

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

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AND EQUALITY UNDER THE TRIBUNALS OF INQUIRY (EVIDENCE) ACT  
1921, ON 17 FEBRUARY 2017, AS AMENDED ON 7 DECEMBER 2018

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

HELD IN DUBLIN CASTLE  
ON WEDNESDAY, 1ST JULY 2020 - DAY 152

152

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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 WEDNESDAY, 1ST JULY  
2 2020:

3  
4 MR. MARRINAN: Good morning, Chairman.

5 CHAIRMAN: Good morning. 10:31

6 MR. MARRINAN: Before we embark on submissions, there  
7 is one matter that has to be addressed. This relates  
8 to the position of the Policing Authority --

9 CHAIRMAN: Yes.

10 MR. MARRINAN: -- vis-à-vis this Tribunal. One would 10:31  
11 have thought that they would have been well assured as  
12 a result of the various rulings of the Tribunal during  
13 the course of the hearings and the statements by  
14 counsel that this Tribunal is not examining the  
15 processes and procedures of the Policing Authority, and 10:31  
16 that position was made very clear. Nevertheless, they  
17 are concerned that inevitably the Policing Authority  
18 has been mentioned in dispatches and they are anxious  
19 to make statement to the Tribunal.

20 CHAIRMAN: Yes. 10:32

21 MR. MARRINAN: That statement has been circulated to  
22 the parties and I understand that there is no objection  
23 from any of the parties that the Policing Authority  
24 should be facilitated in making that statement.

25 Mr. Conor Power is here this morning to make that 10:32  
26 statement to the Tribunal.

27 CHAIRMAN: Thank you. Yes, good morning, Mr. Power.  
28 Yes.

29 MR. MARRINAN: I would invite him to do that now.

1 MR. POWER: Good morning.

2 CHAIRMAN: Okay. Thanks, Mr. Power.

3 MR. POWER: Good morning, Chairman. I would just like  
4 to express the Authority's appreciation to you and to  
5 the Tribunal for allowing it to address the Tribunal. 10:32

6  
7 It is in the nature of things that there may be  
8 differing or disputed recollections of things that took  
9 place years ago. While people are entitled to their  
10 recollection, it is nevertheless important that 10:32  
11 inaccuracies that impugn the Authority's reputation are  
12 clarified for the record.

13  
14 The issues of substance the Authority will address  
15 relate to four matters, as follows: Firstly, the 10:33  
16 inference that it gives may be proffered and accepted  
17 by any nominee of the Authority on the chief  
18 superintendent's selection board or by a member of the  
19 Authority staff. The information that informal  
20 representations were made indirectly to and accepted by 10:33  
21 the then Chairperson of the Authority in respect of a  
22 candidate in the competition. The evidence that the  
23 Authority behaved unfairly to a candidate by  
24 unnecessary delays in the appointment process and by  
25 exceptionally refusing an appointment because of an 10:33  
26 unresolved complaint. And finally, the integrity of  
27 the appointments process is challenged by the  
28 suggestion that the Authority abused the clearance  
29 process by urging the Garda Síochána to institute a

1 bullying and harassment procedure so as to disadvantage  
2 an individual candidate.

3  
4 A witness testified to an occasion when he gave a gift  
5 to a senior officer who had been a member of An Garda 10:33  
6 Síochána appointment board that had recommended him for  
7 appointment as a superintendent. He indicated that  
8 this was his practise. While this testimony related to  
9 a time before the Authority became responsible for  
10 appointments of senior members of An Garda Síochána, he 10:34  
11 also indicated that he had conveyed his gratitude to  
12 the Policing Authority following his subsequent  
13 appointment as chief superintendent. Insofar as this  
14 may suggest or be understood to suggest that any gifts  
15 were made to any Authority nominees of the selection 10:34  
16 board, Authority staff and/or Authority members, this  
17 is fully denied.

18  
19 The receipt of any such gift would be a serious breach  
20 of the appropriate behaviour of members of the 10:34  
21 selection board convened by the Authority for the  
22 conduct of this competition.

23  
24 Since learning of this matter, the Authority made  
25 direct enquiries of each and every one of its nominees 10:34  
26 on the selection board, all staff who may have had any  
27 contact with the witness during his candidacy and all  
28 Authority members. Each confirmed that no gift was  
29 offered or accepted.

1  
2 Secondly, to deal with alleged informal  
3 representations. Evidence was tendered on a number of  
4 occasions to the Tribunal that representations from  
5 third parties were accepted as part of both the 10:35  
6 appointments and clearance process. The Authority is  
7 unequivocal in rejecting any such allegations. At no  
8 point did the Authority or any of its members, staff or  
9 selection board gather information or opinions  
10 concerning any candidate outside the formal process 10:35  
11 outlined in the competition documentation. This  
12 suggestion is in particular damaging to the character  
13 and reputation of the former Chairman, Ms. Josephine  
14 Feehily. Her statement to the Tribunal of June 10th  
15 2019 gave comprehensive information concerning this 10:35  
16 allegation and firmly rebutted the suggestion. She  
17 confirmed in that statement that she never discussed  
18 suitability or appointment nor sought any views or  
19 opinions concerning any candidate's suitability  
20 directly or indirectly. This remains the clear 10:35  
21 position of the Authority.

22  
23 The third issue I want to address are alleged delays.  
24 The Authority denies any culpable delay in making  
25 appointments. The process of appointment was set out 10:35  
26 in the detailed statements provided by the Authority to  
27 the Tribunal. It can occur that an appointment is  
28 placed on hold by reason of awaiting necessary  
29 submissions from the Authority from the Garda Síochána.

1 A matter being on hold pending receipt of the  
2 submissions required to complete the necessary  
3 statutory clearance process are provided is not the  
4 same as a delay caused by the Authority. Regulation 12  
5 of the Garda Síochána Act 2005 appointment to the rank 10:36  
6 of assistant Garda Commissioner, chief superintendent  
7 and superintendent regulations SI 641 of 2016 mandates  
8 that the Authority shall not appointment a candidate  
9 unless the candidate has undertaken the clearance  
10 procedure and the Authority is satisfied as to the 10:36  
11 outcome of the clearance process.

12  
13 The evidence of the statutory clearance process were  
14 set out in details at pages 2 to 5 of the chief  
15 executive's statement to the Tribunal of 10th June 10:36  
16 2019. The Authority's clearance process requires the  
17 Garda Commissioner to make a declaration with the  
18 candidate's written consent with regard to the  
19 candidate's health and character. Insofar as any case  
20 before this Tribunal is concerned, the Authority has 10:37  
21 clearly and fully set out the timeline for same in  
22 previous correspondence and this amply demonstrated the  
23 absence of any delay on the part of the Authority.

24  
25 In addition, where there is a delay caused by other 10:37  
26 agencies an appointment can and has been backdated to  
27 the day the appointment was first considered by the  
28 Authority and on which date the candidate would have  
29 been appointed save for the necessary other

1 clarifications.

2  
3 It has never been the Authority's intention that an  
4 unresolved matter in relation to a candidate would of  
5 itself limit its ability to appoint. The Authority 10:37  
6 requires full and complete relevant information in  
7 respect of any candidate to allow it to fulfil its  
8 statutory responsibility.

9  
10 For the avoidance of doubt, to warrant a delay before 10:37  
11 appointment, any such unresolved matter would have to  
12 be of certain and significant import. In particular,  
13 the suggestion that the Authority was refusing to  
14 appoint any candidate because of a complaint remained  
15 unresolved is a source of concern and is fully denied. 10:37

16  
17 The alleged abuse of the clearance process. As regards  
18 this alleged abuse of the clearance process, a witness  
19 testified that the internal Garda Síochána  
20 investigations were being in some way driven by the 10:38  
21 Policing Authority and that the Authority's chief  
22 executive misunderstood the process. This is not only  
23 untrue, but is also wholly unfounded. At no point  
24 during this process did the Authority seek to drive or  
25 dictate the investigation. The Authority sought the 10:38  
26 necessary information to undertake a proper clearance  
27 process in accordance with the process laid out for all  
28 competition candidates and consistent with its  
29 statutory duty not to appoint a candidate until the

1 clearance process was complete.

2  
3 I conclude by saying that the Authority understands  
4 these matters are unlikely to form any part of the  
5 Tribunal's final report. That in itself makes it 10:38  
6 imperative that any impression created in the testimony  
7 be at least in some extent countered by the inclusion  
8 in that same record by the corrections now led. The  
9 Authority considered that these issues have the  
10 potential to allow for uncertainty to surround the 10:38  
11 process if left unaddressed.

12  
13 The Authority would like to thank the Tribunal  
14 Chairperson for allowing it to them correct. Thank  
15 you, Chairman 10:39

16 CHAIRMAN: Thank you very much, Mr. Power. So, nothing  
17 arising.

18 MR. O'BRIEN: Good morning, Chairman. Mr. Kelly, as  
19 you know is at the hearing virtually and I think he is  
20 going to address you, Chairman, in relation to this 10:39  
21 issue.

22 CHAIRMAN: He is going to say something about it.

23 MR. O'BRIEN: Yes.

24 CHAIRMAN: Mr. Power, you better wait around for that  
25 to happen. Have you anything to say about this matter, 10:39  
26 Mr. Murphy?

27 MR. MURPHY: No, Chairman I had understood nobody was  
28 going to say anything about this matter.

29 CHAIRMAN: I understand. I assume that nobody else is

1 going to say anything. We will have to wait for  
2 Mr. Kelly to see what he may or may not say about the  
3 matter and Mr. Power may wish to say something about  
4 the matter and then we may, I think --  
5 MR. KELLY: Chairman, can you hear me? 10:39  
6 CHAIRMAN: Is that Mr. Kelly?  
7 MR. KELLY: It is, yes.  
8 CHAIRMAN: Good morning, Mr. Kelly. It's nice to hear  
9 you again. Good morning. Can we now see you as well?  
10 I can see me, but I can't see you, Mr. Kelly. The 10:40  
11 pleasure will be sufficient if we can just hear you.  
12 Can you hear me, Mr. Kelly?  
13 MR. KELLY: I can hear you. It's fair to say that,  
14 yes, I see you occasionally.  
15 CHAIRMAN: We now have sound and vision, Mr. Kelly. 10:40  
16 MR. KELLY: Well that's excellent. That's great. I  
17 have very little to say about it, Mr. Chairman. As you  
18 know, our position in relation to the Policing  
19 Authority was set out in our submissions, where we had  
20 said that that Garda Keogh makes clear that he does not 10:40  
21 call into question the propriety of the Policing  
22 Authority. As I made clear during the hearing, his  
23 point is that the dealings between Garda Green and  
24 Superintendent Murray as recorded in Superintendent  
25 Murray's various Garda entries go to credibility and 10:41  
26 reliability. And we have no objection at all to the  
27 Policing Authority's statement.  
28 CHAIRMAN: Very good. That is all you want to say  
29 about the Policing Authority's statement?

1 MR. KELLY: It is yes, Chairman.

2 CHAIRMAN: Thank you very much. So are you ready,  
3 Mr. Kelly, to make your submissions or would that be  
4 convenient to do so at this point?

5 MR. KELLY: It would, indeed, Chairman. I am quite 10:41  
6 happy to do it. I should make clear that if we have  
7 any technical difficulties, for example, a link  
8 breaking down or anything of that sort, Mr. O'Brien  
9 will take over and continue in my stead. He has the  
10 substance of what I wanted to say. 10:41

11  
12 SUBMISSION BY MR. KELLY:

13  
14 MR. KELLY: Chairman, the first issue that I want to  
15 address and I should preface this by saying I do not 10:42  
16 intend going through, you will be pleased to hear, all  
17 of our submissions. I take the view that everybody has  
18 had them, you have had an opportunity to read them.  
19 What I will concentrate on are some other issues that  
20 have been raised perhaps by some of the other parties. 10:42

21  
22 Chairman, the first issue that I want to address is the  
23 issue of the standard of proof that has been raised in  
24 the submissions on behalf of the senior officers. I  
25 note in that that An Garda Síochána are asking the 10:42  
26 Tribunal to apply "a suitably exacting standard of  
27 evidence or a more exacting application of the civil  
28 standard of proof". They do so, according to their  
29 submissions at paragraph 16, because "the allegations

1 being considered involve imputations upon a person's  
2 professional reputation or where the charge under  
3 consideration involves an allegation of more  
4 turpitude".

5  
6 Judge, in my submission, the answer to this point lies  
7 in the judgment of Mr. Justice Henchy in Banco  
8 Ambrosian v. Ansbacher, 1987. It is reported in 1  
9 Irish law reports monthly at page 669. A soft copy is  
10 available for you and for anyone else who wishes to  
11 have it. It's one, however, I'm sure that you and  
12 others are familiar with.

13  
14 It is my submission Mr. Justice Henchy at page 700  
15 correctly stated the law and I quote:

16  
17 "The normal rule in a civil case is that the person on  
18 whom lies the onus of proving a particular averment is  
19 held to have discharged that onus if the Court is  
20 satisfied on the balance of probabilities that the  
21 averment in question is correct. In the judgment of  
22 Mr. Justice Hamilton, president, certain authorities  
23 are cited, suggesting that civil cases involving fraud  
24 are an exception to that rule and proof of fraud in  
25 such cases requires a higher degree of proof than is  
26 normally required in a civil case. If, as has been  
27 suggested, the degree of proof of fraud in civil cases  
28 is higher than the balance of probabilities but not as  
29 high as to be, as is required in criminal cases, beyond

1 reasonable doubt, it is difficult to see how that  
2 higher standard of proof is to be gauged or expressed.  
3 There are some intermediately high degree of  
4 probability would in my opinion introduce a vague and  
5 uncertain element, just as if any require to be prove 10:44  
6 in certain case to the level of gross negligence."  
7

8 He then went on to say it was difficult to put forward  
9 a rational and cogent reason for singling out fraud for  
10 that higher degree of proof. 10:44

11  
12 "It is of course to be said that a finding of fraud  
13 usually carries with it a high degree of moral  
14 condemnation which may have serious consequences for  
15 the person so condemned, but similar consequences may 10:45  
16 follow for a finding against the defendant in other  
17 types of civil proceedings. For example, if a doctor  
18 fails for no good reason to go out and attend a patient  
19 to whom he has been summoned so that the patient dies,  
20 the doctor may be held liable in negligence. In such a 10:45  
21 case, the moral condemnation involved and social and  
22 professional consequences to the doctor may be no less  
23 for him than if in another chase he were found to have  
24 acted fraudulently, yet the action would be decided on  
25 the balance of probabilities." 10:45  
26

27 In my submission, Chairman, that is an accurate  
28 statement of the law, it is one which has been  
29 reaffirmed by the Supreme Court in the case of Hazel

1 Lawlor v. Planning Tribunal, as recently as the 1st  
2 July 2009. In that, the then Chief Justice, Justice  
3 Murray, had said, having quoted the passages, the  
4 relevant passages from Mr. Justice Henchy's judgment:

5  
6 "The foregoing judicial statements aptly describe the  
7 requirements of due process as regards the  
8 circumstances in the present case."

9  
10 It goes on to say:

11  
12 "The findings must be clearly proportionate to the  
13 evidence available."

14  
15 Judge, in my submission, it is quite clear that the  
16 test is one of the balance of probabilities. It's also  
17 one which I know you will be familiar with, because it  
18 was applied in the Commission to inquire into child  
19 abuse, and that's in the ruling of 9th September 2002,  
20 which is also available. That effectively is what I  
21 want to say about the balance of probabilities, it has  
22 to be applied equally and consistently to everyone  
23 across the Tribunal. To assert that there is some  
24 higher standard seems to me to be inconsistent with the  
25 law and actually deeply lacking in logic, because is it  
26 to say that there is some lower standard that is  
27 appropriate. Lord Sumption once described it as a more  
28 casual approach, in rejecting that.

1 That is as it stands. That is our submissions in  
2 relation to that.

3  
4 If I can now then turn -- unless there are any question  
5 you want to ask me on that section, 10:47

6 CHAIRMAN: No. Thank you very much.

7 MR. KELLY: If I can now turn to the submissions made  
8 on behalf of the senior officers of An Garda Síochána.

9  
10 The Garda's policy document on whistleblowers is within 10:47  
11 the papers. It's a passage which I know, Chairman, you  
12 will be familiar with. It records the following  
13 commitment from the then commissioner.

14  
15 "As Commissioner of An Garda Síochána, I have 10:48  
16 consistently encouraged workers within An Garda  
17 Síochána to disclose wrongdoing. Any worker who makes  
18 such a disclosure will be fully supported. Each and  
19 every worker has the right and responsibility to raise  
20 their concerns if necessary in confidence and to be 10:48  
21 confident that those concerns will be listed to and  
22 addressed."

23  
24 I rely that in his evidence, Chairman, Chief 10:48  
25 Superintendent Murray said he admired Garda Nick  
26 Keogh's disclosure of wrongdoing. He was asked whether  
27 if he agreed that one of his duties as senior officer  
28 was to be supportive towards members with difficulties  
29 and another was to look after the welfare of a garda

1 who made a protected disclosure. However, within four  
2 months of these submissions we find, presumably upon  
3 the instruction of the Commissioner and other senior  
4 officers, we have a direct attack on Garda Keogh's  
5 reputation and integrity.

10:49

6  
7 At paragraph 2 he is accused -- on page 2 he is accused  
8 of making baseless allegations. The same paragraph  
9 uses the wonderful word solipsism, which I had to look  
10 up only to find it means selfishness.

10:49

11 CHAIRMAN: Sorry, what was the word, Mr. Kelly?

12 MR. KELLY: s-o-l-i-p-s-i-s-m.

13 CHAIRMAN: solipsism. It means, I think I'm the only  
14 person in the world and everything is done to affect  
15 me.

10:49

16 MR. KELLY: Yes, selfishness.

17 CHAIRMAN: Sorry, that is just me showing off that I  
18 know the meaning of the world. Yes. I am the only  
19 person in the world, Mr. Kelly.

20 MR. KELLY: There it is. It certainly clear what is  
21 the sentiment behind it.

10:50

22  
23 In the same paragraph he is accused of "marching  
24 relentlessly away from reality". In paragraph 3 he is  
25 accused of "insolence, lack of concern, alcoholism".  
26 In paragraph 4 he is accused of seeking out to perceive  
27 grievances routinely. In paragraph 5 he is accused of  
28 pertinacity, which I take to be persistent  
29 determination in error. In paragraph 14 he is again

10:50

1 accused of solipsistic outlook.

2  
3 This all involves Garda Keogh having been in the  
4 witness box giving evidence under oath, for I think 16  
5 days, under intense cross-examination by Mr. Murphy. 10:50  
6 What, in our submission, this demonstrates is that An  
7 Garda Síochána does not treat those who make  
8 disclosures as other than the enemy. They have broken  
9 ranks, it seems to us. The words of the former  
10 commissioner that I quoted at the start seem in this 10:51  
11 case to ring very hollow.

12  
13 I go on to point out that, having said that about the  
14 tone of the submissions, that those submissions at page  
15 10 on issue 1 do not address -- I am now going to 10:51  
16 address some of the individual issues, issue 1, don't  
17 address whether the matters were actually covered by  
18 the CHIS rules. You will find a reference to the very  
19 detailed argument we make there in the submissions on  
20 behalf of Garda Keogh at paragraph 20. Nor do they 10:51  
21 address the fact that Garda Keogh had sought a copy of  
22 the directive and was never given it. And again you  
23 will find the detail of that at paragraph 24 of our  
24 submissions.

25  
26 At paragraph 108, on page 26, An Garda Síochána say 10:52  
27 that Superintendent Murray issued five Regulation 10  
28 notices in 2015 to all the Gardaí. However, that in  
29 fact ignores what we say at page 39, paragraphs 186 to

1 98, those other Regulation 10 notices were in respect  
2 of far more serious matters, and we identify what they  
3 were. What Garda Keogh is complaining of is that he  
4 was treated differently.

10:52

5  
6 On issue 7, An Garda Síochána continue the slighting by  
7 saying that they are offering, that Garda Keogh was  
8 offering the explanation that he was out of credit.  
9 Are they saying that he is lying on this?

10:53

10  
11 At paragraph 123, the Guards assert that Nick Keogh's  
12 statement that he made to Superintendent Alan Murray  
13 was provided to him at the time the papers were handed  
14 over by Superintendent Murray. They cite the  
15 transcript on Day 101, page 50, and pages 47, 49, 50  
16 and 51, but they ignore Day 101 at page 50, where Garda  
17 Keogh says:

10:53

18  
19 "I looked for it."

10:53

20  
21 That's the transcript of the statement. Where he says  
22 he never got it. On page 49, where again he says he  
23 didn't get it. And again at page 57, where he says he  
24 never got it.

10:53

25  
26 At paragraph 127, this is on the sick leave, the  
27 disciplinary charge, An Garda Síochána make a number of  
28 points there, but they completely ignore the point that  
29 we made, that in fact, there was a double penalty. You

1 may recall that the evidence was that Superintendent  
2 Alan Murray calculated the penalty by reference to the  
3 way that Garda Keogh had received and his object was to  
4 ensure that Garda Keogh didn't make any profit, as it  
5 were, out of it. But following that, Superintendent 10:54  
6 Patrick Murray arranged that the back pay be collected  
7 again from Garda Keogh. That was a clear double  
8 penalty point.

9 CHAIRMAN: Can I stop you there for one moment? Is  
10 there evidence, Mr. Kelly, is there evidence that the 10:55  
11 money was collected from Garda Keogh?

12 MR. KELLY: Yes, I think he said that. I am sorry,  
13 Chairman, you have broken up slightly.

14 CHAIRMAN: That's all right.

15 MR. KELLY: If I have understood you correctly, you are 10:55  
16 asking is there evidence that it was collected from  
17 him.

18 CHAIRMAN: That the money was collected from him, that  
19 the pay was collected from him. I am thinking that in  
20 looking through the submissions I have a note with a 10:55  
21 question mark on that, to check it. Do you know is  
22 there evidence from Ms. Carr? I know there was  
23 correspondence about it, that Superintendent Murray  
24 wrote off to say he was out of work for this time so he  
25 shouldn't be paid it. 10:55

26 MR. KELLY: I am sorry, Chairman, it's broken up.

27 CHAIRMAN: Okay.

28 MR. KELLY: Mr. O'Brien can answer that in the room.

29 CHAIRMAN: Mr. Kelly, we can check those things. I'm



1 high standards prevailed. Now, if the Guards mean that  
2 those queries were all directed to Nick Keogh, then  
3 that is right. If not, and they mean they were  
4 directed to others, there's no evidence, no examples  
5 given of that at all. That's the point I make there. 10:58

6  
7 At paragraph 151, the Guards say that Superintendent  
8 Murray did to other people's files as well the same.  
9 Part 3, and then the reference, as I understand it,  
10 part 3 of the Tribunal materials and volume 31, which I 10:59  
11 say pertain other crime files which Superintendent  
12 Murray had returned which did not involve Garda Keogh.  
13 However, for my part I cannot see any other such crime  
14 files relating to other people in volume 31. It may be  
15 that I have missed something. 10:59

16  
17 Again, in paragraph 151, at footnote 198, the Guards  
18 say that Superintendent Murray on Day 124 cited as  
19 evidence that queries were raised where Superintendent  
20 Murray felt guidance or direction was needed 10:59  
21 irrespective of whose file it was. Again, I can find  
22 no such evidence.

23  
24 At paragraph 160 they say that Superintendent Murray  
25 was not aware that CCTV footage was in fact Garda 11:00  
26 footage. This was the footage that he sought. That  
27 was because, I would suggest, that he didn't look. In  
28 other words, he just simply jumped in before asking or  
29 looking.

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At paragraph 174 it's said that the management team had doubts in relation to credibility, but nowhere can I find any rational or logical explanation in evidence as to why they had such doubts.

11:00

Issue 10. At paragraph 189 of our submissions I think we deal with that. At paragraph 189 we deal with what they say at paragraph 141. I make that point just simply for the purposes of your note, Chairman, rather than waste time by reading out what we have already written there.

11:01

At paragraph 199 the Guards say that Garda Keogh declined to say where or when the meeting took place. This is on issue 10. That is simply incorrect. He did say when it took place in his application and he was not asked where it was nor how many hours were involved.

11:01

volume 1, at page 211, Garda Keogh explained before this the refusal was made, who the meeting was with. He said it was with GSOC. And in any event, Superintendent Murray never asked for the details that he now says on oath were the details he was looking for.

11:01

11:02

You may remember I had asked him why he didn't just -- if all he was looking for was, he wanted to know was it

1 an hour, two hours a day, half a day or whatever, why  
2 he didn't just ask for that, there was no answer given  
3 at all for that.

4  
5 Turning to issue 11, indoor duty. The Guards purport 11:02  
6 there to introduce fresh evidence by way of paragraph  
7 228, referring to recent media reports. That's where  
8 they're speaking on this issue, I will just turn it up,  
9 there saying that -- they say:

10  
11 "It is submitted that desk duty is not the most 11:02  
12 stressful job in the station as contended by Garda  
13 Keogh or by far the most difficult job by far in every  
14 station in the country. Recent media reports indicate  
15 that 4% of the Garda force are on light duties as 11:03  
16 opposed to frontline duties at one time accommodating  
17 for pregnancy, illness or duty."

18  
19 well, that's evidence which is strongly askew to this  
20 Tribunal, it certainly wasn't produced in evidence 11:03  
21 here.

22  
23 The point on indoor duty was, I think, evidently made  
24 by Sergeant Haran and I have set out what he said. You  
25 will recall, it's paragraph 153. 11:03  
26

27 On issue 12, the misrecording of sick leave, here the  
28 Guards attempt to avoid the issue that when Garda Keogh  
29 reported work related stress there was no investigation

1 in fact carried out at the time, as was mandated by the  
2 circular. It is an issue which we have covered in some  
3 detail.

4  
5 At paragraph 250, the Guards assert that Superintendent 11:04  
6 Murray and Chief Superintendent Wheatley tried to  
7 investigate the matter and were not successful. Well,  
8 in fact it all goes back to that first meeting with  
9 Superintendent Murray and that thereafter I will deal  
10 with it in this way, effectively for each of the 11:04  
11 queries coming from, for example, Chief Superintendent  
12 McLoughlin and so, they've just recycled that in a  
13 variety of measures rather than actually come back and  
14 do the job that they were required to do and find out  
15 what was the reasons. 11:04

16  
17 We have covered that, I think in some detail, that is  
18 one of the issues I think that we reserved our  
19 submissions or made submissions on. I understand they  
20 will be -- it's been agreed that they will be produced 11:05  
21 within two weeks, and set out the detail there.

22  
23 I will move on, if I may, to Issue 14. That is the  
24 delay in payment of travel expenses. Well, that issue  
25 was in fact pursued and we make detailed submissions of 11:05  
26 it.

27  
28 Issue 15, commendations; again we have made our  
29 submissions on that. I won't take up your time by

1 going through those again, Chairman.

2  
3 In relation to Issue 17, what I call the Ó Cualáin  
4 investigation, our submissions are quite clear. They  
5 are set out at pages 79 to 85. What is notable is in 11:05  
6 those submissions of An Garda Síochána, one of the  
7 points we make is that at the start Garda A should have  
8 been suspended or at least serious consideration given  
9 to suspending him. Now, it's interesting, if you look  
10 at what Chief Superintendent Wheatley later said in her 11:06  
11 briefing note when that guard was subsequently  
12 suspended. For the purposes of your note, you will  
13 find what they says at Volume 39, page 11052. There  
14 she spoke of issues that we say were valid right at the  
15 start. She spoke of risk to colleagues. She spoke of 11:06  
16 the potential to pervert the course of justice or  
17 suborn colleagues and risk to colleagues. All of those  
18 things identified to justify the subsequent suspension  
19 were present right at the start; those risks, they  
20 didn't suddenly materialise. 11:07

21  
22 We say also and the Guards say that two reports were  
23 prepared for the DPP. That is absolutely right. And  
24 there is a small paragraph in our submissions, I think  
25 at paragraph 204. I fully accept there were two 11:07  
26 reports made by the investigation team to the DPP. The  
27 first was the 24th November '15 and the other was the  
28 15th November '18. That's a period between the first  
29 one and what, well over a year, a year and a half, and

1 the second one was four years from the date of their  
2 appointment. It is quite clear within the report what  
3 the reasons were as to why the DPP didn't in fact  
4 pursue prosecution, because it was drawn to the DPP's  
5 attention, though it didn't seem to be evidence that 11:08  
6 would stand up, and the second one followed when Ms. B  
7 was interviewed, she then withdrew her statement made  
8 to the McMahon Tribunal, which left them in a position  
9 where they couldn't use it.

10  
11 On Issue 18, bullying and harassment, that's what I  
12 want to say is set out in our written submissions in  
13 relation to that.

