

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

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

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

HEARING HELD IN DUBLIN CASTLE
ON WEDNESDAY, 16TH FEBRUARY 2022 - DAY 167

167

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

GWEN MALONE STENOGRAPHY
SERVICES

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FORMER PRESIDENT OF THE COURT OF
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TAKE NOTICE – PURSUANT TO ORDER DATED THE 1ST DAY OF
FEBRUARY 2022 OF MR. JUSTICE RYAN OF THE DISCLOSURES
TRIBUNAL

IT IS HEREBY ORDERED THAT the identification by name of Mr.
'A' or of any other suspect whether directly or indirectly
in connection with investigations undertaken by An Garda
Síochána is hereby prohibited;

AND IT IS FURTHER ORDERED THAT any interested party in this
matter be at liberty to apply on the giving of 2 days
notice in writing to the tribunal.

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1 THE HEARING RESUMED ON WEDNESDAY, 16TH FEBRUARY 2022 AS
2 FOLLOWS:

3
4 CHAIRMAN: Good morning.

5 MR. MCGUINNESS: Good morning, Chairman, our witness 10:32
6 today is retired Assistant Commissioner Al McHugh.

7 CHAIRMAN: Thanks very much. Good morning,
8 Commissioner. Assistant Commissioner Al McHugh

9
10 RETIRED ASSISTANT COMMISSIONER AL MCHUGH, HAVING BEEN 10:32
11 SWORN, WAS EXAMINED BY MR. MCGUINNESS AS FOLLOWS:

12 CHAIRMAN: Thanks, Commissioner.

13 MR. MCGUINNESS: For the convenience of the parties,
14 Chairman, Mr. McHugh's statement is to be found at page
15 804 in our papers onwards. 10:33

16 1 Q. If you have no objection, I am going to address you and
17 refer to you as Assistant Commissioner McHugh, because
18 it's convenient for us to refer to the rank that you
19 were holding at all relevant times, if you have no
20 objection? 10:33

21 A. No problem.

22 2 Q. Now, there is a microphone in front of you, perhaps
23 you'd switch it on, there is a button in the middle of
24 that panel, and if you'd maybe just direct the
25 microphone towards your voice when you are answering. 10:33

26 A. I will.

27 3 Q. I think you retired from And Garda Síochána in 2009 at
28 the rank of Assistant Commissioner?

29 A. That's correct, Chairman.

1 4 Q. And I think, until your retirement, is that correct,
2 you had been the Assistant Commissioner with
3 responsibility for the Dublin region?
4 A. That's correct, Judge -- Chairman.
5 5 Q. And you'd be referred to in correspondence as A/C DMR, 10:34
6 is that right?
7 A. That's correct.
8 6 Q. And could you give the Tribunal an overview of the
9 responsibilities associated with that position?
10 A. Yeah. I took up that position in, I think, around June 10:34
11 2004. I had executive responsibility for the Dublin
12 region, which covered Dublin city and county. In terms
13 of my management team, I had seven chief
14 superintendents who covered seven divisions, I had 20
15 superintendents who reported to their managers, who 10:34
16 were the chief superintendents, and six detective
17 superintendents. There were 20 districts in the city
18 and 49 stations, and at the time of my retirement, the
19 resources in the city were over 4,000 guards of all
20 ranks and about 450 civilian employees, or Garda staff 10:35
21 as they are known now.
22 7 Q. At the time we're talking about, principally, 2006 into
23 2007, how many years experience would you have had by
24 that time?
25 A. I joined the Garda Síochána in 1969, so, I would have 10:35
26 had 37 years experience, and I spent my time on -- at
27 different ranks in different stations around the
28 country. I was district officer in Cork City, a
29 superintendent for two years. I was a number of years

1 in different branches and in Garda Headquarters as a
2 super and a chief superintendent. I was three years as
3 a chief superintendent in the Louth/Meath division
4 which covered Louth/Meath based in Dundalk, and prior
5 to becoming Assistant Commissioner I was the chief 10:36
6 superintendent in the Dublin North Central division,
7 which covered Store Street, Fitzgibbon Street, the
8 Bridewell and Mountjoy.

9 8 Q. Now, we'll come to aspects of your function at a later
10 stage in some detail, but just touching on the 10:36
11 discipline regulations for the moment, it's my
12 understanding that anyone of the rank of chief
13 superintendent or otherwise can act as an appointing
14 officer under the discipline regulations as they were
15 at the time, is that right? 10:36

16 A. That's correct, Chairman.

17 9 Q. And that's a responsibility that could be exercised in
18 any case where it is appropriate within the
19 regulations --

20 A. That's correct. 10:37

21 10 Q. -- by any divisional officer in any region essentially,
22 or of high rank?

23 A. That's correct?

24 11 Q. As I understand it also, it wasn't a delegated function
25 as such, because the discipline regulations 10:37
26 contemplated that, depending on the rank you held?

27 A. That's correct.

28 12 Q. Now, what was your role in relation to crime
29 investigation in the City of Dublin, as it were? Was

1 it an overview, a supervisory role or very much a
2 management role or...?

3 A. My position would have been as a management role. The
4 district officers in each district would have been
5 responsible for the investigation and overseeing of all 10:37
6 crime investigations, coupled with, in each division
7 there was a detective superintendant who had direct
8 responsibility for investigation of crime who would in
9 return report to the chief superintendant in those
10 divisions. 10:38

11 13 Q. Yes. And in terms of the supervision of those, if I
12 could use that word, what was the level of scrutiny as
13 it were, that you paid to, you know, the investigation
14 of major events or major crimes or...?

15 A. Well certainly in regard to major crime, I would be 10:38
16 briefed on, you know, a regular basis by the divisional
17 officers in each of those divisions as to what the
18 progress of much of the serious crime that what was
19 happening in those divisions.

20 14 Q. Yes. We'll come obviously to the murder of Ms. Saulite 10:38
21 in a minute, but you were asked by our investigator,
22 what was -- what were the general principles applicable
23 to dealing with a threat to an individual or a
24 perceived threat or perceived level of threat, and I
25 think you dealt with this in your answers to the 10:39
26 investigator at page 8225 of our documents, and perhaps
27 we'll just see that on the screen. And this is your
28 answer -- I suppose I should go back, scroll up to the
29 previous page to see the precise question. And the

1 question is there:

2
3 "Q. I have been asked from my experience as Assistant
4 Commissioner DMR what was the process in general terms
5 with respect to acting on intelligence received of a 10:39
6 threat to life of an individual in terms of
7 A) the process of analysis and assessment of the
8 information received,
9 B) internal reporting/dissemination of such information
10 within An Garda Síochána, and 10:40
11 C) contact with the individual the subject of the
12 threat."

13
14 And then your answer is overleaf there. You say.

15 10:40
16 "In general terms with regard to the process of
17 analysing information received concerning a threat to
18 life one is conscious of a number of factors that may
19 influence Garda actions, including the nature and
20 content of the information supplied and the likelihood 10:40
21 of such threat being carried out. Other factors may
22 include what is known about the parties, whether or not
23 similar threats had been made in the past and previous
24 Garda actions in connection with the same."

25 10:40
26 And then B):

27
28 "On receipt of such information there would be an
29 obligation to report it to one's line managers.

1 Thereafter, additional inquiries might be made that
2 would determine the level of dissemination depending on
3 the immediacy of the threat to life,
4 C) any credible threat to the life of an individual
5 would prompt contact with that person and crime 10:40
6 prevention advice would be given as a matter of
7 course."

8
9 So, just looking at the first answer, A) there, if you
10 just scroll back up to see all of A). Obviously, and 10:41
11 this isn't a criticism, it is a general answer to what
12 was posed as a general question. I suppose one could
13 take from that that the analysis of information
14 received about a threat to life depends on all the
15 circumstances that are known. 10:41

16 A. At the time.

17 15 Q. Including previous actions, antecedents, previous
18 reporting, et cetera. And that would be -- that be
19 would be the guiding fact or the driving force in how
20 you would assess it and respond, would that be fair to 10:41
21 say?

22 A. Yeah, that's correct.

23 16 Q. The second one there - an obligation to report it to
24 one's line managers - how would you expect that to be
25 done in circumstances, in a general way? 10:42

26 A. Depending at what level the information was received,
27 the expectation would be that it would be reported to
28 the recipient of the information to the next level, who
29 either could be sergeant or inspector or

1 superintendent.

2 17 Q. Yes. Now, I suppose information could be received in a
3 number of different ways, but it could also be reported
4 in a number of different ways. Would you expect it to
5 be recorded on Pulse by a member? 10:42

6 A. Well, depending on the sensitivity of the information,
7 sometimes something like that may not be recorded on
8 Pulse until such time as maybe it would be assessed as
9 to, you know, what was involved.

10 18 Q. Yes. Obviously that would apply to, as it were, clear, 10:42
11 hard intelligence in a fashion, that detail wouldn't be
12 put on Pulse, is that normally --

13 A. No.

14 19 Q. But would a statement by a victim about their fears or
15 threats, would you expect to see that on Pulse? 10:43

16 A. Yeah, I would expect, you know, something of that level
17 would be on Pulse, yes.

18 20 Q. Obviously it would also be possibly be capable of being
19 reported upon in the normal way, sort of with a report
20 going up? 10:43

21 A. Yeah, normally if a threat was received, you know, a
22 report should normally follow on it. Now, depending on
23 the severity of the threat.

24 21 Q. Yes. And would you expect any documentation to be
25 associated with any particular file in the matter, in 10:43
26 the normal way?

27 A. Eh, I'm not particularly sure on that. You know, in
28 some cases, if the threat was of a very severe nature,
29 and, you know, the threat was maybe imminent, Crime and

1 Security -- or the Assistant Commissioner of Crime and
2 Security branch would have to be notified also in order
3 to have, you know, a proper threat assessment carried
4 out.

5 22 Q. Yes. Is that a significant factor, the immediacy or 10:44
6 the immanency of a possible action on foot of a threat?

7 A. Yeah, certainly the immediacy of it would dictate that,
8 that should be done fairly promptly.

9 23 Q. I mean, just in a hypothetical situation where somebody
10 has complained of threats, four years ago, five years 10:44
11 ago, and they mightn't have been repeated since, in a
12 sense, they are a vintage threat as opposed to a recent
13 threat?

14 A. Well, it really would depend on the content of the
15 threat; what was implied in the threat. 10:44

16 24 Q. Okay. We'll come back to issues related to that at a
17 later stage.

18
19 You, I think, on the 11th October came into possession
20 of some information that was brought to your attention 10:45
21 relating to a threat to Mr. Hennessy?

22 A. I did indeed.

23 25 Q. And you convened a conference of officers whom you have
24 identified in the question and answer session --

25 A. That's correct. 10:45

26 26 Q. -- where the threat was considered. And it was decided
27 to take action by way of alerting Mr. Hennessy and
28 putting in place certain measures?

29 A. That's correct.

1 27 Q. And would that have followed this general outline, as
2 it were, as to assessing it and responding and
3 informing?
4 A. Well, in Mr. Hennessy's case, you know, the threat was
5 a very definite threat, and it was also reported to 10:45
6 Crime and Security branch at the time, so I called the
7 meeting and in view of the contents of what was known
8 and possibly the immediacy of the threat, and arising
9 out of that then, Mr. Hennessy was informed and got
10 appropriate crime prevention advice at the time. 10:46

11 28 Q. Yes. And I think Detective Superintendent Byrne was
12 one at the meeting?
13 A. He was.
14 29 Q. He was the D/Super in Santry?
15 A. He was, indeed. 10:46

16 30 Q. And he with others went to Mr. Hennessy?
17 A. They liaised with Mr. Hennessy.
18 31 Q. And a bulletin issued to all of the local stations as
19 well, isn't that correct?
20 A. That's correct. 10:46

21 32 Q. Now, can I ask you -- I appreciate it's some years --
22 can you say whether you were aware of other threats
23 that had been issued to Mr. Hennessy, or any other
24 events that had happened earlier that year in
25 connection with this? 10:47

26 A. No, I did not -- that was my first knowledge of
27 Mr. Hennessy. I was -- I did not know of previous
28 threats or of previous incidents in respect of
29 Mr. Hennessy.

1 33 Q. Yes. And at that point in time had you heard of
2 Ms. Saulite?
3 A. No, I hadn't.

4 34 Q. Right. Okay. And consequently you weren't aware of
5 anything concerning previous threats to her or 10:47
6 complaints she might have made --
7 A. Definitely not.

8 35 Q. -- at that point in time?
9 A. No.

10 36 Q. And can the Chairman take it there was no evidence of 10:47
11 any threats brought to your attention at that time in
12 connection with her life?
13 A. No, that was the first knowledge I had of John Hennessy
14 and the fact that he was acting for her in a family law
15 case. 10:47

16 37 Q. Now, Ms. Saulite was shot dead, murdered as we know, on
17 the night of the 19th, and I think you attended a
18 number of conferences the next day in Swords?
19 A. I did. Now, to be honest, I had forgotten that and I
20 had no memory of it, because I attended so many 10:48
21 conferences during my period and so many murders I had,
22 until I read the notice of Inspector Cryan which
23 confirmed that I was at the conference.

24 38 Q. Yes. And it records you as being there at the morning
25 conference and then one slightly later in the day? 10:48
26 A. Yeah, the one later in the day was to discuss how we'd
27 go forward as regards dealing with John Hennessy.

