpose of my meeting there. I 12:06
26 solely went there to serve the documentation on him.
27 If I had gone to do a meeting I would have brought
28 someone with me. If this was a meeting I wanted to
29 take something from him, I would have been prepared for

1 it, I wasn't. That is the context of my perspective,
2 Chair, now.

3 290 Q. MS. McGRATH: I suppose we are talking in retrospect
4 now, can I ask you whether or not you should have had
5 such a meeting at all? 12:06

6 A. I had to have a meeting.

7 291 Q. If I can just finish the question, commissioner?

8 A. Yeah.

9 292 Q. Under the policy document this was raised the last day
10 with you, the duties of impartiality, objectivity, can 12:06
11 I ask you, you have the superintendent saying the focus
12 of the meeting was on the promotion, and you're
13 carrying out this investigation, can I ask you, as I
14 say, it may be in retrospect, the appropriateness of
15 such a meeting? 12:07

16 A. I disagree with that. It was his perspective that the
17 focus of the meeting was about telling me this. That
18 was not the purpose of the meeting for me, AC Mick
19 Finn, going there, I went there with one sole purpose,
20 to serve this documentation on him. Which I did. AS I 12:07
21 say, Chair, if I was going for some other purpose I
22 wouldn't have gone along, I would have brought somebody
23 with me to take notes to do that, you know.

24 293 Q. Okay. Can I stay on the day in question, please, can
25 we look at note 2896. This is a shorter note that he 12:07
26 had exhibited. Do you see there it's PM 137 of his
27 statement. He says:

28

29 "Met M Finn. 11:00am to 3:15pm and went over all

1 documents I have. He indicated PA needed assurance and
2 that seeing my documents and the information he was
3 willing to provide that. He gave me Garda Keogh's
4 complaint, had it already from AC Fanning."
5
6 Do you have a hard copy of that, sorry, it's 2896,
7 Commissioner.
8 A. I don't think I have, 2896.
9 294 Q. Volume 10, 2896, commissioner. Do you see that note
10 there? I will just give you an opportunity to read it? 12:08
11 A. 18th January. 10:00am to 3:15pm. Yeah. It's not a
12 fact, no.
13 295 Q. Sorry?
14 A. That is not a fact, I was not asked to do anything by
15 the Policing Authority. 12:09
16 296 Q. Okay. So that line he has recorded "he indicated the
17 PA needed assurance and that seeing my documents and
18 the information he was willing to provide that", do you
19 accept that --
20 A. No. 12:09
21 297 Q. -- or reject that?
22 A. I reject that. As I said, I already did what I had
23 done for the Policing Authority through the CAO two or
24 three days previously, Chair.
25 298 Q. Okay. Now, I think on the last day you were asked 12:09
26 about two further notes that Chief Superintendent
27 Murray made on the 20th January, which is two days
28 later. He is recording conversations with Mr. Nugent
29 and in one of them, for example, he says:

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"M Finn's view is that all is okay."

Do you remember that, you were asked about that on Day 142? And another one, he records:

12:10

"Told him M Finn view and assurance."

So these are notes that he has recorded, he is talking about your views, all is okay, assurances. Do you know what Superintendent Murray could be referring to there?

12:10

A. No.

299 Q. Would you have said -- would you have provided any assurances to him? Would you have told him all is okay? Does it ring a bell?

12:10

A. I couldn't possibly assure him, Chair. I was only starting out on my investigation. As I said, only two days before that I was only writing out to witnesses. So, I couldn't possibly know what was going to -- how my investigation was going to go or what was going to happen.

12:10

300 Q. Can I ask you, he says he handed you the letter that he sent on the 28th November. In his own language he said he sent it to the top three, do you remember that letter, do you remember him handing you a letter on the day?

12:10

A. No, I don't actually remember handing him a letter on the day. I know the letter you're talking about because it came up since, you know, it came up the day

1 I was here. I was couldn't recall coming away with
2 that letter. He says he gave it to me, but I don't
3 recall getting it from him. I don't think it was even
4 relevant to my investigation. He did say --

5 301 Q. Did you subsequently read the letter? 12:11
6 A. Yeah.

7 302 Q. It's at page 2849. It's a very strongly worded letter,
8 isn't that right?
9 A. It is in fairness, yeah.

10 303 Q. 2849. 12:11
11 A. But it's not addressed to me or I don't think it is
12 relevant to me or what I am doing.

13 304 Q. But I think -- can I put it to you, commissioner?
14 A. Yeah.

15 305 Q. Given what the content of it, would you think you would 12:11
16 remember it if you got it on the day?
17 A. Actually I would, yeah. That surprised me when he said
18 that he gave me this going away and I don't actually
19 have any recollection of it.

20 306 Q. I think in the letter he describes your appointment as 12:11
21 contrived and hurried, do you remember that?
22 A. In this letter?

23 307 Q. In this letter. At page 2851. 2851, in the second
24 last paragraph. The letter has been opened in detail
25 to the Chair previously, but see there: 12:12
26
27 "I must ask how this, what I say is a contrived and
28 hurried appointment can continue."
29 A. I see it, yeah.

1 308 Q. Does this ring any bells to you?
2 A. No.

3 309 Q. Do you remember any of this?
4 A. No.

5 310 Q. Okay, so is it your evidence that you didn't get this 12:12
6 letter from him or see it before the brief that was
7 circulated?
8 A. Yes, that's my evidence, yeah. He said he gave it to
9 me, but honestly, genuinely, Chair, I have no
10 recollection of getting it from him. He said he gave 12:12
11 it to me going away, like, you know.

12 311 Q. Now, we're just at the end here, commissioner. Can I
13 ask you, just finally, we know you're role in the
14 investigation continues for a number of months on to
15 December when you do the report? 12:13
16 A. Yeah.

17 312 Q. But just in relation to this issue, the promotion, can
18 I ask you to look at one final note that Superintendent
19 Murray took. It's at 16245?
20 A. I have it here, okay. 12:13

21 313 Q. So at 16245, if you see that note there, it's a note he
22 kept for the 26th January, do you see it there?
23 A. Yeah.

24 314 Q. "26th January 2018, call from M Finn at 7:04pm for 1
25 minute 11 seconds. Asked if PA had been on to me re 12:14
26 promotion."
27 A. Yes.

28 315 Q. So this is you speaking to him. Do you remember this
29 call?

1 A. I do, yeah.

2 316 Q. Okay. "Said he and J Nugent talking and he would ring
3 me. Said PA made decisions Friday morning, 26/01 and
4 had extended Thursday's meeting into Friday. Said he
5 would try and find out more." 12:14

6

7

Do you accept the note of the conversation?

8

A. I can explain the conversation, not necessarily the
9 note because it's not my note.

10 317 Q. Okay. 12:14

11 A. But I do recall we were down in Wexford, and we had a
12 senior leadership meeting.

13 318 Q. CHAIRMAN: Sorry?

14 A. A senior leadership meeting. Sorry, Chair. We were
15 down in Wexford and I remember Joe Nugent was there, I 12:14
16 was talking to Joe, and it came up, a conversation
17 about Pat Murray, there was a meeting the previous day
18 in the Policing Authority and there was an anticipation
19 that there was going to be some promotions coming out
20 of it and obviously Superintendent Murray's was one of 12:14
21 the ones that was pending, so there was an anticipation
22 that day that something was going to happen. So I just
23 rang him out of courtesy, to say, did you get promoted
24 that day, you know, thinking that he might have got a
25 phone call from the Policing Authority saying he got 12:15
26 promoted, like you know. He hadn't.

27 319 Q. So you took the initiative to phone him in relation to
28 the issue, is that right?

29 A. Yeah. I asked him he got promoted, I thought he got

1 promoted that day, because the impression we got, you
2 know, that he got promoted.

3 320 Q. Can I ask you, I am sure it will be put to you, but as
4 the impartial investigator in the bullying and
5 harassment claim, why were you making such a phone call 12:15
6 to Superintendent Murray?

7 A. I suppose it was a big thing for him, like you know
8 what I mean, like he was waiting all along for this
9 thing to happen, we'll say. On a human level, Chair, I
10 mean I had interacted with him. I had no animosity 12:15
11 with him. You know, mightn't have been best of buddies
12 over all this, but I mean he wasn't too happy, he
13 didn't want me to -- he had issues about I doing this
14 investigation at the time because of his civil thing,
15 and he mightn't be too happy that I was driving on with 12:16
16 it but I suppose on a human level I had no difficulty
17 with anything, we hadn't fallen out about it, like you
18 know, the guy was going to get promoted, I rang him did
19 you get promoted today. Now it transpired it didn't
20 happen, maybe it was the Monday or something, that was 12:16
21 the context of when I rang him.

22 321 Q. I think when he was being cross-examined by Mr. Kelly
23 senior counsel for Garda Keogh on day 146,
24 Superintendent Murray said you told him that you would
25 go off and find out if any more promotion decisions had 12:16
26 been made; is that right?