14  
15 Again, Issue 19, the same. 11:08

16  
17 Issue 20, we don't call, as I have already said, into  
18 question the propriety of the Policing Authority. One  
19 of the points that we do however make is that  
20 Superintendent Murray and the other senior officers 11:09  
21 involved failed to update on their account the Policing  
22 Authority with the details of the bullying and  
23 harassment complaint when those were clearly known to  
24 them. what I say there is simply this: Firstly, they  
25 were obliged by the guidance to do that updating, but 11:09  
26 secondly, as a matter of straightforward, honest  
27 dealing surely one would think in relation to the  
28 senior guards once they become aware that this is in  
29 existence and is relevant to the Policing Authority,

1 surely the decent thing to have done was simply to have  
2 notified the Policing Authority. And they didn't. I  
3 say that is something which ought to be borne in mind  
4 and taken into account.

5  
6 Finally on that issue, what I say is that  
7 Superintendent Murray was less than frank with the  
8 Tribunal, particularly on this issue, he said that he  
9 thought about disclosing the complaint but decided not  
10 to do so acting on advice. That is an absolutely  
11 startling statement for him to have made. I thought  
12 about it, I went and took legal advice and I was told  
13 you don't have to. I say at the very least it's  
14 strange.

15  
16 Chairman, if I can conclude with this: It's Garda  
17 Keogh's submission that the bullying and harassment  
18 complaint was relevant, intertwined with this, or have  
19 become in the evidence, and senior officers knew about  
20 it during the course of Superintendent Murray's  
21 application for promotion but didn't at any point  
22 voluntarily do what I say in paragraph 278 what might  
23 reasonably have been expected of him, namely to inform  
24 the Policing Authority.

25  
26 Chairman, I think that is all that I wish to say in  
27 relation to that and I thank you for having listened to  
28 me. I can say for the benefit of those who are  
29 controlling the video and audio, that for the last

1 while it has been absolutely superb.

2 CHAIRMAN: Thank you very much, Mr. Kelly, for your  
3 assistance, not just this morning but you and other  
4 counsel have been extremely helpful to me in the  
5 conduct of this inquiry and in your participation. So 11:11  
6 this gives me an opportunity to pay that little  
7 tribute, to say thank you for your courtesy and your  
8 assistance in the conduct of the Tribunal. Thank you  
9 very much indeed.

10 MR. KELLY: Thank you very much, Mr. Chairman. Can I 11:12  
11 just simply add this, I am grateful for the courteous  
12 hearing we have had throughout the hearing and for the  
13 assistance of the staff and counsel to the Tribunal.  
14 So thank you very much.

15 CHAIRMAN: Very good. Thank you very much. Over and 11:12  
16 out, Mr. Kelly. Thank you very much.

17

18 So we can turn off the link with Mr. Kelly and proceed  
19 to Mr. Murphy.

20 MR. MURPHY: Chairman, I think it is understood we will 11:12  
21 follow the regime that has applied to date, moving from  
22 this part of the room and going around, I will go last.

23 CHAIRMAN: Very good. Anybody else who wants to make a  
24 submission? Yes, Mr. McGrath.

25 MR. McGRATH: A very brief submission. 11:13  
26 CHAIRMAN: Yes, certainly.

27

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29 SUBMISSION BY MR. McGRATH:

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MR. McGRATH: Chairman, you and all parties should have our submissions, which hopefully haven't troubled you too much and hopefully succinctly set out the issues which we raise. But if you have any queries obviously in relation to that, please let me know. I am sorry about that, Chairman. I will just pull in. 11:13

CHAIRMAN: No problem at all.

MR. McGRATH: There is a couple of short matters I wish to raise, arising largely from the submissions made on behalf of Garda Keogh. Our clients are Garda Stephanie Treacy, Garda Fergal Greene and Garda David Turner. 11:13

I would just first of all take issue on behalf of our clients and particularly Garda Stephanie Treacy with the argument made on page 21 of Garda Keogh's written submissions, which suggest, the phrase is used that Garda Treacy misunderstood and misconstrued the comments of Ms. O'Neill 11:13

CHAIRMAN: That's right. 11:14

MR. McGRATH: It is our submission that the Court should reject this suggestion. First of all, the Court, or sorry the Tribunal, my apologies.

CHAIRMAN: That's all right.

MR. McGRATH: The Tribunal will recall that Garda Keogh's own evidence, and I refer here to Day 100, page 40, question 119, his own evidence was he was not present when Ms. O'Neill made her comments to Garda Treacy. Therefore, it follows that the only witnesses 11:14

1 capable of giving evidence that Garda Treacy  
2 misunderstood or misconstrued statements made by Olivia  
3 are in fact Olivia O'Neill herself or her daughter. We  
4 say firstly there are difficulties with Ms. O'Neill's  
5 inability to recall details of what was said on the day 11:15  
6 in question, 28th May 2014. And we would refer the  
7 Tribunal there to the evidence of Ms. O'Neill, again  
8 Day 119, which we say is replete with answers that she  
9 did not recall various details in relation to the  
10 events, being the date on which she made these disputed 11:15  
11 comments to Garda Treacy. I particularly refer the  
12 Tribunal to page 53 of Day 119, from question 267  
13 onwards.

14 CHAIRMAN: Just give me those figures again,  
15 Mr. McGrath. 11:15

16 MR. McGRATH: It is Day 119.

17 CHAIRMAN: Yes.

18 MR. McGRATH: Page 53.

19 CHAIRMAN: Yes.

20 MR. McGRATH: Question 267 onwards. 11:15

21 CHAIRMAN: Thank you very much.

22 MR. McGRATH: And there are a number of questions  
23 beginning with:

24  
25 "Q. The question I am really asking is: Is it the case  
26 that you did talk about it to Garda Keogh that night,  
27 that you talked about essentially Garda involvement in  
28 the drug trade?

29 A. No. I do not remember. I don't remember now.

1 Q. Is Garda Keogh wrong in that?

2 A. I don't remember. I can't remember. To the best of  
3 my knowledge, I can't remember. You never remember  
4 everything you said.

5 Q. No.

6 A. No.

7 Q. In fact, in fairness to you, at page 443 of your  
8 statement you accept that you do talk a lot and that  
9 you do forget a lot of what you say?

10 A. I do, yes. I do.

11 Q. No. In fairness to you on page 443 of your  
12 statement you accept do you talk a lot and that you do  
13 forget a lot of what you say.

14 A. I do, yes, I do."

15

11:16

16 And in fact, counsel for Garda Keogh express low put to  
17 Garda Treacy the proposition that Ms. O'Neill had  
18 limitations with her memory and again I refer to a  
19 passage, Day 123, page 154, at question 688 in that  
20 regard.

11:16

21

22 So it's clear, therefore, we say, that Garda Keogh's  
23 team adopted the position that Ms. O'Neill was a  
24 witness with memory difficulties but they now ask you  
25 to prefer her evidence. This is in circumstances where 11:17  
26 there's no attempt in their written submissions to  
27 address credibility or reliability of Ms. O'Neill. So  
28 we say, therefore, that it is now unreal for Garda  
29 Keogh's representatives to ask you to seriously prefer

1 Ms. O'Neill's evidence and it is our respectful  
2 submission that Garda Treacy recorded Ms. O'Neill's  
3 statements accurately and that the submission made in  
4 this regard by Garda Keogh's representatives, in other  
5 words that she misconstrued or misunderstood, is not a 11:17  
6 reasonable conclusion to draw from the evidence.

7  
8 You will see, Chairman, that in our submissions we  
9 refer to a number of particular recordings for example  
10 and reports on to senior officers in the station which 11:18  
11 would support the evidence given by Garda Treacy in  
12 this regard.

13  
14 Then the second matter we just briefly raise concerns  
15 the arguments made in relation to Garda Green on behalf 11:18  
16 of Garda Keogh. That is Garda Fergal Greene

17 CHAIRMAN: Yes.

18 MR. McGRATH: And I refer to paragraphs 260 to 264 of  
19 the written submissions of Garda Keogh, where we take  
20 issue with what is said there. In that regard, we say, 11:18  
21 firstly, at paragraph 262 in particular there have a  
22 blatant attempt on behalf of Garda Keogh's team to  
23 argue, based on evidence which you specifically ruled  
24 to be irrelevant, on Day 146, at page 136 onwards. The  
25 Tribunal specifically, that is you, Chairman, ruled 11:18  
26 that alleged conversations recorded by Chief  
27 Superintendent Murray and disputed by Garda Greene were  
28 irrelevant, yet Garda Keogh's team seek to rely upon  
29 those.

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Secondly, Garda Keogh's representatives referred to a letter written by Chief Superintendent Murray's solicitors to the Policing Authority to support their contention that Garda Greene was somehow canvassing on behalf of Chief Superintendent Murray, and again we say that this clearly flouts your ruling and that the contents of Chief Superintendent Murray's solicitor is no more than the giving of instructions as to what Chief Superintendent Murray said transpired between himself and Garda Greene and you have already ruled this to be irrelevant. 11:19

The submission made on behalf of Garda Keogh that this evidence is relevant to the issue of credibility and reliability, and here I would ask the Court or you, Chairman, to particularly look at paragraph 261 of Garda Keogh's submissions, is unfounded. It is unfounded because Mr. Kelly on behalf of Garda Keogh resisted our application to have such conversations ruled inadmissible on that very basis. You rejected the admissibility or relevance of these conversations and again and you correctly said that this was, in our respectful submission, an adjectival matter, which could not render admissible evidence which was otherwise inadmissible. 11:20

Again, just to refer you to Day 146, page 137, where he stated:

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"I do take Mr. Kelly's point about the credibility but I have to say that it is not a substantive but an adjectival matter i.e. essentially procedural. While as a matter of law and the law of evidence I agree with his proposition, it doesn't overcome the issue about the materiality of the evidence."

And in addition, Garda Keogh's team asked the Tribunal to assume that the reference in the letter from Chief Superintendent Murray's solicitor to a rank and file member, that is a quotation from the letter, is a reference to Garda Greene, but the proposition was never put to Garda Greene for his comment in cross-examination. So we say that the submission made that Garda Greene lobbied or contacted the Policing Authority, and that's found most clearly at paragraph 260 of Garda Keogh's submissions, is made in disregard for your ruling on Day 146, is based on inadmissible evidence and invites you to make findings which you expressly stated you would not.

So they are our submissions briefly.

CHAIRMAN: Thanks very much, Mr. McGrath. Anybody else? Mr. McGarry, yes.

SUBMISSION BY MR. MCGARRY:

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MR. MCGARRY: Yes, Chairman, I just want to make a few brief observations, if I may, with your permission.

CHAIRMAN: Certainly.

MR. MCGARRY: Again, we have put in detailed written submissions dealing with most of the issues concern or concerned Assistant Commissioner Fanning. 11:22

You yourself, Chairman, way back on Day 111 made the prescient remark that all roads lead to Assistant Commissioner Fanning. And perhaps that is not surprising in the context of what you are looking at, because assistant Commissioner Fanning was in charge of Human Resources in An Garda Síochána and then for a large part of the period we're looking at was the regional commander in the area in which Garda Keogh was serving. Despite this, Assistant Commissioner Fanning had only met Garda Keogh on one occasion and even that was a routine dropping into Athlone Garda Station. Again, perhaps that is not surprising because of the hierarchical structure of the force and the way in which complaints are meant to be processed. 11:23

Now, the Tribunal has had to deal with a lot of information and evidence, some of it is of consequence, some of it is of no consequence, some of it is, quite frankly, bizarre, and nowhere is that as evident as in the interaction or interactions between Garda Greene, Inspector Minnock and then Superintendent Murray. You 11:23

1 don't have to have come, like me, near the bottom of  
2 your class in evidence to realise that when Garda  
3 Greene's information was to the effect that he told  
4 superintendent Minnock -- sorry, that Inspector Minnock  
5 told Superintendent Murray about something that Garda 11:24  
6 Greene had been told by Garda Keogh in relation to  
7 something about Assistant Commissioner Fanning, that  
8 doesn't really amount to very much. Even if it did, it  
9 is instructive to note that that is not of any  
10 relevance to the matters that are being looked into by 11:24  
11 the Tribunal. Indeed, there is no corroboration or  
12 support for any of the things that were said. In fact.  
13 The evidence in relation to that exchange was very much  
14 to the contrary, Chairman. You will recall that Garda  
15 Keogh himself said that when he made those comments to 11:24  
16 Garda Greene he deliberately made them up, because he  
17 knew where the information was going to end up.

18  
19 Another issue that is of concern to us, although  
20 perhaps has dampened down over time, was the attempts 11:25  
21 made by the representatives of the Commissioner, I say  
22 the Commissioner but the legal team I think represents  
23 some 40 members, senior members of the force, but  
24 attempts were made to somehow implicitly question the  
25 appropriateness of the conduct of Assistant 11:25  
26 Commissioner Fanning in a number of respects. There  
27 was, I think, an implicit suggestion that in some way  
28 he was supportive, or overly or inappropriately  
29 supportive of Garda Keogh by providing him with

1 information about what was going on. Again, no  
2 additional evidence was given in relation to that and  
3 no questions were asked directly of Assistant  
4 Commissioner Fanning in relation to it. You probably  
5 recall that attempts were made to suggest that there 11:25  
6 were people involved in the leaking of material to the  
7 media about meetings, and you, Chairman, quite rightly  
8 put an abrupt stop to all of that, not just obviously  
9 because there was no evidence in relation to it but, of  
10 course, because it is not relevant to the matters that 11:26  
11 we are looking into in this part of the Tribunal.  
12

13 In fairness, the bulk of the Tribunal's concern about  
14 the complaint made by Garda Keogh and the manner in  
15 which that interacted with Assistant Commissioner 11:26  
16 Fanning related to the period when Garda Keogh had made  
17 his bullying and harassment complaint that led up to  
18 the appointment of Assistant Commissioner Finn. What's  
19 crucial about that, in our submission, is that Garda  
20 Keogh himself expressly stated in evidence that he had 11:26  
21 no issue with the way in which Assistant Commissioner  
22 Fanning dealt with the file over time. There's no need  
23 to take it out but you will find references to this in  
24 the evidence at Day 105 and Day 111 in response to  
25 questions from us and from Mr. Murphy. 11:27  
26

27 It's perhaps again maybe not surprising that we have  
28 seen a good deal of interaction. You will recall the  
29 detailed chronology prepared by Inspector McCarthy

1 setting out all of the events that occurred. It is  
2 clear that Assistant Commissioner Fanning was engaged  
3 in a very detailed process in attempting to get to the  
4 bottom of it all. If there was any delay, and I should  
5 say that even if there was any delay, it couldn't come 11:27  
6 close to meeting the test for targeting or  
7 discrediting, but even if there was, that clearly  
8 didn't have anything to do with the way in which  
9 Assistant Commissioner Fanning was dealing with the  
10 matter. Because, as we have seen, his engagement with 11:27  
11 Garda Keogh was fairly thorough, right from the time  
12 that the Scanlan report was being prepared up to the  
13 sending of seven or eight letters to Mr. Barrett  
14 between May and October 2017, letters that Mr. Barrett  
15 says he didn't see, although he said someone in the 11:28  
16 office must have seen them, although it's surprising  
17 that there was no response to them or at least requests  
18 for further information or even a letter to say what  
19 are you talking about here.

20  
21 So all of that is to say that, in the context of a  
22 scenario where even if Garda Keogh is correct in  
23 relation to the issue of delay, it could never  
24 constitute the type of harassment, targeting or  
25 discrediting that would come within the Terms of 11:28  
26 Reference of the Tribunal.

27  
28 So, Chairman, you were probably right when you said  
29 that all roads lead to Assistant Commissioner Fanning,

1 but it is clear from the evidence that if they did, the  
2 roads continued on and went to somewhere or somebody  
3 else.

4 CHAIRMAN: I should say, Mr. McGarry, at the particular  
5 point there was a number of references --

11:28

6 MR. MCGARRY: Yes.

7 CHAIRMAN: -- that you have identified earlier, and  
8 they did all tend to go in one direction.

9 MR. MCGARRY: Yes.

10 CHAIRMAN: I have your point. On my understanding, the  
11 issue that involves Assistant Commissioner Fanning is  
12 the issue concerning the bullying and harassment claim,  
13 which I think is number 18, that's the issue that  
14 concerns him, and you have said what you have said  
15 about that.

11:29

11:29

16 MR. MCGARRY: Yes, Chairman.

17 CHAIRMAN: You said there wasn't delay, Garda Keogh  
18 exonerated Assistant Commissioner Fanning, though he  
19 did blame Mr. Barrett. But he did make that, and you  
20 say even if that were the case, it couldn't amount to  
21 targeting or discrediting.

11:29

22 MR. MCGARRY: Yes, I do say that, Chairman. It is  
23 clear to us that even if roads did lead Assistant  
24 Commissioner Fanning, they continued on.

25 CHAIRMAN: All I was keen to clarify was that when I  
26 said all roads, I was referring to a particular moment  
27 in the Tribunal's inquiries, not to suggest that there  
28 was some other agenda concerning Assistant Commissioner  
29 Fanning.

11:29

1 MR. MCGARRY: No, Chairman, I fully accept that and I  
2 understand that is exactly what you meant when you said  
3 that. Our only submission is that the roads clearly  
4 continued on or led to somebody or somewhere else,  
5 whether that is Assistant Commissioner Ó Cualáin, or 11:30  
6 Mr. Barrett or Mr. Nugent or Assistant Commissioner  
7 Finn, as the case may be.

8  
9 Those are my submissions

10 CHAIRMAN: Thank you very much. Anybody else want to 11:30  
11 say anything before I go to Mr. Murphy?

12 MS. O'ROURKE: Yes, Chairman.

13 CHAIRMAN: Who am I speaking to?

14 MR. MCGUINNESS: Ms. O'Rourke.

15 CHAIRMAN: I am so sorry, Ms. O'Rourke. I couldn't see 11:30  
16 you there. Forgive me.

17

18 SUBMISSION BY MS. O'ROURKE:

19

20 MS. O'ROURKE: No difficulties. Myself with 11:30  
21 Mr. Dockery together with Ms. Gleeson represent a  
22 number of parties.

23 CHAIRMAN: Thank you.

24 MS. O'ROURKE: Inspector Farrell, Inspector Baker,  
25 Sergeant Haran, Sergeant Moylan, Sergeant Monaghan, 11:31  
26 Sergeant Martin, Sergeant Keane and Sergeant Lyons.

27 CHAIRMAN: Thanks very much.

28 MS. O'ROURKE: Chairperson, I don't propose to go into  
29 any huge detail with you because I know the Tribunal

1 has received written submissions on behalf of each of  
2 those parties.

3 CHAIRMAN: Yes.

4 MS. O'ROURKE: The position is more fully set out in  
5 respect of those witnesses in the written submissions. 11:31  
6 However, I do propose just to deal with a number of  
7 issues. Firstly, to make some general observations,  
8 Chairman, and then to look at the issues in respect of  
9 which these witnesses have given evidence and having  
10 regard to the written submissions received from Garda 11:31  
11 Keogh.

12  
13 In relation to the standard of proof, firstly,  
14 Chairperson, I would refer to the decision of Chief  
15 Justice Murray in Lawlor v. Flood, where at page 184 he 11:31  
16 notes:

17  
18 "While it is the civil standard, it is simply to  
19 recognise that as an integral part of fair proceedings  
20 that a finding in respect of a serious matter which may 11:32  
21 involve reputational damage must be proportionate to  
22 the evidence upon which it is based."

23  
24 He continues on in that at page 186 to say that any  
25 findings of grave wrongdoing ought to be on the basis 11:32  
26 of cogent evidence. Chairperson, I don't propose to  
27 deal any further with that, save to say that I would  
28 adopt insofar as relevant or necessary to my clients -  
29 and I say respectfully it is not, but - I would adopt

1 the submissions of the Garda Commissioner in that  
2 regard.

3  
4 Secondly with regard to procedure, the jurisdiction of  
5 the Tribunal is set out as the Tribunal is well aware 11:32  
6 at (p) of Terms of Reference and it relates to senior  
7 officers, senior members being identified as those of  
8 superintendent and above. And again, none of the  
9 clients that we represent fall within that definition I  
10 think, Chairperson, of senior members. 11:32

11  
12 In addition, Chairperson, it clearly must relate to  
13 complaints made by Garda Keogh. In that regard I would  
14 direct the Tribunal to the fact that Garda Keogh has  
15 given evidence that he has no complaint against 11:33  
16 Inspector Farrell and that was at Day 105, Chairperson,  
17 page 45 of the transcript, at lines 27 to 29.

18  
19 In respect of Sergeants Haran, Moylan and Martin, he  
20 accepts that he doesn't make any allegations against 11:33  
21 them and that they didn't do anything wrong. And  
22 that's at Day 100, page 121, line 15 of the transcript.

23  
24 The evidence before the Tribunal, Chairperson, was that  
25 Sergeant Haran was a caring and supportive colleague of 11:33  
26 Garda Keogh, who worked closely with him in providing  
27 support to him. Specifically in relation to Detective  
28 Sergeant Martin, Garda Keogh has said "In fairness to  
29 her, she didn't bother me kind of", and that's at Day

1 100, page 113, line 18. And Garda Keogh has apologised  
2 to Sergeant Martin for the distress that he has caused  
3 her, noting that she has been put through a lot in all  
4 of this as well. And that's at Day 106, page 79 of the  
5 transcript, Chairperson, at lines 11 to 16. Equally, 11:34  
6 no complaints are made against either Sergeants Keane  
7 or Monaghan.

8  
9 In his evidence to the Tribunal, Garda Keogh confirmed  
10 that he wasn't making any allegation against Inspector 11:34  
11 Baker, and that's at Day 107, lines 21 to 25.

12  
13 while that was the evidence before the Tribunal, in the  
14 written submissions that have been furnished on behalf  
15 of Garda Keogh, there appear to be criticisms unfairly 11:34  
16 directed at Inspector Baker. I will deal with that  
17 when I look at Issue 4. But I suppose a general point  
18 that I wish to make is that Garda Keogh has levelled  
19 serious allegations against parties on the basis of his  
20 suspicions and speculations. And as has been the 11:34  
21 evidence before the Tribunal, Inspector Farrell and now  
22 Detective Sergeant Martin have been subject to this  
23 treatment. I respectfully submit, Chairperson, that  
24 Sergeant Lyons now finds himself at the receiving end  
25 of such allegations. And I will deal with that when I 11:35  
26 deal with allegation number 4, Chairman.

27  
28 Garda Keogh has made allegations not on the basis of  
29 how he was actually treated by any member, by members

1 of the Garda Síochána, but instead on the basis of his  
2 perceptions of their friendships with other parties. I  
3 would refer to the written submissions on behalf of  
4 Inspector Farrell at paragraphs 203 to 205 in that  
5 regard.

11:35

6  
7 Garda Keogh's evidence appears to be that he formed his  
8 perception of Inspector Farrell on the basis of what he  
9 perceived to be Inspector Farrell's friendships. And  
10 at Day 105, pages 45 to 46, Garda Keogh's evidence was,  
11 "It wasn't Inspector Farrell, I see here, there,  
12 Inspector Farrell is friends with, it's not to do with,  
13 he himself is a decent guy but just, it's other persons  
14 that he was friends with."

11:35

15  
16 And in the written submissions a number of other  
17 entries in that regard are identified.

11:36

18  
19 The evidence of Garda Keogh that Inspector Farrell was  
20 a decent guy is in fact supported by the evidence of  
21 all the witnesses to the Tribunal. I don't propose  
22 going into that, Chairperson, because it is set out in  
23 our written submissions but I would note that  
24 Superintendent McBrien's evidence at Day 120, page 103,  
25 at lines 3 to 6, was that:

11:36

11:36

26  
27 "Inspector Farrell was extremely supportive of all  
28 members, he had a very good understanding of them and  
29 he was always available to Garda Keogh even if Garda

1 Keogh didn't accept his support."

2  
3 Equally, Inspector Minnock gave evidence to the  
4 Tribunal that at a meeting that he had with Garda Keogh  
5 on 24th May 2016, Garda Keogh asked him to say that he 11:37  
6 had no issue with Inspector Farrell. That's at Day  
7 130, page 67 to 68 of the transcript. As set out at  
8 paragraph 1102 of Inspector Farrell's submissions, this  
9 evidence was of comfort to Inspector Farrell, who until  
10 these hearings found himself in the frustrating 11:37  
11 position of being able to address these historical  
12 unfounded allegations, some of which he has only heard  
13 of in light of the disclosure from this Tribunal. In  
14 that regard it was only in the course of this Tribunal  
15 that Inspector Farrell learned that Garda Keogh had 11:37  
16 made allegations which Garda Keogh now accepts were  
17 unfounded to Detective Sergeant Mulcahy in respect of  
18 Inspector Farrell at a time when Inspector Farrell was  
19 going for promotion.

20  
21 In his evidence Garda Keogh said at Day 105, page 21,  
22 he said:

23  
24 "Just, I mean there's a lot of things all along the way  
25 where I assumed things, my perception, and been 11:38  
26 incorrect even at that stage."

27  
28 This matter is dealt with, Chairperson, at paragraphs  
29 901 to 908 of Inspector Farrell -- the written

1 submissions on his part, where he confirms that he was  
2 going for promotion and of the fact that he only  
3 learned of this correspondence at that late stage.  
4

5 Chairperson, while Inspector Farrell has welcomed the 11:38  
6 withdrawal of the allegation, it cannot be gainsaid  
7 that unfounded allegations can cause stress and strain  
8 to parties against whom they are directed. In that  
9 regard, if I can just then turn briefly to Detective  
10 Sergeant Martin, as she now is. And here again, Garda 11:38  
11 Keogh had made against Detective Sergeant Martin not on  
12 the basis of his interactions with her but on what he  
13 perceived was her involvement in other matters. In his  
14 statement to the investigators to this Tribunal he  
15 indicated that he was allocated Sergeant Martin as a 11:39  
16 liaison person to discuss work related issues and he  
17 indicated that she was the sergeant in the McCabe and  
18 so-called Mullingar meetings. But, Chairman, it is a  
19 matter of record, and this is set out in our  
20 submissions, that any allegation of wrongdoing by 11:39  
21 Detective Sergeant Martin has been accepted as being  
22 without any basis in fact by Mr. Justice Charleton and,  
23 in fact, Detective Sergeant Martin herself confirmed  
24 that she was never called as a witness before the  
25 Disclosures Tribunal. 11:39  
26

27 Garda Keogh, during the course of his -- he wrote to  
28 the Minister for Justice, Equality and Law Reform in  
29 January 2017, making a similar point to that which he

1 made to the investigators here. It appears that that  
2 correspondence to the Minister caused an investigation  
3 by GSOC of which Detective Sergeant Martin was unaware  
4 until this particular Tribunal. And again, this is  
5 dealt with, as I said, in the submissions on behalf of 11:40  
6 Sergeant Martin.

7  
8 Obviously while these have been withdrawn, they have  
9 been a source of stress to Detective Sergeant Martin.  
10 And Garda Keogh, on Day 100 of the Tribunal, at page 11:40  
11 113, acknowledged that he should not have written to  
12 the Minister for Justice. He stated:

13  
14 "In hindsight I should not have done, there was an  
15 incident to do with what was dealt with in a previous 11:40  
16 module of the Tribunal where Sergeant Martin was, there  
17 was an allegation there, and I understand that she was  
18 totally vindicated in that, I perhaps jumped, I did  
19 jump the gun and I shouldn't have. But at the time it  
20 was handed around and I mean look, I wasn't to know any 11:41  
21 different."

22  
23 Garda Keogh's evidence at Day 106, page 96, lines 27 to  
24 28, was that he didn't really know Sergeant Martin but  
25 unfortunately he wrote negatively impacting on her 11:41  
26 reputation and professionalism to the Minister for  
27 Justice. The making of these unfounded allegations  
28 have been a source of stress to Sergeant Martin.  
29

1 If I might then turn briefly to Sergeant Lyons. Before  
2 this Tribunal Garda Keogh has made serious and  
3 unfounded allegations against Sergeant Lyons, not based  
4 on any evidence but purely on account of his  
5 speculation or perception. He has sought to impugn 11:41  
6 Sergeant Lyons' reputation in circumstances where Garda  
7 Keogh himself accepts that Garda Lyons was a clean pair  
8 of hands and a smart member of An Garda Síochána. He  
9 acknowledged on Day 100, at page 93, that he had no  
10 evidence to support the accusation now levelled, that 11:42  
11 the report of Garda Lyons, as he then was, was  
12 maliciously invented. And he further continued that he  
13 didn't see what motive Garda Lyons would have to do so.  
14 That's at Day 105, page 29, lines 24 to 28. And it's  
15 wholly unfair and unjust that Garda Keogh would cast 11:42  
16 aspersions on Sergeant Lyons, a hard-working member of  
17 An Garda Síochána.