28 39 Q. All right. Okay.
29 A. That was in Santry.

1 40 Q. Yes. All right. Now, can I ask you, at that stage was
2 it brought to your attention that she had come to the
3 station and produced a draft victim impact statement?
4 A. No.

5 41 Q. Can you recollect when you first heard of that? 10:49
6 A. I think it was probably two or three days later. I'm
7 trying to think of the date now, in terms of the 19th,
8 20th -- I think around the 22nd, it was brought to my
9 notice by divisional officer, Chief Superintendent
10 Phillips. 10:49

11 42 Q. Well, can you recollect was he telling you that he knew
12 there was one and that he was trying to get it, or that
13 he had seen it or read it or...?
14 A. No, he told me that -- in a briefing, I suppose, on the
15 murder he told me that this document existed, where she 10:49
16 had come to the station a number of days prior to her
17 murder, met some gardaí, Sergeant Hughes and another
18 guard, and that Sergeant Hughes had some fears as
19 regards what was contained in the document, and as a
20 result, I looked for that document. 10:49

21 43 Q. And what was the fears of Sergeant Hughes that were
22 being communicated to you?
23 A. I can't recall what fears, but I just remember it was
24 in that context that he told me about it.

25 44 Q. Detective Inspector Cryan had a note about the note of 10:50
26 the afternoon of Tuesday the 22nd, and he recorded --
27 and he has given of evidence of obtaining the victim
28 impact statement from Sergeant Hughes where it had been
29 placed in his locker. Now, there was some evidence

1 given of Chief Superintendent Phillips looking for it
2 and an apparent reference to being given instruction by
3 you to get it almost at all costs, in the sense that if
4 it was in his locker his locker should be opened. Have
5 you any memory of giving an instruction that if he 10:51
6 couldn't be got, to get it in time, that the locker
7 should be opened and broken open maybe?

8 A. Yeah, I did have a discussion and I never said to burst
9 open his locker, but in the event of Sergeant Hughes --
10 I think if I recall, maybe Inspector Cryan would have 10:51
11 had difficulties in contacting him for different
12 reasons, and I said in the eventuality of he being
13 unable to acquire the document, consideration would
14 have to be given to forcing open the locker, if keys
15 couldn't be got for the locker from the staff sergeant, 10:51
16 and probably at the end of the day, I never intended
17 that, you know, his locker would be forced open, but I
18 did speak in those terms.

19 45 Q. Yes. Was it to convey the urgency of getting it?

20 A. I beg your pardon? 10:52

21 46 Q. Was it to convey the urgency of getting the document?

22 A. It was indeed, I wanted to see this document.

23 47 Q. I mean, had you been made aware that Sergeant Hughes
24 had handed over the file, he had handed over the
25 disclosure file. He had given another copy of the file 10:52
26 to Inspector Cryan, and that Inspector O'Sullivan knew
27 that there had been a victim impact statement but it
28 still hasn't been, as it were, taken possession of in
29 the context of what was happening?

1 A. No, none of that was discussed with me, or I wasn't
2 told about that.

3 48 Q. Okay. All right. Inspector Cryan has given evidence
4 of getting the document from Sergeant Hughes, who did
5 come in, and bringing it to Chief Phillips who had it 10:52
6 faxed to you. Did you read it straight away?

7 A. Yeah, it would arrived in my office sometime in the
8 afternoon. I would have -- it was a handwritten
9 document. I would have gone through it. And, you
10 know, I found huge concerns with a very defining line 10:53
11 in it, where she said that at the moment I'm very
12 scared for my life. And, you know, to me, that
13 conveyed at the moment that it was the present tense,
14 whatever night that she was in Swords station.

15 49 Q. And in terms of any discussion with Chief 10:53
16 Superintendent Phillips, Inspector Cryan has given
17 evidence that what was relayed to him through Chief
18 Superintendent Phillips was a message that Sergeant
19 Hughes had nothing to worry about in terms of anyone
20 blaming him in relation to the matter not, having read 10:54
21 it or going after him in some way. Did you have such a
22 discussion with Chief Superintendent Phillips?

23 A. I can't recall. If he did, you know, speak in those
24 terms, I would have had a hugely different
25 interpretation of, you know, what I read at the end of 10:54
26 the document.

27 50 Q. But did you send any sort of signal that Sergeant
28 Hughes had nothing to worry about?

29 A. Oh, I didn't. I conveyed no such message like that.

1 51 Q. You see, Inspector Cryan has recorded, and the Chairman
2 heard about it the other day, that he recorded:
3
4 "The chief asked me meet Sergeant Hughes and tell him
5 that he was satisfied there was nothing untoward in the 10:54
6 victim impact report that was unfinished and needed
7 editing."
8
9 Had you considered the victim impact statement from the
10 point of view of whether it was in a state to be 10:55
11 presented in court, as such, or would be accepted, or
12 did you consider it from an entirely different point of
13 view?
14 A. I didn't look at it from the condition that it was in,
15 that it was -- whether it was being prepared for court 10:55
16 or not being prepared for court. I was purely
17 interested in seeing what was contained in it.
18 52 Q. Yes. Well, is that because it was the last known
19 contact, as far as you were concerned, that Ms. Saulite
20 had with the investigating members? 10:55
21 A. Yeah, from the knowledge that I had was, that this was
22 three or four days before the unfortunate woman was
23 shot. I didn't know was there any other contact, but
24 as far as I was concerned, it appeared to be the last
25 contact she had with Gardaí. 10:56
26 53 Q. Yeah, that was your state of knowledge at the time?
27 A. Yeah.
28 54 Q. Okay. We heard from Superintendent Donohoe, who was
29 the press officer, and he was at I think one of the

1 meetings with you, and then he issued a statement on
2 behalf of the Commissioner that afternoon, and perhaps
3 we'd just look at that, it's at page 795 of our papers
4 -- you have probably seen this before, have you?

5 A. I have indeed, yeah.

10:56

6 55 Q. And he explained why it was being issued in evidence,
7 and went through the contents. But the second last
8 sentence is the one I just want to ask you about at the
9 moment. It says, at the bottom of the page:

10

10:57

11 "The Garda Commissioner is now examining when and to
12 whom this information was known."

13

14 Now, in his statement, Superintendent Donohoe said that
15 he is sure that he would have consulted with the
16 Commissioner and that the Commissioner would have
17 approved the text of the press release before it was
18 issued, and would that be in accordance with
19 Commissioner Conroy's scrutiny of these matters?

10:57

20 A. Mr. Conroy's?

10:57

21 56 Q. Mr. Conroy's practice in these matters?

22 A. Yeah, I'd never any dealings with the Press Office, but
23 I understand that the press officer and the
24 Commissioner are in regular contact in regards to
25 different issues.

10:58

26 57 Q. Yes. And obviously there is nothing unusual about
27 that. But, did you become aware of the Commissioner's
28 desire to examine when and to whom this information was
29 known?

1 A. I mean, I don't know when I would have read that press
2 release, but certainly I had no contact with
3 Kevin Donohoe, Superintendent Kevin Donohoe, I never
4 dealt with Kevin Donohoe as an Assistant Commissioner
5 in terms of any crime investigation, and I had 10:58
6 absolutely no input into anything that's contained in
7 that press release.

8 58 Q. Okay. That's very clear. The other question then is:
9 did you discuss the issue with Commissioner Conroy at
10 the time, do you recall? 10:58

11 A. No, I did not.

12 59 Q. Okay, right. There was a press report the following
13 day after that press release written by Mr. Brady, Tom
14 Brady who was a security journalist, as it were. And
15 perhaps we'd just look that at that, that's page 8096. 10:59
16 And just if we scroll down a small little bit there,
17 there is a reference there to:

18
19 "The Latvian born mother of two disclosed her concerns
20 for her safety in a victim impact statement prepared 10:59
21 for a court case involving her estranged husband.
22 Senior Gardaí said last night they had not become aware
23 of the contents of the statement or her express safety
24 fears until early yesterday."

25 10:59
26 Certainly I am not suggesting that you were talking to
27 the press about that, but as far as your position was
28 concerned, you hadn't yourself known about that until
29 the 22nd?

1 A. The press -- yeah, I can't -- I don't know whether I
2 saw that article or not, but -- I certainly had no
3 input into Tom Brady's contribution.

4 60 Q. No. But just in terms of the kept of it, you hadn't
5 been aware of the contents of the statement until 11:00
6 yesterday as well?

7 A. That's correct.

8 61 Q. And it just quotes then -- or it doesn't quote the
9 Commissioner, but it says:
10
11 "Garda Commissioner Noel Conroy has now ordered an
12 immediate review of all Garda files on Ms. Saulite and
13 [blank] to establish who knew of those concerns at an
14 earlier stage. The review being carried out by an
15 assistant commissioner will focus in particular on 11:00
16 whether any garda knew about those concerns."
17

18 And it seems to be bringing the story forward as to who
19 would do the review and I wonder --

20 A. Sorry? 11:00

21 62 Q. I wonder, can you help us in that regard? Was that an
22 issue that was live within Headquarters on that day or
23 the day after or --

24 A. As I said, I never had any dialogue with Commissioner
25 Noel Conroy. I never received any directions from 11:00
26 Commissioner Conroy. And certainly I would expect, if
27 a direction had been issued, it would have come in
28 writing and I'm sure there would be a paper trail
29 there. I don't have it. I accept it was I who

1 initiated what was done, I have said that in the
2 questions to the investigators.

3 63 Q. I see that. And it's just it may -- it may not be all
4 that anomalous or much of a mystery, but the Press
5 Office, on the Commissioner's instructions, had issued 11:01
6 the statement that the Commissioner is now examining to
7 whom and where these concerns were known, and it's your
8 evidence that on the 6th December then, unconnected to
9 the Commissioner's desire, you decided you would carry
10 out a fact-finding? 11:01

11 A. Yeah.

12 64 Q. Is that right?

13 A. That's correct.

14 65 Q. Okay. And obviously that's a number of days -- some
15 time after the murder itself. When did you take that 11:01
16 decision as such?

17 A. It would have been probably maybe one or two days
18 beforehand I would have got the document left to have
19 typed. I mean, I would have quite, you know, a busy
20 office, considering the amount of staff and divisions 11:02
21 in Dublin I had to deal with, you know, it wasn't a
22 spontaneous thing that I did but it was done in days
23 subsequent.

24 66 Q. Yes. Perhaps we'll just look at the documentation. I
25 think you tasked Chief Superintendent Feehan to carry 11:02
26 that out. And if we look at page 854, I think that's
27 the instruction you gave. And just in terms of the
28 scope of that, you obviously refer to the interaction
29 of Ms. Saulite with members of An Garda Síochána in the

1 second paragraph. And then in the third paragraph, you
2 are referring to two members which -- I take it you
3 knew it was Sergeant Hughes and Garda Nyhan who had
4 been meeting with her on that day?

5 A. Yeah, I did from the draft victim impact document. 11:03

6 67 Q. Yes. And that paragraph ends by saying "...it
7 transpires that Ms. Saulite had raised in the written
8 material fears for her safety." And then the
9 instruction is there:

10
11 "Carry out a fact-finding investigation into the level
12 of knowledge in possession of An Garda Síochána prior
13 to Ms. Saulite's murder. Let me have your views and
14 recommendations in early course. 11:04

15
16 Detective Superintendent Michael Byrne, the officer in
17 charge of the investigation, will provide relevant
18 background material." 11:04

19
20 And if we could just go on then, I think that's -- if 11:04
21 we scroll down, I think that's signed by you on the
22 day.

23
24 Now, can you just help the Tribunal to understand what
25 you were intending to set in train in terms of a 11:04
26 fact-finding investigation?

27 A. Well, because of the nature of the, you know,
28 fact-finding, preliminary inquiries, scoping, whatever
29 you want to call it, I'd expect that I'd have got an

1 amount of knowledge that would dictate what course I
2 would take as a result of what would have been acquired
3 during the fact-finding.

4 68 Q. Yes. So, you regarded it as not necessarily the end of
5 what might occur, but it was to give you a platform of 11:05
6 facts from which to make a decision?

7 A. Yeah, it was going to guide me into whatever decision
8 making I would take at its conclusion.

9 69 Q. And presumably, these sort of inquiries are relatively
10 common, the fact-finding inquiry? 11:05

11 A. Fact-finding, or some people call them scoping or other
12 people would call them preliminary inquiries, but yeah,
13 they would be common.

14 70 Q. Certainly one species of them does appear to referred
15 to as a preliminary inquiry in the Garda Code under the 11:05
16 discipline part of the Code, chapter 10?

17 A. Yeah, it's a while since I saw the Code, but yeah.
18 It's a long time since I saw the Code but certainly,
19 yeah.

20 71 Q. Perhaps we'd just look at that, it's at page 6479, it's 11:05
21 one small paragraph, 10.6. And it says:

22

23 "Preliminary inquiries in relation to discipline.
24 In some cases it may be necessary to have preliminary
25 inquiries conducted to establish the facts before the 11:06
26 appointing officer decides to appoint an investigating
27 officer. A brief report should normally be sufficient
28 for the appointing officer at this stage and extensive
29 investigation should be avoided."

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So it seems to envisage an inquiry about the facts which takes place outside the commencement of anything under the discipline regulations, would that be fair and accurate?