27 A. I'd say that was the case. We were asking him did he
28 get promoted, like you know, and obviously he hadn't
29 got any phone call. So he knew it was probably

1 evident. I am sure he asked me have you anything to
2 tell me. That would be the context of the
3 conversation.

4 322 Q. Can I ask you, commissioner, your dealings then with
5 the promotion issue, I mean I think you accept that it 12:17
6 came into your orbit, as it were, at the start of the
7 investigation, is that right?

8 A. Yeah.

9 323 Q. And I think Garda Keogh --

10 A. By accident I suppose more than anything, you know. I 12:17
11 just happened to be -- my investigation started at the
12 time, I suppose, when it was a sensitive time for him,
13 I would imagine, in terms of his promotion was due
14 again, so that's how our paths crossed I suppose in
15 that context. 12:17

16 324 Q. As I say, I think Garda Keogh was quite critical of
17 your role in relation to having anything to do with it
18 whatsoever, given your duty as an impartial
19 investigator what, do you say to that?

20 A. I felt I was always impartial towards him. I never had 12:17
21 any animosity or any difficulty or never had any run
22 ins with Garda Keogh, I never met the man apart from I
23 did write about him once, as you demonstrated there
24 earlier on at the outset of today's evidence, that when
25 I was up in the Northern Region at one stage or filling 12:18
26 in for the Eastern Region I think, that was the only
27 time the man's name had crossed my boughs, we'll say, I
28 wasn't doing him any harm in that context either that
29 particular day. So I certainly had no animosity or I

1 wasn't impartial and I had any reason to show bias
2 towards him or show any favour towards Superintendent
3 Murray. I felt I was quite neutral coming into the
4 whole thing, Chair.

5 325 Q. You used the word there neutral, do you think by 26th 12:18
6 January when you're phoning him, has that neutrality be
7 compromised in any way at that stage?

8 A. Not from my perspective.

9 326 Q. If you could answer any questions, please?

10
11 END OF EXAMINATION

12
13 ASSISTANT COMMISSIONER MICHAEL FINN WAS CROSS-EXAMINED
14 BY MR. O'BRIEN, AS FOLLOWS:

15
16 327 Q. MR. O'BRIEN: Thank you. If we can just go back 12:18
17 please, assistant commissioner, first of all to the
18 clearance form, I would just like to clarify something
19 with you in relation to that. So that commences on
20 page 4022, which is in volume 14. This is the 12:19
21 clearance form that you signed in relation to
22 Superintendent Murray on 11th September 2017.

23 A. I have it opened here, Chair.

24 328 Q. I listened carefully to the evidence that you gave to 12:19
25 the Chairman earlier in relation to this, but I just
26 want to understand something, when the clearance forms
27 were presented to you or were presented to you on this
28 day, you said you signed a number of them, did they
29 present in a kind of batch form, where you simply

1 signed your name on each form and moved on, or was
2 there a file belonging to each one in relation to the
3 candidate?

4 A. I suspect there was a file for each one, Chair, but I'd
5 be hard pressed now to be definitive on that, do you 12:20
6 know.

7 329 Q. I see. For example, if you look down there on page
8 4022, you will see the box in relation to previous
9 disciplinary action, for example?

10 A. Yeah. 12:20

11 330 Q. And it says as follows:
12
13 "In accordance with the provisions at 1.28 of HQ
14 Directive 159/08, the candidate has no previous
15 discipline actions. . . ." 12:20
16
17 Etcetera.

18 A. Yeah.

19 331 Q. I take it when the file lands on your desk that that is
20 already in place? 12:20

21 A. Yeah.

22 332 Q. That is not something that you inserted into the box?
23 A. Correct.

24 333 Q. Do I take it then that you just took at face value the
25 entries in each of the boxes and signed the form? 12:20
26 A. Correct.

27 334 Q. You didn't read the file to make any independent
28 clarifications or otherwise as to what the boxes
29 contained?

1 A. Well, I don't think there was anything to alert me to
2 go, say, delving further into it. If there was
3 something in it I would have said, oh, what's that,
4 like you know, but there was nothing there. He had no
5 previous discipline issues. 12:21

6 335 Q. I see, but this is a situation where you are signing a
7 clearance document for somebody who is going to be a
8 senior officer within An Garda Síochána?

9 A. Yeah.

10 336 Q. What I am suggesting or what you seem to be saying to 12:21
11 the Chairman is that you didn't carry out your own due
12 diligence before signing that form yourself; is that
13 right?

14 A. No, but sure your staff would do that for you. You'd
15 trust area staff to prepare the documentation for you. 12:21

16 337 Q. Okay.

17 A. I suppose if there was an issue, Chair, they'd be
18 flagging it to you, they'd be saying, oh, there's an
19 issue there, you need to look at that.

20 338 Q. And in relation to Superintendent Murray, do I take it 12:21
21 that nobody flagged any issues?

22 A. Correct.

23 339 Q. I see. If you move down just in relation to the
24 evidence he gave the Chairman about including
25 complaints of bullying and harassment or otherwise, if 12:21
26 you look at page 4023, and this is in relation to
27 section 4, and it says:
28
29 "Please provide details below of any ongoing or

1 outstanding investigation (criminal or disciplinary)
2 that the candidate is the subject of.

3
4 This should include: The nature of the alleged
5 wrongdoing; the nature of the investigative process 12:22
6 (e.g. criminal or discipline, less serious discipline
7 or serious discipline process) and the details of the
8 stage of the investigation process."

9
10 So I suggest to you that the wording of that section 12:22
11 imposing an obligation upon the person signing the
12 clearance form to include those allegations, do you
13 accept that?

14 A. I would accept it in the context of, to go back to the
15 start of the paragraph, about any ongoing outstanding 12:22
16 criminal or discipline issues, we'll say.

17 340 Q. Yes. So we know that Garda Keogh made a statement to
18 Chief Superintendent Scanlan on the 27th March, isn't
19 that correct?

20 A. Correct, yeah. 12:22

21 341 Q. But I understood you earlier to say that perhaps, and
22 correct me if I am wrong, that if, for example, the
23 investigation hadn't completed, that you in signing
24 this form wouldn't have included that, is that right?

25 A. I was saying my mindset at the time, issues of bullying 12:23
26 and harassment, I suppose, wouldn't be as forefront in
27 my mind as they are right now, if I was signing this
28 form today.

29 342 Q. I see. Notwithstanding, for example, it's the nature

1 of the alleged wrongdoing?

2 A. But I would say, and this is only my view, Chair, that
3 in signing this form, and the context, and I wouldn't
4 say it was just my view, but I would say probably the
5 staff who were preparing this for me, that, you know, 12:23
6 we were looking at it to see was there any criminal or
7 discipline matters outstanding. I think that's what we
8 would have looked for and I was satisfied that there
9 wasn't anything of that nature.

10 343 Q. I see. When you were appointed, just to clarify, on 12:23
11 15th November of 2017 to investigate Garda Keogh's
12 bullying and harassment complaint, you didn't feel a
13 responsibility to correct that clearance form that you
14 had signed in September?

15 A. I mean, I wouldn't have remembered I signed this form. 12:24

16 344 Q. You will remember when I asked you questions on the
17 last occasion, on Day 142?

18 A. Yeah.

19 345 Q. We discussed the bullying and harassment policy, and we
20 discussed the nature and the ethos of the policy and I 12:24
21 suppose in brief we discussed the principles of natural
22 justice --

23 A. Yeah.

24 346 Q. -- that attach to you as the investigator so that you
25 would -- and it's set out that you would be impartial 12:24
26 and so on. If we could just look to volume 14, page
27 4205, please, Mr. Kavanagh. It's page 4205, volume 14.
28 We went through this in some detail on the last
29 occasion, but to just briefly refresh your memory in

1 relation to it. So just if we look to the first
2 paragraph there, entitled "the principles to be
3 observed by the investigator", it says:

4
5 "The investigator must avoid discussing the case with 12:25
6 any person, whether within or outside of the workplace,
7 other than those to whom they must speak in the course
8 of the investigation."
9

10 Isn't that what it says? 12:25

11 A. Yeah.

12 347 Q. Outside of the witnesses that are named in the bullying
13 and harassment complaint, did you speak to anybody else
14 in relation to the investigation?

15 A. I did. 12:25

16 348 Q. Okay. You spoke, for example, to Chief Superintendent
17 Healy, is that correct?

18 A. Oh I did, yeah, yeah.

19 349 Q. I wonder if we could have the transcript please for Day
20 146, at page 41? 12:25

21 A. That was in the context of Superintendent McBrien
22 giving me material. When I wrote to Superintendent
23 McBrien she gave me a volume of material and she
24 prefaced by saying that she had given this material to
25 the Chief Superintendent Healy for the purposes of the 12:26
26 civil proceedings. So that was kind of through my
27 antenna that the civil proceedings the volume was
28 there, so I asked him about it.