18  
19 As I said, Chairperson, in cross-examination Garda  
20 Keogh has accepted he has no criticism of then Sergeant 11:42  
21 Baker, now Inspector Baker, but in the submissions  
22 delivered there appears to be a level of criticism  
23 towards her and I will deal with that at Issue number  
24 9. But I think it is important that insofar as  
25 Inspector Baker was in a position to assist the 11:42  
26 Tribunal, it was in relation to a matter which occurred  
27 at a PAF meeting, a routine meeting in 2015. The  
28 criticism made against her appears to be entirely  
29 disproportionate and unwarranted.

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Chairperson, there are other matters set out in the submissions of Inspector Farrell and others including in relation to correspondence which they received in relation to the Assistant Commissioner Finn report and I just direct the Chairperson to that, which is at I think paragraphs 10.01 to 10.04 of the written submissions of Inspector Farrell.

11:43

Chairperson, I might just very briefly deal with the various issues insofar as any of the clients I represent have been able to assist the Tribunal. The first issue was Issue 1, the investigation of the Pulse entry. I don't propose going over the evidence, but both Inspector Farrell and Sergeant Haran gave evidence in relation to this matter. You will recall that Inspector Farrell was instructed by Chief Superintendent Curran to meet with Garda Keogh and he met with him on the 19th May 2014 and his evidence was that he did not deviate from the instructions save for suggesting that perhaps Garda Keogh might have asked Assistant Commissioner Ó Cualáin about the merits of creating the intelligence entry. That's at Day 121, page 118.

11:43

11:43

11:44

11:44

It is not entirely clear from the submissions where Garda Keogh is maintaining the suggestion that Inspector Farrell asked him to change an intelligence entry, but insofar as that is an issue that the

1 Chairperson has to look at, I would respectfully say  
2 that that suggestion is not supported by the evidence,  
3 Chairperson. This again is addressed in our written  
4 submissions, but just in that regard you will recall  
5 that neither party could change an entry to the Pulse 11:44  
6 system and that was a matter accepted by Garda Keogh  
7 and, indeed, Inspector Farrell had a note of his  
8 meeting with Garda Keogh. So I would respectfully say  
9 that there is no basis for any criticism or for any  
10 suggestion that Inspector Farrell was other than 11:45  
11 professional in his dealings with Garda Keogh.  
12

13 The next issue, Chairperson, is Issue 3 and the  
14 investigation into Ms. O'Neill's visit to the Garda  
15 station. In this regard, both Sergeants Haran and 11:45  
16 Keane have given evidence on this matter, as has  
17 Inspector Farrell. And I would adopt the points made  
18 by Mr. McGrath in respect of any difference between the  
19 evidence of Ms. O'Neill and Sergeant Keane as well as  
20 Garda Treacy, insofar as it is necessary for the 11:45  
21 Tribunal to consider that matter. I think it is  
22 relevant that Ms. O'Neill herself accepted in evidence,  
23 she said that she does talk a lot and "then I forget  
24 what I say" and that's the transcript at Day 119 page  
25 53, lines 15 to 18. 11:46  
26

27 Inspector Farrell's involvement is set out at  
28 paragraphs 701 to 708 of the written submissions and I  
29 don't propose going through that, Chairperson. But

1 there is a suggestion made in Garda Keogh's submission,  
2 written submissions, at paragraphs 45 and 48, that if  
3 Inspector Farrell had asked Garda Keogh what had been  
4 said by Ms. O'Neill, it might have clarified the  
5 matter. I think that suggestion should be viewed in 11:46  
6 context, Chairperson. Inspector Farrell himself gave  
7 evidence that, and it's at paragraph 707 of his  
8 submissions, his evidence was:

9  
10 "I didn't think it was appropriate for me to approach 11:46  
11 Garda Keogh in those circumstances, that the  
12 information that was given to me by Garda Treacy I  
13 believe merited being forwarded to my Chief  
14 Superintendent in the absence of the superintendent for  
15 them to consider what action should be taken. " 11:47

16  
17 That's at Day 121, page 16, line 25.

18  
19 Earlier Inspector Farrell had put into context the role  
20 of the acting district officer and in reply to question 11:47  
21 433, which is at Day 121, page 108, lines 18 to 29 and  
22 over the page at lines 1 to 5, Inspector Farrell said  
23 that when he was acting as district officer he wouldn't  
24 presume the approach that the superintendent might  
25 take. I think that that point is equally valid here. 11:47

26  
27 I also think the suggestion should be viewed in the  
28 context where Garda Keogh had made clear in the meeting  
29 that he had with Inspector Farrell on 9th May 2014 that

1 he didn't want any dealings with Inspector Farrell.  
2 And indeed, I direct the Tribunal to the evidence of  
3 Sergeant Haran on Day 121, at page 91, lines 18 to 24,  
4 where Sergeant Haran said, speaking of Garda Keogh:

5  
6 "He wasn't generally I suppose receptive to what might  
7 be perceived as management kind of advices. If I had a  
8 hope of getting advice to him it would be best coming  
9 from myself than from another colleague, but if he felt  
10 it was coming from the top down he might perceive it as 11:48  
11 not being the best advice."

12  
13 At paragraph 48 of the written submissions of Garda  
14 Keogh, issue was taken with Inspector Farrell's  
15 position that the report that he submitted to Chief 11:48  
16 Superintendent Curran was reporting the facts as  
17 relayed to them. I would respectfully say that -- and  
18 it is suggested again that Inspector Farrell should  
19 have made enquiries in that regard. I think I have  
20 dealt with that. But I suppose it's trite to say that 11:48  
21 if Inspector Farrell had made enquiries then  
22 necessarily he would be doing more than reporting  
23 facts, the initial facts relayed to him, Chairperson.

24  
25 Equally, Chairperson, at paragraph 47 of Garda Keogh's 11:49  
26 submissions it's stated that, it's said that when the  
27 issue was reported by Inspector Farrell it was done in  
28 a way that had negative connotations for Garda Keogh.  
29 And there is a reference to an extract from Inspector

1 Farrell's evidence. I won't bring the Tribunal to it  
2 now but I would respectfully ask the Tribunal to look  
3 at the full reference to Inspector Farrell's evidence,  
4 because I think that that extract might be less than  
5 complete and if I could refer the Tribunal to Inspector 11:49  
6 Farrell's evidence on Day 107, page 128, at lines 28 to  
7 29 and at page 129, line 1, where the tenor of  
8 Inspector Farrell's evidence is he was potentially  
9 reporting inappropriate behaviour.

10  
11 As I said, Chairperson, no allegation is being 11:49  
12 maintained -- complaint has been made by Garda Keogh in  
13 respect of either sergeants Haran, Keane or Inspector  
14 Farrell in respect of Issue 3, and at paragraph 46 of  
15 Garda Keogh's written submissions it's identified that 11:50  
16 he makes no complaint in respect of Inspector Farrell.

17  
18 If I can turn then, Chairperson, to Issue 4, which is  
19 the investigation into the Liam McHugh matter. The  
20 Chairperson has heard evidence from Inspector Farrell 11:50  
21 and Garda Lyons in relation to this matter. Garda  
22 Keogh no longer makes any allegations against Inspector  
23 Farrell in respect of this matter. However, before  
24 this Tribunal he levelled serious and grave allegations  
25 against Garda Lyons, impugning his professional 11:50  
26 integrity. I would respectfully suggest it was  
27 entirely unwarranted. As I said, this is more fully  
28 addressed in our written submissions but there are a  
29 number of points that I do want to make, because these

1 allegations are repeated in the written submissions of  
2 Garda Keogh, including at paragraph 60 and 63.

3  
4 The starting point is, of course, that Sergeant Lyons  
5 has given clear evidence of his meeting with Liam 11:51  
6 McHugh and similar to Ms. O'Neill, the only parties who  
7 had that conversation were Sergeant Lyons, Then Garda  
8 Lyons and Mr. McHugh. Garda Lyons was returning to the  
9 station, he was called by Mr. McHugh on 31st May 2014  
10 at about 9:00pm and Sergeant Lyons recounted to this 11:51  
11 Tribunal the conversation that he had. He spoke with  
12 his superior officer about the conversation and he  
13 reported it by e-mail on 2nd June 2014, following a  
14 busy June bank holiday weekend.

15 11:51  
16 Sergeant Lyons' evidence to the Tribunal was that it  
17 was clear to him that he needed to report the matter,  
18 "Report the facts of the matter and let my superiors  
19 decide what action should be taken from there and you  
20 know investigate the matter as they saw fit." 11:52

21  
22 That's at Day 128, page 18 of the transcript, at lines  
23 1 to 4. Mr. McHugh didn't recollect his meeting with  
24 then Garda Lyons but neither did he deny it. And he  
25 was somewhat equivocal initially as to whether he could 11:52  
26 identify Garda Lyons and it was only I think on  
27 cross-examination on behalf of the Garda Commissioner  
28 where it was identified that Sergeant Lyons had been  
29 the subject of serious assault by a party known by

1 Mr. MCHugh that he clarified that he did in fact know.

2  
3 I would respectfully submit to the Tribunal that the  
4 evidence of Sergeant Lyons was clear and  
5 straightforward, he had an encountered with Mr. MCHugh, 11:52  
6 he reported the conversation because he said it would  
7 be wrong of him not to do so. He rejected Garda  
8 Keogh's speculation as absurd.

9  
10 At paragraph 307 of the written submissions reference 11:52  
11 is made to the evidence of Sergeant Lyons, where he  
12 says:

13  
14 "Garda Keogh knows I am not the sort of person who  
15 would allow myself to be manipulated into making a 11:53  
16 false report. I wouldn't do it. I think everyone in  
17 Athlone Garda Station knows I wouldn't do it. I had  
18 that conversation with Liam MCHugh."

19  
20 And that's the transcript Day 128 page 57, lines 11 to 11:53  
21 15.

22  
23 I think it bears scrutiny that Garda Keogh himself has  
24 accepted that he has no evidence to suggest that the  
25 report was maliciously invented and equally that he 11:53  
26 acknowledges that he couldn't see any motive that Garda  
27 Lyons would have to do that. That's at Day 105, page  
28 29 of the transcript.

29

1 The allegation also has to be assessed in the light of  
2 Garda Keogh's evidence of his knowledge of -- Garda  
3 Keogh's evidence of his knowledge of Garda Lyons.  
4 Garda Keogh had previously been Garda Lyons' partner  
5 and it's clear from Garda Keogh's evidence that he 11:54  
6 considered Garda Lyons a clean pair of hands and an  
7 intelligent guard. It is also relevant how the manner  
8 in which the allegation has emerged and evolved.

9  
10 On Day 100, page 75, Garda Keogh gave evidence of 11:54  
11 looking in his diary for I think 30th June and he  
12 stated:

13  
14 "But I believe that's the night the complaint was  
15 conceived. I don't even believe that there was a 11:54  
16 meeting with Garda Lyons and Liam McHugh."

17  
18 And then he continues on about two guards in a patrol  
19 car. I think it's also relevant to the Tribunal that  
20 while this assertion was made here by Garda Keogh, it 11:54  
21 was not -- no complaint was made by him in the course  
22 of the Finn investigation that the report was  
23 fabricated by Garda Lyons. This was accepted by Garda  
24 Keogh on Day 105, at page 39, where he said:

25 11:54  
26 "Sometimes when I am reading things, even on the  
27 screens, there are things that jump out at me and can  
28 just rejig the memory that I can't explain."  
29

1 Chairperson, in our written statements we have set out  
2 the fact that no complaint was made to Mr. de Bruir  
3 either in relation to the veracity or the integrity of  
4 the report of Garda Lyons. It is also the case, as set  
5 out in the submissions on behalf of Garda Lyons, that 11:55  
6 in the course of his evidence to this Tribunal Garda  
7 Keogh suggested that he didn't know the identity of the  
8 author of the report and that's something I think that  
9 is repeated at one stage in the written submissions  
10 which have been furnished to you, but I think the clear 11:55  
11 evidence and it has been accepted by Garda Keogh  
12 himself that he was furnished with the unredacted copy  
13 of the report during the course of the Finn  
14 investigation. It's equally the case that he referred  
15 to the name of Garda Lyons in his appeal of the Finn 11:56  
16 investigation. But he didn't make any of the  
17 allegations that he now ventilated and sought to  
18 ventilate before the Tribunal.

19  
20 In his evidence to the Tribunal, and it's a point I 11:56  
21 think that is made in the written submissions on behalf  
22 of Garda Keogh, great emphasis is placed on the fact  
23 that Garda A was Garda Lyons' partner. However, Garda  
24 Keogh was also Garda Lyons' -- had formerly been Garda  
25 Lyons' partner. And in his evidence Garda Keogh 11:56  
26 confirmed that he considered Garda Lyons to be a  
27 friend. That's at Day 100, page 93, lines 3 to 5.

28  
29 Chairperson, given the gravity of the allegations made

1 against Garda Lyons now, the evidence of Garda Lyons it  
2 appears bears scrutiny. That is set out at paragraphs  
3 321 to 322 of the submissions. I very briefly note  
4 that Inspector Curley who was his immediate superior  
5 noted that the report was made in good faith. Chief 11:57  
6 Superintendent Curran equally indicated that Sergeant  
7 Lyons was a very straight and direct and honourable  
8 person and that he accepted Garda Lyons would have  
9 reported the matter in good faith. That's at the  
10 transcript on Day 118, page 69, lines 11 to 13. 11:57

11  
12 I want to also refer the Tribunal to the evidence of  
13 Superintendent McBrien at Day 120, page 99, line 7 to  
14 10 and the evidence of Sergeant Haran on Day 121, that  
15 Garda Keogh never expressed that he was being bullied 11:57  
16 to him in any event in relation to the Ms. O'Neill or  
17 the Mr. McHugh matter. And that's at Day 121, page 75,  
18 line 4.

19  
20 Chairperson, there's other issues raised in respect of 11:58  
21 Issue 4, in relation to obtaining statements, etcetera,  
22 from Garda Lyons, they are not really matters I think  
23 for Garda Lyons. Garda Lyons was in the position that  
24 he reported a conversation to Sergeant Curley, his unit  
25 sergeant, he sent a report by e-mail, he didn't conduct 11:58  
26 any investigations which, of course, is a matter with  
27 which the Tribunal is concerned with in issue number 4.  
28 His evidence was that he wished he didn't have the  
29 encounter with Mr. McHugh but when he did he felt

1 obliged to report it. He reported on the facts and no  
2 one came back on the report. Chairperson I  
3 respectfully submit there is no evidence, let alone  
4 cogent evidence, to support the serious allegation now  
5 directed by Garda Keogh against Sergeant Lyons, a  
6 hard-working member of the force held in esteem.

11:58

7  
8 If I might then turn, Chairperson, to Issue 5 which is  
9 the alleged micro supervision of Garda Keogh by  
10 Sergeant Martin, Sergeant Moylan and Sergeant Haran.  
11 The Tribunal has heard the evidence of each of those  
12 sergeants. I direct the Tribunal to paragraphs 301 to  
13 306 of the written submissions of Sergeant Martin; 401  
14 to 407 of Sergeant Moylan; and paragraphs 601 to 607 of  
15 the written submissions of Sergeant Haran.

11:59

11:59

16  
17 It is the position that Garda Keogh does not make any  
18 complaint in respect of any of the superintendents and  
19 that's confirmed at paragraph 82 of the written  
20 submissions which he has furnished to the court. In  
21 his evidence to the Tribunal he stated at Day 100, page  
22 117, that it is crystal clear that he is making no  
23 allegations against the three sergeants and he  
24 confirmed they didn't do anything considered  
25 unreasonable or any targeting of him, that's at Day  
26 106, page 104, line 8.

11:59

12:00

27  
28 Chairperson, the next issue I think in which witnesses  
29 were in a position to assist the Tribunal was Issue 6,

1 which was the disciplinary issue. And Sergeant Haran  
2 gave evidence, he wasn't directly involved in that  
3 issue, but he give evidence in relation to another  
4 instance.

5  
6 Chairperson, in relation to Issue 7 which is the  
7 disciplinary investigation in relation to the sick  
8 leave of Garda Keogh, Sergeant Moylan assisted the  
9 Tribunal on this issue on Day 131. No complaint is  
10 made by Garda Keogh in relation to him or any of the  
11 other witnesses before the Court. I will just direct  
12 the Tribunal to paragraphs 601 to 603 of the written  
13 submissions of Sergeant Moylan.

14  
15 Issue 8 was withdrawn by Garda Keogh and that was a  
16 matter in which Sergeant Haran had provided assistance  
17 to the investigators in advance.

18  
19 Chairperson, if I can then turn to Issue 9. I think  
20 Sergeant Moylan was in a position to assist the  
21 Tribunal in relation to the criticisms made by Garda  
22 Keogh in respect of the theft at Custume Place and  
23 Sergeant Monaghan gave evidence both in relation to the  
24 theft at Custume Place and the theft of a trailer on  
25 the Athlone Road and criminal damage at Mulligan's  
26 Filling Station on 17th August 2015. And now Inspector  
27 Baker gave evidence in relation to the robbery on the  
28 30th September 2015. As I have already identified,  
29 Garda Keogh doesn't appear to make complaint about any

1 of these parties. In respect of the written  
2 submissions of Garda Keogh, at paragraph 116, or 119,  
3 Chairperson, at page 49, it's stated that:

4  
5 "In respect of the evidence of Sergeant Monaghan it is 12:01  
6 stated:

7  
8 "Importantly he as the supervising sergeant found in  
9 issues with the steps Garda Keogh had taken."

10 12:02  
11 That again is an extract from the evidence of Sergeant  
12 Moylan and may be somewhat incomplete and I would ask  
13 the Tribunal to consider the extract or the evidence in  
14 its entirety, including at page 70, lines 1 to 26,  
15 where Sergeant Moylan said he didn't see anything wrong 12:02  
16 either way, he didn't take issue one way or another.

17  
18 I won't open the evidence of Sergeant Monaghan, which  
19 is at paragraphs 401 to 405 of his written submissions.

20 12:02  
21 Turning then to the last of the four complaints and  
22 that's the one in respect of which Inspector Baker gave  
23 evidence

24 CHAIRMAN: Yes.

25 MS. O'ROURKE: She has dealt with this at paragraphs 12:02  
26 302 to 309 of her written submissions. I won't open  
27 those to you, Chairperson, but one issue which has  
28 arisen out of the written submissions is concerning,  
29 because there appears to be a level of criticism of her

1 which is at odds with the evidence I think of Garda  
2 Keogh. There's just a number of points I want to make  
3 about that, Chairperson. Firstly, Sergeant Baker, as  
4 she then was attended a PAF meeting on 13th September  
5 2015. It was a Monday meeting. You will recall that 12:03  
6 she said she brought the 003 form, which identified  
7 over 100 incidents on it and that this was one issue in  
8 respect of the number of issues at the meeting. She  
9 also, she says she raised the issue of the report that  
10 Garda Keogh had left in the tray with her, and that's 12:03  
11 the report at page 229 of the documents, which she  
12 considered unsatisfactory and it was not e-mailed. And  
13 per evidence I think at Day 129, page 124, lines 28 to  
14 29 and over the page, lines 1 to 10 was:

15  
16 "She would not have raised this as an individual item.  
17 It would have come about in the course of a list of one  
18 hundred and whatever incidents."

19  
20 I think it is unfair to make any criticism of Inspector 12:04  
21 Baker where she identified a matter on a routine Monday  
22 morning in September 2015 and many years later she is  
23 subjected to examination and cross-examination on it  
24 and she gave her clear evidence in that regard,  
25 Chairperson. She says that this was something that 12:04  
26 came to her, that she was unhappy with and she brought  
27 it to the attention of the meeting.

28  
29 She gave evidence that the report should have been

1 e-mailed. And a small point, but at paragraph 124 of  
2 Garda Keogh's submissions it's stated that there was no  
3 direction from sergeant Murray that a report must be  
4 e-mailed. But I would respectfully say that there was  
5 a direction from sergeant Murray and that was the 12:04  
6 direction of 18th August 2015. That's at page 2121 of  
7 the documents before you, Chairperson.

8  
9 At paragraph 124 of Garda Keogh's submissions it's  
10 stated that Sergeant Baker accepted in 12:05  
11 cross-examination that she did not write to Garda  
12 Keogh's supervising sergeant about him not sending an  
13 e-mail. It continues on, it states:

14  
15 "It is noteworthy that Sergeant Baker did not take the 12:05  
16 step."

17  
18 But, in fact, I would ask the Tribunal to consider the  
19 evidence of Inspector Baker at Day 129, page 143, lines  
20 29, and over the page to line 1, because she said she 12:05  
21 didn't raise it because the superintendent raised it.  
22 And one could ask the question that, if Sergeant Baker,  
23 who was sergeant in charge at the time, wrote to Garda  
24 Keogh's supervising sergeant, could that also be the  
25 subject -- could that be seen as being doubling down on 12:05  
26 Garda Keogh, Chairperson?

27  
28 A further criticism seems to be made of Inspector Baker  
29 at paragraph 129 of the written submissions. It's said

1 that the issue with the crime file stems from Sergeant  
2 Baker's dissatisfaction with Garda Keogh's initial work  
3 and it continues on, it suggests she puts a different  
4 interpretation on member in charge and it says:

5  
6 "It is submitted that this is both incorrect and  
7 entirely self-serving. It is further submitted that it  
8 was for the sergeant to prepare the report and not  
9 Garda Keogh."

10  
11 And it says:

12  
13 "This was confirmed in sergeant Murray's evidence."

14  
15 And there is an extract to the evidence of Sergeant  
16 Murray. Chairperson, I think firstly it is important  
17 that the extract from Sergeant Murray's evidence was  
18 not put to Inspector Baker and she wasn't offered an  
19 opportunity to comment on that, but I think,  
20 Chairperson, as significant is the fact that the  
21 extract appears to be somewhat incomplete. And  
22 Superintendent Murray sets out on whom the duty is and  
23 he confirms in his evidence, on Day 123, that the  
24 member in charge, as identified in the directive,  
25 refers to the member in charge of the investigation.  
26 And he explains the position of a member in charge of a  
27 Garda station. And if I could ask the Tribunal or the  
28 Chairperson to consider Day 123, page 39, lines 25 to  
29 26. And Day 123, page 40, lines 16 to page 41, lines

1 23. I would say, Superintendent Murray does not  
2 suggest that the sergeant in charge prepare the report.  
3 That's clear from Day 124, page 130 of his evidence at  
4 lines 10 to 11. I would say there is no basis for  
5 suggesting, as set out in the written submissions, that 12:07  
6 Inspector Baker was self-serving.

7  
8 So, Chairperson, that is it in relation to Issue 9.

9  
10 In relation to Issue 10, Sergeant Monaghan assisted the 12:07  
11 Tribunal in relation to that matter and I will just  
12 direct the Tribunal to his submissions in that regard.

13  
14 In relation to Issue 11, the complaints in relation to  
15 indoor duty, no complaint is made by Garda Keogh in 12:08  
16 respect of any of the parties, witnesses that we  
17 represent. Sergeants Haran and Monaghan gave evidence  
18 in relation to that matter and they gave evidence as to  
19 what availability there was in Athlone Garda Station  
20 where a person was not in a position to be, I suppose, 12:08  
21 on the beat, Chairperson.

22  
23 Issue 12 is again an issue upon which the witnesses  
24 that I represent couldn't assist the Tribunal.

25 12:08  
26 Issue 13 was withdrawn on Day 103 before the Tribunal.  
27 That was an issue in respect of which Inspector Baker,  
28 Sergeant Moylan and Sergeant Keane had prepared  
29 statements in advance to deal with those complaints.

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Issue 15, Sergeant Monaghan was in a position to assist the Tribunal in relation to that matter and no complaint is made against him in respect of that. I will just direct the Chairperson to paragraph 601 to 602 of his written submissions.

12:09

Chairperson, in respect of the other issues, 17 to 22, I don't think any complaint has been made by Garda Keogh in respect of any of the witnesses I represent.

12:09

So, I suppose, in summary, I respectfully say that each of the witnesses have given their evidence that they treated Garda Keogh in a fair manner, in a professional manner, that they didn't act in a way to -- they didn't see any targeting or victimisation or discrediting of him. I would say that the witnesses have sought to assist the Tribunal insofar as possible, Chairperson.

12:09

I have no further submissions, unless I can be of assistance to you, Chairperson

12:10

CHAIRMAN: Thank you very much, Ms. O'Rourke. Now, I think we are now to Mr. Murphy, is that right?

MR. MURPHY: Chairman, just in terms of timing, I wonder could does it commend itself to you that I should proceed to finish now. It is now 12:15, the other alternative I was going to suggest, if it is convenient to you, Chairman, is perhaps a 15 minute break and I will proceed completely to finish.

12:10

1 CHAIRMAN: How long do you expect it to take.

2 MR. MURPHY: I think realistically it could be between  
3 an hour to an hour and a half.

4 CHAIRMAN: why don't we proceed to lunchtime and we  
5 will see how we are going, Mr. Murphy. It's a really 12:10  
6 matter of comfort to you

7 MR. MURPHY: Yes.

8 CHAIRMAN: we might have a break, people might need a  
9 little break just for a moment. But there is no  
10 pressure on you. However long it takes. 12:10

11 MR. MURPHY: Thank you, Chairman.

12 CHAIRMAN: I think we will proceed. Mr. Murrinan, that  
13 seems to be sensible. Are you happy with that?

14 MR. MARRINAN: Yes.

15 CHAIRMAN: That we proceed. we will take a normal 12:11  
16 break at lunchtime, Mr. Murphy, because inevitably  
17 people's assessments, people's estimates tend to be a  
18 little bit on the shorter side, so that is not a  
19 problem.

20 12:11

21 SUBMISSION BY MR. MURPHY:

22

23 MR. MURPHY: Thank you. At the outset, in relation to  
24 one of the issues raised by Mr. Kelly, can I end any  
25 controversy on that point, that is to say the burden of 12:11  
26 proof issue. If I can bring you to our submissions at  
27 paragraph page 5, 16 onwards. we effectively say the  
28 same as Mr. Kelly. we quote the same case, that is to  
29 say the Lawlor case. We are not advocating for any

1 hybrid standard of proof. We make it clear in the  
2 written submissions that what we are saying, as the  
3 Supreme Court said, that it is a question of the weight  
4 to be attached to the evidence, the more serious the  
5 allegation, the stronger the evidence. 12:11

6 CHAIRMAN: My understanding, Mr. Murphy, was the nature  
7 of the allegation gives rise to a certain implication.

8 MR. MURPHY: Yes.

9 CHAIRMAN: I was asked about this in the Court of  
10 Criminal Appeal when I made this point and was treated 12:12  
11 with scepticism by the court. I said if I was going  
12 out of the court, if I were going out of the court and  
13 if I knocked over somebody's handbag and the question  
14 was, how stupid you were, how clumsy you were, that'd  
15 be one thing. But if the person whose handbag it was 12:12  
16 said that I had taken her wallet out of it, one would  
17 approach the matter -- the nature of the allegation  
18 would appear to give rise to a certain implication of  
19 proof. Now, how you put that into --

20 MR. MURPHY: Yes. 12:12

21 CHAIRMAN: That was the example I gave and the Court  
22 seemed to be satisfied with it. But I think it  
23 expresses the essence of the point.

24 MR. MURPHY: That's correct, Chairman. I respectfully 12:12  
25 agree, Chairman. Just to say there isn't a controversy  
26 in that sense. We are not looking for some new form of  
27 proof. We expressly rely on the judgment of  
28 Mr. Justice O'Flaherty in O'Keefe in Ferris:  
29

1 "The more serious an allegation that is made in civil  
2 proceedings, then the more astute must the Judge be to  
3 find that the allegation in question has been proved."  
4

5 That is as far as I seek to push that point. 12:13

6  
7 Secondly, a small point, which I think is a point you  
8 had raised and was a matter of concern for you, as to  
9 whether in relation to Mr. Kelly's reference to the  
10 issue of alleged double penalty, you, Chairman, raised 12:13  
11 the question was to whether actually collected.

12 CHAIRMAN: Yes.

13 MR. MURPHY: My understanding is that the evidence of  
14 Monica Carr.

15 CHAIRMAN: Yes, that's what I was thinking. 12:13

16 MR. MURPHY: Day 134, page 36, line 26, it was  
17 confirmed that in fact money had not been docked.

18 CHAIRMAN: I mean, Superintendent Murray, as he was,  
19 wrote to say he wasn't at work, he should be paid. And  
20 he cited rules and regulations that impelled him to do 12:13  
21 that. Whether or which, that was his view, that Garda  
22 Keogh oughtn't get paid when he didn't show up.

23 MR. MURPHY: Yes.

24 CHAIRMAN: There was controversy with Ms. Carr about  
25 the mechanism by which it would be done and the 12:14  
26 propriety of doing it and people did talk about double  
27 penalty.