11:06

A. Well, at that stage I had no pre-determination in my mind, you know, what I was going to do when I got the report back.

72 Q. Yes. I suppose it would depend what was in the report obviously?

11:06

A. Exactly.

73 Q. You weren't going to prophesise what might or might not be reported?

A. No.

74 Q. And I suppose you have experience, many other cases of appointing investigating officers under the regulations?

11:07

A. I have indeed, yes.

75 Q. And I'm not asking, and I wouldn't expect you to have any statistics at all, but presumably it would be common for fact-finding reports to come back which don't go anywhere, would that be your experience or not?

11:07

A. Oh certainly, in fairness to the people involved, if there is no justification to pursue it any further, you know, that would be the end of it.

11:07

76 Q. Yes. I suppose some fact-finding could lead to a criminal investigation?

A. In some cases.

1 77 Q. And some fact-finding might lead to the establishment
2 of -- or the appointment of an investigating officer?
3 A. That's correct.

4 78 Q. Okay. And it did so in this case, and we'll come to
5 that in due course? 11:08
6 A. I beg your pardon?

7 79 Q. It did so in this case?
8 A. It did, yes.

9 80 Q. Obviously at a later point. But I mean if I asked you
10 to describe what you intended Superintendent Feehan to 11:08
11 do in terms of -- in terms of the scope, the scope of
12 it in the most general way?
13 A. Well, the only information I had at the time was the
14 document received by the two gardaí in Swords, and if
15 other evidence emerged that -- from the fact-finding -- 11:08
16 that other members were aware of threats, that would be
17 considered as well. It wasn't a case of setting up a
18 fact-finding to -- I won't use the word target, but to
19 concentrate on both garda -- or Sergeant Hughes and
20 Garda Nyhan. Further, I'd expect that it was broader 11:09
21 than that.

22 81 Q. Yes. If we could go back to your question and answer
23 document, at page 8228. You were asked by the
24 investigator -- if we just go down there -- you were
25 asked this question about the scope and nature of it. 11:09
26 And you said:
27
28 "While I didn't place any specific parameters on the
29 fact-finding, my information at the time of writing was

1 that retired Sergeant Hughes and Garda Nyhan may have
2 been in possession of relevant information regarding a
3 threat to the life of Ms. Baiba Saulite."

4
5 Factually speaking, that was accurate, is that right? 11:09

6 A. It was, yeah. I didn't place any parameters on it. I
7 would be dictating then how Chief Feehan would carry
8 out his work. I didn't place any parameters on it.

9 82 Q. Yes. And I think you had some discussion with Chief
10 Superintendent Feehan at around that time about the 11:10
11 scope of it, is that right?

12 A. Yeah. Well, on a daily basis, or maybe on a number of
13 times during the week, he was one of my divisional
14 resources, he was the chief superintendent of Store
15 Street, he would be in contact with me as regards 11:10
16 incidents in his own particular division and I would
17 have told him that I was giving him this task. But
18 that's as far as it went.

19 83 Q. Yes. I suppose a more specific question is: was it
20 intended by you to be limited to the knowledge of those 11:10
21 two members of An Garda Síochána, or was it to look at
22 it in a more general way to see what evidence of a
23 threat?

24 A. Oh, no, it certainly was not limited to Sergeant Hughes
25 or Garda Nyhan. It was, in general, what information 11:10
26 was available. I think it's fairly broad, the report
27 that I sent asking that it be carried out.

28 84 Q. It does refer to "in possession of An Garda Síochána,"
29 rather than simply two named members?

1 A. Oh, it did, yeah. Oh, of course.

2 85 Q. In terms of the, as it were, depth of inquiry that you
3 wanted or expected Chief Superintendent Feehan to do,
4 how extensive did you expect it to be, or could you
5 have an expectation? 11:11

6 A. Well, while I didn't place any parameters on it, I
7 expected that there would have been a sufficient search
8 done to establish was any threats known to the
9 deceased, Ms. Saulite.

10 86 Q. Yes. And what would then determine what you did next? 11:12
11 At this stage now if you could help the Chairman how to
12 access you were approaching it?

13 A. Is this now after getting the report back?

14 87 Q. No, no, before you got it back, where did you think it
15 might lead you, or what were the possibilities in broad 11:12
16 terms?

17 A. Well in broad terms, I wanted to establish if threats
18 were known to other members of the -- people in that
19 particular district apart from Sergeant Hughes and
20 Garda Nyhan. 11:12

21 88 Q. Yes, all right. And if we just scroll down the page
22 there, you were asked a question then about any
23 discussions with Chief Superintendent Feehan, and your
24 answer here is recorded as:
25 11:13

26 "I had a preliminary discussion with Chief
27 Superintendent Feehan informing him that I intended to
28 direct him to conduct a fact-finding investigation
29 arising out of written material provided to two members

1 of An Garda Síochána. . . "

2

3 If we go over the page. And that was your starting

4 point, that you gave him?

5 A. Yes. 11:13

6 89 Q. All right. And you do emphasise, I think in your

7 statement and in this question and answer, that the

8 issue, if it arose at a later stage in terms of any

9 other possible suspected breaches of discipline, it

10 didn't preclude you from following down those routes if 11:14

11 any other member's knowledge warranted it, is that

12 right?

13 A. Yeah. Was this now when the discipline was initiated?

14 90 Q. I mean, did you contemplate that at this stage, that it

15 might go possibly beyond the knowledge of Sergeant 11:14

16 Hughes and Garda Nyhan?

17 A. Well, that was the intention of setting up the

18 fact-finding; to establish what knowledge was there.

19 And if the knowledge did appear, I'd expect that the

20 same route would be followed, as I did in respect of 11:14

21 Sergeant Hughes.

22 91 Q. Okay.

23 A. And I think when you get to that, I had covered that in

24 the covering note that went out with the documents when

25 we get to the -- that part of it. 11:15

26 92 Q. Yes. Now, while the fact-finding was going on did you

27 receive any reports that Inspector Mangan had produced

28 for Chief Superintendent Feehan?

29 A. No, I received no material until the document was

1 received, I think it was in March, 26th March.

2 93 Q. Yes. And I think you received those on the 26th March,
3 and perhaps we'd look at those, they are in Volume 9 at
4 page 1963 on to 1981. That's almost a 19-page report.
5 And you are probably very familiar with that, or 11:15
6 certainly you were at the time I am sure.
7 Now, obviously there is an introduction there which
8 recites your instruction.

9 A. That's correct.

10 94 Q. There is a number of pages which deal with 11:16
11 Ms. Saulite's background, and then it deals with
12 allegations that she had made in her statement of 2005
13 in some detail?

14 A. Yeah, the 4th January I think, 2005.

15 95 Q. And I think those statements were appended to the 11:16
16 report?

17 A. They were.

18 96 Q. And you had regard to them, I'm sure, in your overall
19 consideration of the matter?

20 A. I did, yeah. There was some very damning content in 11:16
21 that statement in respect of Mr. A.

22 97 Q. Yes. In the account relating to Ms. Saulite, it goes
23 up to the 7th November when there was a plea of guilty
24 entered on the abduction, and there's a neutral
25 recitation of the production of the victim impact 11:17
26 statement to the two members on the 14th, isn't that
27 correct?

28 A. Correct.

29 98 Q. Part 3 of the report then, from page 1967, concerns an

1 examination of Garda records of contact with
2 Ms. Saulite. If we just go down to the bottom of that
3 page -- 1967. And there is -- there follows a précis
4 of all of the Pulse records that were held in relation
5 to her and that Crime and Security, isn't that right? 11:18

6 A. Yeah, that's right.

7 99 Q. And if we just look briefly at the next page, scrolling
8 through, there is just -- all the way down, if we can
9 go quickly through the next two or three pages,
10 scrolling down, and that covers a period -- if we keep 11:18
11 going down to number 11 even -- we don't need to go
12 into the detail of any of these. But it goes on, then,
13 to deal with intelligence reports relating to her at
14 the bottom of the page, isn't that correct?

15 A. Yeah, oh yes, yes. 11:19

16 100 Q. And then if we go over, it details other reports from
17 2005 down to number 14 and 15, if we just stop at 14
18 and 15 there, they are reports from, respectively,
19 Garda Nyhan and Sergeant Hughes there. And there is
20 reference there to intimidation in the last couple of 11:19
21 lines of that.

22 If we then go on across the page, there is number 16
23 there, which refers to the 11th October, which records
24 the account given by Sergeant Hughes in relation to
25 that. 11:20

26 The next section deals with reports of violence and
27 intimidation towards her. It refers, obviously in some
28 detail, to her first original statement taken in the
29 investigation, which was being led by Sergeant Hughes

1 at that time, that was taken by Garda McNally, and
2 there is a summary of the issues raised in that
3 statement over the next three pages: 1972, 1973, 4, and
4 down -- if we go to page 1975 -- just stop there now.
5 This then details the events of the 14th November, and 11:20
6 records different details from the statement. And then
7 at the top of page 196, it refers to the portion of the
8 statement that you have referred to earlier in your
9 evidence.

10 Then there is a reference to Sergeant Hughes's report, 11:21
11 which is summarised there. On the next page then,
12 there is a reference to Garda Nyhan's report. There is
13 a reference to Garda McEneaney's report. Again, which
14 that related to -- this is on page 1978, Garda Nyhan's
15 report there, Garda McEneaney's report, he had spoken 11:21
16 to her on the same day, on the 11th October. And then
17 there is a reference to relevant case law.

18 There is no explicit reference to Mr. Hennessy or the
19 threats to Mr. Hennessy or the fact that they were
20 obviously linked, in terms of being generated or 11:22
21 emanating from the same person; did you see that as an
22 omission in any way in the fact-finding report that you
23 got?

24 A. As far as I recall, Sergeant Hughes had included that
25 in his 16-page document that he submitted to Inspector 11:22
26 Mangan, that he was aware of the more recent threat and
27 that -- I think a firearm had been acquired, that was
28 around, I think he said the 13th October, I actually
29 got the information on the 11th.

1 101 Q. Yes, it was the 11th. The reference now to the case
2 law, I think you will recall I asked you at the
3 beginning about the general principles underlying the
4 reaction to a threat that you would have received from
5 information. This is looking at the issue of a threat 11:23
6 from the point of view of State responsibility then,
7 and State responsibility as it's devolved onto the
8 police, as it were, in the performance of their duty.
9 And presumably, you took that into account, is that
10 right? 11:23

11 A. I did, yeah. I think that case referred to a specific
12 threat.

13 102 Q. If we look at the top of page 1979, there is reference
14 to the facts of the case. But it then goes on to sort
15 of quote the court there where it says: 11:24
16
17 "The court stated that where the 'authorities knew or
18 ought to have known at the time of the existence of a
19 real and immediate risk to life of an identified
20 individual or individuals it was their duty to take all 11:24
21 measures within the scope of the powers that might have
22 been expected to avoid that risk'." The court went on
23 to state that 'measures must take into account the
24 rights and freedoms of all individuals involved'."
25 11:24

26 So, is this a factor that you considered in your
27 decision as to what you would then do?

28 A. Yeah, I think the documents that were served
29 subsequently on Sergeant Hughes would have, I think,

1 contained some of the language that was used in that
2 particular judgment.

3 103 Q. Okay. We'll come to that when we look at the framing
4 of it then.

5 Chief Superintendent Feehan put his views and
6 recommendations then in the next two and a half pages,
7 and he identifies that the most significant involvement
8 in the second paragraph there, appears to have been in
9 relation to the investigation of the abduction. And
10 from what you were presented with, did you agree with
11 that? Did you think that that appeared to be a
12 reasonable conclusion?

11:24

11:25

13 A. The -- in what way now?

14 104 Q. Well, what he is saying is:

15
16 "The most significant Garda involvement with
17 Ms. Saulite appears to have been in relation to the
18 investigation of the abduction of her two children by
19 her partner. Sergeant William Hughes, Swords, was
20 directed by the then district officer in Coolock,
21 Superintendent Noel McLoughlin, to carry out an
22 investigation into these abductions. That
23 investigation included the taking of a number of
24 statements from Baiba Saulite, in which she had alleged
25 that she had been assaulted and intimidated by [blank]
26 on several occasions and that she was in fear of him.
27 These statements were included in a file which was
28 completed by Sergeant Hughes and forwarded to the
29 Director."

11:25

11:25

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And then it goes into what the Director --
He seems to be saying that the most significant Garda
involvement with her was in relation to the Sergeant
Hughes led investigation?

11:26

A. Yeah, it was, certainly Sergeant Hughes was very
involved, generally -- or mostly involved in the
investigation of the abduction of the two children,
and, you know, would have had a very close relationship
in terms of he dealing with her on a very regular
basis.

11:26

105 Q. Yes. In terms of the scope of what you had asked Chief
Superintendent Feehan to do, which was to look at the
information in the possession of An Garda Síochána,
were you satisfied that he appeared to have presented
you with a fairly comprehensive picture of what was
known about Ms. Saulite, going back some considerable
period, what was known about her husband, and her
interaction with the Guards over the course of that
substantial period?