29 350 Q. Just to recall, Day 146 is Superintendent Murray's

1 evidence, when he was being questioned by Mr. Marrinan.
2 If we move down to line 14. This is a note that is
3 attributed to you and he said that you:

4
5 "...had spoken to Chief Superintendent Healy, who 12:26
6 examined the entire situation re the mirrored civil
7 claim between January and August of 2017, he now knows
8 of the meticulous files and records and notes that I
9 have."

10
11 Did you speak to Chief Superintendent Healy about the 12:26
12 bullying and harassment investigation?

13 A. No. I hadn't. Sure I was only starting my bullying
14 and harassment investigation then.

15 351 Q. Did you speak to Chief Superintendent Healy about 12:26
16 Superintendent Murray and his civil claim?

17 A. I did. In the context I just said, Chair, that I got
18 this volume of material from Superintendent McBrien.
19 So I rang him to say, have you got this material. He
20 said, I did an investigation but he didn't physically 12:27
21 have it then, he had submitted this. But he, I
22 suppose, verified that, what Superintendent McBrien
23 gave me, he had got that for the purpose of his civil
24 proceedings. So I was happy to get this material.

25 352 Q. I see, Ms. McGrath asked you a couple of moments ago 12:27
26 about the letter that Superintendent Murray had written
27 and about a note that he -- sorry, about his view that
28 he had the support of the top three, is that something
29 that you were aware of or something that you agree

1 with? Did Superintendent Murray have the support of
2 the top three?

3 A. I don't know. I mean, that's his perception of
4 something.

5 353 Q. Well, for example, Mr. Nugent is the chief 12:27
6 administrative officer, isn't that correct?

7 A. He is.

8 354 Q. Would you consider to be one of the top three?

9 A. Yeah.

10 355 Q. And you had some conversations with Mr. Nugent in 12:28
11 relation to these issues, isn't that right?

12 A. I updated him, yeah.

13 356 Q. Having had those conversations with Mr. Nugent, did you
14 form a view that he was supportive of Superintendent
15 Murray? 12:28

16 A. I don't think I had that conversation with him, yeah.

17 357 Q. No, but having had the conversations with him
18 surrounding the promotion issue and so on, did you form
19 any view as to whether you thought that he was
20 supportive of Superintendent Murray? 12:28

21 A. I didn't specifically get that impression from him, I
22 don't think we ever had that discussion, Chairman.

23 358 Q. If we can go back to the 18th January 2018. This is
24 the date upon which you had the meeting with
25 Superintendent Murray at his house and that was for the 12:28
26 purpose of delivering, I suppose, or serving upon him
27 the bullying and harassment complaint. We know that
28 the meeting took four hours or four hours and 15
29 minutes. I think you have a note of it in your diary,

1 that's at --

2 A. I have my diary here.

3 359 Q. Sorry, it's page 5695, it can be brought up on the
4 screen. You will see there it's Thursday, 18th
5 January: 12:29

6

7 "Meet with Pat Murray and give him documents and go
8 through the allegations."

9 A. Yeah.

10 360 Q. Then you go on to say Pat Murray is to consider his 12:29
11 position and so on. So you didn't take any notes of
12 that meeting, as we know. If we can just move, and
13 again this is something you discussed with Ms. McGrath
14 a few moments ago. If we look at Day 146 and it's page
15 60 of the transcript? 12:29

16 A. Page?

17 361 Q. If we move down?

18 MS. McGRATH: Page 146 of the transcript, Commissioner.
19 MR. O'BRIEN: Sorry, Day 146 and it's page 60.

20 CHAIRMAN: Do you have the transcript of Day 146 in 12:30
21 front of you?

22 THE WITNESS: I don't think I have. Oh, I do, yeah.
23 146.

24 362 Q. MR. O'BRIEN: It is page 60, please.

25 A. I have it open here actually. 12:30

26 363 Q. At line 8 there, you will see:

27

28 "My interpretation was that Assistant Commissioner Finn
29 was providing the information and assurances and views

1 to Mr. Nugent."

2

3 Now, you're at Superintendent Murray's home to deliver

4 to him the statement and documents surrounding the

5 bullying and harassment investigation? 12:30

6 A. Yes.

7 364 Q. Why are you discussing anything else outside of that,

8 outside of that investigation with Superintendent

9 Murray?

10 A. I suppose, Chair, to be fair, most people, when you 12:31

11 serve the documentation on them, they say something to

12 say, you know, yeah, I'm aware of it, or, oh, you

13 shouldn't be doing this, I'm not happy with this, you

14 know. I think it's a common kind of a natural enough

15 reaction, offload something on you. 12:31

16 365 Q. In relation to the documents you had in your

17 possession, did you put any of the allegations you had

18 to him at that meeting, did you say, for example, Garda

19 Keogh says X or Y about your behaviour?

20 A. I probably touched on it, Chair, in the broad sense of 12:31

21 what the allegations contained, yeah.

22 366 Q. So essentially that was fulfilling your function as the

23 investigator?

24 A. Yeah.

25 367 Q. Then did you have any conversation with Superintendent 12:31

26 Murray about his promotion?

27 A. About his promotion?

28 368 Q. Yeah, in that context?

29 A. Other than the fact, I suppose, that he was

1 articulating that he was concerned, frustrated,
2 whatever you want it articulated, that his promotion
3 was being held up and I think he saw this as another
4 obstacle that was being put in the way to prevent him
5 being promoted. 12:32

6 369 Q. I see. why then at that stage did you not stop him and
7 say, sorry, superintendent, that is not my business, I
8 am here solely to investigate a bullying and harassment
9 complaint?

10 A. I suppose the way the conversation went, the day went, 12:32
11 we'll say, as I said, I met him, drove to his house,
12 came in and exchanged pleasantries, you know. I didn't
13 really know the guy so it kind of gave him an
14 opportunity to talk to me, tell me who he was, you
15 know, tell me a bit about himself. As you would talk, 12:32
16 general conversation about family, blah-blah-blah. And
17 I gave him the papers I suppose and he started off his
18 articulation of why this was unfair to him and the
19 promotion being held up, which I felt was kind of a
20 normal enough response, you know. Human beings. He's 12:33
21 not happy with what is happening, he is probably
22 offloading to me, as I say, his frustration with it.
23 And he goes on to say, look, I've all this material,
24 look I have this big file here and explained to me why
25 he can't give it to me because of the civil 12:33
26 proceedings, because he knows if he gives it to me, I
27 have to give it to Garda Keogh. I suppose he's
28 frustrated and he's trying to at the same time saying,
29 I have this stuff here, and he has press cuttings.

1 370 Q. I see. You allowed him, I suppose, to address matters
2 that were running alongside the bullying and harassment
3 complaint but I suppose in relation to Garda Keogh
4 whose complaint you were investigating, you didn't
5 solely focus on that brief on that day, is that right? 12:33

6 A. As I said to the Chair earlier on, look, I suppose
7 there was a curiosity from my perspective as an
8 investigator. He had material which was of interest to
9 me, he is saying to me he can't give it to me right now
10 because of his legal advice, I assured -- I mean, I am 12:34
11 certainly interested in what's in it, if that is
12 material to me in terms of my investigation. So yeah,
13 I left him talk on.

14 371 Q. Do you accept that that --

15 A. But I mean it wasn't an interview. 12:34

16 372 Q. Do you accept that that was wrong of you?

17 A. No, no.

18 373 Q. As an investigator, to go outside of the boundary of
19 the investigation and discuss the promotion? I suggest
20 to you that wrong? 12:34

21 A. I don't think I was going outside the boundary of the
22 investigation of what was happening on the day, you
23 know, I don't think there was anything sinister about
24 what was going on. He was articulating his, I suppose,
25 frustration, as I say, why is this happening, you know, 12:34
26 this is another opportunity where somebody has put an
27 obstacle in a way, it's been done to prevent him being
28 promoted. He has this material, I say I certainly have
29 a curiosity about what's in the material, so, yeah, I

1 let him talk away about it. But it wasn't a formal
2 meeting. I said, look, you're going to have to respond
3 to me formally, you go off, get your legal advice, I
4 have to do my business, I'll be knocking at your door
5 again.

12:35

6 374 Q. If you look down to line 25, please, of the same page
7 there in the transcript. This is the person -- this is
8 Superintendent Murray's evidence to this inquiry, and
9 he says in relation to the meeting:

10
11 "This wasn't about Garda Keogh's complaints. This was
12 about my promotion and having what I felt were the
13 impediments and assurances the Policing Authority
14 needed delivered to them in a proper fashion."

12:35

15
16 Now, how can Superintendent Murray form that view when
17 you were there to discuss the bullying and harassment
18 investigation? He seems unequivocal, I suggest to you,
19 about what the meeting was about?

12:35

20 A. No, no.

12:35

21 375 Q. It was about his promotion?