28 MR. MURPHY: Yes.

29 CHAIRMAN: As to which there might be a discussion, but

1 that is not important right now.

2 MR. MURPHY: Yes.

3 CHAIRMAN: But going through the submissions, I noted  
4 this, and I thought, I am not so sure. I thought of  
5 Ms. Carr's evidence but hadn't got around to actually  
6 checking it. 12:14

7 MR. MURPHY: I believe the actual entry, question 107:

8

9 "Can you assist us as to whether or not Garda Keogh's  
10 pay was in fact deducted for that period of time? 12:14

11 A. No, it wasn't."

12

13 CHAIRMAN: I thought that was in error, about the  
14 double punishment. But as far as it goes, the point  
15 can be made on behalf of Garda Keogh that it was 12:14  
16 Superintendent Murray's intention that that ought to be  
17 the case, that he should not get paid and whether one  
18 calls that a double punishment or not a double  
19 punishment, may be another day's work but as to the  
20 fact I think he did write off to say this shouldn't be 12:15  
21 the case.

22 MR. MURPHY: I will address that later, Chairman, in  
23 relation to the question of perception against reality,  
24 which some of my friends have raised in their  
25 submissions also. 12:15

26 CHAIRMAN: Sorry, that is where my understanding of it  
27 was.

28 MR. MURPHY: Yes, Chairman.

29

1 Chairman, at the outset it's important in this case to  
2 perhaps take stock for a moment at the end of such a  
3 lengthy process and to perhaps go back to the  
4 beginning. If one looks, for example, at book 1, page  
5 106, which is a statement or submission made by Garda 12:15  
6 Keogh, it's undated, but it was outset of the process  
7 that's led to these hearings and will ultimately be the  
8 subject of your review and determination. The way in  
9 which these allegations were pitched by Garda Keogh to  
10 begin with was in our submission at a very high level. 12:15  
11 At the very outset, I quote from page 116 of the  
12 Tribunal materials, it was submitted on his behalf:

13  
14 "The matters concern the perversion of the  
15 administration of justice, non-investigation of Garda 12:16  
16 criminal collusion, they raise issue about a  
17 collectiveness or gang police culture at higher levels  
18 of Garda management which defeats the possibility of  
19 the administration of justice given either on the one  
20 hand the ineffectuality of corporate control in An 12:16  
21 Garda Síochána at senior level and/or in alternative  
22 deliberate perversion of the course of justice by the  
23 controlling mind of An Garda Síochána, such a gang  
24 culture was exhibited in Commissioner Callinan's remark  
25 where he said that he said he found whistleblowers 12:16  
26 disgusting."

27  
28 At the outset this was pitched by Garda Keogh of an  
29 allegation of very serious wrongdoing by senior members

1 of An Garda Síochána and of persons under their  
2 control.

3  
4 But it didn't stop there, because in the course of  
5 complaints which he has made, and this also applies to 12:16  
6 his written submissions, having come down from that  
7 particular high mountain, as it were, of alleging  
8 perversion of the course of justice, about which there  
9 has been no evidence at this Tribunal at all, we then  
10 find ourselves in a position where the collapsing case 12:17  
11 in the form of the Russian doll becomes smaller and  
12 smaller as time goes by. The case that is then made in  
13 the written submissions particularly focuses on  
14 Superintendent Murray. So we have now moved from the  
15 top echelons of An Garda Síochána, moved down from the 12:17  
16 assistant commissioners, we have moved down now to  
17 local management in the form of Superintendent Murray.

18  
19 At paragraph 79 of the submissions filed on behalf of  
20 Garda Keogh, he says: 12:17

21  
22 "Ultimately Superintendent Murray formed a view that  
23 the use of alcohol was a causative factor."

24  
25 And he goes on to say, paragraph 80: 12:17

26  
27 "It is Garda Keogh's case that owing to his making of a  
28 protected disclosure, he was mainly targeted by  
29 Superintendent Murray."

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Chairman, if I can pause at that point. The phrase "the accusation and the focus was that targeting took place because Garda Keogh was a whistleblower". We will be inviting you to consider at the end of this process there is no evidence to support that whatsoever. And that what has happened in this case is that Garda Keogh's allegations have morphed and changed in shape and in substance and also in focus. And that what you are now confronted with is a suggestion of targeting by members of middle management, as it were, and in those circumstances we say that there is simply no evidence to support that either.

But it is significant, we say, that there has been this change. We would urge you to take this into consideration. Because, even this morning, listening to Ms. O'Rourke's submissions in relation to her clients, this is a factor that is not just common -- sorry, that is not just applicable to my clients. As recently as the filing of the written submissions the case has changed again. So, as you have just heard a few moments ago, Sergeant Martin, Inspector Farrell, Inspector Baker, Garda Lyons now complain to you that at this stage of the process, having been assured they weren't in the firing line, you are being invited by Garda Keogh to consider that they are. This fluidity is something which we say is a factor you should take into account, because it goes towards the consistency

1 the reliability and credibility of what is being  
2 suggested in this case but also it indicates a worrying  
3 tendency on the part of Garda Keogh to effectively  
4 proceed in the face of the evidence, to continue to  
5 make allegations which have no substance. 12:19

6  
7 I note that Mr. Kelly, in reference to a number of  
8 large words in the submissions, but insofar as those  
9 words are there, they are there to try assist the  
10 Tribunal in making a particular point. 12:19

11  
12 In the issue of solipsism, we do make the case that it  
13 is a feature which you are entitled to take into  
14 consideration. Is there an element in the way in which  
15 Garda Keogh has approached this whole controversy, 12:19  
16 whereby everybody is perceived from his own perspective  
17 only and that the objective facts or the position of  
18 other people or real evidence is put to one side? And  
19 even when real evidence is put forward to demonstrate  
20 that the perception that Garda Keogh has is wrong, he 12:19  
21 then proceeds to continue to do so.

22  
23 We say at paragraph 3 of our submissions that a feature  
24 in his testimony includes a regrettable insouciance on  
25 his part in relation to the consequence of making 12:20  
26 allegations of wrongdoing against his colleagues and  
27 without regard for their good name or wellbeing. I am  
28 not being overly precious on behalf of my clients in  
29 suggesting that's a significant matter. As you,

1 Chairman, have seen, the breadth of the matter made,  
2 the original projection, the descent in terms of  
3 assessment and identification and the impact on the  
4 people against whom those allegations have been made.  
5 You saw it in the evidence of Garda Lyons, you've heard 12:20  
6 it today in relation to the submissions of Inspector  
7 Baker, Inspector Farrell, Sergeant Martin, but also  
8 you've heard in relation to Superintendent Mulcahy,  
9 Chief Superintendent Wheatley, Sergeant Yvonne Martin,  
10 Chief Superintendent Curran, Acting Commissioner 12:20  
11 Ó Cualáin, Chief Superintendent Pat Murray and  
12 Assistant Commissioner Finn.

13  
14 So we say that in this case, that is a very worrying  
15 development and a very worrying aspect of Garda Keogh's 12:20  
16 approach. But in addition to this we say it is also  
17 material to your assessment, the fact that in this  
18 situation there appears also to be an intent on Garda  
19 Keogh's part to target other people. This is a feature  
20 again which I will return to later on. 12:21

21  
22 We would also urge you to take into consideration his  
23 diaries, an unusual feature of this case but we used  
24 those in cross-examination to ask him questions about  
25 those and certain material points came out. Again, 12:21  
26 they are a factor of where we say you, Chairman, are  
27 entitled to look at those to ask yourself, what do they  
28 say about his state of mind at the time, his connection  
29 with reality as opposed to perception. The tragic

1 impacts of the long standing struggle with alcoholism  
2 which may have had on his behaviour, his capacity to  
3 work, his understanding of surrounding events and his  
4 attitude towards other people and his memory of events.  
5 And memory is a feature which Ms. O'Rourke referred to 12:21  
6 this morning. That is also something that emerges from  
7 the testimony.

8  
9 we do also say that in this case a feature of the  
10 evidence which is unusual was the fact that Garda 12:21  
11 Keogh, through the evidence, we say, was involved in an  
12 organised, calculated campaign conducted over a number  
13 of years to vilify some of his superior officers. We  
14 saw in the diaries reference to allies, we saw  
15 references to communications with members of Dáil 12:22  
16 Éireann. Again, those factors which you have and have  
17 received in evidence. But we say this has also  
18 demonstrated a very unusual feature whereby Garda Keogh  
19 sought to put pressure on his superiors, who he says he  
20 believed were targeting but did so in a way which was 12:22  
21 unusual and which we would ask you to take into  
22 investigation in terms of its impact on them.

23  
24 One further preliminary point, Chairman, we want to  
25 make is that it is noteworthy during the course of 12:22  
26 public sittings of the Tribunal, Garda Keogh did not  
27 proceed with a number of the allegations and we refer  
28 to those in the course of the submissions. We ask you,  
29 Chairman, to note that this resulted in the abandonment

1 of some claims which had been placed by him in the  
2 public domain over a period of years, without any  
3 apology or statement of regret. That is a feature  
4 which the Tribunal should consider when assessing his  
5 evidence. I match that or ally that to the complaints 12:23  
6 made today, making new reference in his written  
7 submissions against persons who I don't represent, who  
8 have not been the subject-matter of those kind of  
9 complaints before.

10  
11 During the course of our submissions we also made 12:23  
12 reference to the manner in which allegations were put  
13 forward; for example, Issue 16, Issue 8, where there  
14 was no evidence. Now again, Garda Keogh moves away  
15 from those points at this stage, but we say it's a 12:23  
16 matter for you to assess whether that impacts on your  
17 view of the way in which he makes complaints against  
18 third parties and continues to make them in the absence  
19 of any evidence at that time.

20  
21 We have drawn attention in paragraphs 8 through 10 of 12:23  
22 our written submissions of examples of this and we  
23 would urge and invite you to consider that that is a  
24 factor which you can take into consideration when  
25 assessing this particular element. 12:23  
26

27 So, these are important features because this is not a  
28 case where a lone individual, isolated in a rural  
29 station was victimised by senior management of An Garda

1 Síochána. We have a situation here where we say there  
2 is no evidence to support that, but there is evidence  
3 of an absolute determination to attack his superiors,  
4 disobey his superiors, to believe that his status as a  
5 whistleblower made him somehow special, different, not 12:24  
6 subservient to the rules which other members had to  
7 obey. Given his particular treatment, given perhaps  
8 the possibility to select his own investigation team,  
9 all of those elements indicate the degree of specialty  
10 which Garda Keogh appears to have assumed by virtue of 12:24  
11 his position. But we say there is no evidence to  
12 demonstrate that anybody targeted him because he was a  
13 whistleblower or that anybody targeted him at all.

14  
15 The issue of targeting has been addressed by 12:24  
16 Mr. Justice Charleton and we refer to this in paragraph  
17 15 of the submissions, where he says and I quote:

18  
19 "Discredit within the meaning of the inquiry includes  
20 the fostering or disparagement, mistrust, suspicion, 12:25  
21 disbelief or otherwise to convey or cause reputational  
22 damage in a personal and/or professional sense.  
23 Targeting meant abuse or criticism directed at a person  
24 and it's also defined senior members of An Garda  
25 Síochána as being officers of the rank of 12:25  
26 superintendent and above as well as anybody acting in  
27 those capacities."

28  
29 That is the standard that has to be met by Garda Keogh

1 should he seek to persuade you. We will make the point  
2 repeatedly and briefly, I hope, in relation to each of  
3 the issues that we say respectfully there is no  
4 evidence to support targeting or discrediting of the  
5 kind which is alleged by Garda Keogh or at all.

12:25

6  
7 Insofar as that is concerned, I think it's very  
8 important for the Tribunal itself not to yield, as it  
9 were, to the implicit submission of Garda Keogh's  
10 lawyers that somehow one should forget all these things  
11 in the past and just focus on how things stand at the  
12 present time. The progression and the history of this  
13 complaint process, we say, is material to your  
14 assessment of Garda Keogh and it is a pertinacity and  
15 error that we refer to, the attempt to continue  
16 regardless of what is surrounding, which is deeply  
17 damaging and, we say, something which also goes towards  
18 assessing the weight to attach to his evidence

12:25

12:26

19 CHAIRMAN: Just say that again, Mr. Murphy, I'm not  
20 entirely sure I follow you there. You're saying that  
21 Garda Keogh's representatives are making a particular  
22 point to say forget everything else.

12:26

23 MR. MURPHY: No, I'm saying insofar as the approach  
24 appears to have been adopted there has been no  
25 reference to an apology for matters which have been  
26 dropped, there's no reference to the perversion of  
27 course of justice, all those points seem to have been  
28 abandoned, but instead you're being invited to say this  
29 is a different complaint.

12:26

1 CHAIRMAN: I'm sorry. So you are saying that obviously  
2 it's necessary to look at each issue discretely in  
3 regard to its own evidence.

4 MR. MURPHY: Yes.

5 CHAIRMAN: But you say there is also a background  
6 content that is relevant in considering those.

12:26

7 MR. MURPHY: Yes.

8 CHAIRMAN: Okay, thank you.

9 MR. MURPHY: I make that point not against --

10 CHAIRMAN: I'm not agreeing with you, I'm just  
11 understanding that is the point you're making.

12:27

12 MR. MURPHY: Absolutely. Clearly that is made on  
13 instructions. So Garda Keogh is the person who is  
14 making --

15 CHAIRMAN: I understand. I wasn't quite sure I  
16 understood it. Okay.

12:27

17 MR. MURPHY: Again, briefly to finish on this opening  
18 point, I hope Mr. Kelly will forgive me for having one  
19 further evidence. But Anthony Trollope once wrote:

20

21 "There is nothing perhaps so generally consoling to a  
22 man as a well-established grievance; a feeling of  
23 having been injured, on which his mind can brood from  
24 hour to hour, allowing him to plead his own cause in  
25 his own court, within his own heart, – and always to  
26 plead it successfully."

27

28 we say in this case the issue of reality and perception  
29 is real, it has emerged through the evidence, it is a

1 thing of substance in the dynamic of this particular  
2 case and I will return to that point as we proceed.

3 CHAIRMAN: The man in the Land Commission said to Hugh  
4 Leonard when he joined it first of all, that in this  
5 job, he said, you will have one of two things, you will 12:28  
6 get either promotion or a grievance and one is almost  
7 as good as the other.

8 MR. MURPHY: I see.

9 CHAIRMAN: As I recall. That is your point.

10 MR. MURPHY: Just as a background point hopefully for 12:28  
11 you to take into consideration.

12 CHAIRMAN: Okay.

13 MR. MURPHY: Chairman, there are a large number of  
14 allegations and I think my clients are involved with  
15 all of them at this stage. So I am going to try and 12:28  
16 deal with them in turn so far as I can and to address  
17 the points made by Mr. Kelly.

18  
19 As we proceed through the process, we do make the case  
20 that you have had the chance to see the demeanour of 12:28  
21 the witnesses and to assess their response.

22 CHAIRMAN: Yes.

23 MR. MURPHY: That is entirely within the control and  
24 purview of the Tribunal. But insofar as the case is  
25 concerned, we say that that in relation to Issue 1, 12:28  
26 which is the investigation of the Pulse entry, we say  
27 there's again the statement of belief, it's referred to  
28 at paragraph 25 of our submissions, there at outset  
29 Garda Keogh said that the enquiries made in respect of

1 the Pulse entry, and I quote:

2  
3 "I believe that this interference by Inspector Farrell  
4 and Chief Superintendent Curran was inappropriate  
5 interference with senior management in the independent 12:29  
6 police internal investigation headed by Assistant  
7 Commissioner Ó Cualáin."

8  
9 We say that while it is very important to look at that  
10 to say that this is made in the context of Judge 12:29  
11 McMahon telling him not to discuss matters about the  
12 internal investigation with other members. We also  
13 point out the fact that that information was already  
14 the subject of Garda Keogh's protected disclosure. And  
15 then also we have the position where Garda Keogh takes 12:29  
16 what we say is the unsustainable position that he was  
17 entitled to take and rely on his own interpretation of  
18 HQ Directive of 126/10 of CHIS and not to follow the  
19 interpretation adopted by Garda management which  
20 applies to every other member of Garda Síochána. We 12:29  
21 also say that the allegations are inconsistent with the  
22 views of Superintendent McBrien against whom, until  
23 written submissions, Garda Keogh never made any  
24 allegations or complaints whatsoever.

25  
26 In this particular issue one of the features that  
27 emerged at an early stage was the chain of command.  
28 Again, Garda Keogh's view appeared to be that because  
29 he was a whistleblower he was entitled to have his own

1 individual view. In our respectful submission, the  
2 approach adopted by Chief Superintendent Curran and  
3 Superintendent McBrien was entirely appropriate and  
4 proportionate. And the evidence of Chief  
5 Superintendent Curran was particularly compelling, in 12:30  
6 our respectful submission, demonstrating the nature of  
7 the CHIS system, demonstrating the need for supervision  
8 and control, demonstrating the fact that that control  
9 was nationwide, demonstrating the importance of the  
10 uniform application of the system, demonstrating that 12:30  
11 the persons who were in charge of that system had to be  
12 proactive in supervising it and making sure that it was  
13 controlled and then, perhaps even more significantly of  
14 all, indicating that the consequence, if the matter was  
15 a CHIS matter, was that Garda Keogh would effectively 12:30  
16 step away from contact with the source, it would be  
17 taken over by a manager.

18  
19 One will have seen in the course of the evidence that  
20 Garda Keogh appears at various stages to have had 12:31  
21 slightly propriety interest, quite understandably, very  
22 important interest in the outcome of the investigation,  
23 but one makes reference to the suggestion that one  
24 stated he might have an entitlement to suggest the  
25 investigating team, but also this obstinacy in relation 12:31  
26 to a reasonable question for information from his chief  
27 superintendent. We make the point that the chief  
28 superintendent is entitled to enquire as manager of the  
29 CHIS system as to whether the source was a CHIS source.

1 we also know that the evidence of Garda Keogh himself  
2 under cross-examination was that he was open in saying  
3 that he admitted he understood the importance of the  
4 CHIS system, he was aware from his training of the  
5 management of the system, it wasn't the sole or 12:31  
6 personal responsibility of any individual Garda, he  
7 agreed that the CHIS system worked for the benefit of  
8 the Gardaí as a whole, he agreed that the CHIS system  
9 provided for system of control and supervision. That  
10 is all on page Day 106, pages 14 through to 16. 12:32

11  
12 In terms of the evidence, what the evidence in Issue 1  
13 discloses, in our respectful submission, is that Garda  
14 Keogh had a view, well as far as he was concerned that  
15 view trumped everybody else's view. We say that was 12:32  
16 something which showed lack of reality, a lack of  
17 awareness and was not in keeping with the training  
18 which he had received. But then to take the perception  
19 and reality conundrum, Garda Keogh then seems to have  
20 turned this into something as being part of a master 12:32  
21 plan, a wider plan to target him because he was a  
22 whistleblower.

23  
24 We say that the evidence, any fair assessment of the  
25 evidence of Chief Superintendent Curran, would support 12:32  
26 the proposition that it was reasonable, proportionate  
27 and was not targeting. We say this was a case where  
28 the evidence shows that what Garda Keogh had done was  
29 something very unusual and his superior officers were

1 entitled to enquire into it and that there is nothing  
2 connecting that to any wider pattern of behaviour of  
3 the type which is put forward on behalf of Garda Keogh  
4 at this time.

5  
6 We say that this is a situation where Chief  
7 Superintendent Curran, as he said in his evidence, had  
8 a duty to fulfil and he did so. We say that that is a  
9 situation, which indicates there is a lack of merit to  
10 this point, we say there is no foundation to this  
11 allegation at all.

12  
13 Issue 2 then, Chairman, deals with the question of the  
14 investigation of the Pulse check by Garda Keogh on 18th  
15 May 2014. In terms of that particular issue, we say  
16 that having made this complaint on Day 106, after  
17 lengthy questioning, Garda Keogh accepted it was  
18 reasonable for enquiries to be made regarding the  
19 reason for a check. That is at transcript Day 106,  
20 page 36. If that is the case, Chairman, we say that  
21 resolves that issue, because ultimately, we say that  
22 the Pulse check originally was raised by Superintendent  
23 McBrien. Garda Keogh made no complaints or allegations  
24 against Superintendent McBrien until more recent  
25 submissions. And we say that his assertion that the  
26 enquiries of the Pulse check were an interference with  
27 the Ó Cualáin investigation or amounted to targeting  
28 and harassment of him were therefore illogical. In any  
29 event, we say that while Chief Superintendent Mark

1 Curran had regular conversations with Superintendent  
2 McBrien, he did not take a role in the matter himself  
3 as he viewed it to be a local matter to be dealt with  
4 in Athlone. And again we say in relation to issue 2,  
5 hearing the situation where Garda Keogh's conduct, 12:34  
6 which is unusual, triggered a necessary and reasonable  
7 response from Garda management in Athlone and we say  
8 that the evidence suggests that they were entitled to  
9 and obliged to question Garda Keogh about this pulse  
10 check, but there is no basis for any contention that 12:34  
11 what we say is a reasonable proportionate and limited  
12 enquiry made by Garda management amounted to part of a  
13 wider pattern of targeting or discrediting of Garda  
14 Keogh.

15  
16 In relation to Issue 2 -- 3, rather, concerning the 12:34  
17 investigation into Olivia O'Neill's visit to Athlone,  
18 we again outline our views in relation to the reasons  
19 of the inquiries that were made at that particular  
20 time. You, Chairman, have heard evidence and that 12:35  
21 evidence is a matter entirely for you to assess. We  
22 would respectfully say there is nothing in the evidence  
23 in Issue 4 that demonstrates or supports Garda Keogh's  
24 suggestion that this was a deliberate attempt to target  
25 or discredit him in relation to an allegation of 12:35  
26 coaching. We say, in fact, this is for example where  
27 there is evidence free zone in relation to the claim  
28 and the complaint that's made. We say that the actions  
29 taken by members of An Garda Síochána consequent on

1 Olivia O'Neill's visit to Athlone were demonstrably and  
2 proportionate response to the information received and  
3 recorded by Garda Treacy and the investigation ended  
4 when Ms. O'Neill refused to cooperate with the Gardaí.  
5 So again we say this was entirely taken in accordance 12:35  
6 with the duty of the members concerned and the action  
7 could not be regarded as targeting or discrediting  
8 Garda Keogh.

9  
10 Again, one point, Chairman, that I would ask you to 12:35  
11 bear in mind, time and time again in most but not all  
12 of these issues, what is a striking feature is that the  
13 persons involved with interacting with Garda Keogh at  
14 local level, sergeants, ordinary ranking gardaí, are  
15 people who he went out of his way to say are not 12:36  
16 responsible for targeting or discrediting him. Yet  
17 somehow the allegations still seems to keep them  
18 subsumed in some kind of a greater spider's web which  
19 is suspected or believed by Garda Keogh to represent  
20 targeting or discrediting. We do make the point again 12:36  
21 that his belief, his surmise, his conjecture, his  
22 personal inner conviction, is not matched by objective  
23 reality and the evidence on the ground. And multiple  
24 witnesses have described how they acted in accordance  
25 with what they perceived and understood to be their 12:36  
26 duty at that time.

27  
28 In relation to Issue 4, which is the investigation into  
29 Liam McHugh's complaint to Garda Lyons on 31/5/2015,

1 again we seek to identify these particular points as  
2 best we can, but in particular, Chairman, I just draw  
3 your attention at paragraph 76 of our written  
4 submissions, where Garda Keogh claims:

5  
6 "The Liam McHugh thing, I absolutely have always argued  
7 was completely vindictive, it was false, they tried to  
8 set me up, Garda management rolled the two of these  
9 things into one because they are coming at me there for  
10 discrediting when there is another investigation going  
11 on at the time." 12:37

12  
13 He also emphasised in his evidence, at Day 100, that he  
14 believed that this was targeting, using the phrase:

15 "I definitely will stand by targeting on this one." 12:37

16  
17  
18 The Court has had a chance to look at all the different  
19 elements, Mr. Hugh and different feature. We make two  
20 points, Chairman, the first is that we say the evidence 12:37  
21 demonstrates that Garda Keogh's allegations against the  
22 senior gardaí on this issue were made at a very high  
23 level, but they weren't supported by any evidence.  
24 When one looks at the individual blocks of testimony in  
25 this issue, firstly we can see that Superintendent 12:37  
26 McBrien is the person who directs that Mr. McHugh be  
27 approached to make a statement. Garda Keogh has no  
28 complaint against her. It is Superintendent McBrien  
29 that then refers the matter to the Ó Cualáin team, and

1 Garda Keogh should have no complaint against the team,  
2 although he does have complaints again Assistant  
3 Commissioner Ó Cualáin later on, again unfounded,  
4 because they were investigating Garda Keogh's  
5 complaints as a confidential reporter. 12:38

6  
7 The point then is that the Ó Cualáin team declined to  
8 do so because they took the position this put them in a  
9 conflicting position. Again, that is not a feature  
10 that seems to be challenged by Garda Keogh. Then when 12:38  
11 that particular attempt to secure a statement from  
12 Mr. McHugh failed, Chief Superintendent Curran directed  
13 the superintendent to request that Garda Keogh file a  
14 report and did so. So we say that if one looks at each  
15 stage of this, each stage of the interaction at this 12:38  
16 stage was simply an appropriate response and that no  
17 statement was forthcoming, it was reasonable to request  
18 Garda Keogh to report on the matter and when Garda  
19 Keogh indicated he hadn't met Mr. McHugh in recent  
20 times, the matter rested and it wasn't addressed any 12:38  
21 further.

22  
23 So again, perception on one hand, reality on the other.  
24 We say that if one looks at the reality, objectively  
25 you have the evidence, this action could never be 12:39  
26 interpreted as targeting. We say that also this  
27 particular complaint features what I think the Tribunal  
28 may consider is a deeply hurtful allegation against  
29 Garda Lyons. Because Garda Lyons, it would appear from

1 everybody's testimony in the course of this process,  
2 was a highly regarded member of the force in the  
3 station itself and you, Chairman, will have seen his  
4 reaction to that allegation in the witness box and can  
5 form your view as to how harsh that was to make such an 12:39  
6 allegation against him in that sense.

7  
8 We say that if one looks at this particular case, again  
9 there's simply no evidence to support the complaint  
10 that's made by Garda Keogh and this is a no evidence 12:39  
11 issue as far as we submit on this particular point.

12  
13 Issue 5, Chairman, deals with the question of alleged  
14 micro supervision of Garda Keogh by Sergeant Martin,  
15 Sergeant Moylan and Sergeant Haran. 12:39

16 CHAIRMAN: Mr. Murphy, can I stop you for a second.

17 MR. MURPHY: Yes.

18 CHAIRMAN: Just number 4.

19 MR. MURPHY: Yes.

20 CHAIRMAN: Garda Keogh's complaints, certainly one of 12:40  
21 his complaints is there should have been an  
22 investigation in that case directed by Chief  
23 Superintendent Curran. There should have been an  
24 investigation as to whether this whole matter,  
25 essentially as to the genesis of this report, that is 12:40  
26 what he says. And I am just wondering, he is saying  
27 look, he maintains that there's no basis whatsoever for  
28 this, that he never met Mr. McHugh and everything else,  
29 we have heard all that evidence. But on his case, he

1 says, look, here is a case, if I never said these  
2 things to Mr. McHugh, then Mr. McHugh must have made  
3 them up or Garda Lyons must have made them up that is  
4 what he says, and that should have been investigated.  
5 Now, in either of those situations would it not be 12:41  
6 legitimate to say, here is a possible case of  
7 targeting, if those allegations were to be maintained,  
8 and that targeting, if it happened, could have been  
9 acquiesced in knowledge of or tolerated by the chief  
10 superintendent. 12:41  
11 MR. MURPHY: Yes.  
12 CHAIRMAN: That is putting a case at its strongest, if  
13 you like.  
14 MR. MURPHY: Yes.  
15 CHAIRMAN: At least as it seems to me. 12:41  
16 MR. MURPHY: Yes.  
17 CHAIRMAN: The case to say that he said there should  
18 have been an investigation, Garda Lyons should have  
19 been asked to make a statement, which would have had  
20 implications for the investigation and the nature of a 12:42  
21 full statement, that's really the case he makes about  
22 that, isn't that so?  
23 MR. MURPHY: Yes, and we respectfully say that there is  
24 simply no basis for that contention whatsoever. We do  
25 make the case is that there was no complaint against 12:42  
26 Garda Lyons, there's no suggestion he was instructed by  
27 any superior officers to fabricate the account that he  
28 recorded of the conversation with Mr. McHugh. Garda  
29 Keogh was not a party to that conversation. Garda

1 Lyons' integrity has not been challenged. Garda Keogh  
2 didn't appear to allege fabrication at that time.  
3 Garda Keogh claims that Mr. de Bruir was under the  
4 incorrect impression that Garda Keogh knew Garda Lyons  
5 was the author of the report. But we are saying 12:42  
6 ultimately the actions in that situations were entirely  
7 within the control of An Garda Síochána. They didn't  
8 trigger the need for the type of formal anticorruption  
9 investigation which Garda Keogh believes that they  
10 should. 12:42

11  
12 We say that if there was to an objective assessment of  
13 this issue, there's no basis for that finding to be  
14 made either. In other words, even a subjective  
15 assessment of Garda Keogh from one side, in terms of 12:43  
16 the objectivity of the scenario, what we have here is a  
17 proportionate and response by the Garda management to  
18 the issue which occurred in that case.