11:26

A. Yeah, I think he covered it quite well in his report.

106 Q. Yes. In the next paragraph then, he refers to the 14th
November meeting, and quotes from Sergeant Hughes
there. And he then refers to the Osman case again, and
his concluding paragraph then on the following page, is
as follows:

11:27

11:27

"Taking account of the foregoing, it is apparent that
there was knowledge in existence and available to An

1 Garda Síochána in relation to threats from [blank] to
2 Bai ba Sauli te. The members of An Garda Síochána
3 readily admit this in their reports. In order to fully
4 outline the facts in existence and the level of actions
5 taken as a result of this knowledge coming into the 11:28
6 possession of members of An Garda Síochána, I recommend
7 that a full investigation should be carried out into
8 this matter."
9

10 Now, what did you understand him to be recommending 11:28
11 there?

12 A. My understanding of his recommendation from what was
13 contained in his report was that he was recommending a
14 discipline investigation.

15 107 Q. Yes. And why did you -- why did you think he was 11:28
16 recommending that, or did you have any doubt about that
17 issue?

18 A. No, I had no doubt about it. Sergeant Hughes had met
19 the deceased on the 14th November, five days before she
20 died. She had produced a document. There was a very 11:29
21 defining statement in the document that at the moment
22 -- which to me signifies the present tense, that day --
23 I am very scared for my life. Unfortunately he didn't
24 read the document. The document was placed in his
25 locker and five days later the unfortunate mother was 11:29
26 shot. Together with his knowledge that -- in the
27 statement contained on the 4th January 2005, it was
28 damning evidence there which could be coupled with what
29 she had said on her statement on the -- or her draft

1 statement on the 14th November.

2 108 Q. I mean --

3 A. I wasn't alleging that he was in breach of discipline.

4 109 Q. Yes. No, I understand that. But did you regard this 11:30
5 as, as it were, a sufficient platform to require a
6 further inquiry into --

7 A. I did indeed. I mean, under the '89 regulations the
8 threshold, you know, is very low in terms of what's
9 required to initiate a discipline investigation. If a
10 breach of discipline may be disclosed, it's very loose, 11:30
11 I suppose, and, you know, it's a very low threshold
12 compared to maybe the new regulations that came in
13 shortly afterwards.

14 110 Q. Yes. From the answer you have given, it seems that you
15 were taking into account as being a most relevant fact, 11:30
16 the currency of the threat, the time at which it was
17 communicated, and then the way you perceived it might
18 have been dealt with by Sergeant Hughes --

19 A. Sorry? And also the fact that, you know, he had
20 knowledge that there was a specific threat on the life 11:31
21 of John Hennessy, who had been her solicitor; it was
22 very much in the air at the time, and that he was
23 getting Garda attention.

24 111 Q. And obviously a discipline investigation is a
25 completely different forum and could lead to 11:31
26 potentially very significant outcomes were it to be
27 progressed right through to the conclusion of a
28 disciplinary inquiry. I suppose you couldn't know
29 whether it might go there or not?

1 A. No, not at that stage. Like, the reason for
2 establishing it would be to establish if there were
3 grounds there to prefer breaches of discipline; that
4 would be the intention. I was never alleging at any
5 stage that he was in breach of discipline. It was very 11:32
6 much that he may have been in breach of discipline.

7 112 Q. Yes. Sergeant Hughes, and his counsel will no doubt
8 ask you about this, perceived it as entirely different,
9 as sort of targeting of him by unfairly selecting him
10 out of all of the other members who either did know or 11:32
11 might have realised or should have realised a risk of a
12 danger to Ms. Saulite.

13 A. Well I had no other evidence from that fact-finding
14 that would justify me establishing a disciplinary
15 investigation against others. 11:32

16 113 Q. All right. And is that, I mean, more or less based on
17 the fact that they had been given the draft victim
18 impact statement, they had it, nobody else had it?

19 A. Exactly.

20 114 Q. And the concern about what had been done or not done 11:33
21 with it seems to have been a driver in the decision to
22 proceed a little further then, that would be accurate?

23 A. You mean in terms of initiating the discipline?

24 115 Q. Yes.

25 A. Yeah, it was one of the influencing factors. 11:33

26 116 Q. I mean, I suppose it would be impossible not to regard
27 the threat as being -- having been expressed
28 immediately at the time and put down in the document.
29 But were you concerned to establish whether their

1 accounts were correct, that they hadn't read it?

2 A. well --

3 117 Q. Or was that a possibility?

4 A. well, I was guided by the investigation that the two
5 experienced people carried out, a detective inspector 11:34
6 and chief superintendent, and I was guided by their
7 conclusions.

8 118 Q. Did you see any deficiency or obvious gap in the level
9 of reporting that Chief Superintendent Feehan had
10 brought to you? 11:34

11 A. No. It was, you know, a fact-finding, a scoping. I
12 didn't.

13 119 Q. The report, as I think I have referred to, contains
14 several different appendices, many, many Pulse records
15 and the various reports we have referred to. Do you 11:34
16 want to refer to any of those at this stage? I don't
17 intend to open any of them in any more detail.

18 A. Em... no, I don't think there is a requirement.

19 120 Q. Perhaps if we just look at the old discipline
20 regulations of 1989 that were I think in operation at 11:35
21 the time. They were seen superseded by the ones then
22 in 2007. But if we look at page 6420, and if we scroll
23 down there, there is a definition there of:

24

25 "'Appointing officer' has the meaning assigned to it by 11:35
26 regulation 8.2 and includes a member of the same or
27 higher rank acting in place of the appointing officer."
28

29 So if we then go down to regulation 8. And this is the

1 first step in something that may become a process that
2 continues, obviously. And it says.

3
4 "Subject to regulation 7, where it appears that there
5 may have been a breach of discipline the matter shall 11:36
6 be investigated as soon as practicable by a member not
7 below the rank of inspector (in these regulations
8 referred to as an investigating officer)."

9
10 Then sub-regulation (2): 11:36

11
12 "An investigating officer shall be appointed by a
13 member (in these regulations referred to as an
14 appointing officer) who is not below the rank of chief
15 superintendent or who is a superintendent assigned to 11:36
16 discharge the duties of a chief superintendent."

17
18 I think you took your decision on the basis of
19 regulation 8 there, isn't that correct?

20 A. Yeah, I did. 11:37

21 121 Q. If we just scroll back up to that. And it appeared to
22 you that there may have been a breach of discipline.
23 And I think from points you have emphasised in your
24 statement and your questions and answers, you weren't
25 determining that there was a breach of discipline. 11:37
26 That could only -- if it ever came to it -- would
27 happen later, isn't that correct?

28 A. There was never, ever, ever, any question of I
29 determining that there was a breach of discipline

1 and can I ask you at this stage, why did you decide to
2 do that or...?

3 A. Well, I had no particular reason. I chose him because
4 I found him to be the best person to do the position.
5 I know regulations have changed since and that you have 11:39
6 to appoint someone from -- that hasn't dealt with the
7 case already, but that was the position in 2007.

8 127 Q. Yes. Obviously he had the prior involvement and the
9 experience and knowledge of that which he had
10 investigated so far? 11:40

11 A. He had.

12 128 Q. And did you consider that would be an advantage?

13 A. I didn't take any of those things into consideration.
14 I just had him in mind that that's who I was going to
15 appoint to investigate the discipline. Like none of 11:40
16 those factors influenced me, if that's what you are
17 asking me.

18 129 Q. Pardon?

19 A. None of those factors influenced me, if that's what you
20 are asking. 11:40

21 130 Q. Yes. And I mean I don't know whether it's in any way
22 an issue, but did you discuss his -- did you discuss
23 the decision to appoint someone with anyone else?

24 A. No, I didn't. Any decision I took was purely by
25 myself. 11:41

26 131 Q. And did you discuss with Chief Superintendent Feehan
27 his possible appointment as such?

28 A. I told him that I was appointing him under the
29 discipline regulation to carry out the discipline

1 investigation. Nothing further.

2 132 Q. And it will become relevant at a later stage, but an
3 officer so appointed as an investigating officer, he
4 can't go off and investigate other things pursuant to
5 your order of appointment, isn't that right? 11:41

6 A. That's correct. But in the course of his
7 investigation, if he discovers that there are breaches
8 of discipline emerge against other members, he reports
9 that.

10 133 Q. Yes. But he doesn't go off investigating that himself, 11:41
11 or he doesn't go off appointing himself as the
12 investigating officer into that?

13 A. Oh, no.

14 134 Q. That would emerge as facts reported upon, either to you
15 or some other person, and then a decision would have to 11:42
16 be made about appointing somebody else to do that?

17 A. Exactly.

18 135 Q. I mean, just thinking of different cases over the
19 years. Members have got into trouble with, you know,
20 firearm certificate money in stations down the country. 11:42
21 And if you appointed an officer to investigate that,
22 and he found out in fact that when looking at the
23 station money, that passport money, for instance, or
24 other monies had gone missing, he doesn't then
25 investigate that, but would report that back as a fact 11:42
26 and then it would or might lead to a separate
27 investigation; would that be a fair reflection of what
28 would happen?

29 A. Yes, it would. Otherwise, you'd be coming to a

1 conclusion without having it investigated.

2 136 Q. And in terms of your power as an appointing officer,
3 the regulations don't provide for you to expand his
4 task by appointing him at the same time to investigate
5 other breaches in connection with either the same 11:43
6 officers or other officers; you can't amend your
7 appointment?

8 A. No. No, I can't.

9 137 Q. And regulations don't provide for any of that?

10 A. No. 11:43

11 138 Q. Now, can we just look at your appointment of Chief
12 Superintendent Feehan at page 2081. 2081 should be
13 coming up in a minute if you bear with us. In any
14 event, you issued that on the 4th May and at the same
15 time you informed the A/C HRM of the fact of doing it, 11:44
16 as is required?

17 A. Yeah, that would be the normal practice, that they
18 would be informed.

19 139 Q. And if we just scroll down, you are reciting section 8,
20 and this is the only, I think, record that does exist, 11:45
21 and I'm not saying -- there is nothing wrong about
22 that -- of the basis of your appointment?

23 A. Yeah, that's the normal procedures on establishing an
24 investigation.

25 140 Q. So, it's arising, it says there in the second line, out 11:45
26 of your fact-finding investigation into the level of
27 knowledge in possession of An Garda Síochána prior to
28 the murder of Baiba Saulite at her home, et cetera, et
29 cetera.

1 And can I ask you then just to look at the detail of
2 the acts or commission or omission alleged, that's at
3 page 2083

4 A. Can I scroll down, if you don't mind, please?

5 141 Q. Sorry.

11:46

6 A. Just scroll up again, please.

7 142 Q. Scroll up.

8 A. Up, sorry. Well -- the other way.

9 Just to highlight, and maybe it's coming back to the
10 question you were talking about earlier, you know, to
11 clarify for the chair as well:

11:46

12

13 "During the course of your investigation, should you
14 identify further breaches of discipline against other
15 members, you should notify this office immediately so
16 as to have the necessary forms completed."

11:46

17

18 Just to highlight that, that that was included in the
19 covering note that went to Chief Feehan.

20 143 Q. Yes.

11:46

21 A. It's just going back to the point that you --

22 144 Q. Yes, and that's standard practice?

23 A. It is.

24 145 Q. If we then look at 2083, and I think just to be clear
25 about this, this isn't a breach of discipline charge
26 under the regulations?

11:46

27 A. Definitely not.

28 146 Q. It defines, as it were, the scope of the discipline
29 investigation to be conducted by the investigating

1 officer. And in terms of the influence of the Osman
2 decision, it appears to have been used as the basis for
3 that which was to be investigated because it reflects
4 the language of it?

5 A. Yeah, it does, and I think it came from the Court of 11:47
6 Human Rights, so it would be considered a very credible
7 judgment I think.

8 147 Q. It seems to envisage, I would suggest to you, the three
9 different things to be looked at: what they knew,
10 number one; number two, what they ought to have known; 11:48
11 and whether, then, they failed in their duty to take
12 measures that might have been expected to avoid the
13 risk based on what they knew or either what they ought
14 to have known.

15 And did you contemplate that it would focus an 11:48
16 investigation outside of the provision of the victim
17 impact statement to include all matters, or was it
18 primarily directed towards that?

19 A. It would be -- it would -- it could be confined to the
20 victim impact -- sorry, yeah, the victim impact 11:48
21 statement would be one -- I was thinking of the
22 fact-finding. Sorry, the victim impact statement had
23 to be one of those that had to be considered.

24 148 Q. So you weren't excluding any other meetings -- or you
25 didn't intend to? 11:49

26 A. No, I did not, no.

27 149 Q. And just, I suppose, fast forwarding quickly: when
28 Chief Superintendent Feehan reported back and referred
29 to earlier meetings as being relevant to either their

1 appreciation of a threat or their alleged failure to
2 act, that was entirely proper for him to do that, to
3 refer to earlier meetings?

4 A. Is this in the --

5 150 Q. Yes. 11:49

6 A. -- in the original report?

7 151 Q. In the report to come.