22 A. This was his perspective of what the meeting was. I
23 think he genuinely -- I might be wrong, Chairman, in my
24 interpretation of it, but I think, this is my view,
25 that he believed that I was going back to the Policing
26 Authority with material or whatever from this meeting,
27 yeah.

12:36

28 376 Q. You discussed that earlier. I mean, after that meeting
29 on the 18th January, did you report back to Mr. Nugent

1 what was discussed at the meeting?

2 A. No. As I say, I already reported to Mr. Nugent, do you
3 know what I mean, that was done and dusted two days
4 beforehand.

5 377 Q. You're saying to the Chairman you had no communication 12:36
6 with Mr. Nugent in relation to that after the 18th
7 January?

8 A. Not in that context, we'll say, yeah.

9 378 Q. Okay, I wonder could we have document 12418, please. 12:36
10 This is a note that Superintendent Murray -- it's a
11 note from Saturday, 20th January 2018. If I could ask
12 you to look at the last paragraph of that note, please.
13 Now, I accept that this is Superintendent Murray's
14 note. If you look to the last paragraph, please
15 assistant commissioner. So this is after the 18th, on 12:37
16 the 20th, he says:
17
18 "I then sent M Finn a text at 10:51 asking him to
19 promise he would fill J Nugent in re our meeting. He
20 text back at 14:06 saying already on it and that he 12:37
21 would ring me on Sunday 21 January 2018."
22
23 Do you recall receiving a text message from
24 Superintendent Murray after your meeting on the 18th?
25 CHAIRMAN: Scroll up a little. 12:37

26 A. I don't. But I could have. I don't know. I don't
27 recall it, to be honest with you.

28 379 Q. MR. O'BRIEN: Do you recall him asking you to promise
29 to fill Mr. Nugent in on what happened at the meeting.

1 A. There was nothing of relevance I thought anyway,
2 from --

3 380 Q. Well, in circumstances where you have told us a few
4 moments ago that you didn't have contact with
5 Mr. Nugent? 12:38

6 A. That's what I'm saying, I didn't think there was
7 anything of relevance for me to tell Mr. Nugent after I
8 served the papers on --

9 381 Q. And Superintendent Murray says you text him back, and
10 he is very specific about the time, at 14:06, saying, 12:38
11 "already on it" and that you would ring him on Sunday
12 the 21st. So that you had communicated to Mr. Nugent
13 in some way or form, isn't that right?

14 A. Sure I had nothing to communicate. I mean, I had
15 nothing to communicate back to Mr. Nugent. 12:38

16 382 Q. Well, if Superintendent Murray's recollection and his
17 note is correct?

18 A. Yeah.

19 383 Q. He attributes the position that you would fill Joe
20 Nugent in in relation to the meeting you had on the 12:39
21 18th, isn't that correct?

22 A. Yeah, because Superintendent Murray seems to be of the
23 view -- his perception of this meeting, that I'm going
24 to be a conduit to get stuff back to the Policing
25 Authority. 12:39

26 384 Q. Yes.

27 A. Which he knows, I suppose, at some stage that I was
28 briefing Mr. Nugent.

29 385 Q. Yes.

1 A. But he doesn't know that I have already done that, even
2 before I called to see him on the 18th, I had done that
3 already.

4 386 Q. I see. But he is saying not only that, he is saying
5 you text him back saying "already on it" and that you 12:39
6 would ring him on Sunday, the 21st. Why would you be
7 ringing him on Sunday, the 21st?

8 A. I have no idea. I have no idea. I don't have any
9 record of it.

10 387 Q. And do you recall speaking to him on Sunday 21st? 12:39

11 A. No.

12 388 Q. I wonder could we scroll on to the next page, please.
13 So 12419. This again is a note from Superintendent
14 Murray, where he says:
15
16 "I spoke to M Finn for 3 minutes 42 seconds."
17
18 And again very specific on the time.
19
20 "At 18:407. He assured me that he spoke to J Nugent on 12:40
21 Friday about what he learned over his four-hour visit
22 with me."
23
24 Is Superintendent Murray correct about that?

25 A. I don't know what he is referring to, we'll say. 12:40

26 389 Q. Let me read it to you again?

27 A. Yeah.

28 390 Q. "He assured me", that's you?

29 A. Yes.

1 391 Q. That you spoke to Joe Nugent on Friday 19th about what
2 you learned in your four hour visit with him. Did you
3 speak to Joe Nugent on the 19th about the four hour
4 meeting?

5 A. I will just check my diary on it, Chair. I don't
6 recall. I have no record of talking to Joe Nugent on
7 the 19th.

12:40

8 392 Q. I see. So are you saying you don't recollect this
9 phone call?

10 A. I don't, no.

12:40

11 393 Q. "He also assured me that Joe Nugent gets it and is
12 talking to the Policing Authority. He is to run it by
13 Joe Nugent whether or not I should offer the Policing
14 Authority my document and get back to me."

15

12:41

16 So again I'm asking you why you are speaking to
17 Superintendent Murray about matters, on the 21st
18 January '18, about matters outside of the parameters of
19 the bullying and harassment investigation?

20 A. I don't understand what context that is happening in.
21 As you asked me the question, I'm trying to think why
22 would I want to talk to him in relation to that. I
23 mean, it's a matter for Superintendent Murray if he was
24 going to give his documentation to the Policing
25 Authority. I understood he already gave that
26 documentation to the Policing Authority.

12:41

12:41

27 394 Q. I mean, were you aware that Mr. Nugent was
28 communicating, I suppose, with the Policing Authority
29 on a formal level in relation to documents that they

1 were seeking --

2 A. Yes.

3 395 Q. -- regarding your investigation?

4 A. Yes.

5 396 Q. You were aware of that? 12:42

6 A. I was, yeah.

7 397 Q. And we know that you provided Mr. Nugent with the 11
8 point progress report?

9 A. Yeah.

10 398 Q. And that doesn't go into the substance of the complaint 12:42
11 but it shows the status of where you are at with it?

12 A. Yeah.

13 399 Q. That's correct. So you knew on the one hand that
14 Mr. Nugent was in communication with the Policing
15 Authority? 12:42

16 A. Correct, yeah.

17 400 Q. Did you make Garda Keogh aware at any stage of any of
18 these matters?

19 A. No.

20 401 Q. I see. Just moving on then to the note, sorry, the 12:42
21 26th January, it's at 16245. You gave evidence to the
22 Chairman a few moments ago and Ms. McGrath asked but
23 this particular document. 16245, if we can scroll back
24 up please. This is the call that arises when you're at
25 the leadership meeting in Wexford, as I understand? 12:43

26 A. Yes.

27 402 Q. And you said that you rang him out of courtesy to see
28 if he got promoted. And again, I suggest to you that
29 that is highly unfair to Garda Keogh, that you as the

1 impartial investigator of his bullying and harassment
2 complaint are telephoning a person against whom the
3 complaint is made as a courtesy about their promotion.
4 Can you understand that from Garda Keogh's perspective,
5 how that is unfair?

12:43

6 A. I wouldn't say it was unfair. I mean, I don't think --
7 that's kind of professional courtesy. I mean, I was
8 ringing the man to see did he get promoted, like you
9 know. Nothing further than that, we'll say, you know.

10 403 Q. But the perception is that you have created, I suggest
11 to you, is that you were involved in Superintendent
12 Murray's promotion business when your brief essentially
13 was to investigate the bullying and harassment
14 complaint?

12:43

15 A. I wasn't involved in it, that's not fair.

12:44

16 404 Q. Could we just go back, please, just briefly, to the 8th
17 December. Could we have document 12533 back on the
18 screen, please, Mr. Kavanagh?

19 A. I have it here.

20 405 Q. This document was opened up and it is an e-mail.
21 Sorry, if we just scroll back up to the top, please,
22 Mr. Kavanagh, just so we can see the address and so on.
23 So it's sent to Ms. Hall, it's dated the 8th December.
24 I appreciate that this is from Mr. Nugent to Ms. Hall.
25 If you can scroll down there, please. I think you
26 reviewed this document earlier. Did I understand you
27 to tell the Chairman that you hadn't been in
28 conversation with Mr. Nugent about the bullying and
29 harassment investigation at this stage?

12:44

12:45

1 A. I don't think so, no.

2 406 Q. You don't think so. Could we just scroll down a little
3 bit, please. And if you look to that paragraph, which
4 begins:

5 12:45

6 "I can also confirm that Assistant Commissioner Michael
7 Finn has been appointed to investigate the bullying and
8 harassment complaint. The first of his work has been
9 to formalise the complaint."

10 12:45

11 And so on.

12
13 "The process has commenced. Assistant commissioner has
14 met with Garda A and his legal representatives earlier
15 this week."

16 12:45

17 so that is obviously referencing the meeting on the 1st
18 December.

19 A. Yeah.

20 407 Q. "The outcome of this meeting is for Garda A." 12:46

21
22 So that is Garda Keogh.