19  
20 There is also another feature here, which is that if 12:43  
21 people won't make statements, if people won't  
22 cooperate, this features in some of the earlier issues  
23 too, then that is an obvious issue for An Garda  
24 Síochána in any case.

25 12:43  
26 Again, a further layer of unreality is placed on top of  
27 the process where it is suggested that because Garda  
28 Keogh has a suspicion, that means his superiors must  
29 immediately launch a massive investigation into matters

1 where it would appear on the face of it that statements  
2 are not being made, there's no complaint being made  
3 against Garda Lyons and Garda Lyons then finds himself  
4 in the cross hairs when he comes here. But ultimately  
5 we say that there is nothing in that instance that 12:43  
6 demonstrates a need for response of that kind. But  
7 even if there was, to come back to the point, Chair,  
8 that I made at the outset, for this to be targeting and  
9 discrediting, one step further would have to be there,  
10 targeting and discrediting because Garda Keogh is a 12:44  
11 whistleblower. There is simply no evidence of that at  
12 all.

13  
14 At each layer of the required evidence of proof, it  
15 simply doesn't exist. 12:44

16  
17 what one might find here, in fairness to Garda Keogh,  
18 is the question of difference of question. The  
19 question is, does a difference of opinion between Garda  
20 Keogh and the world effectively mean that his view must 12:44  
21 be correct and that if his view is not given into, that  
22 amounts to targeting and discrediting by him by other  
23 people because he is a whistleblower. So there's  
24 several leaps along the road that have to be made and  
25 there is simply no stones on which to walk across to 12:44  
26 support that particular journey.

27 CHAIRMAN: Okay.

28 MR. MURPHY: Chairman, just in terms of Issue 5, which  
29 is the micro management.

1 CHAIRMAN: Micro management, yes.

2 MR. MURPHY: Just in Garda Keogh's own written  
3 submissions, if I can just make reference to them for  
4 the assistance of your note.

5 CHAIRMAN: Yes. 12:45

6 MR. MURPHY: He does a synopsis at page 31, submissions  
7 on issues 5 to 15. And at paragraph 80 he says this:

8  
9 "It is Garda Keogh's case that owing to his making of a  
10 protected disclosure he was mainly targeted by 12:45  
11 Superintendent Murray. This targeting, Garda Keogh  
12 maintains, is demonstrated through evidence of the  
13 superintendent's direct attitudes towards him, through  
14 micro supervision, decisions taken that directly  
15 adversely affected him, disciplinary action taken 12:45  
16 against him, car tax and other issues, unfair or  
17 unwarranted criticism made of him, a refusal to accept  
18 reasonable explanations from him, a refusal or neglect  
19 on the part of the superintendent to acknowledge the  
20 positive policing contributions of Garda Keogh by way 12:45  
21 of commendations and it is also submitted that Garda  
22 Keogh was discredited by Superintendent Murray."

23  
24 So, the focus, as I have mentioned, has now become much  
25 narrower. Superintendent Murray is the target, mainly, 12:46  
26 with a few other people playing a minor role allegedly  
27 around the sides of this particular complaint.

28  
29 But what is striking in paragraph 80 is that there's no

1 suggestion that there's evidence, no identification of  
2 evidence that even if these allegations were true that  
3 Superintendent Murray acted because was a  
4 whistleblower. So we have moved on again from this  
5 suggestion, it now has come effectively a local 12:46  
6 management interaction of hostility between a middle  
7 ranking superior officer and a garda of ordinary rank.  
8 The allegation has changed shape, focus and import. We  
9 still say it is baseless but we draw your attention to  
10 that particular descent in terms of the argument. 12:46

11  
12 In relation to issue 5, Chairman, which is the question  
13 of alleged micro management. You, Chairman, have heard  
14 the evidence in relation to these points. One of the  
15 striking features in our submission of this issues is 12:46  
16 that at the end of all the evidence it becomes apparent  
17 that in fact Garda Keogh accepted that he wasn't  
18 actually placed under micro supervision in Athlone at  
19 all.

20 CHAIRMAN: Absolutely. 12:47

21 MR. MURPHY: And then going back to the earlier phase,  
22 one looks at the witnesses who were there and I invite  
23 you, Chairman, to consider that the sergeants were very  
24 impressive witnesses in this case. They were people of  
25 experience, they held no ill will to Garda Keogh, they 12:47  
26 were people who worked with him and ultimately, Garda  
27 Keogh's complaint in the course of his statement to the  
28 Tribunal was:

29

1 "I had a third sergeant allocated to monitor me, unlike  
2 anybody else, this is basically three sergeants  
3 monitoring me and being asked to go through everything  
4 I am doing to find something I am not doing right, to  
5 identify some misdemeanour on my part, it is my belief 12:47  
6 that Superintendent Patrick Murray was targeting me in  
7 this respect."  
8

9 Breaking down that complaint. First of all, three  
10 sergeants monitoring, we know that didn't happen in 12:47  
11 that way, certainly not micromanaging. And being asked  
12 to go through everything I am doing to find something I  
13 am not doing. Well, did the evidence indicate anything  
14 more than the sergeants giving guidance in relation to  
15 guidance in relation to an officer who was struggling, 12:48  
16 on his own evidence, in relation to other matters  
17 personal, and in terms of work and efficiency, but  
18 doing so in a kindly way and non-threatening way. Then  
19 the third block, where is the evidence that was done in  
20 this case as part of a grand design to target Garda 12:48  
21 Keogh?  
22

23 We say that that evidence is also very interesting  
24 because the sergeants don't give a hint of anything  
25 consistent with micro management or targeting, 12:48  
26 discrediting, going back to the definition the Tribunal  
27 has adopted. We say that this again indicates a  
28 scenario whereby the allegation starts at a very high  
29 level and in particular you asked Garda Keogh questions

1 on Day 100, page 120, in relation to these issues.  
2 CHAIRMAN: Hm-hmm, what was the issue about.  
3 MR. MURPHY: And I think he accepted in response to  
4 you, Chairman, that Superintendent Murray's direction  
5 hadn't actually affected him adversely in personal 12:49  
6 terms, he accepted that the instruction wasn't proper  
7 on the face of it but he questioned the motive.  
8 CHAIRMAN: That's right. He said it says this and that  
9 isn't necessarily hostile but the intention behind it  
10 was hostile. 12:49  
11 MR. MURPHY: Yes.  
12 CHAIRMAN: And e.g., go through his notebook, for  
13 instance.  
14 MR. MURPHY: Yes. And then on Day 107.  
15 CHAIRMAN: That's the evidence. 12:49  
16 MR. MURPHY: At Day 107, in cross-examination, he  
17 accepted that all three sergeants had shown him  
18 friendship, kindness and assistance. He also accepted  
19 that paperwork was not his strong suit. So, again one  
20 takes each of these different elements and puts them 12:49  
21 all together, a totally different picture emerges from  
22 the picture contained in the written allegations made  
23 on this point. We respectfully say there was no  
24 targeting or discrediting of Garda Keogh, in fact the  
25 evidence shows bona fide efforts made by his superiors 12:49  
26 to support and assist him and the person responsible  
27 for assisting and directing that in his best interest  
28 was his superior officer but for that and for no other  
29 reason.

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Issue 6, this deals with the disciplinary investigation in relation to motor tax on Garda Keogh's vehicle in 2015. Again, the Tribunal has dealt with all of that evidence and has proceeded with it in due course. We say again that when one looks at the issue as to how it is dealt with, there appears to be no doubt that the issue is picked up first of all Superintendent McBrien, against whom Garda Keogh has no complaint, and then the matter effectively is left there for Superintendent Murray, who arrives, has to take this over as part of the legacy issues left behind by his predecessor, which he does. But I think all of the evidence, Chairman, suggests, both from Superintendent McBrien, from Inspector Minnock, from Detective Superintendent Mulcahy, that members of An Garda Síochána know that they have an obligation to make sure that their vehicles are taxed in conformity with the law. It is clear it is matter of importance in terms of importance confidence. It is not just a question of public money, it is also a question of making sure that discipline is being maintained.

If one looks at the issues involved in this particular issue, we say that enquiries made by Inspector Minnock, a solution is put forward whereby Garda Keogh will correct and produce evidence of the correction of his car tax, and Superintendent Murray says that he will then deal with the issue by way of a Regulation 10

1 caution, again there is obviously dispute between the  
2 parties in relation to that issue. But in those facts  
3 and in those circumstances, we say that the  
4 intervention was a balanced intervention, we say that  
5 Garda Keogh was given an opportunity to address the 12:51  
6 issue of incorrect tax. It was treated as a minor  
7 breach of discipline. It didn't go on his personnel  
8 file. When Garda Keogh later took issue with the  
9 Regulation 10, didn't raise an issue at the time of  
10 signing it on the 3rd April. We say that actually the 12:51  
11 evidence demonstrates that the matter was closed  
12 efficiently without any disciplinary record on Garda  
13 Keogh's file, and then his claim for expenses was  
14 processed and paid promptly.

15  
16 We have also made the case that Superintendent Murray's  
17 issue 5 regulation 10 regulations notice to other  
18 gardaí in the district, Mr. Kelly complains and says  
19 they are much more serious. But here again we have the  
20 benefit of 20/20 hindsight looking back at a situation 12:52  
21 in 2015. The query is, should this Tribunal be invited  
22 to consider whether the decision of a local management  
23 was irrational, whether there was basis for the  
24 intervention. Is it a question for this Tribunal to  
25 say it is an urgent matter of public importance, that 12:52  
26 that decision was a decision that somehow was a little  
27 bit over the top or was excessive or wasn't comparable  
28 to other decisions. We say that would be the incorrect  
29 prism to regard this issue. The issue here is whether

1 what Superintendent Murray did was targeting Garda  
2 Keogh because he was a whistleblower. We say there is  
3 simply no evidence of that at all. Garda Keogh may  
4 disagree with Superintendent Murray's opinion, that is  
5 not a basis to invite this Tribunal to intervene. We 12:52  
6 say that the evidence also demonstrates that this isn't  
7 a question of some tyrannical decision taken by  
8 Superintendent Murray without reference to other  
9 persons. We know that Superintendent McBrien was aware  
10 of the need for this to be dealt with and also that 12:53  
11 Superintendent Murray informed Chief Superintendent  
12 Wheatley and that she considered in the course of a  
13 statement that this was a balanced intervention.

14  
15 Garda Keogh asserted that other gardaí had similar 12:53  
16 issues with their cars and he also feels a sense of  
17 unfairness about how he was dealt with. And again,  
18 Superintendent Murray has given his evidence, saying  
19 that on 24th April 2017 he issued a minute entitled  
20 "members private vehicles" and that was issued "to all 12:53  
21 members of Athlone district" and stated they were made  
22 aware in a general way that the private vehicles of  
23 members in some cases were not in order in relation to  
24 tax, insurance, NCT and Driving Licences and he stated  
25 that checks would be carried out, that any claims 12:53  
26 involving the use of members' vehicles will only be  
27 approved if the vehicle being used complies with all  
28 road traffic legislation in force.

29

1 We say that insofar as there is a difference between  
2 that notice and the other persons affected by it, in  
3 this case the facts show that the matter of the  
4 incorrect motor tax came to the specific attention of  
5 Superintendent McBrien and Superintendent Murray and 12:54  
6 came to their attention at a time when there was an  
7 outstanding claim for payment of expenses. These  
8 allegations in relation to the other gardaí were made  
9 in a general way without reference to specific expenses  
10 issues. 12:54

11  
12 So we say that the handling of this matter doesn't  
13 amount to targeting or discrediting of Garda Keogh and  
14 although Garda Keogh objects to the Regulation 10  
15 approach, we say it was entirely reasonable and we say 12:54  
16 it was also at the very minor level of intervention.

17  
18 In that situation we urge you, Chairman, to consider  
19 that the approach adopted was proportionate and  
20 reasonable and that in those circumstances, the 12:54  
21 evidence demonstrates that it was not part of a pattern  
22 of wrongdoing directed against Garda Keogh calculated  
23 to damage him.

24  
25 Issue 7 relates to the disciplinary investigation in 12:54  
26 relation to the sick leave of Garda Keogh during July  
27 of 2015. This evidence comes to deal with the pattern  
28 of difficulties encountered by Garda Keogh in 2015. He  
29 failed to appear for duty on the 11th, 12th, 13th, 14th

1 July 2015, having reported back from sick leave and  
2 therefore was available for duty from the 10th July  
3 onwards.

4  
5 Ultimately this is a case where on the facts Garda 12:55  
6 Keogh admits or admitted a neglect of duty in respect  
7 of those four days. He did give an explanation to say,  
8 in the Tribunal materials at page 244, that he thought  
9 he was medically sick on the days in question. He  
10 didn't answer calls from the station. He offered the 12:55  
11 explanation that he was out of phone credit and in a  
12 previous investigation that he hadn't charged his  
13 phone.

14  
15 So, this particular issue, Chairman, we say, has to be 12:55  
16 seen in the context. The context is the very sad  
17 documented and self acknowledged problem suffered by  
18 Garda Keogh in relation to his alcoholism, a problem  
19 which also from his diaries and from his records is a  
20 problem that went back as far as 2012 and perhaps 12:56  
21 beyond, but certainly far way back in the distance  
22 before Superintendent Murray ever came to Athlone Garda  
23 Station. The Tribunal has that detail, I don't propose  
24 to trespass on it.

25 12:56  
26 The evidence also demonstrates that Superintendent  
27 Murray stated that Garda Keogh acknowledged his absence  
28 and said that his note of the conversation was that  
29 Garda Keogh said he would continue going sick at will.

1 Here we have a difference of view and a difference of  
2 opinion between a superior and a member of An Garda  
3 Síochána. But I don't think there is anything in the  
4 evidence that suggests that Garda Keogh denied that not  
5 being there for his colleagues on duty caused big 12:56  
6 problems for them. We have also the evidence of a  
7 number of witnesses, including Superintendent Murray,  
8 that at that time An Garda Síochána was very much under  
9 pressure in terms of recruitment and in terms of  
10 numbers and that at an operational basis this was not a 12:57  
11 minor matter, it was a significant practical matter  
12 for the station itself.

13  
14 Insofar as that's concerned, the complaint then relates  
15 to what took place next, where Chief Superintendent 12:57  
16 Wheatley appointed Superintendent Alan Murray to  
17 investigate the matter. We know also from the evidence  
18 that Garda Keogh pleaded guilty to the charge of  
19 neglect of duty and the phrase is that without good and  
20 sufficient cause he failed to attend for duty between 12:57  
21 11th and 14th July 2015 but he pleaded not guilty to a  
22 second charge of discreditable conduct.

23  
24 You have the evidence of Superintendent Alan Murray,  
25 that the neglect charge was the primary charge. He 12:57  
26 then has given evidence, Chairman, of the manner of his  
27 approach and the decision that he made was that the  
28 deduction of wages would be taken gradually from a  
29 member's account and he is not liable for tax in

1 respect of the deducted amount. So we submit that on  
2 the evidence what Superintendent Alan Murray did was  
3 impose very minor punishment for a breach of failing to  
4 attend work for four days and he conveyed that  
5 understanding to you, I think, that the finance section 12:58  
6 consults members to ask when would it be convenient to  
7 make the deduction. So there was a very careful source  
8 of protection.

9  
10 One of the striking features, Chairman, perhaps I 12:58  
11 should mention it now, but I suppose for us as  
12 outsiders coming to look at this, is the elaborate  
13 nature of the Garda Síochána regime for welfare. I  
14 think the evidence before you demonstrates on any view,  
15 and you have heard the evidence of Chief Superintendent 12:58  
16 McLoughlin and Monica Carr and others, that there is an  
17 extremely elaborate system put in place and it would  
18 appear on the face of it that great care has been taken  
19 to ensure that there is every opportunity given to  
20 members who have difficulties to have those 12:59  
21 difficulties addressed, they be health or otherwise,  
22 and here we have again the gradual purported response  
23 to this particular issue.

24  
25 This intervention also had the capacity to permit a 12:59  
26 review. Garda Keogh availed of that review. And you,  
27 Chairman, have heard evidence of the way in which that  
28 was conducted. You have heard the evidence of Chief  
29 Superintendent Wheatley and Superintendent Alan Murray

1 and Garda Keogh complains that he was refused access to  
2 his statement in the proceedings. He argued that the  
3 date of the phone call should have been investigated.  
4 It was suggested there should have been a copy of the  
5 statement in the report of Superintendent Alan Murray, 12:59  
6 which he had received, but Garda Keogh thought that  
7 there was not and that he hadn't seen it before you saw  
8 the Tribunal documents. We say that the evidence from  
9 Day 101, at page 50, ultimately established the  
10 statement was in fact included amongst the documents. 12:59

11  
12 Again, in this case we have a perception, reality and  
13 memory issue that may be relevant for your assessment.  
14 Because the gravamen of the complaint appears to be  
15 that Superintendent Pat Murray was involved in 13:00  
16 vindictively requesting an acknowledgement of the  
17 finding against him, and we say that there is simply no  
18 evidence to support that whatsoever.

19  
20 In terms of the evidence of Superintendent Alan Murray, 13:00  
21 he said in the course of his evidence, at Day 132, page  
22 37:

23  
24 "I didn't want to be harsh on him but I didn't want him  
25 to gain financially." 13:00

26  
27 And he effectively said there were issues of discipline  
28 and collective cohesion within the force itself that  
29 meant that an absence of that kind could not have been

1 left to one side.

2

3 We say that the evidence before you demonstrates that  
4 it was appropriate to take disciplinary action. We say  
5 that the evidence was also that the complaint was 13:00  
6 handled fairly and reasonably. We have confirmed, as I  
7 mentioned earlier, that the actual claim in the end was  
8 not deducted. But we say that insofar as this is all  
9 concerned, we say that the process described under this  
10 complaint was an internal disciplinary procedure and we 13:01  
11 say that Chief Superintendent Wheatley's confirmation  
12 of the findings made was entirely within expression, it  
13 was justified on the facts of the case and didn't  
14 amount to targeting Garda Keogh.

15

16 We say that the sanction imposed was proportionate and  
17 fair and that none of the actions of Superintendent Pat  
18 Murray, Superintendent Alan Murray or Chief  
19 Superintendent Wheatley amounted to a targeting of  
20 Garda Keogh. 13:01

21

22 There does appear to be a confusion in Garda Keogh's  
23 mind as to Pat Murray and Alan Murray. That is a  
24 matter for you, Chairman, to assess. But here again we  
25 have a situation where it is undoubtedly a problem. It 13:01  
26 is not acceptable for a Garda not to turn up for work  
27 when he is meant to be there. Therefore, that  
28 triggered a genuine intention and obligation on the  
29 part of his superiors to investigate that. We say that

1 that was done in a balanced and proportionate way. It  
2 resulted in a process which gave him a review. That  
3 review was conducted fairly also. And in consequence,  
4 the substantial consequence, we know that the actual  
5 funds appears not to have been deducted.

13:02

6  
7 So, in over all terms, taken as an isolated incident,  
8 if this was judicial review and this was the only issue  
9 for consideration, we would respectfully submit there  
10 would be no basis to apply for judicial review against  
11 this decision. But what is missing from this entirely  
12 is any indication that there is any evidence at all to  
13 show that Superintendent Alan Murray was knowingly  
14 engaged in the process of targeting Garda Keogh because  
15 he was a whistleblower, and no evidence Chief  
16 Superintendent Wheatley was doing so either, and no  
17 evidence that Superintendent Pat Murray was activating  
18 them to do so as part of some wider plan. Again we say  
19 a significant fundamental deficiency.

13:02

13:02

20  
21 Issue was 8 was not pursued. I made the point about  
22 that at the outset, Chairman, in terms of allegations  
23 are made, people put to the trouble of having to get  
24 representation, a point I think Ms. O'Rourke made,  
25 complaint not pursued. That again is a matter for your  
26 assessment.

13:02

13:02

27  
28 Moving to issue 9, which is the question of criticisms  
29 of investigations by Garda Keogh during 2015, four

1 episodes, theft at Custume Place, theft of the trailer,  
2 criminal damage at Mulligan's Filling Station and the  
3 robbery from the person.  
4

5 One feature that emerged from this section and this 13:03  
6 issue was the evidence of Superintendent Murray of his  
7 desire to bring into reform to the policing system in  
8 Athlone. But allied to that I think you have the  
9 evidence of many of the other witnesses, in particular  
10 the sergeants, witnesses who I do not represent, who 13:03  
11 have given you evidence that this led to reform, it led  
12 to efficiency, it led to greater support for individual  
13 members, it left even less isolated than before. And,  
14 most importantly in the context of this allegation of  
15 targeting, it applied to everybody in Athlone Garda 13:03  
16 Station, not just to Garda Keogh.  
17

18  
19 But here we have a situation where genuine reform is  
20 being implemented, the committee system, the review, 13:03  
21 again which you have hear in terms of PAF meetings,  
22 which say that all of this was directed towards  
23 improving the standards of investigation, improving the  
24 detection rate, improving the allocation of resources,  
25 improving the keeping of records. 13:04  
26

27 Now, Garda Keogh, in the heart of his complaints, seems  
28 to say that the questions asked of him were not  
29 necessary or were not reasonable. If he thought they

1 were not necessary or reasonable, that must have been  
2 because they were part of this targeting and conspiracy  
3 to get him because he was a whistleblower. But in  
4 fact, evidence has been given to you Chief  
5 Superintendent Murray about what he believed to be best 13:04  
6 practice. He could be right, he could be wrong. We  
7 say he is right. But ultimately he has given evidence  
8 in relation to matters which are relevant to police  
9 practice. One example can be seen at paragraph 153 of  
10 our submission, where Sergeant Moylan was being 13:04  
11 cross-examined by counsel for the Tribunal. This is in  
12 relation to the question of whether you would allow an  
13 injured party to write out their own statement,  
14 Sergeant Moylan, who has no hostility towards Garda  
15 Keogh, who has been unfailingly kind to him said, and I 13:04  
16 quote:

17  
18 "I myself have never seen witnesses submit statements  
19 before. The only statements I would have seen people  
20 presenting themselves as possible suspected offenders 13:05  
21 with their solicitors for cases, if that was  
22 non-arrestable, I'd say."

23  
24 A that was Day 131, at page 87.

25  
26 In the statement to the Tribunal's investigators,  
27 Superintendent Pat Murray said he hadn't come across a  
28 victim writing down their own statement before and it  
29 wasn't normal practice. That chimes precisely with

1 Sergeant Moylan. And then the distinction was made by  
2 both of them between a person who may come as a  
3 solicitor at the station, having met with the solicitor  
4 previously and prepared a statement with the solicitor  
5 on the one hand, and the witness, who in the situation 13:05  
6 in this case was required to be facilitated by the  
7 garda taking the statement.

8  
9 So, in this particular situation we say that the  
10 evidence in relation to the theft at Custome Place 13:05  
11 Athlone demonstrates that Superintendent Murrays'  
12 approach was reasonable and in the interests of proper  
13 crime. Similarly in relation to the theft at Athlone  
14 on 17th August 2015. And third, in relation to the  
15 Mullingar -- sorry, Mulligan's Filling Station on 17th 13:06  
16 August of 2015. And then fourth, in relation to the  
17 robbery from the person on 13th September 2015.

18  
19 Insofar as that last one is concerned, again there is  
20 evidence to demonstrate that in Garda Keogh's report, 13:06  
21 this is at page 170 in the submissions, that Garda  
22 Keogh's report was reviewed at a daily PAF meeting on  
23 14th September 2014. Sergeant Baker brought to the  
24 attention of the meeting Garda Keogh's report, which  
25 she felt was far from satisfactory in that it lacked 13:06  
26 sufficient detail to assist enquiries. Garda Keogh has  
27 confirmed in his evidence that he had no issue with the  
28 sergeants but it would appear from the evidence that  
29 you have heard that on that issue, Sergeant Baker,

1 Detective Sergeant Curley and Inspector Minnock all  
2 took the view, at the time, that there was a problem  
3 and that this needed to be developed further. This is  
4 in the context of a reform, by a discussion within the  
5 personnel of the crime management team and then the 13:07  
6 discussion goes onto the question of reclassifying the  
7 crime. Superintendent Minnock described in the course  
8 of his evidence at Volume 4, page 691 of the Tribunal  
9 materials, that this was a comprehensive management  
10 process to ensure good governance and investigation. 13:07  
11 So, far from being some lone decision taken by  
12 Superintendent Murray, this is the product of a  
13 collaborative assessment by the committee system to  
14 review issues in relation to the case itself.

15  
16 Insofar as there are issues and complaints made by  
17 Garda Keogh, ultimately, if a view is taken that the  
18 credibility of a victim, there is evidence before you  
19 as to why that issue arose. The committee management  
20 team indicated that there was insufficient evidence. 13:08  
21 The complaint was withdrawn. They had doubts in  
22 relation to its credibility. They took the view that  
23 there was a reasonable probability that a criminal  
24 offence hadn't occurred. This is a view taken by  
25 experienced colleagues of Garda Keogh's, based on an 13:08  
26 assessment of the evidence they had received. And  
27 importantly, it is a decision which was supported by a  
28 number of persons against whom Garda Keogh has never  
29 made any complaint, they were in on the alleged

1 targeting of him because he was a whistleblower. which  
2 is denied.

3  
4 I would also ask you, Chairman, to consider in the  
5 circumstances of this case that it is also material 13:08  
6 that at Day 107, Garda Keogh transmuted this particular  
7 complaint into the very serious allegation that this  
8 amounted to fiddling with the crime figures. So here  
9 is an allegation again which has moved from medium  
10 level to supersonic level without any evidence. He 13:09  
11 recorded in his diary for 30th November 2015, that he  
12 printed classifications copied in stations and that he  
13 was asked questions by you in relation to what was  
14 taking place in that regard. And ultimately, we also  
15 know from the evidence at Day 107, that Garda Keogh 13:09  
16 informed Deputies Wallace and Daly that what had taken  
17 place here amounted to a massaging of crime figures.

18  
19 So, we urge you, Chairman, to say that here is a  
20 situation where a decision is taken, it's not just 13:09  
21 taken by one person, it is not just taken by a person  
22 who Garda Keogh regards as his bête noire, it is taken  
23 by a committee, a management committee, reasonably, and  
24 evidence is given to that effect. But Garda Keogh not  
25 only forms a view that it is wrong or unfair or unjust 13:09  
26 to him, he then alleges that it's ultimately a criminal  
27 offence and gets that particular view broadcast to  
28 third parties by his communications.

1 We draw particular reference to the fact at paragraph  
2 181, that on 15th December 2015, a speech was made in  
3 Dáil Éireann by Deputy Clare Daly based on what Garda  
4 Keogh had said,, that is referred to in also Day 107  
5 but the factual terminology itself is in page 2522 in 13:10  
6 the Tribunal book materials and the quote was:

7  
8 "Previous Garda inspectorate encountered Garda  
9 massaging the crime figures, this is a very serious  
10 matter, we know that for a fact, that massaging the 13:10  
11 figures is still continuing and in recent weeks in  
12 Superintendent Pat Murray's station in the midlands, in  
13 Athlone, we have seen direct evidence for these eight  
14 cases where crimes were written down so the original  
15 crimes were reclassified as more a minor matter, clear 13:10  
16 evidence of massaging the figures; for example,  
17 changing burglaries to criminal damage. This is a very  
18 serious situation."

19  
20 Garda Keogh accepted that this was said on the basis of 13:10  
21 what he had said to Deputy Daly. That's at Day 107,  
22 page 116. He also accepted he had never gone to  
23 Superintendent Murray and complained to him about this.  
24 Instead he facilitated what was being said about  
25 Superintendent Murray in the Dáil, in public, in a 13:11  
26 matter which made it subject to Dáil privilege with no  
27 right of reply. A factor which I would ask you,  
28 Chairman, to bear in mind as something to weigh on the  
29 scales of your assessment as well in this case.

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In relation to Issue 9, we say that in our submission there was no targeting or discrediting of Garda Keogh in relation to the four crime files. In fact, we say that all the interventions were part of the legitimate improvement of the system of managing the investigation of crime in Athlone. There may be a difference of opinion and there may be a different view and there may be a different view between Garda Keogh and his superiors, but there appears to be no difference between the different members of the management team. We say that is a factor which gives extra support and solidity to the submission which we make, that Superintendent Murray's decision was rational, proportionate and supported by the rest of the management team in relation to that last matter.