8 A. Oh yes.

9 152 Q. Nothing wrong in him having regard to any earlier
10 meetings? 11:49

11 A. No, I wouldn't have found any difficulty with that.

12 153 Q. I mean, I suppose one aspect of it is what I referred
13 to earlier as a vintage threat, an older threat would
14 necessarily affect -- might affect the view of a member
15 when they were considering a later threat. That would 11:50
16 be --

17 A. Yeah, it should have been in their mind.

18 154 Q. Okay. Well, just going on then to look at some
19 documentation in the course of what was to become a
20 lengthier inquiry than you envisaged. If we could look 11:50
21 at document 2097. This is a letter from Mr. Costello,
22 solicitors, it was sent to Assistant Commissioner
23 Clancy. It dealt with another matter in the first
24 paragraph, and it dealt with the disciplinary issue in
25 the second paragraph. 11:50
26 And in the last paragraph on that page it says:

27

28 "On our client's instructions the motive behind the
29 service of such a notice on our client is quite clear

1 and at this point and in order to advise our client we
2 require to know the following information..."
3
4 Insofar as they are impugning the motive behind the
5 service of it, did you have any motive other than the 11:51
6 normal invocation of the discipline regulations where a
7 question arose that a breach may have occurred?
8 A. Yeah, I was purely coming from the point of view that a
9 breach of discipline may have occurred. I wasn't
10 making any other implications in establishing the 11:51
11 discipline inquiry.
12 155 Q. I think the request related to three issues overleaf,
13 if we go onto the next page. And those questions were
14 asked there. And this was referred on to you. And I
15 think you replied by letter of the 9th August -- or the 11:52
16 8th August at page 2104?
17 A. Yeah, I think this letter was referred -- or
18 Mr. Costello probably wrote to me as a result of
19 whatever he was told by --
20 156 Q. 2104, this was your reply to Mr. Costello. 11:52
21 A. Yeah.
22 157 Q. And just to go to the substance of the reply there.
23 You are making the case, insofar as it's a case, that
24 you are complying with the regulations.
25 A. Exactly. 11:53
26 158 Q. And insofar as the request is for information, on the
27 next page, you provide the following answers there:
28
29 "That the documentation and information alleged to have

1 been in your client's possession include, inter alia, a
2 copy of a 12-page handwritten document wherein Bai ba
3 Saulite stated..."

4
5 Then there is a quote there then for it. 11:53

6
7 And then:

8
9 "B. It is alleged that your client failed in his duty
10 to take measures which would have been expected of him 11:53
11 to avoid any risk to Ms. Saulite."

12
13 Then you point out there is no provision in the
14 regulations for what they are looking for.

15 A. Yeah. 11:53

16 159 Q. And that would be a fairly normal response to
17 something?

18 A. Yeah, I was complying with what's in the regulations.
19 They are there 20 or 30 years, and there wasn't
20 provision there to supply the documentation that he was 11:54
21 looking for.

22 160 Q. Yes. At page 2109, Mr. Costello wrote back looking for
23 the 12-page document. And again, I think you replied,
24 at paragraph -- at page 2112 -- that the position
25 remains the same, the regulations do not require this 11:54
26 to be done, isn't that correct?

27 A. Yeah.

28 161 Q. You were asked I think for a progress report, if we go
29 to 2121. And were you aware that the issue then of his

1 fitness for interview was becoming an issue?

2 A. Yeah, I don't know at what stage you are at now, but it
3 did -- that was a key point.

4 162 Q. well, perhaps I should look at 2124. You are seeking
5 an update from Chief Feehan there? 11:55

6 A. Yeah, I am. That was in April, yeah.

7 163 Q. Yes, and you are enclosing Mr. Costello's letter. You
8 tell Mr. Costello, at 2126, that you are seeking an
9 update.

10 A. That was signed by someone in my absence but it's from 11:55
11 my office.

12 164 Q. Yes. You are pressing Chief Superintendent Feehan for
13 an update, at page 2128 and 2129, I don't think we need
14 to look at them. Chief Feehan writes to you then on
15 the 25th May, at 2134. And this is where he first 11:56
16 tells you of the issue relating to stress, et cetera.

17 A. Sorry, what was the date of that letter, please?

18 165 Q. This is the 27th May?

19 A. '08?

20 166 Q. '08. Yes. He refers -- it's at the bottom of the 11:56
21 page, but in the middle paragraph he refers to the
22 previous year's events where --

23 A. The meeting was arranged.

24 167 Q. The meeting was arranged, et cetera. And then Chief
25 Superintendent Feehan, as we know, and we will hear 11:57
26 from him directly in the next few days, he wrote off to
27 the CMO immediately after that looking for --

28 A. After receiving a fax from Costello solicitors.

29 168 Q. Yes, exactly. And he had enclosed that documentation

1 to you.

2 If we jump forward to page 2159. And this was

3 informing you that advices had been issued from the

4 office of the CMO in respect of the disciplinary matter

5 and will be relayed to the parties. This is in June 11:57

6 2008. And I think you passed that on to Chief

7 Superintendent Feehan on the 23rd June, at page 2160.

8 And if we just go forward to page 2166, you had -- by

9 the time you were writing this letter on the 11th July

10 -- you had received the report of Chief Superintendent 11:58

11 Feehan in relation to Garda Nyhan

12 A. Yeah...

13 169 Q. And we don't need to go into the contents of that. But

14 you considered his report in relation to Garda Nyhan

15 and decided that there was no breach of discipline. 11:59

16 The matter ended there?

17 A. Yeah, I discontinued -- as provided under the

18 regulations, I discontinued it.

19 170 Q. Yes. Now, insofar as the decision to initiate a

20 disciplinary investigation is concerned, I think there 11:59

21 was no litigation either taken or threatened in

22 relation to that step, isn't that correct?

23 A. No?

24 171 Q. No litigation.

25 A. Litigation? 11:59

26 172 Q. Yeah.

27 A. Em... At no stage -- I wouldn't have been aware of any

28 litigation. Nothing came through my office that I can

29 recall as regards litigation. I think that was

1 channelled through Assistant Commissioner HRM, so I
2 wouldn't have been aware of it.

3 173 Q. At page 2170, you were being written to by Chief
4 Superintendent Feehan in July of 2008, again updating
5 you in relation to what is in reality the lack of
6 progress? 12:00

7 A. Yeah, I don't know, but I may have corresponded with
8 him asking what was the delay, or give me an update.

9 174 Q. Yes. If we go onto the second page there, page 2171,
10 the second last paragraph he says: 12:00

11
12 "On that basis --"

13
14 That is in relation to the earlier advices.

15 12:00
16 "On the basis that the investigating officer was
17 informed by the legal representative of Sergeant Hughes
18 that his client is unfit to be interviewed in this
19 matter and that no advice to the contrary has been
20 received by the investigating officer, Sergeant Hughes 12:00
21 has not been interviewed in this matter to date.

22
23 The interview of Sergeant Hughes is required before
24 disciplinary aspects of this matter can be 'brought to
25 closure' . " 12:00

26
27 And presumably, you'd agree with that as being a
28 necessary step, albeit unsatisfactory because it was
29 delaying the progress --

1 A. In fairness to Sergeant Hughes he was off sick from
2 work, and I think it would be a huge infringement on
3 his medical condition and his human rights to try and
4 force him to be interviewed without having a medical
5 opinion, and I think Chief Feehan went to a lot of 12:01
6 effort to establish that in view of the letter he had
7 received from Sean Costello I think on the 7th November
8 in 2007.

9 175 Q. In August of '08, then, I think you received a
10 communication from the Deputy Commissioner, 12:01
11 Mr. Callinan, inquiring what the position was in
12 relation to Sergeant Hughes, and that's at 2189. And I
13 think you passed that letter on to Chief Feehan later
14 in August, isn't that correct?

15 A. Yeah. Well, yeah, that would have been the natural 12:02
16 flow of --

17 176 Q. If we look at page 2188, just preceding that, you send
18 that letter on to Chief Feehan and ask him to treat it
19 as urgent.

20 A. Yeah, it was signed in my absence. I may have been on 12:02
21 leave, I don't know, but it's from my office.

22 177 Q. Yes. I think Chief Feehan wrote back to you on the
23 27th August -- if we look at page 2193 -- he is still
24 saying -- if we can go to the second page, to really
25 the concluding paragraph -- he is effectively repeating 12:03
26 there, in the last four lines he said:
27
28 "Despite a number of reminders from this office, I have
29 not at yet received a reply from the Chief Medical

1 Officer in this matter. On that basis, I am of the
2 opinion that it would be unwise to interview the member
3 without having the benefit of the advice of the CMO."
4

5 And I presume you had to accept that as the position? 12:03

6 A. Yeah. And it goes back to the point I said to you
7 there a few minutes ago, that, like, the Chief Medical
8 Officer is a doctor, and management, or any guards,
9 would have to be guided by his advices.

10 178 Q. Yes. I think you reported this back up to Deputy 12:04
11 Commissioner Callinan, at 2197. We don't need to look
12 at that. At page 2200, Chief Superintendent Feehan is
13 writing to Sergeant Hughes conveying the advice of HRM
14 there in the second paragraph as follows:

15 12:04
16 "On the 19th September 2008 I received correspondence
17 from Assistant Commissioner HRM indicating that the
18 Chief Medical Officer recommends that 'if it is
19 possible, any disciplinary issues outstanding (against
20 you) be dealt with as early as possible'. Assistant 12:04
21 Commissioner HRM has advised that this should be taken
22 as confirmation that you are 'fit to be interviewed in
23 relation to disciplinary issues'.

24
25 In this regard Inspector Fergus Dwyer, Store Street, 12:04
26 who is assisting me in my investigation, will be in
27 contact with you in the near future to arrange a date
28 and time for the interview."
29

1 And I think you became aware that Inspector Dwyer was
2 successful in arranging an interview, and you were
3 furnished with a report from Inspector Dwyer, on Chief
4 Feehan's instructions, on the 29th October?

5 A. That's correct.

12:05

6 179 Q. If we look at page 2238. And it recalls there calling
7 to the office of Sean Costello to interview him,
8 Sergeant Hughes providing a pre-prepared 25-page
9 report. And it said that he was interviewed, a number
10 of matters were put to him and a written memo of the
11 interview was recorded. It then says:

12:06

12

13 "A number of matters arising from this interview will
14 have to be examined further. The investigation is
15 continuing."

12:06

16

17 And it states then, on the next page:

18

19 "In his report, Sergeant Hughes raises a number of
20 issues that do not come within the remit of this
21 investigation. Accordingly, I have been directed by
22 Assistant Commissioner Feehan to forward a copy of the
23 said report to you for whatever course of action you
24 deem necessary."

12:06

25

12:06

26 And I think you dealt with that, having received it on
27 the -- by letter to the Deputy Commissioner, you wrote
28 to the Deputy Commissioner on the 17th December -- if
29 we look at page 2248. It starts off by referring to

1 Garda Nyhan, and then on the second page, deals with
2 Sergeant Hughes.

3
4 And at this stage, in the final paragraph there, you
5 say: 12:07

6
7 "[You] have requested clarification on some matters in
8 relation to Sergeant Hughes's report from Assistant
9 Commissioner Feehan and other matters in relation to
10 Sergeant Hughes's sickness and alleged breach of Garda 12:07
11 policy to Chief Superintendent Phillips."

12
13 So you were, as it were, diverting those issues to the
14 departments where it was appropriate to consider them?
15 A. Yeah, I did. You could probably bring it up there, on 12:07
16 the 17th December -- 2252 -- I --

17 180 Q. Yes. And that was how you dealt with it on the same
18 date?

19 A. I did, yeah. Quite a number of queries went out
20 arising from what was sent in to me by Inspector Dwyer. 12:08

21 181 Q. Yes. If we look at 2252. And the first issue relates
22 to an earlier complaint of bullying. And the second
23 matter there relates to other bullying. Just at the
24 bottom of page 252. And if we just scroll back up,
25 Mr. Kavanagh, thank you. 12:08

26 And you obviously searched for the records to see
27 whether there were other current bullying complaints in
28 hand. And if not, he should be asked if he wished to
29 make an official complaint under the policy?

1 A. Yeah, the reason I did that was, he made reference in
2 the 25-page report, that the records were in the
3 assistant commissioner's office. So, I had a search
4 done of my office, and my registry, and I could find no
5 reference to any matters coming through that office. 12:09
6 So that was one of the reasons that I queried that
7 particular part. And eventually, it transpired that
8 the assistant commissioner involved would have been
9 Assistant Commissioner HRM, it had no relevance to my
10 particular office. 12:09
11 The other part of it was the -- in relation to his
12 sickness. And I directed that query to Chief
13 Superintendent Phillips in the DMR North division.
14 182 Q. Yes. And in relation to the disciplinary matters, if
15 we go onto the top of page 2253, by scrolling down, you 12:10
16 identify a number of matters that required to be
17 investigated further, or clarified in the way set out
18 there?
19 A. Yeah, the assertion is to require further
20 investigation, yeah, I said that. Oh yeah, there it 12:10
21 is, yeah.
22 183 Q. And I think Inspector Dwyer carried out the task of
23 seeking clarifications, and if we could just look at
24 those, at page 962, 963.
25 These are clarifications in relation to the interview 12:11
26 with Sergeant Hughes that had earlier taken place in
27 October, which Chief Superintendent Feehan had directed
28 Inspector Dwyer to do, isn't that correct?
29 A. That's correct, yeah.

1 184 Q. And --

2 A. He also wrote quite a number of letters to Sean
3 Costello, solicitor, as well there, after Christmas, in
4 January, where he asked did his client wish to make a
5 formal complaint in respect of the numerous allegations 12:11
6 of bullying and harassment, and also about the
7 misconduct allegation against detective inspector --
8 that was in volume 5.