23
24 "To specifically confirm the exact matters of his
25 complaint relating to Superintendent Murray and which 12:46
26 are covered by the organisation's bullying and
27 harassment policy."

28
29 Did you provide this information to Mr. Nugent, first

1 of all?

2 A. I don't think I provided it directly.

3 408 Q. Where did Mr. Nugent get that specific information to
4 write that letter to Ms. Hall if it didn't emanate from
5 you? 12:46

6 A. I'm not saying it didn't emanate from me, I'm saying I
7 didn't communicate directly.

8 409 Q. Was it one of the members of the investigation team?

9 A. I don't know, Chair, I mean, it could have been his own
10 legal section, it could have been our legal section, I 12:46
11 was getting legal advice on this matter, so he could
12 have got that from --

13 410 Q. We know that Chief Superintendent Myers and I think it
14 was Inspector Brown, they formed your investigation
15 team, isn't that correct? Do you recall ever in the 12:46
16 month of December 2017, saying to either of them or
17 directing either of them or permitting either of them
18 to communicate with Mr. Nugent in relation to the
19 bullying and harassment complaint and its status?

20 A. No, I'd say. Unless Inspector Brown might have, 12:47
21 because she was working closely with me, but I don't
22 recall that, no. I don't have any record of it anyway.

23 411 Q. Do you accept that discussing --

24 A. Like I mean, just because the CAO knew about it, he
25 mightn't have got it from me, he could have got it 12:47
26 elsewhere, we'll say, that is what I am saying.

27 412 Q. Just in relation then to Mr. Nugent, he gave evidence
28 on Day 148. It's Day 148, when he was being examined
29 by Ms. McGrath he confirmed that you and he had

1 contact. If we look to page 78, please.

2 A. Sorry, I missed the start of that.

3 413 Q. It's the transcript, it's Day 148. This is
4 Mr. Nugent's evidence. If you go to page 78 first of
5 all, please, Mr. Kavanagh. I don't think there's any 12:48
6 dispute, you will see there that Ms. McGrath asked him:
7
8 "I think you were in some contact with Assistant
9 Commissioner Finn; is that correct?" And he says at
10 line 23: 12:48
11
12 "So I was in touch with Assistant Commissioner Finn to
13 obtain some further information about the status of the
14 matter."
15 12:48
16 If we could move on then to page 91, please?

17 A. He did write to me, Chair. That was the whole sequence
18 of my letter, the 15th January.

19 414 Q. I see. I mean, did you see it as a breach of the
20 policy to be discussing anything concerning the 12:48
21 bullying and harassment investigation with Mr. Nugent?
22 A. I don't believe so, Chairman.

23 415 Q. In circumstances where the policy mandates that you're
24 not to discuss the matters with people who are not
25 involved in the investigation? 12:49
26 A. But you have to, I have to communicate with the legal
27 people, I have to get advice, we'll say, in relation to
28 -- you can't just be totally in a cocoon, you know. I
29 had to reach at time outside the organisation, outside

1 of my own team, we'll say, to get information or do
2 stuff.

3 416 Q. Did Mr. Nugent ask you to conduct the investigation
4 quickly?

5 A. I wouldn't say he asked me to conduct it quickly. I 12:49
6 suppose everybody wanted me to conduct it quickly.
7 There was timeframes on it. I was obliged to do it
8 quickly or as quick as you can. He didn't put pressure
9 on me. I didn't think anybody was putting pressure on
10 me to do it quickly. 12:49

11 417 Q. He says, if you look to the bottom of page 91 there, at
12 question -- at line 24:

13
14 "Joe Nugent spoke to M Finn about doing his
15 investigation quickly." 12:50

16
17 And Mr. Nugent confirms to Ms. McGrath at line 28:

18
19 "Yes, I would have asked him, I mean, this is in the
20 broad context, as this matter had been going on a long 12:50
21 time."

22
23 He is even saying that he asked to you do it quickly,
24 do you accept that?

25 A. Superintendent Murray did? 12:50

26 418 Q. No, Mr. Nugent.

27 A. I'm sure he did. Everybody wanted me to do it quickly
28 and thoroughly. But I didn't deliberately rush or I
29 didn't deliberately delay it. I did what I had to do

1 in the timeframe that I could, bearing in mind the
2 complexities that were there and the legal advice and
3 all that kind of stuff.

4 419 Q. well, did you try to process it quickly to facilitate
5 Superintendent Murray's promotion? 12:50

6 A. No.

7 420 Q. when you had the meeting with Superintendent Murray on
8 the 18th January, why did you not write back to Garda
9 Keogh as part of the process into the bullying and
10 harassment investigation to let him that you had met 12:51
11 with Superintendent Murray and that you had had a
12 meeting? would that not have been fair to Garda Keogh,
13 to keep him abreast of the progress of your
14 investigation?

15 A. I didn't think that bit was relevant, no. I mean, I 12:51
16 was going to be writing to him to say -- well, when
17 Superintendent Murray and the others came back to me,
18 he knew, everybody knew, that that's part of the
19 process, that I would have to give him whatever
20 material was coming from the three people that he 12:51
21 complained of.

22 421 Q. Just finally, if we could go to page 12549, please, of
23 the documents. This is the document we couldn't see
24 clearly earlier on but it's another copy of it. It's
25 the e-mail from Mr. Nugent to yourself. If you could 12:52
26 just scroll down, please, a little bit, Mr. Kavanagh.
27 And he says to you:

28

29 "Mi ck, we spoke briefly about this earlier in the week.

1 Grateful if you are able to send me something short by
2 means of update which might answer some of the issues
3 raised by Helen Hall."

4

5 Do you recall a conversation prior to receiving that 12:52
6 e-mail on 11th January 2018?

7 A. I don't, Chair, no.

8 422 Q. And if we could just scroll down. The response I think
9 you provide him with is the 11-point status report,
10 isn't that correct? 12:53

11 A. He may have asked me for it. I mean could I have
12 bumped into him, we were both in headquarters.

13 423 Q. But he was coming to you from the perspective -- he
14 was, as you have said, discussing or sorry, liaising
15 with the Policing Authority in relation to the 12:53
16 outstanding matters that they were seeking by way of
17 correspondence. So obviously, when he spoke to you, he
18 must have given you some context as to why he was
19 looking for a status update from you, is that right?

20 A. Yeah, I knew what he wanted. 12:53

21 424 Q. Okay. And you were satisfied to give him the document
22 that you did?

23 A. Yeah. But I was careful though, I think I was careful.

24 425 Q. You were, sorry?

25 A. I was careful in wording it. 12:53

26 426 Q. You were careful?

27 A. Yeah.

28 427 Q. I see.

29 A. I mean, I didn't set out in it any of what the

1 allegations were in that, my response was to --
2 428 Q. I suppose it's a factual document setting out the
3 process?
4 A. Yeah.
5 429 Q. Did you ever make Garda Keogh aware or Mr. Cullen on 12:54
6 his behalf that you had provided a status report to
7 Mr. Nugent to send to the Policing Authority?
8 A. No.
9 430 Q. Why was that?
10 A. I didn't think it was appropriate. I was never asked 12:54
11 for it or it never came up in the context.
12 431 Q. Just finally, I have to suggest to you that you weren't
13 impartial in carrying out the investigation and that
14 your actions in and about the investigation, the
15 bullying and harassment investigation was to the 12:54
16 discredit of Garda Keogh?
17 A. No.
18 CHAIRMAN: Say that again, Mr. O'Brien.
19 432 Q. MR. O'BRIEN: That he wasn't impartial in the
20 investigation and that his actions in the investigation 12:54
21 and the promotion issue were to the discredit of Garda
22 Keogh.
23 A. Definitely not.
24 433 Q. No further questions.
25
26 END OF EXAMINATION
27
28 CHAIRMAN: Thanks very much. Now who is next?
29 MS. McGRATH: Chairman, I see it is 12:55, Chairman, I

1 don't know whether you want to proceed.

2 CHAIRMAN: I was hoping that we might drive on to
3 finish it, if that is convenient, are you all right?

4 THE WITNESS: I'm all right.

5 CHAIRMAN: Are you happy enough? well, I am not 12:55
6 expecting a lengthy examination. who is doing it,
7 Mr. O'Higgins, is it you?

8 MR. MÍCHEÁL O' HIGGINS: Yes, Chairman. I'm not sure if
9 I am next. I was going to request, Chairman, I have no
10 difficulty with there not being a lengthy luncheon. 12:55

11 CHAIRMAN: would you prefer to have a break at this
12 point?

13 MR. MÍCHEÁL O' HIGGINS: I was going to ask for a short
14 break.

15 CHAIRMAN: That is all right. 12:55

16 MR. MÍCHEÁL O' HIGGINS: It might shorten my redirect.

17 CHAIRMAN: There is no problem. who else then wants to
18 get in on the act. Yes.

19 MR. McGRATH: I have no questions

20 CHAIRMAN: Thank you very much. Has anybody else got 12:56
21 any questions for the assistant commissioner? Very
22 good. So it's only you, Mr. O'Higgins. well,
23 Mr. O'Higgins, if it's all right with you, we will take
24 a break for ten minutes.