Issue 10, Chairman. These relate to complaints made by Garda Keogh in relation to the denial of the request for cancellation of annual leave on 31st August 2015. Again, we know from the evidence that Superintendent Murray told the Tribunal that he was accountable for any decision on leave, that he felt it was up to Garda Keogh to provide him with the information to allow him to make a more meaningful decision, he said that he was accountable for leave as a resources issue, he described this as being subject to all annual leave, he said he would try and reconcile his obligations to Garda Keogh with his own work obligations, he said he

1 wanted Garda Keogh to account for the application in a  
2 proper fashion, that he had to deal with in terms of a  
3 resource, presenting fit for duty at the time.  
4

5 So all of those were statements at Day 124, which we 13:12  
6 say were entirely reasonable and appropriate.

7 Superintendent Murray did say in his evidence that he  
8 was not attempting to pry in any way to Garda Keogh's  
9 dealings with GSOC. And what he said in his evidence  
10 at Day 124 was, page 156: 13:13  
11

12 "I had no interest in his meeting with GSOC. I didn't  
13 know what it was about. It didn't worry me. It was a  
14 matter for himself."  
15

16 Garda Keogh also said in his evidence that he 13:13  
17 understood he didn't legally have to answer questions  
18 about GSOC. He also said that he understood the  
19 request for a comprehensive report to mean a report  
20 outlining every detail as to why he was meeting with 13:13  
21 GSOC. And that can be seen at Day 104, page 27.  
22

23 We say that in this case the evidence is not consistent  
24 with anything that was put forward by Garda Keogh. We  
25 say this is another example of Garda Keogh deciding 13:13  
26 that because he was unhappy with the outcome of a  
27 particular issue, that that outcome per se must amount  
28 to targeting. This appears to be a feature which we  
29 will see later on, perhaps in some aspects of the

1 larger enquiries that were triggered as a result of his  
2 complaints, that Garda Keogh on occasions seems to put  
3 forward the view that he has a right to a verdict in  
4 his favour on all issues, or that if there is an  
5 adverse outcome, an outcome of which he is personally 13:14  
6 unhappy, that must mean that he is the subject and  
7 victim of deliberate targeting.

8  
9 So, we say on this particular suggestion and issue,  
10 that if one looks at the issue of discrediting it has 13:14  
11 been required as conveying or causing reputational  
12 damage. We say that no reputational damage has been  
13 made out in the evidence and where the matter remained  
14 between Superintendent Murray and Garda Keogh, we say  
15 that it could not possibly amount to discrediting. 13:14

16 Likewise, with targeting we submit that the  
17 superintendent's request for further information didn't  
18 amount to an abuse or criticism but was entirely  
19 reasonable in all the circumstances of the case.

20 13:14  
21 We do make the point that Superintendent Murray had no  
22 reason to believe that Garda Keogh was involved in a  
23 GSOC investigation. Garda Keogh's suggestion that  
24 Superintendent Murray should have inferred that it must  
25 have been a matter pertaining to protected disclosure 13:15  
26 because it wasn't served on papers is just not  
27 reasonable. We say that again that bridge or  
28 connection between Garda Keogh as a whistleblower and  
29 the complaint he is making is not made out.

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One further point, a question asked by you, Chair, earlier, the idea of a superior officer to proactively do something beyond the norm, we make the point at paragraph 201 of our submissions that Garda Keogh appears to have thought that the onus was on Superintendent Murray to contact GSOC and verify whether or not he was appointed. We say that the evidence on this issue demonstrates that Garda Keogh didn't appear to appreciate that a guard absenting himself from work had a real resourcing and operational consequences for his colleagues. Superintendent Murray outlined again on this issue the resourcing difficulties facing his district at the time, and that he and Superintendent Alan Murray had indicated they talked about little else on a daily basis. So we do make the point that in this instance Superintendent Murray was a manager, discipline force, it wasn't something that was incumbent on him to seek out supporting information for the retrospective cancellation of leave requests made by divisional members, we say that he was endeavouring to treat Garda Keogh the same as any other member presenting fit for service on the force. We urge you, Chairman, to consider that there is simply no evidence of targeting or discrediting in Superintendent Murray's refusal to cancel Garda Keogh's leave following that retrospective application.

13:15

13:15

13:15

13:16

13:16

1 Chairman, if I can move to 11  
2 CHAIRMAN: Yes.  
3 MR. MURPHY: I am mindful of the stenographer.  
4 CHAIRMAN: How are you going, Mr. Murphy, you don't  
5 seem to be heading for the home straight just yet. 13:16  
6 MR. MURPHY: I will accelerate, Chairman, I think  
7 another hour.  
8 CHAIRMAN: Should we break for lunch?  
9 MR. MURPHY: I think if you would, Chairman.  
10 CHAIRMAN: It sounds to me, like, as I say, the 13:16  
11 sensible thing to do is to break for lunch. I am not  
12 in any way pressurising you as to time. If we resume  
13 at 2:30. Sorry, I think it's 1:15 now. 2:15, sorry.  
14  
15 THE HEARING THEN ADJOURNED FOR LUNCH AND RESUMED AS 13:17  
16 FOLLOWS:  
17  
18 CHAIRMAN: Thank you.  
19 MR. MURPHY: Thank you, Chairman. I will proceed next  
20 to deal with Issue number 11 very briefly. That is a 14:18  
21 complaint by Garda Keogh in relation to his confinement  
22 to indoor duty on 22nd October 2015.  
23 CHAIRMAN: Yes.  
24 MR. MURPHY: Chairman, you have received evidence  
25 indicating the contest, as it were, between the two 14:18  
26 principal witness in relation to this issue, but from  
27 the perspective of Superintendent Murray, he has given  
28 evidence that he perceived and assessed Garda Keogh to  
29 be in a particular health condition at the time and

1 felt that this was a decision that he had to make in  
2 order to ensure that he was able to work but not able  
3 to work in a front line position, as it were, in the  
4 outdoor sector of An Garda Síochána. He has given his  
5 evidence about what he saw. Garda Keogh disputes that. 14:19  
6 That is a matter for you to assess and to review.

7  
8 Insofar as the allegation is concerned, what is being  
9 made here is a suggestion that Garda Keogh was singled  
10 out for special treatment, that nobody else was treated 14:19  
11 as he was treated and that ultimately this was a form  
12 of targeting him in the presence of his colleagues  
13 within the station. Now, at the same time we say that  
14 the evidence doesn't support that, and we say that  
15 insofar as the evidence is concerned, Superintendent 14:19  
16 Murray found himself in a very difficult position with  
17 limited possible solutions and we submit that he used  
18 his best endeavours to balance the interests of all  
19 parties involved. He also indicated in the course of  
20 his evidence that the decision he made was the decision 14:20  
21 that was to be reviewed in November. That this was not  
22 a life sentence, as is somehow portrayed by Garda  
23 Keogh, or a career ending manoeuvre.

24  
25 We say that what took place in this case didn't involve 14:20  
26 any issue of targeting or discrediting. Insofar as  
27 that is concerned, there is a suggestion made that by  
28 communicating in a circular to sergeants his direction,  
29 that Superintendent Murray was somehow discrediting

1 Garda Keogh. We say again that negates the basic  
2 communications obligation of a Superintendent to the  
3 relevant sergeants. There was limited publication,  
4 publication that was necessary on an operational basis.

14:20

5  
6 Garda Keogh has said that this was the most stressful  
7 job in the station. Again, that is a matter which  
8 different witnesses take different views about, but  
9 ultimately you have evidence which indicates that  
10 persons returning to work from periods of ill health  
11 might find themselves in that position and in those  
12 circumstances we say that there is nothing adverse,  
13 permanent, damaging, targeting or discrediting in what  
14 took place the behest of Superintendent Murray. We  
15 also make the point that on this issue again the  
16 evidence is silent about any link between the  
17 assignment to indoor duties and the making of a  
18 protected disclosure.

14:21

14:21

19  
20 Garda Keogh was asked why he thought it was linked to  
21 the protected disclosure. This was at Day 102.  
22 Counsel for the Tribunal examined him and he replied it  
23 was because he had never had any of this before the  
24 protected disclosure. Now, the evidence demonstrates  
25 that by that time, in October, the evidence before you  
26 suggests that there was an ample reasonable basis for  
27 assigning Garda Keogh to indoor duties. You have the  
28 evidence in relation to his medical condition, the  
29 evidence in relation to his drinking, the evidence of

14:21

1 his own diary indicating patterns of excessive drinking  
2 which he indulged in at that time, his absences from  
3 work, all of these predates this decision. Therefore,  
4 this decision cannot be seen, we say, in isolation, it  
5 has to be seen in the context of what preceded it by 14:22  
6 several months. And that evidence comes from different  
7 sources, including from Garda Keogh himself.

8  
9 So we say that Superintendent Murray acted reasonably  
10 and that there's no evidence of targeting or 14:22  
11 discrediting because Garda Keogh was a whistleblower.

12  
13 Number 12, Chairman, relates to complaints by Garda  
14 Keogh in relation to the misrecording of his sick leave  
15 and the reduction of salary. It is important, again 14:22  
16 coming back, Chairman, to the complaints at the outset  
17 made by Garda Keogh, this was something which he  
18 pitched as targeting by senior management. This would  
19 be on page 79 of the Tribunal materials in Garda  
20 Keogh's earlier statement. He said then specifically, 14:23  
21 page 21 of those materials:

22  
23 "The police appear to wish to deny knowledge of my work  
24 related stress, while on the other hand dealing  
25 punitively with my condition in terms of reduction of 14:23  
26 pay, monitoring, discipline etcetera. My recurrent  
27 sickness was seen as disciplinary and wage reduction  
28 matters rather than a welfare or safety issue."  
29

1 So again, at the outset, Chairman, I draw your  
2 attention to the fact that this was pitched as a senior  
3 management decision. Now, taking that particular  
4 allegation and looking at the evidence which you have  
5 heard, all of the evidence demonstrates that the 14:23  
6 entries in the relevant document of SAMS were carried  
7 out by Garda Olivia Kelly, who is the district clerk in  
8 Athlone. There is no evidence she was directed to make  
9 entries adverse to Garda Keogh. On the contrary, all  
10 of the evidence from her and from Ms. Monica Carr, who 14:24  
11 is head of HR directorate, indicated there was a  
12 systematic recording of information in which  
13 Superintendent Murray had no part whatsoever and  
14 neither did Chief Superintendent Wheatley.

15  
16 So, on the specific micro issue of who entered the 14:24  
17 relevant materials into the system, there's only one  
18 set of evidence, that it was Garda Kelly and it was not  
19 Superintendent Murray and it was not Chief  
20 Superintendent Wheatley. 14:24

21  
22 We go on to say that the system makes it clear also  
23 that there were reasons for the entry of particular  
24 words because there was a drop down facility which had  
25 very specific categories to be entered in. Any 14:24  
26 suggestion that this was somehow badness on the part of  
27 Garda management is belied by the actual structure of  
28 the system itself.  
29

1 We say that if one looks at this particular issue,  
2 Garda Keogh's first complaint is that there was  
3 misrecording. We say that is nothing to do with senior  
4 management, could not have had anything to do with  
5 them, there's no evidence of that whatsoever. 14:25

6 Secondly, he say no investigation was properly  
7 conducted in particular by Superintendent Murray and  
8 Chief Superintendent Wheatley to deal with this  
9 particular situation as required by the sick leave  
10 regulations. 14:25

11  
12 The simple answer to that, we say, is that all of the  
13 evidence demonstrates that Garda Keogh did not wish to  
14 speak to Chief Superintendent Wheatley or to  
15 Superintendent Murray in relation to his issues. That 14:25  
16 was reported back up the line, and you saw in the  
17 evidence two days ago that Chief Superintendent  
18 Wheatley ultimately wrote a letter, which was opened to  
19 the Tribunal on Monday, indicating that she could not  
20 progress the matter any further, asking whether there 14:25  
21 were any further steps she was obliged to take and  
22 indicating that if there was to be an inquiry that  
23 perhaps it should be done by somebody outside the  
24 division. What we don't find is any deliberate attempt  
25 on her part to harm Garda Keogh, to target him because 14:26  
26 he was a whistleblower or otherwise. And it's  
27 important we say it, because the complaints made by  
28 Garda Keogh throughout the earlier part of this  
29 controversy were that this was done, in his words,

1 knowingly. We say there is no evidence to support that  
2 contention either.

3  
4 Eventually and belatedly, on Day 102, in response to  
5 the Tribunal, Garda Keogh accepted that Superintendent 14:26  
6 Murray physically had no role. But he then suggested  
7 perhaps Superintendent Murray had been aware of the  
8 situation and that Chief Superintendent Wheatley, in  
9 his words, "had to have spotted around the time of the  
10 investigation into his absence without leave". We say 14:26  
11 that is completely unreasonable. There's no evidence  
12 that they did know about it. There's no evidence that  
13 they were obliged to make an enquiry about it. There's  
14 no evidence that they had any awareness that this had  
15 not been processed by the district office or had been 14:27  
16 processed in any way that was in default. There's no  
17 evidence that any of them had any hand, act or part in  
18 deliberately bringing that result and there's,  
19 therefore, no evidence we say targeting or discrediting  
20 of any kind. 14:27

21  
22 What we do also note at paragraph 257 of our  
23 submissions, is although Garda Keogh tried to blame  
24 Chief Superintendent Wheatley for not seeing the matter  
25 was dealt with in her capacity as a chief 14:27  
26 superintendent, we submit there is no evidence of any  
27 complaint made by Garda Keogh in respect of his reduced  
28 rate of wages in the period between 2015 to '16, where  
29 it wasn't reasonable we say in that situation for the

1 chief superintendent to pick up on the issue  
2 independently.

3  
4 So we say that Superintendent Murray had no role in  
5 recording Garda Keogh's sickness, there was no basis to 14:28  
6 suggest he was involved in any aspect of the process,  
7 but ultimately at the heart of this issue again there's  
8 another perception point, which is that Garda Keogh  
9 appears to have expected that Garda management would  
10 simply take his word for the fact that his stress was 14:28  
11 work related. This was not a reasonable position to  
12 adopt, we say, because the system required an  
13 investigation, but he would not facilitate the  
14 investigation, for reasons best known to himself, but  
15 that was the position. 14:28

16  
17 So we say that there is no evidence that there were  
18 further steps that could have been taken to force him  
19 or to compel him to comply and submissions made in  
20 recent days on his behalf seem to suggest that this was 14:28  
21 something that could have been done, but no one has  
22 actually suggested what steps could be taken by Chief  
23 Superintendent Wheatley to advance matters any further  
24 and there is also no suggestion that she did not report  
25 this matter up the line, which she did. 14:28

26  
27 So in all the circumstances, Chairman, you have the  
28 evidence of the individual witnesses and the system  
29 itself and we say there is simply no basis to support

1 the allegation made by Garda Keogh on that basis.

2  
3 I move then to Issue 13, which is not pursued. That is  
4 the complaint in relation to alleged denial of  
5 overtime. 14:29

6  
7 Number 14, we had thought, Chairman, you may have seen  
8 this in our submission, we thought it not being  
9 advanced, it is now being effectively advanced at this  
10 stage by Garda Keogh's team in their written 14:29  
11 submissions. I wonder if I might address that briefly?

12 CHAIRMAN: Yes.

13 MR. MURPHY: This is a complaint in relation to a delay  
14 in payment of travel expenses. Garda Keogh submitted a  
15 series of claims for travel and subsistence expenses 14:29  
16 back to the summer of 2014. These claims were not  
17 initially approved by Superintendent McBrien because  
18 she was aware of issues in relation to the taxation of  
19 Garda Keogh's vehicle as commercial instead of  
20 designated for private use. She considered that Garda 14:30  
21 Keogh wasn't in a good place words the end of her  
22 tenure in Athlone, she decides to postpone approval of  
23 the claims and leaves the matter to the new  
24 superintendent to resolve in due course.

25 14:30  
26 It has been argued in Garda Keogh's legal submissions,  
27 at paragraph 173, that both superintendents played a  
28 role in causing his expenses to be delayed. That is  
29 paragraph 173. And he claims that that is an example

1 of targeting or discrediting. We say this flies in the  
2 face of a number of important factors. Superintendent  
3 McBrien's unchallenged evidence that she refrained from  
4 addressing the issue because of her view that Garda  
5 Keogh was having problems with his alcohol addiction 14:30  
6 and she was reluctant to press resolution of the  
7 matter. That is the evidence. In the submissions,  
8 Garda Keogh now submits:

9  
10 "What remains unclear is why Superintendent McBrien had 14:30  
11 waited until then to deal with the issue."

12  
13 She has answered this question. I don't believe she  
14 was ever cross-examined on this basis at all and this  
15 is another example, Chairman, of a person against whom 14:31  
16 no allegation is made until the very last second in the  
17 written submissions.

18  
19 They are also attempting to suggest that there was  
20 something sinister in Superintendent Murray retaining a 14:31  
21 copy of the file concerning the tax issue or expenses  
22 claims. But Superintendent Murray was clear as to why  
23 he made a copy of the file at that time and in those  
24 circumstances he has given evidence on that point.

25 14:31  
26 We also say on behalf of Superintendent Murray, he  
27 arrived in Athlone on 4th March 2015, he told Garda  
28 Keogh on the 26th March that he would deal with the car  
29 tax matter by way of Regulation 10. He dealt with that

1 issue and we say that it is inconceivable that there is  
2 an allegation of delay as a mode of targeting or  
3 discrediting on the part of Superintendent Murray can  
4 reasonably be pressed by Garda Keogh against  
5 Superintendent Murray on those facts, but that's what 14:32  
6 seems to be the complaint in the written submission  
7 CHAIRMAN: Was it not the 9th March, not that it makes  
8 the slightest difference, except my tediously pedantic  
9 --  
10 MR. MURPHY: I stand corrected. 14:32  
11 CHAIRMAN: Superintendent McBrien left on the 8th and  
12 he came in on the 9th, I think. As I say, I'm sorry  
13 for being so pedantic.  
14 MR. MURPHY: Chairman, I fully accept that. In the  
15 annals of delay cases this really does not stand. We 14:32  
16 say that it is inconceivable an allegation as a method  
17 of targeting or discrediting can be reasonably put  
18 forward in that situation.  
19 CHAIRMAN: One of the things Garda Keogh said was,  
20 look, they knew about this issue from the previous 14:32  
21 September.  
22 MR. MURPHY: Yes.  
23 CHAIRMAN: And it was in the context of why drag it up  
24 now, and we have heard the evidence. But that at least  
25 was the point he made. 14:32  
26 MR. MURPHY: Yes.  
27 CHAIRMAN: Now I have to say, like you, I thought that  
28 number 14 was included in a general way in number 6,  
29 because it was all about the car tax, because it

1 focused ultimately -- the reason for it was the car  
2 tax, although Garda Keogh had been uneasy, if not  
3 suspicious, about the genesis of the issue. And we  
4 heard a lot of evidence ultimately resting with  
5 Detective Superintendent Mulcahy.

14:33

6 MR. MURPHY: Yes, Chairman, exactly so. In terms of  
7 this issue, one important point: Garda Keogh gave  
8 evidence and, in simple terms, he gave evidence that he  
9 had no axe to grind with Superintendent McBrien. I  
10 don't believe that she was asked any questions to  
11 support the submission. But here, it does appear that  
12 at this very late stage there is an attempt being made  
13 by Garda Keogh to effectively bridge a complaint  
14 between her in an effort to get at Superintendent  
15 Murray and then to attack her in the written  
16 submissions. We say the allegation is without any  
17 merit. But we say what is disturbing, that even now,  
18 after all the evidence has been given, that Garda Keogh  
19 is changing tack yet get. I ask you to bear in mind  
20 Ms. O'Rourke's submission this morning. This is  
21 effectively a fresh attack against somebody who he  
22 previously exonerated in this Tribunal and it is clear  
23 that the purpose to doing so is to have a further  
24 chance to pitch at Superintendent Pat Murray.

14:33

14:34

14:34

25 CHAIRMAN: Okay.

14:34

26 MR. MURPHY: Just in terms of the delay issue also,  
27 it's clear that Superintendent Murray dealt with this  
28 within a month of arriving in the location. The issue  
29 was closed. So we formally again say, Chairman,

1 there's no evidence of targeting or discrediting in  
2 relation to matter either.

3  
4 Issue 13 in relation to overtime is not pursued.

14:34

5  
6 Issue 14, I just dealt with.

7  
8 Issue 15 deals with the commendations issue. If I  
9 briefly deal with that, Chairman. This deals with  
10 Garda Keogh's complaint in relation to the alleged  
11 denial of commendations in respect of --

14:35

12 CHAIRMAN: That's right, the rescue of the woman.

13 MR. MURPHY: Yes.

14 CHAIRMAN: I don't know if you saw the television the  
15 other night, Mr. Murphy, of the three gardaí who  
16 rescued a woman in Rathfarnham I think, who found  
17 herself when the dog slipped in, and she slipped in,  
18 and three gardaí, including a very tall woman who  
19 actually went you, you would sympathise with, who  
20 actually effected the rescue, and there they were proud  
21 as punch and had a very nice picture of the rescued  
22 lady, the dog, as far as I know, the three gardaí  
23 proudly holding their certificates of commendation. I  
24 didn't know whether they had also been referred for the  
25 Seiko Just in Time award, but who knows, but there they  
26 were. I thought gosh, I wonder has anybody else seen  
27 this.

14:35

14:35

14:35

28 MR. MURPHY: In terms of the approach --

29 CHAIRMAN: Sorry, I'm not trivialising the thing, but

1 the coincidence, I think it struck everybody, because  
2 as soon as I mentioned it to our team, everybody said  
3 but, of course, oh yes, did you see the thing in the  
4 picture. What do you say about it, Mr. Murphy.

5 MR. MURPHY: Chairman, there are three, obviously two 14:36  
6 are not aquatic, the stabbing of the taxi driver, the  
7 arrest of a person for burglary, in each of those cases  
8 detailed evidence has been given. In relation to the  
9 nature of Garda Keogh's involvement and the disparaging  
10 of that and the involvement of others. And the same in 14:36  
11 relation to the burglary.

12 CHAIRMAN: Undoubtedly in this one he was centrally  
13 involved, isn't that right?

14 MR. MURPHY: Yes.

15 CHAIRMAN: I mean the other ones, okay, you say look, 14:36  
16 there's evidence and there was a judgment made there  
17 was evidence.

18 MR. MURPHY: Yes. And I draw the Chairman's attention  
19 to the fact that in this case that what we would say  
20 respectfully is the bizarre situation has developed, 14:36  
21 where a person who is nominated by Superintendent  
22 Murray to travel to this building in Dublin, with his  
23 colleagues to attend a public meeting with the  
24 Minister, to be photographed and fated and  
25 congratulated and to be given a commendation by the 14:37  
26 Minister through the Seiko watch award system, that you  
27 are to regard that as an exercise in targeting and  
28 discrediting. I would recall in the evidence that was  
29 given by Garda Keogh in cross-examination that when

1 this was put to him on Day 108, at page 52, line 4,  
2 when questions were asked by you at the end of  
3 cross-examination, by me, as to how this could be  
4 regarded as targeting or discrediting, we say that  
5 Garda Keogh, you will see this in the transcript, 14:37  
6 appears to shrink back in relation to that allegation  
7 and replied, "I'm in your hands on this one, Judge".  
8 We say objectively speaking that simply has no basis in  
9 reality whatsoever. It is perhaps one of the clearest  
10 examples of what I referred to in relation to a number 14:37  
11 of the other points. That is to say, Garda Keogh's  
12 perception is superimposed on facts and therefore any  
13 other interpretation which could be levelled is out  
14 ruled and the matter is transmogrified in his mind into  
15 effectively targeting and discrediting. 14:38

16  
17 we say that all the other evidence is there to  
18 demonstrate the opposite.

19 CHAIRMAN: Okay.

20 MR. MURPHY: Certainly there's no evidence to 14:38  
21 demonstrate the demonstrate that the decision was  
22 influenced by a desire to target him as a whistleblower  
23 or at all. In addition, Chairman, it would appear that  
24 all the persons involved in that received the same  
25 treatment. And certainly there's no evidence any of 14:38  
26 them complained that they were persons who had been  
27 singled out for treatment of an adverse kind, that  
28 their career had been jeopardised and damaged in that  
29 way.

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We urge you, Chairman, on the evidence to demonstrate that was a decision reasonably made. Again, if this was a judicial review, the Court might look at the situation to say, well, perhaps I might have made a different decision but is this a basis for intervening? That is one thing. Is it a basis to intervening to say what was described on the evidence of this issue was targeting and discrediting Garda Keogh because he was a whistleblower, we say not. And we invite you, Chairman, to consider that there is no evidence to support this issue either.

14:38

14:39

Issue 16 was also abandoned by Garda Keogh. That's in relation the alleged tapping of his phones and opening of his post..

14:39

I would like to move to Issue 17, which is the Ó Cualáin investigation. Chairman, you have heard a lot of evidence in relation to different pointers and again there is a strange bifurcation in Garda Keogh's view of this particular investigation. I think it is fair to say that on any view of the evidence, Garda Keogh accepts that Detective Superintendent Murray and Detective Superintendent Coppinger were excellent --

14:39

14:39

CHAIRMAN: Mulcahy.

MR. MURPHY: Mulcahy, sorry, I beg your pardon, were excellent in terms of their dedication to investigation and following the leads which she had given them, and

1 he worked in conjunction with them. But as time goes  
2 by, one sees once again that Garda Keogh puts a  
3 praetorial view, which seems to colour and affect his  
4 views of these issues. He has put forward various  
5 complaints. For example, he has complained about delay 14:40  
6 in commencing the investigation. You have the evidence  
7 of Detective Inspector Coppinger saying that in his  
8 view that they moved very quickly in assembling a team,  
9 meeting with him and dealing with whatever urgent  
10 matters were there. Is there any evidence of 14:40  
11 carelessness, indifference by Coppinger and Mulcahy?  
12 We say no on the evidence. In fact, all the evidence  
13 coming from Garda Keogh is that they were people who he  
14 came to admire in terms of their capacity to  
15 investigate. Again, Chairman, you have had a chance to 14:40  
16 see them giving evidence and to assess whether they are  
17 persons of serious intent or whether they are persons  
18 engaged in some form of elaborate pantomime to  
19 participate in targeting a whistleblower in the form of  
20 Garda Keogh, which they weren't. 14:40

21  
22 The second point is an allegation of delay in seizing  
23 evidence. Again, you have the evidence of Detective  
24 Superintendent Mulcahy, specifically adverting to the  
25 possibility of causing alarm and then effectively 14:41  
26 giving evidence that he travelled to Athlone and seized  
27 the phone on 13th th June 2014 and says:

28  
29 "The phone was seized before we even sat down to make a

1 statement."

2  
3 And goes on then to give his evidence as to how he  
4 operated. In evidence, again in this progression  
5 point, if you come forward, Chairman, to Day 103, Garda 14:41  
6 Keogh appears to concede that he cannot blame the  
7 Ó Cualáin investigation for any delay in seizing  
8 phones. He says, at Day 103, page 124:

9  
10 "I concede on that." 14:41

11  
12 He had previously suggested there had been a tip off by  
13 the investigation team but then stated in evidence that  
14 he doubted that there had been.

15 14:41  
16 So effectively we have got examples throughout the  
17 course of this issue of complaints, suspicions on the  
18 part of Garda Keogh, but nothing to sustain them.

19  
20 The third element was his complaint that there had been 14:42  
21 a failure to suspend Garda A. Again you have detailed  
22 evidence from Assistant Commissioner Ó Cualáin about  
23 the complexities of that issue, the subtleties of that  
24 issue and the way in which care had to be taken in each  
25 aspect of this process, and proofs had to also be 14:42  
26 arranged. Also you have the evidence of Detective  
27 Inspector Coppinger, who told you, Chairman, that while  
28 Garda A's suspension was a matter of ongoing attention  
29 between the chief superintendent, Garda Headquarters

1 and Assistant Commissioner Ó Cualáin, it wasn't within  
2 the remit of the investigation team. So there was the  
3 combination of the investigation, the sharing of the  
4 information. In that situation we say that it is not  
5 correct to say that the issue of suspension was ignored 14:42  
6 or was not taken into consideration at an early stage.  
7 There is ample evidence to show that there was.