9 185 Q. Yes. And could we go on then to look at that. Another
10 follow-up that you directed in February is at 2268. 12:12
11 And this related to the report that had come back from
12 Inspector Cryan which touched on this other issue of
13 compliance with 11.39 and the visiting of Sergeant
14 Hughes that ought to have taken place at different
15 periods and you were seeking reports on that at that 12:12
16 time?

17 A. Yeah, that was one of the queries he had raised in his
18 25-page report.

19 186 Q. Yes. And you dealt with all of the queries raised in
20 that report, and you were, it would seem from paragraph 12:13
21 (B) of the previous letter that we looked at, that you
22 were anxious to have any relevant inquiries in relation
23 to the disciplinary aspects dealt with within the
24 disciplinary hearing?

25 A. Exactly. 12:13

26 187 Q. The disciplinary investigation, I should say. I think
27 you then received a report from Inspector Dwyer on the
28 13th September '09, and if we look at page 2269. And
29 this is effectively a report of the meeting, and there

1 were notes of the interview, which we have previously
2 seen there accompanying that, and there is a record of
3 the dissatisfaction expressed by Sergeant Hughes at the
4 bottom there, with the way they were handled by
5 Assistant Commissioner HRM, and an expression of belief 12:14
6 there, in the third last line:

7
8 "Sergeant Hughes believes that cognisance should be
9 taken of these matters in the current disciplinary
10 investigation. Mr. Costello undertook to forward him 12:14
11 all relevant material pertaining to these matters to
12 Inspector Dwyer."

13
14 If we just going on there:

15 12:14
16 "Concern was also expressed regarding Assistant
17 Commissioner Michael Feehan's appointment to
18 investigate the complaint made in respect of the
19 article that appeared in The Star Newspaper on
20 Thursday, 20th November 2008 ('Cop never looked at 12:14
21 tragic Bai ba's warning'). It was requested that the
22 members concerned be brought to the attention of the
23 Commissioner.

24
25 For the avoidance of doubt, I advised Sergeant Hughes 12:15
26 and Mr. Costello that Assistant Commissioner Feehan had
27 been appointed to investigate the disciplinary issues,
28 the matters arising under the Whistleblower Charter and
29 their complaint in respect of the newspaper article."

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Now, just touching on the newspaper issue. You had no involvement with the complaint that was made by Mr. Costello and Sergeant Hughes in relation to the newspaper article?

12:15

A. No, I wasn't involved in the -- apart from, I can't find the document, apparently I appointed Commissioner Feehan to investigate it. It came down from the Commissioner's office, but I couldn't find the appointment document, but apparently I appointed him. Because Mr. Costello subsequently wrote to me complaining about that. But I had no involvement whatsoever in any of the investigation.

12:15

188 Q. Yes. And insofar as the appointment of Commissioner Feehan - Assistant Commissioner Feehan, as he was then - to look into the whistleblower Charter, had you any role in that or were you consulted in any form or fashion about that?

12:16

A. Is this the disclosure to the confidential recipient?

189 Q. Yes.

12:16

A. I had no hand, act or part in that investigation.

190 Q. Okay. Can I then look at a letter -- page 2274 -- where you are seeking an update from Commissioner, and this is directed to what was then, now, Assistant Commissioner Feehan, is that correct, Northern Region?

12:17

A. He was then based in Sligo, yes.

191 Q. Okay. And I think is the next relevant issue then the report made by Assistant Commissioner Feehan; you received that on the 3rd June, within effectively three

1 weeks of this letter?

2 A. Yeah.

3 192 Q. And could we look at that report of the 3rd June, from
4 page 907 onwards to 924.
5 And you considered the report with the appendices and 12:17
6 the attached statements and documents?

7 A. I did.

8 193 Q. And you made a decision to discontinue the proceedings
9 under the disciplinary regulations?

10 A. I did indeed. 12:18

11 194 Q. And can you just explain your approach to it at that
12 point in time?

13 A. Well, in terms of the report that was submitted to me,
14 I was unable to find any breach of discipline in
15 respect of Sergeant Hughes. 12:18

16 195 Q. Yes. And I think we don't need to look at the text of
17 them all, but you wrote communicating your decision to
18 all who were required to be?

19 A. I did, yeah. I think I wrote personally to Sergeant
20 Hughes I think, and I wrote to the chief superintendent 12:19
21 in the northern division, and to Assistant Commissioner
22 HRM.

23 196 Q. Did you consider, at the outset, that you were in any
24 way conflicted in either deciding to do a fact-finding
25 investigation in relation to an area, as it were, that 12:19
26 you had responsibility for?

27 A. I don't mean a suggestion, but are you saying that I
28 should have got someone else to do it?

29 197 Q. Well, I am wondering, did it occur to you as to whether

1 it was an issue at all, or whether it could ever be an
2 issue --

3 A. No.

4 198 Q. -- or whether there was any difficulty with it?

5 A. I didn't. I said to myself it would have been a 12:20
6 dereliction of my duty if I didn't carry out an inquiry
7 into the -- this document and the surrounding
8 circumstances concerning -- in view of the fact that,
9 you know, within four days of this woman meeting the
10 guards, that she was shot dead. 12:20

11 199 Q. In terms of your knowledge of Sergeant Hughes having
12 made a protected disclosure, we have seen that letter
13 from Inspector Dwyer, at the end of I think it's
14 February '09, referring to the appointment of Chief
15 Superintendent Feehan under that, did you know at that 12:21
16 stage that Sergeant Hughes was the confidential
17 reporter?

18 A. No, I didn't. And Chief Feehan never told me either.

19 200 Q. It's been suggested that the initiation of the
20 disciplinary proceedings was an attempt to, as were it, 12:21
21 shut Sergeant Hughes up, clip his wings, cover up
22 matters in any way.

23 A. I think that's covered in my statement there, how I
24 responded to that. I think it was brought up on the
25 first day by Mr. Marrinan I think -- 12:21

26 201 Q. Yes...

27 A. -- to the contrary.

28 202 Q. Did you see that the discipline investigation that you
29 established as in any way preventing Sergeant Hughes

1 from taking whatever course he wished to in relation to
2 his concerns, which he did, by bringing them to the
3 confidential recipient?

4 A. I initiated the discipline investigation on the 2nd May
5 2007, and I think it was sometime in, I don't know, 12:22
6 August I think, 2008, that he took up the matter with
7 the confidential recipient, which was about a year and
8 a half later.

9 203 Q. Did you have any involvement in that?
10 A. None whatsoever. 12:22

11 204 Q. In the establishment or the conduct of it?
12 A. Of the?

13 205 Q. Of the confidential recipient investigation?
14 A. No, I did not.

15 206 Q. One of the matters that Sergeant Hughes has complained 12:22
16 about in his statement, and in his evidence, was that
17 the initiation of the disciplinary document was a
18 direct result of him raising the spectre of systems
19 failures in the Baiba Saulite murder investigation,
20 that he was now being targeted. would you like to 12:23
21 respond to that?

22 A. When I set up the fact-finding investigation, and when
23 he submitted his 16-page report, or 19 pages, that he
24 submitted to the Tribunal office, there was not one
25 reference to the word "systems failure" in that 12:23
26 document, so I couldn't have targeted him as a result
27 of him using the word or bringing up the expression
28 "systems failure".

29 207 Q. Did anyone report to you in the period after the murder

1 of Ms. Saulite and before the initiation of the
2 fact-finding that he was making allegations of a
3 systems failure?
4 A. Definitely not. Never.
5 208 Q. Okay. In the interim between the receipt of chief 12:24
6 superintendent's fact-finding report, your
7 consideration of it, and your decision to appoint an
8 investigating officer, did anyone report to you that he
9 was making allegations of a systems failure?
10 A. Definitely not. I think the first time I saw the 12:24
11 reference to a systems failure when the documents were
12 served on me this month two years ago.
13 209 Q. Okay. Thank you Assistant Commissioner McHugh. You
14 may be asked other questions by other parties. I have
15 no more questions at the moment. Thank you. 12:24
16 CHAIRMAN: Yes. Now, gentlemen, who is going to ask
17 Assistant Commissioner McHugh questions? Mr. Dwyer,
18 yes.
19
20 THE WITNESS WAS CROSS-EXAMINED BY MR. O'DWYER AS 12:25
21 FOLLOWS:
22 210 Q. MR. O'DWYER: Good morning. I'll address you as
23 Assistant Commissioner, is that okay?
24 A. Sorry, I beg your pardon?
25 211 Q. Assistant Commissioner, Colm O'Dwyer is my name, I am 12:25
26 one of the counsel for Mr. Hughes. I was going to
27 address you as Assistant Commissioner --
28 A. Well, I don't mind how you address me. I am retired.
29 I have no rank any more.

1 212 Q. I just want to begin by asking you just a little bit
2 about the background just before the murder, because
3 it's arisen a couple of times in what was said earlier
4 on. Did you know, before the murder, of the link
5 between John Hennessy, Baiba Saulite and suspect A, 12:25
6 Mr. A -- you know who I mean by that?

7 A. I do, yeah. No, I had no knowledge until the evening
8 that I called the meeting on the 11th October to
9 discuss the specific threat against John Hennessy. And
10 that was the first time I ever heard of Baiba Saulite 12:26
11 or John Hennessy. Well, I am sure I read of John
12 Hennessy in the newspapers in court cases, but
13 certainly never was his name brought to my notice prior
14 to that.

15 213 Q. So at that point, did you learn about the relationship 12:26
16 between them, that John Hennessy was the solicitor for
17 Ms. Saulite, or was it after that?

18 A. Yeah, I was -- at the meeting, I remember being told
19 that he was acting in a family law capacity for Mr. A's
20 wife. 12:26

21 214 Q. And I suppose a question that has been asked of other
22 witnesses that might be relevant to you in this context
23 is: if, at that stage, you were being made aware of a
24 very serious threat to John Hennessy, and you are aware
25 that Baiba -- of his connection with Baiba Saulite, did 12:27
26 it not occur to you, being a very senior officer, that
27 she might also be at risk?

28 A. Well, the only information I had was of a specific
29 threat to John Hennessy. No information of any kind of

1 a threat against Baiba Saulite.

2 215 Q. I am aware you are talking about the slightly
3 earlier -- in October, but there was a letter to you
4 from Chief Superintendent Phillips of the 25th October
5 2006, which is at page 1744 in the papers, and this 12:28
6 certainly seems to outline the relationship -- we can
7 perhaps just scan down through it because I'm worried
8 that -- I mean, there is certainly reference -- there
9 is a lot of background information about what had been
10 going on -- if you could scroll down, Mr. Kavanagh, 12:28
11 thank you -- there is almost a full report, and you can
12 see Mr. Hennessy is mentioned there as we go down and
13 what his role was. And a lot of information, including
14 reference to Liam Hughes -- should I say Sergeant
15 Hughes and what he had been doing. So this clearly, I 12:28
16 mean this is a letter to you, and it makes the
17 relationship quite clear and what had been happening
18 with Baiba Saulite?

19 A. Yeah, I actually sought that -- I wanted to know, you
20 know, who was Mr. A, and on the basis of that, this was 12:29
21 what I was sent in by Chief Phillips.

22 216 Q. Yes...

23 A. So I mean, they're in -- the same as unfortunate cases
24 all over Ireland everyday -- they are in and out of
25 courts everyday in respect of family law issues. 12:29

26 217 Q. I understand. I suppose the question I'm asking, and I
27 say this because it's been asked to other witnesses,
28 is: certainly given this information, and the clear
29 relationship between the two of them, would such a risk

1 and such a serious threat -- you know, someone [REDACTED]
2 [REDACTED] -- not have given rise to an
3 apprehension, at your level, about the wellbeing of
4 Baiba Saulite?

5 A. No, I didn't have any apprehensions at that stage is 12:30
6 the only response I can make.

7 218 Q. I suppose I should put that that has a second context.
8 So you didn't consider, from any of this, that she
9 might be at risk?

10 A. No. 12:30

11 219 Q. Though you knew who she was at this stage and what the
12 tie was?

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

14 220 Q. Well, that leads me on to another point that My Friend
15 was making to you earlier -- Mr. McGuinness. When it 12:30
16 came after the murder and you were considering the, you
17 know, the fact-finding -- and we'll move on to that in
18 a moment in detail -- but, Mr. McGuinness suggested to
19 you that there might have been a conflict involved,
20 that you might have considered a conflict. would that 12:31
21 not seem -- given you had an involvement in the case
22 prior to -- you know, because of what had happened to
23 John Hennessy, that you are aware of what happened with
24 Baiba Saulite, or what had been happening in the
25 background with Baiba Saulite over a number of years 12:31
26 and her connection with John Hennessy, who was now
27 under, at that point, under a very -- you know, had a
28 realistic threat made against him and what's been
29 termed I think a specific threat, but would that not --

1 when you came -- when this matter came to your
2 attention after the murder, that perhaps you might have
3 a conflict in relation to this, because you'd had an
4 involvement, that it might have been better to give it
5 perhaps to another Commissioner from outside? 12:32

6 A. No, that thought never entered my mind. I had no
7 direct involvement in which of the happenings in the R
8 District. I was working at a distance from that.

9 221 Q. But clearly, I mean you are receiving letters like this
10 prior to the murder, so I mean, if you didn't know 12:32
11 before this, you certainly knew at this stage?