25 MR. MÍCHEÁL O' HIGGINS: That is fine, perhaps would you 12:56
26 mind saying 15.

27 CHAIRMAN: I would have no problem saying 15, it gives
28 me a chance to get back to my office and get back down
29 here, which is a bit of a rush if I have only 10

1 minutes. So 15 minutes, all right. We will say we
2 will assemble at 1:15 and if you are happy, it is
3 easier to get it over with, so to speak, with no
4 disrespect to Mr. O'Higgins. Okay. Thank you very
5 much.

12:56

6
7 THE HEARING ADJOURNED BRIEFLY AND RESUMED AS FOLLOWS:

8
9 CHAIRMAN: Are you okay, Mr. O'Higgins.

10 MS. McGRATH: I just notice we're missing the Keogh
11 team. Sorry about that, Chairman.

13:16

12 CHAIRMAN: I think Mr. Barnes is on the trail. That is
13 fine. Okay, now, Mr. O'Higgins.

14
15 ASSISTANT COMMISSIONER MICHAEL FINN WAS CROSS-EXAMINED
16 BY MR. MÍCHEÁL O'HIGGINS, AS FOLLOWS:

13:16

17
18 434 Q. MR. MÍCHEÁL O'HIGGINS: Good afternoon, assistant
19 commissioner. Could I first of all ask you to deal
20 with a document at page 12526? If we could call that
21 up please, Mr. Kavanagh. Just to put this in context,
22 assistant commissioner. This is the letter which I
23 think perhaps contextualises the Policing Authority
24 request for information. It is a letter of the 24th
25 November 2017, from the Policing Authority to Mr. Joe
26 Nugent, chief administrative officer. It is from Helen
27 Hall, the chief executive. It indicates that -- and
28 this is now, as I say, is November '17. A few lines
29 down, the last sentence of the first paragraph,

13:17

13:17

1 Ms. Hall requests:

2
3 "I would be obliged if you would provide the details
4 requested regarding this bullying and harassment
5 complaint as per points 3 and 4 of that letter." 13:18

6
7 which is a letter from 7th November. Then she says:

8
9 "In particular, I am requesting details of what is
10 contained in the complaint, what steps have been taken 13:18
11 to investigate the complaint, a copy of the relevant
12 procedures and the timeline for completing this
13 investigation. I would also reiterate my request for a
14 timeline regarding both the civil litigation and the
15 bullying and harassment allegations as set out in point 13:18
16 4 of my letter of the 7th November."

17
18 And then she concludes by indicating there is no
19 difficulty redacting third party information from any
20 material provided. So, can I ask you, does that, 13:18
21 insofar as you are aware, inform the context in which
22 there came to be a request from the Policing Authority
23 to An Garda Síochána to provide some degree of detail
24 as to the bullying and harassment complaint?

25 A. That's my understanding, Chair. 13:19

26 CHAIRMAN: Sorry, can you just remind me of the date of
27 that letter, Mr. O'Higgins?

28 MR. MÍCHEÁL O' HIGGINS: That's 24th November 2017.

29 CHAIRMAN: Thanks very much.

1 435 Q. MR. MÍCHEÁL O' HIGGINS: I think it's the case that your
2 substantive -- insofar as you had any role in being
3 asked to provide such information, I think it has been
4 your evidence that your substantive input into that was
5 reflected in the 11 bullet point e-mail that has 13:19
6 already been opened up?

7 A. Correct, Chair.

8 436 Q. Can you assist, just to put perspective on it,
9 assistant commissioner, in providing that 11-bullet
10 point response, what was purpose in providing that 13:20
11 information in the document dated January 2018? If it
12 assists you, it is at page 4540 of the materials. We
13 have already seen it. It's in volume 15.

14 A. Right. Chair, my role, I suppose, was just to give the
15 CAO an insight as to how my investigation was 13:20
16 progressing, I suppose, in the context of what the
17 policing Authority had asked him. I don't think they
18 were looking for the content of the complaint but they
19 just wanted to know timeframes, you know, when was it
20 likely to be concluded etcetera or had it progressed or 13:21
21 had it moved on at all. That was my understanding of
22 what Mr. Nugent wanted to find out from me.

23 437 Q. Yes. At any stage, can you assist the Chairman, did
24 you provide any, what might be termed, one-sided or
25 biased information to do down the complaint of Garda 13:21
26 Keogh?

27 A. No, Chair. I think I just gave a very factual outline
28 here of what was happening without expressing any
29 comment about any of the parties involved, Chair.

1 438 Q. And you mentioned in response to a question from
2 Mr. O'Brien that you did keep it factual and that was
3 your intent?
4 A. Correct, yeah, yeah.

5 439 Q. Specifically, can you assist us with that, what was 13:21
6 your thinking in keeping it quite strict or factual in
7 the 11 points?
8 A. Well, I didn't want to be -- I suppose the guidelines
9 say, you know, if we're dealing with a bullying and
10 harassment complaint we shouldn't be going around 13:21
11 telling everybody what this business is, you know. And
12 I think I was being careful not to set out any of that
13 in my correspondence. I just gave a factual response
14 saying, yeah, this investigation is ongoing,
15 complaint has been made. I identified who the parties 13:22
16 are, there are parties other than Superintendent Murray
17 involved, which, to be fair, I didn't name them or
18 anything like that because I didn't think it was
19 appropriate or relevant. So I was trying to be careful
20 in terms of what information I gave or set out, you 13:22
21 know.

22 440 Q. In bullet point 5 on page 4540, which is your 11-point
23 note of the 15th January '18.
24 A. Yes.

25 441 Q. In bullet point 5 you inform Mr. Nugent of the 13:22
26 following:
27
28 "On 20th December '17 Superintendent Murray raised a
29 query in relation to his participation in my

1 investigation, bearing in mind that many of the issues
2 raised in the bullying and harassment have sought and
3 received clarification of this issue with the Head of
4 Legal Affairs and I have shared this with
5 Superintendent Murray on 10th January 2018."

13:22

6 A. Yeah, Chair.

7 442 Q. Could I ask you, in that context, assistant
8 commissioner, would you mind looking at page 4333,
9 which is in volume 15. So 4333. I beg your pardon, if
10 we can scroll down a little bit to page 4334, which
11 sets the relevance of this document in context. So
12 page 4334.

13:23

13 A. Mm-hmm.

14 443 Q. This is an e-mail or a communication from Pat Murray at
15 page 4334. If you scroll down a bit, yes, it reads as
16 follows:

13:24

17
18 "On 13th November 2017, I was provided with a statement
19 from Garda Keogh said to be made on 27th March '17, in
20 which workplace relation allegations are made against a
21 number of other officers and I. I don't know where
22 that complaint lay until now."

13:24

23
24 And if we scroll down a little bit further to the next
25 page, it continues:

13:24

26
27 "As I am sure you will understand, I too am most
28 anxious to deal with these matters expeditiously as I
29 have comprehensively dealt with them in the High Court

1 proceedings. I would be most anxious to meet with you
2 at your earliest convenience to discuss the matter.
3 Kind regards, Pat Murray."

4
5 Perhaps if you could assist the Tribunal with putting 13:25
6 that in context. What was Pat Murray's complaint in
7 relation to the making of the allegation and how it
8 dovetailed with the task he had already carried out of
9 providing a rebuttal for the High Court proceedings and
10 what was his complaint as far as you were aware? 13:25

11 A. My understanding, Chair, is that he had --

12 CHAIRMAN: I'm not sure I understand that. Would you
13 mind asking that again, Mr. O'Higgins?

14 MR. MÍCHEÁL O' HIGGINS: Sorry.

15 CHAIRMAN: Sorry, just so that the commissioner is 13:25
16 answering a question that we all understand.

17 MR. MÍCHEÁL O' HIGGINS: Yes.

18 CHAIRMAN: Do you mind me asking you to ask that again.

19 MR. MÍCHEÁL O' HIGGINS: Certainly. I will do it this
20 way, Chairman, I'm sorry if it wasn't clear, my 13:25
21 question.

22 CHAIRMAN: There is no criticism intended. It's just
23 clarity.

24 444 Q. MR. MÍCHEÁL O' HIGGINS: Yes. So in your bullet point,
25 11 point bullet e-mail, you have informed Mr. Nugent of 13:25
26 a concern or objection that Pat Murray had raised
27 concerning his participation in an investigation and
28 you sought, as I understand it from your bullet point
29 e-mail, you sought clarification of a legal nature.

1 A. Yeah, correct.

2 445 Q. From Legal Affairs?

3 A. Yeah.

4 446 Q. So that you would keep yourself right?

5 A. Correct, yes. 13:26

6 447 Q. Is that right?