8  
9 In overall terms, we say that each of the criticisms  
10 made in relation to this particular point are matters 14:43  
11 which are not sustained by the evidence. We  
12 respectfully invite you to consider that it's whole  
13 inconsistent for Garda Keogh on the one hand to shower  
14 the praise that he has on his team and then on the  
15 other hand to effectively appear to take away from what 14:43  
16 they have been saying and what they have been doing.  
17 But most peculiar of all is the suggestion and response  
18 to a question from you, Chairman, which tended to  
19 suggest that Garda Keogh believes that somehow, in a  
20 way which was not clear, Assistant Commissioner Ó 14:43  
21 Cualáin was working to sabotage his own investigation.  
22 That is a proposition for which we say there is no  
23 evidence at all. Again, I invite you, Chairman, to  
24 consider the fact that it was maintained right to the  
25 very end of the evidence in the teeth of the evidential 14:43  
26 void on the issue is a significant matter and one which  
27 you may find applies to the approach by Garda Keogh  
28 towards not just this issue but other issues as well.  
29

1 I don't propose, Chairman, to rehearse each and every  
2 point within this issue.

3 CHAIRMAN: No. It is dealt with very fully in the  
4 evidence and in the submissions, yes.

5 MR. MURPHY: I think perhaps the most serious one of  
6 all, if can just I deal with that. 14:44

7 CHAIRMAN: Yes.

8 MR. MURPHY: Coming back to pertinacity and error, is  
9 this persistent allegation that the entire  
10 investigation amounted to a deliberate cover up by 14:44  
11 Assistant Commissioner Ó Cualáin. Just pausing for a  
12 moment and standing back and asking oneself to begin to  
13 prosecute that case. Where are the evidential building  
14 bricks for it? And there are none. But the allegation  
15 has been left there in the public domain. Assistant 14:44  
16 Commissioner Ó Cualáin has had to give evidence about  
17 it, the fact that the allegation has been published and  
18 there is simply nothing to subtend it whatsoever.

19  
20 Towards the end of his evidence also I think Detective 14:44  
21 Superintendent Mulcahy became aware of the views  
22 expressed by Garda Keogh about him, which he had never  
23 heard before or seen before. These are issues which  
24 again I will invite you to take into consideration as  
25 well. 14:44

26 CHAIRMAN: Mr. Murphy, may I interrupt you for a  
27 moment, if it is convenient.

28 MR. MURPHY: Yes.

29 CHAIRMAN: To ask you a question about the process of

1 the investigation. Probably the biggest point that  
2 Garda Keogh -- if it isn't the biggest it's certainly a  
3 significant point that he makes, is that the witnesses  
4 should not have been trooping, so to speak, in and out  
5 of Athlone Garda Station at the same time, at times 14:45  
6 when he was there, at times when Garda A was there and  
7 at times when each of them was there. Would you agree  
8 that would appear to be an occasion of tension? I am  
9 trying to avoid work related stress or whatever, but it  
10 would appear to be an occasion of pressure. I mean, 14:45  
11 leaving aside whether anybody is to blame or anything  
12 of that kind and whether he brought it on himself or  
13 anything of that kind, that in itself would appear to  
14 be a reasonably significant occasion of pressure on  
15 somebody, would you agree? 14:46  
16 MR. MURPHY: I respectfully disagree in the sense,  
17 Chairman, coming back to the perception and reality  
18 submission, Garda Keogh had that perception at the  
19 time. But you have heard evidence from many of people  
20 involved in the process, including the organisers of 14:46  
21 that process, they say that once his concern was made  
22 known to them, directions were given. There's also  
23 evidence that not every interview afterwards took place  
24 away from the Garda Athlone station.  
25 CHAIRMAN: That's right. But at least they accepted 14:46  
26 the point, they recognised it.  
27 MR. MURPHY: And I think you also have evidence from  
28 Superintendent Minnock and from other witnesses that on  
29 occasion it may have been be convenient for witness to

1 give evidence there.

2 CHAIRMAN: Absolutely.

3 MR. MURPHY: Garda Keogh didn't complain about the  
4 period after the time he made his complaint. So it  
5 would seem that whatever took place, wasn't the subject 14:47  
6 of any further complaints by Garda Keogh, that it was  
7 done discretely for the purpose of seeking documents,  
8 what one can say, what one can't say. But there was no  
9 complaint at that time. And you have the list of other  
10 occasions where interviews were taking place elsewhere. 14:47  
11 CHAIRMAN: Yes.

12 MR. MURPHY: I accept that, as I must.

13 CHAIRMAN: But on the face of it, whether he complained  
14 or didn't complain, on the face of it, the fact that  
15 this was happening, and leaving aside whether it was 14:47  
16 necessary in some cases, the former deputy commissioner  
17 and acting commissioner, we'll call him Assistant  
18 Commissioner Ó Cualáin, said that sometimes it was  
19 necessary because people would need to look at  
20 documents. But leaving that aside, just the occasion 14:47  
21 itself, it would be a difficult time for somebody.  
22 would you agree?

23 MR. MURPHY: I think that if it was a difficult time --

24 CHAIRMAN: As I say I'm trying to avoid the normative  
25 expressions or something like that. 14:48

26 MR. MURPHY: Yes. But if it was a difficult time,  
27 Chairman, could I suggest that that person could  
28 complain to somebody in Authority.

29 CHAIRMAN: Yes.

1 MR. MURPHY: And it could be resolved.

2 CHAIRMAN: Yes.

3 MR. MURPHY: And that's what happened. So I don't  
4 think there's any evidence of, for example, ongoing  
5 distress being caused to Garda Keogh after he made that 14:48  
6 complaint.

7 CHAIRMAN: I understand.

8 MR. MURPHY: We say that his conduct at the time was  
9 consistent with him being comfortable with what was  
10 taking place thereafter. There was evidence I think at 14:48  
11 the beginning of the process, if that wasn't perceived  
12 to be an issue by the investigators but their actions  
13 when confronted by his criticism or complaint was to  
14 change. It wasn't to say that this couldn't happen,  
15 there wasn't a row or anything of that kind. They were 14:48  
16 sensitive to his --

17 CHAIRMAN: I'm not sure anybody ever put it to the --  
18 I'm pretty sure they didn't because I think I would  
19 remember if they had. But nobody said, did you not  
20 think about this to begin with. I don't think anybody 14:48  
21 ever actually said to them, did you not consider this  
22 to begin with. But reflecting on it and re-reading the  
23 evidence and the submissions and so on, it certainly  
24 occurred to me that there must have been a period when  
25 this would not have been a comfortable place to be, 14:49  
26 even if I didn't make a complaint about it at the time.

27 MR. MURPHY: Yes. Chairman, yes, but even if that was  
28 the case, on the reference points that are here for  
29 consideration by you, is there any evidence that any of

1 that was done to target --

2 CHAIRMAN: Quite. Even assuming everything I am  
3 saying, even assuming that this was, you know, a really  
4 difficult time, one still has to say was there  
5 targeting or discrediting. 14:49

6 MR. MURPHY: In the Chair's view there may also be an  
7 error or an infelicity or an inappropriate strategic  
8 approach, but the question is: was it done knowingly.  
9 Is it targeting? This ultimately is a process where a  
10 complaint has been made, nothing here is accidental, it 14:49  
11 is all planned.

12 CHAIRMAN: Are you suggesting, Mr. Murphy, question,  
13 are you suggesting that targeting can't really been  
14 accidental? I can't end up accidentally targeting or  
15 discrediting you? 14:50

16 MR. MURPHY: No.

17 CHAIRMAN: Okay. Because if anything else, you would  
18 say, it has to be related to a purpose, and the purpose  
19 is -- or rather a reason for it, and that is the  
20 protected disclosure. 14:50

21 MR. MURPHY: If it was a criminal offence it would be a  
22 crime with specific intent.

23 CHAIRMAN: Yes.

24 MR. MURPHY: It has to have that focus. Otherwise  
25 every administrative error, boo-boo, mistake, error in 14:50  
26 terms of administration could amount to targeting and  
27 discrediting.

28 CHAIRMAN: Yes, I understand.

29 MR. MURPHY: I do think that the focus, therefore,

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which --

CHAIRMAN: Okay, thank you very much. I'm sorry for interrupting you.

MR. MURPHY: No not at all.

CHAIRMAN: I wanted to ask you the specific question about the interviewing in Athlone.

14:50

MR. MURPHY: we sought to address those in the written situations.

CHAIRMAN: Yes.

MR. MURPHY: Very briefly, just by way of summation on this issue, I do draw your attention, Chairman, from paragraph 347 onwards, to the kind of complaints made by Garda Keogh in his statement to the Tribunal investigators and/or in his original complaints. For example, in the Tribunal materials at page 35 there seems to be a suggestion by Garda Keogh alleging that Assistant Commissioner Ó Cualáin must have leaked details of his investigation to Superintendent Murray. Where else could Superintendent Murray have acquired information contained in the report? And Detective Superintendent Mulcahy gave evidence that there was no interference by Assistant Commissioner Ó Cualáin in the investigation at all.

14:51

14:51

14:51

So we have here, as it were, a cadre of people against whom no implication of wrongdoing is made, who worked closely with Garda Keogh. Their superior is someone who they say didn't do any of the things Garda Keogh says, but he continues to maintain, in the absence of

14:51

1 any evidence, that somehow --

2 CHAIRMAN: He said the reason for the suspension of  
3 Garda A that ultimately came about, he said that came  
4 about and he said could only have come about because of  
5 information from the Tribunal. Now, we have had 14:52  
6 evidence about that and as I recall the superintendent  
7 gave evidence that he had acquired that information  
8 elsewhere as a result of which the -- but that is the  
9 debate, if you like. That was the basis.

10 MR. MURPHY: From an operational perspective, I think 14:52  
11 the evidence before the Tribunal demonstrates that  
12 there was a very measured and careful consideration,  
13 and when a moment arrived where there was sufficient  
14 information to suspend, suspension took place and took  
15 place very efficiently. 14:52

16 CHAIRMAN: All right.

17 MR. MURPHY: So if I could just say in that situation,  
18 a further factor that is present here, it is clear that  
19 Garda Keogh was disappointed with the outcome of the  
20 investigation, namely that there was no prosecution. 14:53  
21 But again, there is no dispute that that decision was a  
22 decision of the DPP. And there's no dispute that the  
23 DPP considered the file very carefully. We say that  
24 the attacks made on it, on the investigation team  
25 through Garda Keogh's attack on Assistant Commissioner 14:53  
26 Ó Cualáin just have no basis whatsoever.

27  
28 We say that a bona fide investigation was pursued,  
29 every reasonable lead was put forward and yet again a

1 feature of perhaps a number of the issues, a witness  
2 declined to give evidence. Something which has  
3 occurred in many of the other issues. But when that  
4 happens it highlights the fact that there was limits as  
5 to how far one can pursue matters. And the DPP is the 14:53  
6 ultimate decision-maker in that case, not the gardaí  
7 itself.

8  
9 So, we finally ask you, Chairman, to say there is no  
10 merit by any of these points made by Garda Keogh. 14:53

11 CHAIRMAN: Okay.

12 MR. MURPHY: Moving on to Issue 18, and that is the  
13 complaints in relation to the bullying and harassment  
14 investigation carried out by Assistant Commissioner  
15 Finn. 14:54

16  
17 Again, we have heard evidence in very recent date, I  
18 don't propose to trawl through that evidence, but can I  
19 make a number of points, some which come from more  
20 recent evidence as well. At paragraph 358 of our 14:54  
21 written submissions, Chairman, there's reference to a  
22 complaint made by Garda Keogh that there was a lost or  
23 missing complaint. And Garda Keogh first made this  
24 allegation on 17th August 2017, in a letter sent by his  
25 solicitor to the Minister for Justice and the Garda 14:54  
26 Keogh and others. Then this statement of the lost  
27 complaint made against on 21st September 2017, that was  
28 also --

29 CHAIRMAN: Sorry, have we got something going on in the

1 background.

2 MR. McGRATH: Sorry, it's my computer, apologies.

3 CHAIRMAN: Is that you, Mr. McGrath? Okay. We will  
4 name the guilty party.

5 MR. McGRATH: Yes, I am the guilty party, I am sorry 14:54  
6 about that.

7 CHAIRMAN: Okay. The letter from Mr. Cullen raises the  
8 question of whether the thing was lost, yes.

9 MR. MURPHY: Chairman, you will see from the  
10 progression from paragraph 358 onwards that the 14:55  
11 allegation is repeated in December 2017. This is a  
12 drum beat that is going all the way through 2017.  
13 Pausing for a moment, in terms of the other evidence  
14 which you have heard, you have heard evidence that  
15 throughout 2017, from April onwards, until November, 14:55  
16 Garda Keogh was kept repeatedly informed of  
17 developments by Assistant Commissioner Fanning, by  
18 sending Inspector McCarthy to speak to him. The  
19 Tribunal has received all that documentation.

20 14:55

21 We refer at paragraph 365 of our written submissions to  
22 correspondence between Assistant Commissioner Fanning  
23 to Garda Keogh about the progress of the complaint.  
24 That's on the 16th May. In that letter Assistant  
25 Commissioner Fanning acknowledged to Garda Keogh that 14:56  
26 he received a 17-page statement dated 27th March 2017,  
27 which was signed by Garda Keogh, he advised him if he  
28 wished to submit further information, he should do so  
29 by the 30th May, as Assistant Commissioner Fanning was

1 "anxious to proceed with the matter". This was  
2 delivered to Garda Keogh on 16th May 2017. In a letter  
3 from Inspector McCarthy to Garda Keogh's solicitor of  
4 the 17th May, he indicated that Garda Keogh was  
5 indicating that he was satisfied that all those issues 14:56  
6 were included in both the signed and unsigned  
7 statements and Assistant Commissioner Fanning was  
8 examining this matter and the correspondent view in due  
9 course.

10  
11 This is followed by a visit on 22nd May 2017, and  
12 further issues were updated. Correspondence on the 5th  
13 June. And then at a later stage, if we move forward to  
14 August, on 17th August 2017, notwithstanding that  
15 communication, Garda Keogh is instructing his 14:56  
16 solicitors to write letters saying that he, Garda  
17 Keogh's complaints have effectively been clandestined  
18 and secreted and covered up.

19  
20 So Garda Keogh himself, in a handwritten letter of the 14:57  
21 17th September, this is paragraph 370 in submissions,  
22 says that the statement that was made by him is  
23 "withheld, lost by Garda management who facilitated  
24 their choice of candidate being promoted". So now it  
25 moves from being a statement of lost property to a 14:57  
26 deliberate concealment of documentation.

27  
28 Then we have Inspector McCarthy meeting Garda Keogh on  
29 the 24th September. In terms of that particular

1 letter, of course, Garda Keogh told him he received no  
2 updated report concerning the allegations. But there  
3 was no concerns expressed or noted by Garda Keogh about  
4 a lost or missing statement. Then we have the same  
5 lost or missing statement referred to in December 2017. 14:57  
6 That's an addendum to Garda Keogh's statement about  
7 bullying and harassment. He said:

8  
9 "I heard nothing further about the processing of the  
10 complaint. I didn't realise the complaint had gone 14:58  
11 missing until I found out that Superintendent Pat  
12 Murray was on a promotion list."

13  
14 It is entirely a matter for you, Chairman, to decide  
15 what to make of that, but on one view of that evidence 14:58  
16 there are a series of parallel train tracks, which are  
17 completely inconsistent, and Garda Keogh is travelling  
18 along those tracks at the same time.

19  
20 We say that raises a significant issue as to the 14:58  
21 credibility or consistency of this point. But what we  
22 do say is that in the issue to deal with the  
23 discussions at headquarters, you may recall that on Day  
24 112 issues arose concerning media leaks from Garda  
25 Headquarters. You will also remember that there was an 14:58  
26 issue which arose in relation to credibility, as to who  
27 had given the information to Garda Keogh.

28 CHAIRMAN: Yes.

29 MR. MURPHY: That is a matter before you and is a

1 matter for you to assess.

2 CHAIRMAN: what information?

3 MR. MURPHY: The fact that there is information that  
4 his solicitor wrote in a letter which contained  
5 particular detail about the meeting that had been 14:59  
6 privately held in --

7 CHAIRMAN: Sorry, yes, yes.

8 MR. MURPHY: You will recall that when pressed Garda,  
9 Keogh declined to give the identity of that person.

10 CHAIRMAN: Yes. 14:59

11 MR. MURPHY: And it was put to that his repeated denial  
12 of knowledge of the person, of the informant was simply  
13 not credible. Again, Chairman, that is a matter for  
14 you to assess. But throughout the process of this  
15 particular bullying and harassment, there has been a 14:59  
16 constant suggestion that the process has been tainted.  
17 We say on those points there's nothing to demonstrate  
18 that that is correct.

19

20 Then there's further complaints of alleged delay 14:59  
21 Assistant Commissioner Finn. Again, in more recent  
22 days you have received his evidence and he has outlined  
23 the nature and circumstances of the investigation. He  
24 has made the case that it was complex. Nobody seems to  
25 be denying that. He has made the case that the 14:59  
26 criminal investigation took nearly three years and he  
27 took I think 13 months. He said that from the very  
28 outset he knew that this couldn't be completed in 28  
29 days. The original complaint made by Garda Keogh was

1 that this was being rushed, facilitating the promotion  
2 of Superintendent Murray. That has now been flipped  
3 around to it's been delayed. So there is a variety of  
4 different approaches.

5  
6 what we say in this case is that the duration of the  
7 investigation was reasonable and the complaint that the  
8 delay was any deliberate ploy by Garda management to  
9 ensure the promotion of Superintendent Murray is made  
10 again without any evidential foundation. It is 15:00  
11 speculation, it is surmise, it is conjecture, nothing  
12 more than that.

13  
14 There is a further complaint which he has made. This  
15 is at paragraph 389 of our submissions, and it was made 15:00  
16 with some vigour by Garda Keogh in the course of his  
17 evidence, that ultimately somehow Assistant  
18 Commissioner Finn, because he decided there had been no  
19 bullying and harassment, was failing to uphold Garda  
20 Keogh's rights and entitlements as a Garda officer. 15:00  
21 And again, that is quite a startling proposition  
22 because it is open to the view by you, Chairman, that  
23 what is meant by that, is that Garda Keogh has an  
24 entitlement to be believed and upheld in relation to  
25 every complaint. And that if a complaint is not 15:01  
26 upheld, that that amounts to a failure to uphold his  
27 rights as a member of An Garda Síochána. We say that  
28 is a very general proposal but one that is not  
29 supported at all. As long as the process itself is

1 subject to proper examination, and that is something  
2 which is capable of being decided one way or the other.  
3 The fact that the decision is adverse to Garda Keogh or  
4 not one he likes, does not mean there has been any  
5 failure to uphold his essential rights.

15:01

6  
7 we make the case that this allegation is not supported  
8 by any evidence and we also say that there's no  
9 evidence to support the complaints of prejudgement  
10 against Assistant Commissioner Finn, and you have heard 15:01  
11 that evidence and it is a matter for you to assess and  
12 determine. Assistant Commissioner Finn has given his  
13 evidence in response. He has also pointed out that, in  
14 fact, he spent the next 12 months carrying out an  
15 investigation, didn't rush to any prejudgement and we 15:02  
16 have in this case too the fact that his investigation  
17 was subject to review by Mr. de Bruir and by Assistant  
18 Commissioner O'Brien. So, in relation to their  
19 assessment that is a factor that we would ask you to  
20 bear in mind as well. We say there isn't any evidence 15:02  
21 to support the allegation of prejudgement or bias that  
22 has been made in the course of the cross-examinations  
23 that were made of him.

24  
25 If I can move then to Issue 19, Chairman, which is 15:02  
26 whether the disciplinary investigation carried out by  
27 assistant commissioner Anne Marie McMahon constituted  
28 discrediting or targeting of Garda Keogh. Garda Keogh  
29 made three allegations. He said first, Assistant

1 Commissioner McMahon failed to arrest Garda A; second,  
2 she deliberately delayed her investigation; and third,  
3 she failed to keep him informed of the progress of her  
4 investigation. So, in relation to the first point, we  
5 make the case that Deputy Commissioner Twomey appointed 15:03  
6 AC McMahon to conduct a disciplinary investigation into  
7 13 allegations and this was just the first step in a  
8 disciplinary process. She has given evidence that she  
9 had no power or business in arresting Garda A. She  
10 said hers was a disciplinary investigation. And again, 15:03  
11 we submit, Chairman that, there is no evidence to the  
12 contrary. No one has identified an obligation on the  
13 part of a person conducting a disciplinary  
14 investigation to carry out arrests. It didn't exist.  
15 And the focus of her investigation is as she has 15:03  
16 outlined.

17  
18 The second point in relation to alleged delay, again  
19 there is evidence demonstrating the fact that Assistant  
20 Commissioner McMahon had to take over the 15:04  
21 investigation. She has given evidence that it was a  
22 lengthy investigation. She has given evidence of the  
23 assessment that she has made of the detailed  
24 information which was present. She has given evidence,  
25 as have others, that this was not the only duty she had 15:04  
26 to carry out. I think, Chairman, you expressed a  
27 concern about that and it features also I think in the  
28 bullying investigation --

29 CHAIRMAN: And in the Ó Cualáin investigation, they

1           took it on in addition to their other work.

2           MR. MURPHY: Yes. So that insofar as that is

3           concerned, that is a matter which -- first of all,

4           again coming back to the issue of the failure to

5           arrest, taking the Terms of Reference and the issue of 15:04

6           targeting and harassment, is there evidence to suggest

7           that there was a failure to arrest Garda A and that was

8           part of a plan to target and discredit Garda Keogh, we

9           say there is no evidence of that at all.

10          CHAIRMAN: I thought that the assistant commissioner 15:05

11          gave evidence that because it was a disciplinary

12          investigation, am I right in saying that she felt she

13          didn't have power to arrest.

14          MR. MURPHY: Yes.

15          CHAIRMAN: That whatever else, there would be sanctions 15:05

16          and -- I didn't think there was a challenge on that

17          issue.

18          MR. MURPHY: No. But also, Chairman, you will have

19          seen elsewhere that different lines of investigation,

20          whether it is bullying and harassment, whether it is 15:05

21          grievance or whether it is discipline, they tend to

22          have different focuses.

23          CHAIRMAN: Yes.

24          MR. MURPHY: But then if it is a criminal

25          investigation. 15:05

26          CHAIRMAN: After Ms. B made the statement in this

27          investigation, that was transmitted to the Ó Cualáin

28          group, there may be a question of delay between maybe

29          September and February, I think, when it went to

1 Detective Inspector Coppinger, but that was the issue,  
2 that they could have effected an arrest if they were  
3 satisfied, isn't that right?  
4 MR. MURPHY: Yes.  
5 CHAIRMAN: There were other issues, but I understood 15:06  
6 the chief said she didn't have power to arrest.  
7 MR. MURPHY: Yes.  
8 CHAIRMAN: Am I remembering that correctly.  
9 MR. MURPHY: Yes.  
10 CHAIRMAN: Okay. 15:06  
11 MR. MURPHY: we say that that is an obvious impediment  
12 on the landscape.  
13 CHAIRMAN: Okay.  
14 MR. MURPHY: That it tends to undermine the suggestion  
15 of any deliberate intention to avoid exercising power 15:06  
16 with a plan to targeting and discrediting Garda Keogh.  
17  
18 The next issue is alleged deliberate delay. Evidence  
19 has been given about the way in which that matter  
20 developed. we have an extraordinary feature at the end 15:06  
21 of the process, whereby she has given evidence that it  
22 was lengthy, it involved consideration of the  
23 statements made in the Ó Cualáin investigation, 28  
24 conferences, 110 statements, approaching 27  
25 individuals, including people who declined to make 15:06  
26 statements, seeking legal advice, waiting for a period  
27 between February and November 2018, pending the outcome  
28 of further investigations by Detective Inspector  
29 Coppinger in relation to Ms. B. So there was an

1 elaborate process, but at the end of the day we say  
2 there is nothing to demonstrate that this was  
3 deliberately steered in a fashion which was calculated  
4 to damage or target Garda Keogh.

15:07

5  
6 Doubly so in this situation, because Assistant  
7 Commissioner McMahon says in the course of her report:

8  
9 "I am of the opinion that there is substance to this  
10 allegation resulting in a potential serious breach of  
11 disciplinary regulations and that a board of inquiry is  
12 established subject to section 25 of the Act to further  
13 examine matter."

15:07

14  
15 She didn't recommend a board of inquiry for the other  
16 seven matters.

15:07

17  
18 We say that the history of this case demonstrates  
19 oversight of her, an ultimate decision made by  
20 Assistant Commissioner Sheehan, and she was effectively  
21 proposing matters, not making the decisions, she was  
22 giving an opinion, that the ultimate decision was to be  
23 taken by Assistant Commissioner Sheehan. And there's  
24 sincerely a question of peer review as well.

15:08

25  
26 Then thirdly, there is a complaint of failing to update  
27 Garda Keogh. We say that there were delays in relation  
28 to clarifying exactly what role Assistant Commissioner  
29 McMahon had, whether she could take over the

15:08

1 investigation or whether she could start a new  
2 investigation. There is evidence from superintendent  
3 Maher that he contacted Garda Keogh on the 6th March.  
4 There is a detailed note of the phone call. There is  
5 evidence of how Garda Keogh behaved during that 15:08  
6 conversation. The conversation ended prematurely. And  
7 ultimately, there's detail of an attempt to have  
8 communication. And that is given by Superintendent  
9 Maher and Superintendent Lacey. That can be seen at  
10 Day 143. Again a matter for to you consider. But none 15:09  
11 of it shows, in our view, any evidence of deliberate  
12 targeting or seeking to visit damage on Garda Keogh on  
13 the basis of he being a whistleblower.

14  
15 We say that the allegations against Assistant 15:09  
16 Commissioner McMahon are all the more surprising  
17 considering the outcome of her investigation and her  
18 recommendation, but nonetheless it is being made on  
19 that basis.

20 15:09  
21 Chairman, Moving now to Issue 20, and that is  
22 complaints by Garda Keogh in relation to the promotion  
23 of Superintendent Pat Murray to Chief Superintendent in  
24 2017. Here in this particular issue we have further  
25 example of communications between Garda Keogh and third 15:09  
26 parties and very clear indication of his animus towards  
27 Superintendent Murray. That is evidenced by his  
28 conduct during that time. We make the point that he,  
29 Garda Keogh, has suggested that the Finn investigation

1 was delayed to facilitate the promotion of  
2 Superintendent Murray and to discredit him. We  
3 disagree with that for the reasons set out in our  
4 submissions at paragraph 411 to 413.

5  
6 We also note, at 414, that in 2016, 2017, 2018 there  
7 was adverse coverage relating to Superintendent Murray  
8 in the media and Garda Keogh also engaged in  
9 correspondence to the Tánaiste, the Minister for  
10 Justice and the Policing Authority about him and  
11 Superintendent Murray was also referred to in the Dáil,  
12 we detail those references. And on the 13th June 2016,  
13 and this is at tab 2, volume 1, of the Tribunal  
14 materials, Garda Keogh wrote to the Tánaiste and the  
15 Minister for Justice saying:

16  
17 "The Garda Commissioner is rewarding Superintendent  
18 Murray by way of promotion while the harassment  
19 allegations have been investigated and prior to the  
20 Policing Authority taking over the promotion  
21 procedure."

22  
23 We say, for the reasons outlined there, that during  
24 that period of time there's evidence before you of a  
25 pattern of vilification of Superintendent Murray in the  
26 public domain. The use of Dáil privilege being  
27 particularly egregious in the sense he no capacity to  
28 take further action. But effectively, and we list this  
29 from paragraph 416 onwards, a litany of condemnations

1 of him in the public domain.

2  
3 It will be a matter for you, Chairman, to make a  
4 decision as to whether and to what extent this may have  
5 affected Superintendent Murray. But this is 15:11  
6 undoubtedly a very unusual experience for a serving  
7 officer to have to undergo. We say it is utterly  
8 unjustified. But it does reflect also that determine  
9 on the part of Garda Keogh to maintain his suit, that  
10 pertinacity in error that we referred to in our 15:12  
11 submissions, and his determined alliance with other  
12 people to enlist their assistance, but it was  
13 ultimately, it appears, his direction and his  
14 determination to hurt or damage or to take down  
15 Superintendent Murray. 15:12

16  
17 You will see again, Chairman, from the diaries which  
18 were opened to Garda Keogh, that he doesn't behind  
19 those views in the diaries. Those diaries are  
20 interesting in our submission because they are a bit 15:12  
21 like a window into his soul at the time. He indicated  
22 to you that he believes that they very important, that  
23 they reflect his innermost thoughts. We have  
24 identified passages from his cross-examination that you  
25 may find of assistance in your overall assessment of 15:12  
26 him.

27  
28 We say that in terms of the overall evidence in the  
29 context of this particular issue, that there's no

1 substance not complaints made by Garda Keogh in  
2 relation to the promotion of Superintendent Murray to  
3 chief superintendent in 2017. On the contrary, there  
4 would appear to be every effort made by Garda Keogh to  
5 prevent that from happening and ultimately the process 15:13  
6 took its course and his promotion was finalised and  
7 completed, we say fully and correctly in accordance  
8 with appropriate and fair and due procedures.