12 A. Yeah, it was I myself who sought that, and I think
13 that's the only document that I received prior to the
14 murder, that I can think of.

15 222 Q. In relation to Baiba Saulite as opposed to John 12:32
16 Hennessy?

17 A. Well, what I had received in respect of John Hennessy,
18 I knew from the 11th October.

19 223 Q. Yes...

20 A. And then I sought some information on who is this 12:32
21 Mr. A?

22 224 Q. Okay. And that came back with a lot of information
23 about Baiba Saulite not -- well I mean, and her
24 connection to Mr. A. We won't go further on that.

25 A. Yeah, her interactions with the solicitor and the 12:33
26 reasons that she was in and out of court.

27 225 Q. So, if I move on to after the murder, you mentioned you
28 were at a press conference the next day, on the -- I
29 think on the 20th, the morning of the 20th at Swords?

1 A. No, I wasn't at a press conference. I was at the
2 morning conference, the first conference.

3 226 Q. Oh...

4 A. And the reason I went to the first conference, I made
5 it a priority when I became a commissioner in the city, 12:33
6 that I'd show leadership, in view of the volume of
7 serious crime, murders at the time running at 25 to 30
8 a month, I made it a priority to show leadership by
9 visiting the first conference, if I could, and to
10 support the leadership team there and to ensure that 12:34
11 whatever resources or financial resources in terms of
12 human resources or otherwise were required, they would
13 be there, and more especially to support the gardaí on
14 the ground who were going to do most of the donkey work
15 in the months ahead. 12:34

16 227 Q. And there was, I think, a press conference that morning
17 as well. I am sorry if I confused you with the
18 reference --

19 A. No, I definitely --

20 228 Q. -- or confused myself perhaps with the references to 12:34
21 conferences, but there was a press conference I think
22 as well?

23 A. Well, I guarantee you, I was at no press conference.

24 229 Q. So you were at the --

25 A. I just went to the morning -- the first conference, I 12:34
26 tried to go there to support the people that at least
27 the person in charge of the city had an interest in
28 what we were doing out here, that we're working hard
29 and we have this, that and the other. And I had come

1 up through the ranks myself, and often when occurrences
2 like this were taking place, on occasions people who I
3 thought should have been there weren't there, so I set
4 a trend.

5 230 Q. When you say people who were supposed to be there, you 12:35
6 are not referring to Sergeant Hughes in that, you are
7 referring to senior figures?

8 A. No, no, I am referring to people more senior than
9 myself -- or sorry, than Sergeant Hughes.

10 231 Q. So that, I suppose, senior management would be seen to 12:35
11 be involved, is that the -- by the rank and file?

12 A. Exactly. But I would never -- there would never be
13 participation by me again in any of the investigation
14 after that.

15 232 Q. And who -- I mean presumably arriving -- sorry, would 12:35
16 this be what they call a case conference about the
17 murder?

18 A. No, this would be the investigation conference. It
19 would be the first conference that's held immediately
20 after the occurrence. 12:36

21 233 Q. And that's in the morning of the 20th?

22 A. Yeah, the following morning, the morning of the 20th.

23 234 Q. And you were at that. And who was convening that in
24 the morning?

25 A. The conferences are usually chaired by the senior 12:36
26 investigating officer who is usually the detective
27 inspector who would be accompanied by the detective
28 superintendent.

29 235 Q. And when you say the morning, this would have been

1 maybe ten or eleven o'clock, would that be fair?

2 A. Well, as I said earlier to Mr. McGuinness, I couldn't
3 recall whether I was at the conference or not at the
4 conference until I saw Inspector Cryan's notes, and
5 this confirmed that I was there. Because, I didn't 12:36
6 necessarily get to every murder conference. I tried to
7 get to as many as possible, it wasn't always possible.

8 236 Q. And I mean I suppose given your seniority, who was
9 briefing you? You know, would anyone have briefed you
10 about the matters or...? 12:37

11 A. No, I would have sat in there, the same as every other
12 member that was in the room, usually in a small packed
13 rooms, and I didn't always stay for the full conference
14 but I would have stayed for the initial part.

15 237 Q. Can I just ask you, because it's a matter that arose 12:37
16 from the evidence of chief super, or former Chief
17 Superintendent Kevin Donohoe yesterday, did you give
18 any, provide any information or any -- did you speak to
19 Kevin Donohoe at all, or that day or...?

20 A. I don't even remember Kevin Donohoe being at the 12:38
21 meeting. But, as I said earlier, I had no -- I had no
22 interaction with Kevin Donohoe as an assistant
23 commissioner. The interaction normally takes place
24 between the press officer of the day and the local
25 supers and chiefs. The only interaction I think I ever 12:38
26 had with Kevin Donohoe while I was Assistant
27 Commissioner was when I had to go to RTE I think
28 earlier that year when he met me out there. That was
29 the only time I ever had dealings with Kevin Donohoe.

1 238 Q. You told RTE that he met you there?
2 A. No, no.
3 239 Q. Sorry?
4 A. No, I had to go to RTE after an incident in the city to
5 do an interview and he would have met me there. 12:38
6 240 Q. Sorry. It's not connected with this?
7 A. No, this is in I think February of 2006.
8 241 Q. So I think -- but I just want to confirm this -- you
9 didn't provide information to Kevin Donohoe that day.
10 Did you provide information to him over any of the 12:39
11 following days that may have assisted with a press
12 release?
13 A. I have said, and I want to reiterate, I had absolutely
14 no interaction, no speaking to Kevin Donohoe.
15 242 Q. Or anyone in the Press Office? 12:39
16 A. No. I never dealt with the Press Office. The Press
17 office was always dealt with by the local management.
18 243 Q. Okay. In those days following the murder -- so the
19 20th, 21st -- and I know you have answered this
20 already, but it is quite important, how did you find 12:39
21 out about the, what we have been calling the draft
22 victim impact statement? You know to what I'm
23 referring?
24 A. I do, yeah. As I said earlier, I think it was on the
25 -- I think -- on the morning of the 22nd I was told by 12:40
26 Chief Phillips.
27 244 Q. So, on the morning of the 22nd, he told you -- you knew
28 nothing about it before that?
29 A. No, no, I did not.

1 245 Q. Okay. And what did he tell you?

2 A. He told me that -- he was probably giving me a briefing
3 on the -- an update on the murder investigation and he
4 told me about where gardaí had met -- or, Sergeant
5 Hughes and another guard had met the deceased a number 12:40
6 of days prior to her death, that she had provided them
7 with a draft victim impact, and that there was concerns
8 within it and that Sergeant Hughes had concerns as
9 regards what was in it. So, I naturally wanted to see
10 this document. 12:41

11 246 Q. So, Superintendent Phillips was indicating that he had
12 knowledge of what was in the -- of what was in the
13 victim impact statement by what you have said?

14 A. Well, he appeared to have had some knowledge from
15 whoever he was speaking to. I didn't ask him who he 12:41
16 was speaking to.

17 247 Q. Because the difficulty is, certainly he didn't get it
18 until the afternoon.

19 A. Yeah, when I -- when I looked for it.

20 248 Q. Yes. You looked for it and -- 12:41

21 A. Yeah.

22 249 Q. But do you understand what I mean? He didn't -- it's
23 not apparent how he knew what was in it at that point
24 in the morning?

25 A. Well, no, what I said was that he told me that Sergeant 12:41
26 Hughes and another guard had a meeting with the
27 deceased a number of days prior to her murder and that
28 she had provided them with a document and that Sergeant
29 Hughes had fears or expressed some fears as regards how

1 the contents of -- some parts of the contents would
2 affect him.

3 250 Q. And did he tell you how he knew that or who --

4 A. No, no, he didn't. I didn't ask him.

5 251 Q. He didn't say who --

12:42

6 A. No.

7 252 Q. -- Sergeant Hughes had expressed those fears to?

8 A. No, he didn't. No, he didn't.

9 253 Q. Then it seems, because I mean we know from evidence
10 that certainly Walter O'Sullivan knew about it since

12:42

11 the 20th, knew about the victim impact -- the draft

12 victim impact statement, because he had met with

13 Sergeant Hughes on the 20th, the morning actually you
14 were at the conference.

15 A. Sorry, what was the question there?

12:43

16 254 Q. I am sorry. Were you aware that Walter --

17 A. No --

18 255 Q. -- Walter O'Sullivan knew about the --

19 A. I was not.

20 256 Q. And you didn't speak to Walter O'Sullivan?

12:43

21 A. I don't think I spoke to Walter O'Sullivan that
22 morning.

23 257 Q. Okay. And so, you found out, in general -- you found
24 out about the victim impact statement, and as you know

25 -- or the draft victim impact statement -- Sergeant

12:43

26 Cryan has -- or sorry, Detective Superintendent Cryan

27 has given evidence that Chief Phillips told him that

28 you had instructed that this victim impact statement

29 must be got, even if it involved forcing open Sergeant

1 Hughes's locker. I know you have been asked that
2 question, but just to -- yeah -- is that --

3 A. I never suggested that Sergeant Hughes's locker be
4 forced open. However, there was a discussion that in
5 the event, if we couldn't -- if they couldn't locate 12:44
6 Sergeant Hughes, or that if he wasn't coming in to take
7 it out, consideration may be given to forcing open his
8 locker. Now, I don't think it was, I ever intended
9 that that would actually go through, but I am admitting
10 that I did say that. 12:44

11 258 Q. Thank you. But what seems to have happened is that
12 that message -- so, Sergeant Hughes was meant to be
13 coming in to hand over that document, or get that
14 document out of his locker and give it to
15 Superintendent Cryan, but the -- later on in the day, 12:45
16 he wasn't in that day, but that this and other messages
17 from other figures were indicating -- senior figures --
18 were indicating that it had to be got quicker. This
19 was, Chief Phillips contacted him directly, and he was
20 relaying your message that it must be got as quickly as 12:45
21 possible. But the point I was going to make was that
22 this was relayed to Sergeant Hughes, or certainly
23 Sergeant Hughes's evidence, and it's in his statement,
24 was that this idea of the locker being busted open was
25 told to him, and that that, if I may say so, would seem 12:46
26 to be a very aggressive approach in the circumstances,
27 or certainly would have --

28 A. Well, I certainly never suggested to burst open the
29 man's locker.

1 259 Q. well, force open his locker.

2 A. well, I didn't say to force it open either. I said
3 consideration would be given if we had to, but thought
4 would have to go into that. It wouldn't be a case of
5 he going out, forcing open his locker. More thought 12:46
6 would have gone into it subsequently if that was to
7 be happen, if keys couldn't be found from the staff
8 sergeant's office. It was never my intention to convey
9 that: go out there, burst open Sergeant Hughes's
10 locker. That was not the case. 12:46

11 260 Q. And what was the -- well, they were the words. But
12 obviously this had an effect on Sergeant Hughes, as in
13 he came in very -- you know, the message was conveyed,
14 I can't remember Superintendent Cryan's exact words but
15 it was coming down from above, or words to that effect, 12:47
16 that this must be got immediately. And Sergeant Hughes
17 made his way before he had originally planned to come
18 in and arranged to hand over the victim impact
19 statement, he came in and gave it to Superintendent
20 Cryan with another -- with a copy, the full file of the 12:47
21 child abduction matter. And I suppose what I was going
22 to ask you, following that was: what was the rush,
23 given you knew that -- or I assume you knew that he was
24 coming in and that he was going to come in at, I think,
25 two o'clock and give it to you, what was the great rush 12:48
26 at that point? I mean, you have only found out about
27 it earlier in the morning.

28 A. Yeah. well, as far as I remember, and correct me, I
29 think Inspector Cryan was -- had phoned Sergeant Hughes

1 and text him what, and it turns out later then that he
2 was at a parent-teacher meeting. But I wanted to see
3 the document. Like, I wanted to see what was in this
4 document. This was -- this was six days after he was
5 given the document, and it lay in a locker in the 12:48
6 meantime.

7 261 Q. Yes. But he had made it known to Walter O'Sullivan on
8 the 20th, immediately after the murder, that he had it.
9 He had shown it to him in fact.

10 A. Well, I don't know what happened between himself and 12:49
11 Inspector O'Sullivan, but I mean I thought it would --
12 if it was a document like that, it would have appeared
13 much earlier and that was the reason I was looking for
14 it. This was six days later.

15 262 Q. And then I have to ask you, was it connected with a 12:49
16 press release and the issue of a press release that
17 afternoon, a couple of hours later? Was your rush to
18 get the victim impact statement, was that connected to
19 the issuing of a press release in that afternoon?

20 A. As I said earlier, I had nothing to do with that press 12:49
21 release. I was never asked to get any documentation
22 for a press release. That was purely for my own use.
23 It never left my office.

24 263 Q. And Chief Phillips provided it to you; he got it from
25 Superintendent Cryan and he provided it to you. Could 12:50
26 you just explain the mechanics of that?

27 A. Yeah, as far as I remember, it was faxed in to my
28 office from his office.

29 264 Q. And did you have a conversation with him?