7 A. Yes. That's it, yeah.

8 448 Q. What steps did you take to keep yourself right and so

9 that you could communicate and answer that for

10 Superintendent Murray? 13:26

11 A. Well, I wrote to our head of legal and I said --

12 449 Q. CHAIRMAN: This is Mr. Ruane.

13 A. Correct, yeah. I think it went via the CAO.

14 450 Q. CHAIRMAN: I understand.

15 A. To say, look, Superintendent Murray has raised concerns 13:26

16 that --

17 451 Q. CHAIRMAN: He said, how long have you been running this

18 bullying and harassment question when there is already

19 a case in being in the High Court concerned with the

20 same things? 13:27

21 A. Correct.

22 452 Q. CHAIRMAN: That was his case, rightly or wrongly, it

23 doesn't matter?

24 A. Yes.

25 453 Q. CHAIRMAN: But he was raising that question and saying 13:27

26 there is a legal issue?

27 A. Correct.

28 454 Q. CHAIRMAN: That you have to worry about?

29 A. Yes.

1 455 Q. CHAIRMAN: So you said, okay, off you go for legal
2 advice?
3 A. Yeah. And as I understood it, Chair, his legal advice
4 was that he had a predicament in communicating with me.
5 CHAIRMAN: I understand. 13:27
6 456 Q. MR. MÍCHEÁL O' HIGGINS: And I think, on foot of the
7 Chairman's clarification there, if we look at page
8 4332, we see your communication to Joseph Nugent
9 outlining really what had just been said, 4332?
10 A. Yes. 13:27
11 457 Q. And this is a communication of 2nd January 2017, is my
12 understanding, where you send to the CAO Superintendent
13 Murray's e-mail below and you say in the body of this:
14
15 "Superintendent Murray has indicated that he has a 13:28
16 legal impediment to cooperating with my investigation
17 given the civil proceedings that are currently
18 underway.
19
20 I recommend that legal advice is sought to clarify if 13:28
21 there is any reason why cooperating with my
22 investigation would hinder or impede the civil action
23 that is currently before the High Court."
24 A. Yeah.
25 458 Q. That was something that you were anxious to get? 13:28
26 A. Correct, yeah, yeah.
27 459 Q. Judging by your 11-point e-mail of the 15th January
28 '18, you summarise there, where you say that you sought
29 and received clarification on the issue with the Head

1 of Legal Affairs and you shared that with
2 Superintendent Murray on 10th January 2018?

3 A. Correct. Yeah.

4 460 Q. All right. Can I ask you then in relation to the
5 question of delay that has been -- the allegation of 13:28
6 delay that has been levelled against you. I appreciate
7 now that the allegation that's contained within the
8 materials and that Ms. McGrath was very careful to
9 contextualise at the beginning of her questioning, was
10 that you would deliberately held up your investigation 13:29
11 improperly so that Pat Murray's promotion could
12 proceed. All right?

13 A. Yes.

14 461 Q. Now today we seem to have covered and canvassed the
15 opposite allegation, that somehow you deliberately 13:29
16 speeded up your investigation so that Pat Murray's
17 promotion could proceed. Can you assist the Tribunal,
18 are either of those allegations correct?

19 A. No, Chair. I would say, I neither sped it up
20 deliberately or delayed it deliberately to facilitate 13:29
21 anybody, any of the parties involved. You know, I felt
22 I did my investigation as fast as I could, went over
23 the hurdles that came my way as best I could during
24 that tenure.

25 462 Q. In relation to the timeline of events, as I understand 13:30
26 the position, between January and the end of May 2018
27 you have indicated in I think your evidence previously
28 when you were dealing with your investigation, you
29 indicated that you had to engage with the various

1 members against whom Garda Keogh had made allegations?

2 A. Yes.

3 463 Q. Principally Superintendent Murray, Chief Superintendent
4 Wheatley and Chief Superintendent Curran?

5 A. Correct. 13:30

6 464 Q. In relation to some of those members, I think it's the
7 case that they sought separate legal advice on the
8 question of whether it was appropriate for them to
9 engage with your investigation?

10 A. That's my understanding. 13:31

11 465 Q. Can you assist the Tribunal, did that take any degree
12 of time and how did that process play out?

13 A. Not only were those two parties but a number of the
14 witness, Chair, also wanted to get legal advice before
15 they communicated with us, so it was getting rather 13:31
16 complex and it was a factor that delayed the whole
17 process.

18 466 Q. My understanding of matters and perhaps you can say if
19 this is correct or not, is that that legal advice and
20 the process attached to it broadly speaking took place 13:31
21 over the period January to the end of May 2018?

22 A. Correct, Chair.

23 467 Q. Does that accord with your recollection?

24 A. Yes, correct, Chair.

25 CHAIRMAN: Just give me the timeline again, 13:31
26 Mr. O'Higgins.

27 MR. MÍCHEÁL O' HIGGINS: Between January and the end of
28 May 2018.

29 CHAIRMAN: Thank you.

1 468 Q. MR. MÍCHEÁL O' HIGGINS: I think it's the case that in
2 June you were in contact with Mr. Cullen's office on
3 behalf of Garda Keogh?

4 A. Yes. At that stage, chair, I had assembled, we'll say,
5 all the material from all the witnesses and as is part 13:32
6 of the process gave all that material to --

7 469 Q. CHAIRMAN: So this was all the responses, you had
8 gathered this by June?

9 A. Correct, Chair, yeah.

10 470 Q. CHAIRMAN: And so on -- 13:32

11 A. It was probably in the May, but June --

12 471 Q. CHAIRMAN: Give or take, approximately?

13 A. Yeah.

14 472 Q. CHAIRMAN: And sent off that material to Mr. Cullen?

15 A. Correct, yes. 13:32

16 473 Q. CHAIRMAN: Okay.

17 A. And I communicated with him, Chair, and I think he
18 wanted to off and get something off counsel. So it was
19 probably another three months before it came back to me
20 again. 13:32

21 474 Q. CHAIRMAN: He now had a substantial volume of material
22 to analyse?

23 A. Yes.

24 475 Q. CHAIRMAN: Whether he was going to get advice or
25 whatever it was, that would taken some time? 13:33

26 A. Correct, yeah.

27 476 Q. MR. MÍCHEÁL O' HIGGINS: Can you assist the Chairman,
28 what contacts did you have with Mr. Cullen in that
29 connection and did he come back to you as far as you

1 can recollect promptly in relation to any dealings you
2 had with him?

3 A. We'll say in the context of June, when I gave him the
4 material first, I think he came back to me,
5 acknowledged it, sometime, we will say, it might be 13:33
6 July, I can't remember the date now, he said he wanted
7 to send it out to counsel to get some advices. My next
8 correspondence with him was in September, when
9 obviously, I don't know, but he came back to me with
10 some further queries, which necessitated I going off 13:33
11 and carrying out further investigations and enquiries
12 and get material, which took me about maybe another two
13 months to get that, yeah.

14 477 Q. Can you assist the Chairman with that. He came back to
15 you with further queries, is that right, Mr. Cullen? 13:33

16 A. Yeah. There was a query about the famous drink driving
17 case, Judge, which was touched on earlier on by counsel
18 earlier on this morning, there was a question about the
19 sickness file, there was a question about the something
20 Superintendent Murray had said, there was an issue 13:34
21 about the discipline file which was related to
22 Superintendent wheatley. I could get them now, but
23 there was five or six different matters, we'll say,
24 which he came back to me with, which necessitated
25 further enquiries. 13:34

26 478 Q. My understanding of matters is that on foot -- you
27 obviously had to take steps to investigate those
28 additional enquiries?

29 A. Yes.

1 479 Q. And having carried those out, you came back to
2 Mr. Cullen, am I correct, in November?
3 A. November.
4 480 Q. With the results of your enquiries?
5 A. Yeah. So it took me about two month, we'll say, and 13:34
6 there was probably a slight delay, Chair, on my behalf,
7 in that I was doing an interview board. I think I
8 mentioned to you, Chair, that in September/October, I
9 think the month of October I was sitting on an
10 interview board. 13:35
11 481 Q. CHAIRMAN: Does that mean that you came back with the
12 results of explorations of the queries that --
13 A. Yes.
14 482 Q. CHAIRMAN: -- Mr. Cullen had raised, the five or six
15 queries, you had now assembled more material? 13:35
16 A. Yeah.
17 483 Q. CHAIRMAN: You resubmit that or give that or send that
18 to Mr. Cullen?
19 A. To Mr. Cullen, correct, Chair.
20 484 Q. CHAIRMAN: That is in November. 13:35
21 A. Yeah.
22 CHAIRMAN: Okay.
23 MR. O'BRIEN: Chairman, not to interrupt Mr. O'Higgins'
24 cross-examination, but I was careful to frame my
25 questions in relation to Issue 21, which is the issue 13:35
26 that we are investigating in relation to the promotion
27 of Chief Superintendent Murray.
28 CHAIRMAN: I thought it was number 20, I may be wrong.
29 MR. O'BRIEN: Sorry, Issue number 20. I just notice

1 that we seem to be straying outside of that, back into
2 the bullying and harassment complaint into the latter
3 part of 2018, and I am concerned that it's not relevant
4 to the issue that's currently before you, Chairman.