9  
10 Just insofar as I have referred to the diaries, if I 15:13  
11 can just draw the Chair's attention to the documentary  
12 materials in Tribunal, page 13367, an entry of the 5th  
13 July, where Garda Keogh notes himself, in his own  
14 words:

15 15:13  
16 "Under pressure, trying to stop promotions."  
17

18 CHAIRMAN: That is the date of the 5th July?

19 MR. MURPHY: The 5th July.

20 CHAIRMAN: 2017? 15:13

21 MR. MURPHY: 2017, yes.

22 CHAIRMAN: Thank you. 5th July 2017.

23 MR. MURPHY: Yes. And the reason I make the point on  
24 this issue, as I have on others, Chairman, is that in  
25 our respectful submission the diary is a very useful 15:14  
26 insight because matched with actual events, one can  
27 see, as it were, the internal forum, at least some of  
28 Garda Keogh's thinking, his motivation, his  
29 understanding, his health, his condition at that time.

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So, we ultimately say that it is unsettling that a person claiming to be a victim of a targeting campaign will on the evidence be shown to have himself engaged in a campaign so organised and so coordinated as this. We say that the exploitation of Dáil privilege was particularly egregious.

15:14

Issue 21, and I will come to a very general conclusion in a minute, but was a complaint by Garda Keogh that the Disclosures Tribunal order was deliberately withheld from him. We again deal with the facts of that case and you will recall from the evidence of Inspector Minnock indicates that he was tasked with service of the order, that he served associated letters on Garda Keogh, that he delivered on the 21st March 2017, having made several unsuccessful attempts to meet with Garda Keogh, that prior to this he contacted Garda Keogh by telephone. It was agreed that Inspector Minnock would leave a copy of papers at Garda Keogh's house. And Garda Keogh told Inspector Minnock during the telephone call that he was aware of the order. This was then transmuted by Garda Keogh into an allegation that Superintendent Murray had attempted to deliberately obstruct the work of the Tribunal in withholding a Tribunal order from him, a very serious allegation.

15:14

15:14

15:15

15:15

CHAIRMAN: This was a preservation of documents order expressed in general terms.

1 MR. MURPHY: Yes.

2 CHAIRMAN: Anybody with any business or anybody with  
3 any business should keep any papers and shouldn't  
4 dispose of them.

5 MR. MURPHY: Yes, Chairman. 15:15

6 CHAIRMAN: Okay.

7 MR. MURPHY: But again in terms of the question of the  
8 height of the complaint, the beginning, the complaint  
9 was effectively, this can be seen in the Tribunal  
10 materials, that Superintendent Murray had attempted to 15:16  
11 deliberately obstruct the work of the Tribunal in  
12 withholding an order from him. This is a very serious  
13 allegation, it's an allegation of coverup.

14 CHAIRMAN: Yes.

15 MR. MURPHY: And resources of this Tribunal being 15:16  
16 diverted to try and investigate this issue, which had  
17 no substance at all.

18

19 Issue 22 was not pursued.

20 15:16

21 Chairman, if I might just finish very briefly with a  
22 number of concluding comments?

23 CHAIRMAN: Yes.

24 MR. MURPHY: We say, Chairman, that a common feature  
25 appearing through Garda Keogh's evidence and his 15:16  
26 allegations is they are often based on nothing more  
27 than his belief, his assumptions, his perceptions and  
28 without any evidence in support. Even if there were  
29 two possibilities to an outcome, Garda Keogh

1 frequently, if not always, seems to opt for the  
2 sinister one. And in terms of, for example, references  
3 that he made at Day 100 to Chief Superintendent  
4 wheatley and Superintendent Murray's transfer to the  
5 district in which he was working, he asserted without 15:17  
6 any evidence that it was "a bit like badger baiting,  
7 they changed the dogs, they put in fresh dogs". So  
8 again the suggestion there is that there is a wider  
9 master plan, whereby the arrival of new superior  
10 officers is all because of him, all because of his 15:17  
11 status, all because of him being a whistleblower, all  
12 because of a desire to get him by some mysterious cabal  
13 or forces outside the real world.

14  
15 Insofar as this, another example at Day 103, when Garda 15:17  
16 Keogh in his evidence introduced a new allegation, that  
17 Garda A had been tipped off about a planned phone  
18 seizure and wiped his phone. When challenged by you,  
19 Chairman, that he was implying that somebody from the  
20 Ó Cualáin team tipped off Garda A, he replied: 15:17

21  
22 "I have no evidence, it was somebody in the  
23 investigation team that tipped off, like what is  
24 possible is somebody in the investigation team, and  
25 again may have said to somebody." 15:18

26  
27 You, Chairman, remarked:

28  
29 "You know, everything is possible but are you saying

1 that you think somebody tipped him off given that he  
2 could have worked it out himself."

3  
4 And the response was:

5  
6 "Yes."

7  
8 We say that this and other elements is another classic  
9 rush to judgment by Garda Keogh. Now, that can be  
10 forgiven perhaps for a person who does this on a couple 15:18  
11 of occasions through error. But there is a pattern  
12 here, we say, which is a pattern you are entitled to  
13 take into consideration when assessing the reliability  
14 and consistency of the complaints which he has made.

15  
16 Another example, which is in correspondence to the 15:18  
17 Tánaiste, Frances Fitzgerald on 14th June 2016, he said  
18 in the course of that letter:

19  
20 "I was recorded as being out sick with flu by 15:18  
21 Superintendent Pat Murray despite my doctor's  
22 certification of my condition as work related stress."

23  
24 But when being interviewed by your investigators,  
25 Chairman, in 2018, he was asked did he have evidence to 15:18  
26 support the contention, he said, and I quote:

27  
28 "I cannot say it was Superintendent Pat Murray recorded  
29 me as being out sick with the flu as opposed to work

1 related stress, I can only say it is my view that  
2 Superintendent Murray may have been involved and that's  
3 as far as I can go."

4  
5 Garda Keogh was challenged at the Tribunal with the 15:19  
6 difference between the two versions and then his  
7 complaint morphed into an allegation that  
8 Superintendent Murray had permitted the error to  
9 continue. We have indicated that that wasn't the case  
10 and also, as I said earlier on, the evidence is that 15:19  
11 Superintendent Murray had nothing whatsoever to do with  
12 the recording of Garda Keogh's sick leave  
13 classification.

14  
15 Another issue on issues 3 and 4, Garda Keogh appears to 15:19  
16 imagine a plot against him when one didn't exist in  
17 relation to the visit of Olivia O'Neill to the Athlone  
18 Garda Station. Garda Keogh hadn't been accused of  
19 coaching, he wasn't interviewed under caution, he was  
20 asked to make a report, but the response by Garda 15:19  
21 management, we say, was a necessary and proportionate  
22 response but Garda Keogh's was reluctant to get rid of  
23 the perception on his part there was a plot against,  
24 even when he was reassured by Superintendent McBrien.

25 15:20  
26 We say it is similarly in the case of Liam McHugh in  
27 issue 4, which was this allegation of deliberate  
28 targeting involving an alleged plot of total  
29 fabrication by Garda Lyons of his report. Garda Lyons

1 described this allegation as absurd, and it would  
2 appear, and again it is subject to the Tribunal's  
3 superintendence of the evidence, that Garda Keogh made  
4 this allegation of deliberate falsification by Garda  
5 Lyons for the first time when he gave evidence here. 15:20  
6 This was despite the fact that Assistant Commissioner  
7 Finn had supplied him with a copy of the unredacted  
8 Lyons report top Mr. Cullen in 2018. So again, we say  
9 this is an example of Garda Keogh escalating an  
10 allegation but not actually having the evidence to 15:20  
11 sustain it.

12  
13 You may recall, this also chimes with another  
14 allegation that has been abandoned, an allegation that  
15 Commissioner O'Sullivan phoned Superintendent Murray. 15:21  
16 No evidence to support that at all.

17  
18 Garda Keogh also chose to believe in relation to Issue  
19 11 that appropriate action, for example, confining him  
20 to indoor duty, was targeting. We have indicated why 15:21  
21 we believe that to be incorrect.

22  
23 Also we say that his beliefs or perception have  
24 frequently led him to wrongly categorise the action of  
25 reputable, hard-working gardaí as targeting and 15:21  
26 discrediting him. It is submitted that time and time  
27 again his allegation is based on nothing more than his  
28 incorrect perception or personal belief as to what were  
29 reasonable and proportionate actions taken by his

1           superiors.

2  
3           we have dealt previously, Chairman, with issues 5 and  
4           6, again where we say there is no evidence. But we  
5           also say that one of the disturbing features about the 15:21  
6           evidence you may consider is that frequently Garda  
7           Keogh's response to the directions or actions or  
8           questions from his superior officers demonstrated a  
9           disregard towards Authority in what is a dissident  
10          force. Was it because he felt he had a status as a 15:22  
11          whistleblower? One cannot say. But insofar as one has  
12          example of that, one will be the example that Garda  
13          Keogh appeared to consider he was entitled to take his  
14          own view of the CHIS policy, notwithstanding that Chief  
15          Superintendent Curran was his divisional commander and 15:22  
16          was delegated by the Commissioner with that task,  
17          that's in Issue 1.

18  
19          His view also was that he shouldn't be questioned by  
20          management about why he made a Pulse check against 15:22  
21          Garda A because he appeared to see himself as part of  
22          the investigative team in the Ó Cualáin investigation  
23          when, of course, he was not, he was the complainant.

24  
25          In terms of the district officer's issues in relation 15:22  
26          to issue 9, the idea that management and oversight of  
27          crime investigations and attempts to improve the  
28          standards of criminal investigations would be regarded  
29          as targeting him, we say is illogical and inconsistent.

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And then we also have the fact that Garda Keogh declined to provide an explanation for the Pulse entry because of his assertion that Judge McMahon, the confidential recipient, had counselled him not to discuss matters relating to the internal police investigation, notwithstanding the fact that he, Garda Keogh, had disregarded the advice of Judge McMahon by making the entry in the first place and making it known to every guard in the State. This exceptionalism is also evident in his allegation concerning the claim of alleged targeting arising from Superintendent Murray's decision referred to at Issue 10.

15:23

15:23

Finally, if I might just make two further points. We used word at the outset insouciance in relation to making allegations, but you, Chairman, have the evidence of a dialogue with Assistant Commissioner --

15:23

CHAIRMAN: Used the word which?

MR. MURPHY: Insouciance.

15:23

CHAIRMAN: Oh, yes, sorry, yes.

MR. MURPHY: You have received the evidence in relation to Assistant Commissioner Finn's interview, where he was seeking to identify persons who were the subject-matter of the bullying and harassment complaint. The evidence before you, Chairman, demonstrates how that particular dialogue zigzagged and by the end of the process there were three people whose names were on the list, but they weren't at the

15:23

1 beginning and they weren't at the middle, and there was  
2 a suggestion from Mr. Cullen in the notes of the  
3 meeting that there could be others. But I would remind  
4 the Chairman of the line that was put forward at that  
5 stage by Garda Keogh in relation to Chief 15:24  
6 Superintendent Wheatley, which is, let's throw her in  
7 so.

8 CHAIRMAN: Yes.

9 MR. MURPHY: Insofar as that reflects a standard view  
10 about how complaints could be made, if one applies that 15:24  
11 attitude towards many of the other complaints, most of  
12 them which are here, we say that demonstrates a very  
13 disturbing approach towards the making of serious  
14 complaints without regard for the consequences of  
15 people against whom they are made, especially when they 15:24  
16 are made without any evidence.

17  
18 As part of that process, we say that there is also a  
19 pattern which tends to suggest that where Garda Keogh's  
20 version of events did not go as he expected or desired, 15:25  
21 this tended to result in allegations of targeting or  
22 more allegations against the persons who did not do as  
23 he wished to do or to achieve.

24  
25 I would like to make the point also in response to 15:25  
26 Mr. Kelly, who complained at the outset that somehow  
27 the defence of my clients or any of the other Gardaí in  
28 this forum represented somehow a breach of An Garda  
29 Síochána's commitments to whistleblowers

1 CHAIRMAN: Yes.

2 MR. MURPHY: I respectfully say that is completely ill  
3 founded. The evidence and facts discloses that the  
4 whistleblower treatment of Garda Keogh was done in  
5 accordance with the standards of the force to the 15:25  
6 highest level.

7 CHAIRMAN: The defence is pleaded in a manner that  
8 should attract aggravated damages.

9 MR. MURPHY: Because ultimately -- yes.

10 CHAIRMAN: He says that the defence, the manner in 15:25  
11 which the case is met.

12 MR. MURPHY: Yes.

13 CHAIRMAN: The manner in which the submissions are made  
14 is, I suppose, for want of a better word, demeaning of,  
15 disrespectful is the word in my head, but because 15:26  
16 disrespecting is relevant I'm avoiding it, that's what  
17 he says.

18 MR. MURPHY: Yes. But again I say that is ill founded.  
19 If Garda Keogh chooses, as he has chosen, to make wild,  
20 speculative allegations against all of the people who I 15:26  
21 represent or my colleagues represent, they are entitled  
22 to defend themselves and that is what they seek to do  
23 in this forum. Nothing they do in any way changes the  
24 fact that at the same time they maintain, as I  
25 maintain -- 15:26

26 CHAIRMAN: You say they're entitled to defend  
27 themselves and you as counsel or your team, you take  
28 responsibility for the defence and how it's presented  
29 and you stand over it.

1 MR. MURPHY: Yes. Particularly while we are defending  
2 ourselves on the basis we say --  
3 CHAIRMAN: That's what you say.  
4 MR. MURPHY: -- that he was is treated fairly as a  
5 whistleblower. 15:26  
6 CHAIRMAN: I understand. Okay.  
7 MR. MURPHY: And not unfairly.  
8 CHAIRMAN: Yes.  
9 MR. MURPHY: Chairman, those are my submissions.  
10 CHAIRMAN: Now, I understand that Mr. Kelly wants to 15:26  
11 come back, is that right, to say something else?  
12 MR. O'BRIEN: Yes. As I understand it, it will be  
13 quite a short submission.  
14 CHAIRMAN: No problem, we are here to hear submission.  
15 It is very unusual, but what I propose to do is to 15:27  
16 allow Mr. Kelly, he had a very brief intervention, to  
17 allow Mr. Kelly to say what he is going to say and then  
18 to offer Mr. Murphy, if he wants to, a further reply, a  
19 further opportunity to come back, because he would  
20 normally have such a right of reply. You may not do 15:27  
21 so.  
22 MR. MURPHY: I have no issue.  
23 CHAIRMAN: Now, Mr. Kelly. You're back again.  
24  
25 SUBMISSION BY MR. KELLY: 15:27  
26  
27 MR. KELLY: Chairman, can you hear me?  
28 CHAIRMAN: we can hear you loud and clear, Mr. Kelly,  
29 and not only that, we can see you.

1 MR. KELLY: Chairman, I will be brief. The issue came  
2 up and you had raised the point in respect of Issue 17  
3 and the Ó Cualáin investigation.  
4 CHAIRMAN: Yes.  
5 MR. KELLY: That would be that the witnesses should not 15:27  
6 have been in Athlone and why -- the obvious question  
7 was: why did they ever decide to conduct the  
8 interviews there in the first place? I did in fact ask  
9 that. I will give you the reference to it.  
10 CHAIRMAN: Thank you very much. That is very helpful. 15:28  
11 MR. KELLY: It's Day 137, page 111, line 25. I will  
12 read you the question.  
13 CHAIRMAN: Yes.  
14 MR. KELLY: "The point is a simple one. I am putting  
15 it to you that as the chief superintendent it was a 15:28  
16 terrible mistake to have made the decision to interview  
17 people, serving guards, there whilst Garda A was on  
18 duty in Athlone Garda Station."  
19  
20 I then get the reply: 15:28  
21  
22 "Maybe if I can go through the list."  
23  
24 He was handed the list at this point, and he starts  
25 going through it all. Then we go on to page I think 15:28  
26 it's 118, because I didn't want to leave him in any  
27 doubt as to what I was in fact suggesting. At page 118  
28 on Day 137, I say this to him, I put this question to  
29 him:

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"Q. I put it to you fair and square, this is a really bad decision, to have conducted these interviews and to take statements in Athlone Garda Station.

A. I don't agree."

15:29

CHAIRMAN: Thank you very much, Mr. Kelly. First of all, I am glad I raised the question because it was in my mind and I am sure in the course of checking out we probably would have come across Day 137 and that particular reference, but you have referred us to the specific question. It had occurred to me, as I mentioned, as I discussed it with Mr. Murphy that I hadn't recalled that specific point being made. Thank you very much for coming back with that correction.

15:29

15:29

MR. KELLY: You have smart recall, Chairman, if I may say so and I have no doubt it would have come. But it was one of the glaringly obvious things. It is one of the points we make: why were you there in the first place?

15:30

Let me just turn to a couple of other short matters.

CHAIRMAN: Yes. Thank you very much for that. That is very helpful.

MR. KELLY: You're very welcome.

15:30

Mr. Murphy has made the point that Garda Keogh had a grievance which he nursed very well. What I would say is this, if Garda Keogh nursed his grievance as

1 described by Mr. Murphy then it can be said of  
2 Superintendent Patrick Murray that he has nursed his  
3 grievance against Nick Keogh as well as, or even better  
4 than, the way in which a Covid-19 patient is nursed in  
5 an ICU. That is obvious from his statement. Right 15:30  
6 from the off, his statement in the beginning, 31st  
7 March. It goes on in volume 8, from page 2062, where  
8 he raises all the grievances he had, about how  
9 dreadfully he is treated and so on. There is it. It  
10 is a matter for you to make what you will of it. 15:31  
11

12 The point that I am making also is that the submissions  
13 of senior Gardaí, and something touched on at the end  
14 of Mr. Murphy's submissions, and their conduct of the  
15 case has, in our submission, been marked by a sustained 15:31  
16 attack upon Garda Keogh's integrity. And what I would  
17 again ask you to do and invite you as the Tribunal to  
18 find is that Nick Keogh was an honest witness who has  
19 at all times tried to do what he honestly thought was  
20 the right thing in calling out wrongdoing. That was 15:31  
21 also a view that was shared, you will recall, by  
22 Sergeant Haran.

23 CHAIRMAN: Yes. That bit I do remember specifically.  
24 Yes, he did indeed. And Sergeant Moylan I think as  
25 well. 15:32

26 MR. KELLY: That's right, yes. I set out some of  
27 these, the views, at the start of the submissions I  
28 think. It's around about paragraphs 8 and 9.

29 CHAIRMAN: That's right.

1 MR. KELLY: That is an important point because this  
2 isn't a guard who suddenly sat down one day and  
3 thought, look, I'm going to go out to wreck everybody's  
4 career. He was genuinely concerned by what he saw  
5 as -- it's what is classed as the substantive 15:32  
6 complaints; that he genuinely saw as wrongdoing, didn't  
7 believe it was right, and complained. And this is a  
8 chain of events with which we are all too familiar. We  
9 end up here.

10  
11 That is the substance of what I wanted to say. 15:32

12  
13 One final point, Mr. Murphy appeared on some occasions  
14 during the submissions, and perhaps he will forgive me  
15 if I have got it wrong, to be applying something 15:33  
16 equivalent to the test in judicial review for watching  
17 a decision, the B&B, Lord Havisham one; that two  
18 different people can have perfectly opposing views and  
19 each be reasonable. The question isn't whether you as  
20 the judge in deciding in a judicial review would make a 15:33  
21 different decision. That, I completely agree with.  
22 But there is an important distinction here. This is  
23 not a judicial review. This is an inquiry. And the  
24 Tribunal is tasked with investigating the matters and  
25 reaching conclusions on the merits of what is said, who 15:33  
26 to believe and who not to believe, and doing so I say  
27 on the balance of probabilities.

28 CHAIRMAN: Okay.

29 MR. KELLY: That, Chairman, is as concisely put as I

1 can. It is tempting for me to wade through our  
2 submissions again but I am prepared to proceed on the  
3 basis you have read them, you understand them and I  
4 think we have made our case clear.

5 CHAIRMAN: Thank you very much, Mr. Kelly. And 15:34  
6 specifically for the reference to the issue concerning  
7 the questioning in Athlone. Thank you very much for  
8 that particular submission on which I was forgetting  
9 that relevant part. Thank you very much indeed.

10 15:34

11 Okay, I am going to offer Mr. Murphy -- Mr. Murphy, you  
12 don't need to come back on that, do you?

13 MR. MURPHY: Just very briefly, Chairman.

14 CHAIRMAN: Very good.

15 15:34

16 SUBMISSION BY MR. MURPHY:

17 MR. MURPHY: Just the first point, Chairman, relating  
18 to Mr. Kelly's point concerning questions at page 118  
19 of Day 137.

20 CHAIRMAN: Yes. 15:34

21 MR. MURPHY: And the question was put was a question  
22 suggesting that it was a really bad decision to conduct  
23 the interviews. The first point I would make is that  
24 the witness did not agree; secondly, the question was  
25 not put to the witness that it was a really bad 15:35  
26 decision because this was targeting Garda Keogh because  
27 he was a whistleblower.

28 CHAIRMAN: Oh no, sorry, we were discussing, you and  
29 I --

1 MR. MURPHY: Yes.

2 CHAIRMAN: -- I thought were discussing it, so to  
3 speak, independently of attribution of blame or  
4 responsibility, but I hadn't recalled and said that I  
5 didn't recall a point being specifically made that this 15:35  
6 was a bad decision and a stupid decision and Mr. Kelly  
7 reminded me of that. He had actually done that.

8 MR. MURPHY: But insofar as the issues are concerned,  
9 the point I have sought to make this afternoon is that  
10 it isn't sufficient for it to be -- 15:35

11 CHAIRMAN: I appreciate that.

12 MR. MURPHY: It has to be the next level.

13 CHAIRMAN: I understand your submission about that.  
14 But this was a very specific point of fact: was it  
15 put? Was it suggested? Was it not? And Mr. Kelly has 15:36  
16 very helpfully pointed out that out. I am very  
17 grateful.

18 MR. MURPHY: The second point I would like to make,  
19 Chairman, briefly if I can, is that Mr. Kelly prays in  
20 aid the views of Sergeant Haran and others about Garda 15:36  
21 Keogh's sincerity in relation to his whistleblowing  
22 complaint. That hasn't been an issue here today or at  
23 any stage during this process. What we have been  
24 dealing with is the complaints made after that  
25 whistleblowing complaint was made. In fact, the 15:36  
26 evidence is that my clients, Detective Superintendents  
27 Mulcahy and Coppinger and An Garda Síochána took that  
28 complaint deadly seriously and investigated it. That  
29 was a different issue to the defence of allegations

1 that continue to be made when they shouldn't be made  
2 and shouldn't be pursued when there is clearly no  
3 evidence to support them.

4 CHAIRMAN: Okay. Thank you very much for those  
5 submissions and that's all very helpful and I better 15:36  
6 not say too much by way of thanks and appreciation.  
7 People will understand that there will come a time when  
8 we have to consider other issues, so I better not say  
9 too much in the way of thanks, but I do appreciate the  
10 way counsel and solicitors have dealt with the Tribunal 15:37  
11 in a courteous and helpful manner and I think we have  
12 avoided any unpleasantness and any rows or  
13 difficulties. So thank you very much to everyone.  
14

15 Mr. McGuinness. 15:37

16 MR. MCGUINNESS: Yes, Chairman. Just one matter  
17 arises, obviously out of where we are today.

18 CHAIRMAN: Yes.

19 MR. MCGUINNESS: The parties filed their submissions,  
20 their written submissions, in the last week in May 15:37  
21 under very difficult conditions and circumstances but  
22 got them in on time in compliance with the deadline --  
23 CHAIRMAN: Yes, and I am very grateful.

24 MR. MCGUINNESS: -- much to everyone's admiration and  
25 happiness. But obviously those submissions necessarily 15:37  
26 and hadn't and couldn't take account of the evidence  
27 that we have heard this week from the remaining two  
28 witnesses.

29 CHAIRMAN: Right, correct.

1 MR. MCGUINNESS: And in that context, Chairman, it was  
2 obviously thought a bit unreasonable to expect the  
3 parties to deal with that evidence today.

4 CHAIRMAN: Yes.

5 MR. MCGUINNESS: So, Chairman, what I would suggest is 15:38  
6 that you give the principal parties, and I think it  
7 really only concerns Garda Keogh's team and the Garda  
8 Commissioner's team as a whole, to decide if they want  
9 to or if they need to put in any submissions which  
10 refer to any bit of the evidence of either Mr. Barrett 15:38  
11 or Assistant Commissioner Finn on the recall issue.  
12 Obviously from our point of view, Chairman, we would be  
13 anxious to get that in as soon as possible.

14 CHAIRMAN: So if I said --

15 MR. MCGUINNESS: Mr. Kelly referred there in his 15:38  
16 submission to an expectation that they would have two  
17 weeks to do it, but I should just draw one feature of  
18 it to your attention, Chairman. Garda Keogh's team in  
19 their original submissions didn't put forward --

20 CHAIRMAN: Issue 12. 15:39

21 MR. MCGUINNESS: -- any submission on Issue 12 at all  
22 and were reserving their right. So it seems to me as a  
23 necessary corollary, that when they put in their full  
24 and first and only submission on Issue 12, An Garda  
25 Síochána presumably will want to have an opportunity to 15:39  
26 reply to that within a very short space of time I would  
27 hope.

28 CHAIRMAN: Let's just think for a second. The way we  
29 have done it so far is that the parties have put in

1 their submissions and we haven't gone through the  
2 process -- we have circulated the submissions but  
3 parties have not come back with rebutters or  
4 surrebutters, as depending on the thing, because we  
5 didn't want to be -- but this today was intended 15:39  
6 essentially as an opportunity for people to address, I  
7 mean they are free to address what they wanted to  
8 address, but including points made in the submissions  
9 of the other parties. So I am assuming that that has  
10 been done and that parties are happy to rest on their 15:40  
11 submissions as they stand. It was certainly my  
12 intention -- first of all, it is understandable that  
13 Garda Keogh's team would have said we're holding up our  
14 Issue 12 submissions until we have heard Mr. Barrett,  
15 particularly Mr. Barrett, but Mr. Barrett and Assistant 15:40  
16 Commissioner Finn. So I thought they were due in on  
17 Friday week, the 11th, am I right about that?  
18 MS. MULLIGAN: Chairman, we have no issue with having  
19 them by next Friday.  
20 CHAIRMAN: Friday week is the 11th? 15:40  
21 MR. McGUI NNESS: The 10th.  
22 CHAIRMAN: The 10th. Friday week. Close of business.  
23 Thanks. So that is the outstanding Issue 12 which we  
24 understand you withheld, you withheld for that purpose.  
25 Now we also knew that we were asking for submissions 15:41  
26 while there were two witness outstanding and that  
27 parties, the Gardaí and Garda Keogh, might want to make  
28 submissions, brief additional submissions taking  
29 account of the two witnesses who gave evidence. That's

1 not difficult in Garda Keogh's case because you can  
2 incorporate that in your submission. So deal with  
3 presumably the Issue 20 insofar as Assistant  
4 Commissioner Finn added or didn't add to it as you see  
5 fit. You may not wish to do so, but if you do so, you 15:41  
6 are free to do so. Similarly for An Garda Síochána, if  
7 there is anything arising, which I am not sure anything  
8 will arise, but if there is anything arising out of  
9 Mr. Barrett's evidence, the same facility applies and  
10 please could we have it by Friday, 10th. So, that is 15:42  
11 Friday week. So thanks very much, Mr. McGuinness, for  
12 reminding me about that.

13 MR. MCGUINNESS: Might I just conclude, Chairman, by  
14 thanking the legal teams of all the parties, in  
15 particular the legal team for the principal parties who 15:42  
16 have carried a very heavy burden in relation to their  
17 representation, both solicitors and counsel, and the  
18 cooperation of all of the others teams. It makes our  
19 job an awful lot easier --

20 CHAIRMAN: Indeed. 15:42

21 MR. MCGUINNESS: -- and facilitates the running of the  
22 Tribunal.

23 CHAIRMAN: I appreciate that.

24 MR. MCGUINNESS: From our point of view, as the  
25 Tribunal legal team we appreciate that very much. 15:42

26 CHAIRMAN: As I say, at this point I don't want to say  
27 too much myself by way of general appreciation, but I  
28 think the parties will understand the respect and  
29 esteem in which I hold them and the fact that I don't

1 expand on it at this moment will not accuse my zeal, as  
2 they may say. Anyway, thank you very much indeed for  
3 your assistance and we will produce the report as soon  
4 as we can. Thank you.

15:43

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6 THE HEARING THEN CONCLUDED  
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