5 CHAIRMAN: Yes.

13:35

6 MR. MÍCHEÁL O' HIGGINS: Well, Chairman, it was raised
7 this morning, in fairness, I imagine by way of setting
8 the scene, by Ms. McGrath. In fact, the delay
9 allegation was inverted this morning, so I thought it
10 appropriate.

13:36

11 CHAIRMAN: No, you made that point and I understand it.
12 I understood that context.

13 MR. MÍCHEÁL O' HIGGINS: The reason I mention it,
14 Chairman, is that there was canvassing again this
15 morning of the earlier allegation that this witness
16 deliberately held up his investigation.

13:36

17 CHAIRMAN: Yes.

18 MR. MÍCHEÁL O' HIGGINS: So as to enable the promotion
19 proceed. And because that was canvassed this morning,
20 I thought it appropriate to give the witness an
21 opportunity --

13:36

22 CHAIRMAN: And Mr. O'Brien did actually specifically
23 put that at the end of his cross-examination.

24 MR. MÍCHEÁL O' HIGGINS: Yes.

25 CHAIRMAN: That he held it up in order to facilitate
26 the promotion of Superintendent Murray. Okay.

13:36

27 MR. MÍCHEÁL O' HIGGINS: So it has been live as an
28 allegation.

29 CHAIRMAN: On the other hand --

1 MR. MÍCHEÁL O' HIGGINS: If it assists, Chairman, I'm
2 happy to leave that issue at that and move on.

3 CHAIRMAN: I think that's right. I mean, in fairness,
4 I think I'm slow to cut you off, but I would have to
5 say, I think that Mr. O'Brien is right in saying, look, 13:37
6 let's try to separate the issues, you know what I mean.
7 Okay, you're finished with that bit anyway. That
8 brought us to November.

9 MR. MÍCHEÁL O' HIGGINS: Yes.

10 CHAIRMAN: And I think from my point of view it was 13:37
11 useful to have that little chronology and so on. So
12 thank you very much.

13 MR. MÍCHEÁL O' HIGGINS: Thank you.

14 485 Q. Assistant commissioner, you were asked by counsel about
15 your conversation with Pat Murray of the 18th January 13:37
16 with respect to the Policing Authority?

17 A. Yes.

18 486 Q. I think it's the case that your bullet point
19 information of the 11 points you provided to Joe Nugent
20 predated that conversation by three days? 13:37

21 A. Correct, yeah. But Superintendent Murray mightn't have
22 been aware of that now, but that's a fact.

23 487 Q. Am I correct therefore, is this a fair summary of your
24 position, just to assist the Chairman, that the only
25 role that you undertook in the promotion was the update 13:38
26 that you provided to Mr. Nugent in your 11-point
27 bulletin of 15th January 2018?

28 A. I think so, yeah. Yeah. That is a fair comment, yeah.
29 I agree with that.

1 488 Q. And that other than providing that factual information
2 as an update as requested, you had no other substantive
3 role in relation to the Policing Authority?

4 A. No, Chair, it was none of my business.

5 489 Q. Thanks very much.

13:38

6

7

END OF EXAMINATION

8

9

ASSISTANT COMMISSIONER MICHAEL FINN WAS QUESTIONED BY

10

THE CHAIRMAN, AS FOLLOWS:

11

12 490 Q. CHAIRMAN: Assistant commissioner, there is a question
13 that I would like to ask but I'm afraid to ask. Let me
14 see if I can phrase it as neutrally and carefully as
15 possible and if you say, look, I would prefer not to
16 comment, I would understand.

13:39

17

18 The situation as I understand it is, and I know he's
19 not here at the moment and I'm going to talk about him
20 for a second, Superintendent Murray, as I understand it
21 from your evidence, Superintendent Murray had a
22 powerful sense that he was being treated unjustly. I
23 think it's clear, I think he would say to himself, I
24 don't think there is any great mystery about this to
25 any of us in the room

13:39

26

A. Correct.

27

491 Q. CHAIRMAN: It appears, whether they were limited or not
28 limited, that in his exchanges with you, encounters
29 with you, he was very keen to make clear this sense of

1 injustice, grievance, look what they are doing to me, I
2 should be getting my promotion, I haven't been getting
3 it, the Policing Authority -- whatever. Looking back,
4 do you think that you might have been, how should I put
5 it, too sympathetic, too receptive to his complaints, 13:40
6 perhaps given the extent of his sense of injustice
7 looking back? Do you follow me? In other words, so
8 that he might have got an impression that you were more
9 agreeable to him than you were? Do you follow me?

10 A. I do. 13:40

11 492 Q. CHAIRMAN: I'm asking, looking back, do you think that
12 you might have been a little bit -- this is why I am
13 afraid to ask, I'm slow to ask?

14 A. Okay, I know.

15 493 Q. CHAIRMAN: Do you think it might have been a bit unwise 13:41
16 knowing that he had this powerful sense to sort of give
17 him room for it or allow him to ventilate it so that he
18 gets the impression, oh well, I have AC Finn on my side
19 anyway, in relation to the promotion, leaving aside the
20 other question of the bullying and harassment claim? 13:41

21 A. Yeah.

22 494 Q. CHAIRMAN: Does that make any sense to you and what
23 would you say to that?

24 A. I am not sure why you say that in the context of
25 relevant to the promotion, because I don't think I had 13:41
26 any part to play.

27 495 Q. CHAIRMAN: I understand that, it's from his
28 perspective?

29 A. Sure.

1 496 Q. CHAIRMAN: You're investigating bullying and
2 harassment?
3 A. Yeah.

4 497 Q. CHAIRMAN: He has an opportunity, I have an assistant
5 commissioner who is investigating this? 13:41
6 A. Yes.

7 498 Q. CHAIRMAN: He doesn't consciously say I'm going to
8 unburden myself on this senior officer, but that
9 appears to be what happens?
10 A. Right. I think there was an element of human nature to 13:42
11 that, Chair.

12 499 Q. CHAIRMAN: Yes.
13 A. When I met him.

14 500 Q. CHAIRMAN: Yes. He seemed to get the impression?
15 A. Correct. 13:42

16 501 Q. CHAIRMAN: He seems to get the impression that you were
17 on his side in relation to the promotion question. We
18 have seen those notes and so on and some of them he has
19 explained and he has qualified and been -- are you with
20 me? 13:42
21 A. I am, Chair.

22 502 Q. CHAIRMAN: I'm trying to be as fair as I can to
23 everybody. But this question, somebody is going to
24 make a suggestion about it and I'm going to be
25 wondering should I have asked Assistant Commissioner 13:42
26 Finn about this question.

27 A. I wouldn't narrow the scope in terms of the promotion,
28 but I understand the concept that sometimes when you
29 show empathy that sometimes people misrepresent that,

1 that you're agreeing with them, you know, which I think
2 might have been a factor maybe in some of his
3 impressions that he went away with, like you know. If
4 that is making sense, Chair.

5 CHAIRMAN: Okay.

13:43

6
7 END OF QUESTIONING

8
9 CHAIRMAN: Now, does anybody want to ask anything
10 arising out of that? Thank you very much.

13:43

11 MS. McGRATH: Nothing further.

12 CHAIRMAN: Thank you very much, indeed, assistant
13 commissioner. You're finished your evidence now.
14 Thank you very much for facilitating us by coming back
15 today.

13:43

16 THE WITNESS: Not at all.

17 CHAIRMAN: That will finish us for today. Thank you
18 very much indeed. You're free to go. Thanks for your
19 assistance.

20 THE WITNESS: Not at all.

13:43

21
22 THE WITNESS WITHDREW

23
24 CHAIRMAN: Very good. Now, tomorrow we are having
25 submissions. Who goes first on the submissions? Have
26 you agreed on that or discussed that?

13:43

27 MS. McGRATH: No, I don't think, Chair, at the moment.
28 I think at the moment the Policing Authority are
29 scheduled for 10:30 tomorrow morning.

1 CHAIRMAN: Right, so we will have the Policing
2 Authority and they will have something to say and
3 whatever arises we can discuss. But then sooner or
4 later we will get to submissions, work out,
5 Mr. O'Higgins and Mr. O'Brien and Ms. Mulligan, work 13:44
6 out who goes where. It should be obvious, but I don't
7 want to give directions about it. It's hard to know,
8 it's hard to know where we are going until we hear what
9 the Policing Authority has to say. Is that all right?

10 MS. McGRATH: Yes. 13:44

11 CHAIRMAN: Thank you very much. 10:30. Thank you.

12

13 THE HEARING THEN ADJOURNED UNTIL WEDNESDAY, 1ST JULY
14 2020 AT 10:30AM

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