1 A. Em... with Chief Phillips?
2 265 Q. With Chief Phillips, yeah.
3 A. Yeah, he told me he had got the document, he had read
4 it, and, as far as I remember, he said there wasn't
5 that much in it. 12:50
6 266 Q. Yes.
7 A. Or words to that effect.
8 267 Q. And did you say anything to him?
9 A. Well, I said I'll have to read it myself.
10 268 Q. Okay. But he indicated he had read it? 12:50
11 A. I beg your pardon?
12 269 Q. Did he indicate that he had read it? I mean, if he
13 said there wasn't that much in it...
14 A. I don't know whether he read it or not, but that's what
15 he told me. 12:51
16 270 Q. Okay. It's just -- and Mr. McGuinness has asked you
17 about this already -- it's just -- and I hope I am
18 using his proper title, but Superintendent Cryan
19 indicated that he had stayed in the office, or in the
20 offices I think with Chief Phillips, and that after 12:51
21 that was done, Chief Phillips indicated to him that --
22 and I am sorry, I'll have to paraphrase, but that
23 everything was okay for Liam -- or for Sergeant Hughes
24 and that there was nothing to worry about. And I am
25 sorry that that may not be the exact, but certainly 12:51
26 that -- words to that effect, but that was immediately
27 after your conversation Chief Phillips?
28 A. I don't know what he said to Inspector Cryan at the
29 time, but what I can recall was that he told me that

1 there wasn't a lot in it.

2 271 Q. Yes. And then -- so, did you know that he was going to
3 tell -- this is Chief Phillips -- or did you give him
4 any reason to communicate via -- sorry, Inspector Cryan
5 -- to Liam Hughes that -- or to Sergeant Hughes that 12:52
6 there wasn't a great difficulty, and that he shouldn't
7 be so concerned about this victim impact statement?

8 A. I made absolutely no comment in respect of Sergeant
9 Hughes to Chief Phillips.

10 272 Q. Okay. Then you have indicated you had no part in the 12:52
11 press release so you only saw the press release when?
12 A. I don't know when I saw it. Probably, you know,
13 whenever it would have been released subsequently
14 anyway. Certainly I had no recall of it until I got
15 the papers served on me two years ago. 12:53

16 273 Q. It's just, the press release certainly appears to refer
17 to the victim impact statement?

18 A. Sorry?

19 274 Q. The press release appears to refer to the victim impact
20 statement. I think we all -- 12:53
21 A. It does, yeah.

22 275 Q. Now it doesn't -- to be fair, Chief Superintendent
23 Donohoe indicated that he didn't know about -- in
24 drafting the press release, he didn't know about a
25 victim impact statement but he knew there was a 12:53
26 document, it was a court document, and that's what he
27 wrote in to the press release. Now, this would have
28 been in a very short time of you receiving that
29 document. If you didn't provide the information about

1 it and what may have been in it, I mean who did? Do
2 you know?

3 A. I don't know. And I don't know what kind of
4 interaction Chief Donohoe had with the local management
5 in the supers and the chiefs, and the detective super 12:54
6 and the investigating officers in the division there.
7 He had no discussion with me.

8 276 Q. Well, did you -- when you received it and had read it,
9 did you communicate with the Commissioner?

10 A. No, I didn't. 12:55

11 277 Q. Did you communicate with anyone?

12 A. Did you say the Commissioner?

13 278 Q. The Commissioner, yeah.

14 A. No, I didn't communicate with anyone.

15 279 Q. Okay. So you didn't tell anyone about it? 12:55

16 A. No, I didn't at that stage. At that stage?

17 280 Q. Yes.

18 A. No, I didn't.

19 281 Q. Do you have any idea then how the information about it
20 came to be in a press release an hour or two later? 12:55

21 A. Well I assure you, and I am here under oath, I did not
22 discuss the content of that document with anyone from
23 the Press Office.

24 282 Q. Okay. I accept of course -- don't feel -- my questions
25 are not to -- 12:55

26 A. I am only just trying to re-emphasise --

27 283 Q. I am not trying to be aggressive towards you in this
28 way.

29 A. Yeah.

1 284 Q. After that... after that, we move on -- I mean your
2 involvement I suppose was in respect of this
3 fact-finding or scoping investigation. You mentioned
4 this morning that this didn't come from -- the
5 initiative to do this didn't come from the 12:56
6 Commissioner, is that your position?

7 A. No, and I have already said that to the Tribunal
8 investigators. I alone took that decision to initiate
9 the fact-finding investigation.

10 285 Q. And what was your motivation to do that, or what did 12:56
11 you have in mind?

12 A. Well, what I had in mind was in the document that I
13 sent to Chief Feehan, that to carry out -- the only
14 document I had in terms of it was the document from the
15 draft victim impact to Sergeant Hughes and Garda Nyhan, 12:57
16 and to establish -- I think what the words were --
17 whatever evidence was available in the district, or
18 whatever it was --

19 286 Q. Well, to An Garda Síochána --?

20 A. -- and the level of knowledge in possession of An Garda 12:57
21 Síochána prior to Ms. Saulite's murder.

22 287 Q. Well this is something of an issue in this whole case,
23 is that I mean there appears to be what you actually --
24 well, perhaps if we look at the instruction letter -- I
25 just -- I notice, Chairman, it's one o'clock, so 12:57
26 perhaps I --

27 CHAIRMAN: Certainly. If you'd like to break.

28 MR. O'DWYER: I can open it after lunch then would
29 probably be --

1 CHAIRMAN: All right. That is no problem. Thank you
2 very much. [TO THE WITNESS] You're all right?

3 MR. O'DWYER: You are not finished. It's just --

4 CHAIRMAN: I said we're going to break for lunch.

5 WITNESS: Thank you.

12:58

6 CHAIRMAN: Thanks very much. Okay. Very good. Two
7 o'clock.

8

9 THE HEARING ADJOURNED FOR LUNCH AND RESUMED AS FOLLOWS:

10

13:05

11 CHAIRMAN: Now... yes, now, Mr. Dwyer.

12 MR. O'DWYER: Thank you, Chairman. Good afternoon
13 Assistant Commissioner

14 A. Hello.

15 288 Q. I had just left off at the point at which you're 14:00

16 instructing Chief Superintendent Feehan of -- that you
17 are instructing him about the fact-finding

18 investigation you had in mind, and there was a letter
19 that was opened briefly this morning, it's at page 854

20 in which you -- I think you instructed him. If we 14:00
21 could just get that on screen, sorry, Mr. Kavanagh.

22 Thank you. And if you scroll down a little bit there,
23 and we can look, it's quite a short letter. It begins,

24 the second paragraph, Ms. Saulite had previously been 14:01
25 interacting with members of An Garda Síochána which

26 resulted in court proceedings. So that's referring to
27 the child abduction matters. Then it goes on, and you

28 say two members from Swords Garda Station and you talk
29 about the draft victim impact statement.

1 So what struck me: that seems to be quite specific, yet
2 the subsequent paragraph - "carry out a fact-finding
3 investigation into the level of knowledge in possession
4 of An Garda Síochána..." - is, as you said this
5 morning, very broad. Do you see a conflict between 14:02
6 them? Does the first part not seem to limit the second
7 part, if you follow what I mean?

8 A. No, I wouldn't have seen any conflict. I was giving
9 him an outline of the fact that -- about the victim
10 impact, and that, the fact that she was interacting 14:02
11 with other members of An Garda Síochána didn't
12 necessarily mean that it was Sergeant Hughes and the
13 other guard.

14 289 Q. Well, "which resulted in recent court proceedings"?

15 A. Well, that's a possible interpretation, but the fact, 14:03
16 in the second last paragraph, I thought it would have
17 kind of clarified, you know, really what I wanted; "was
18 to carry out a fact-finding into the level of knowledge
19 in possession of An Garda Síochána prior to
20 Ms. Saulite's murder." So, it wasn't confining it to 14:03
21 Sergeant Hughes and Garda Nyhan.

22 290 Q. Well, reading that, even at this stage, would you --
23 would it not appear to be, I suppose, focussing in on
24 them, even though you do go on to indicate that a much
25 wider, or what would appear to me to be a much wider 14:03
26 investigation was called for, but nonetheless, can you
27 not -- do you see -- do you understand what I mean?
28 That that would -- there would appear to be a
29 limitation built in to that?

1 A. The only material I had at the time was in respect of
2 the meeting between Sergeant Hughes and Garda Nyhan.
3 But it was never the intention to confine it to both
4 those members. If other information emerged during the
5 fact-finding, I would have expected that that 14:04
6 information, if it included other members, would be
7 included in the report.

8 291 Q. So that was the instruction. And you know that -- you
9 obviously were instructing chief superintendent, as I
10 think he was then, Michael Feehan, to, you know, to do 14:05
11 this fact-finding mission -- or fact-finding
12 investigation, or scoping investigation, as I think he
13 might have termed it, but he passed it on initially --
14 well, not passed it on, but he instructed another -- he
15 instructed Inspector Mangan, you know that? Were you 14:05
16 aware of that?

17 A. I wasn't aware of who was involved or what was involved
18 until I got the report I think in March.

19 292 Q. And that's --

20 A. That was the final report. 14:05

21 293 Q. When you say the report in March, the only report that
22 was in March was Chief Superintendent Feehan's report?

23 A. Also included in that would have been the report from
24 Inspector Mangan.

25 294 Q. Yes. Well... yes. Well, in that case -- well, sorry, 14:06
26 I'll ask you first: were you aware of the findings that
27 Inspector Mangan had made in his own report?

28 A. No, that was never discussed with me by Chief Feehan,
29 and I didn't see that until the 23rd March, or whatever

1 date subsequent to that I received the document.

2 295 Q. well, I might open it on screen because it's quite
3 important. I do understand you're saying that you
4 didn't see it, but you'll probably realise why it's
5 significant when I open it. It's at page 887. And 14:06
6 this was his report from the 2nd February 2007.
7 And you see -- if I could -- sorry, Mr. Kavanagh, if I
8 could just stop -- it says:
9

10 "Michael Feehan was requested by Al McHugh to carry out 14:07
11 a fact-finding and report his views on the level of
12 knowledge in possession of An Garda Síochána prior to
13 the Baiba Saulite murder."
14

15 And that is the broader meaning, you know, that's the 14:07
16 broad part of your instruction, if I can put it that
17 way. But then, if we go on down the page --
18 Mr. Kavanagh, sorry -- it goes straight into 2006, and
19 Sergeant Hughes's interaction and continues, if you
20 could continue down the page, we'll just scan through 14:07
21 this. But what I'm saying is, it's dealing with
22 Sergeant Hughes and Garda Nyhan only. Could you
23 continue going -- sorry, thank you. And then Sergeant
24 Hughes had provided a comprehensive report, and that's
25 the chronology that was appended to -- so that might be 14:08
26 what you are referring to -- that was appended to Chief
27 Superintendent Feehan's report to you later on, that
28 chronology -- or what has been termed a chronology.
29 And you can see what Sergeant Hughes said. There is

1 reference to Sergeant McEneaney. Are you aware of his
2 contact with Baiba Saulite before she -- you know he
3 had contact with her as well, I think we'll leave it at
4 that if that's okay.

5 A. Yeah, I think he submitted a report. 14:08

6 296 Q. Yes. And if could you continue down the page. Then,
7 it goes straight into a discussion of the victim impact
8 report. So, clearly focussing on the victim impact
9 report. And if you continue down the page -- or the
10 pages. And it talks about what a victim impact 14:09
11 statement -- report or statement is supposed to say.
12 what it's supposed to deal with, and I think deals with
13 the Wayne O'Donoghue case, which you may be familiar
14 with, and which I suppose the Court of Criminal Appeal
15 dealt with what should be in a victim impact report. 14:09

16
17 And then it -- it also says shall be signed by the
18 victim on each page and shall be dated, et cetera. And
19 if we can continue down, just to the end if that's all
20 right, Mr. Kavanagh. 14:09

21
22 So then, after that, it reaches a conclusion, and it
23 says that -- and she suffered emotionally and
24 physically. And then it said Sergeant Hughes has
25 submitted a comprehensive report outlining his 14:10
26 dealings, and in that, as you probably know, he does
27 deal with that -- his last meeting with her at Swords
28 that we know about.

29

1 And it goes on -- they talk about, that they didn't
2 know about any -- certainly any specific threat to her.
3 And Inspector Mangan finds that this would not have
4 been accepted. I mean, it was a handwritten document.
5 It didn't cover a lot of the matters. You probably -- 14:10
6 you know -- you have seen it so you know all of these
7 problems that would have been associated with it. And
8 it couldn't have been used for a prosecution.

9
10 And in fact, you are aware that Sergeant Hughes was 14:10
11 saying that he had sent her -- this is Baiba Saulite --
12 away to get a medical report and then that they would
13 return to it after that, you know that, don't you?

14 A. Yeah, he had referred to that in his 16-page document,
15 yes. 14:11

16 297 Q. Yes, that's a 16-page statement he gave to --

17 A. Yeah.

18 298 Q. -- it's been referred to as a chronology --

19 A. Yeah.

20 299 Q. -- but I think a statement might be a better 14:11
21 description.

22
23 And then you can see Inspector Mangan makes a finding
24 about both Sergeant Hughes and Garda Nyhan, and I think
25 that's been described as an exoneration, that they are 14:11
26 being commended, in effect, is that -- would you
27 understand that to mean that, that --

28 A. Well, my reading, my interpretation of that was that
29 both had done a fantastic job in the child abduction

1 case, and that was never -- there was never any issues
2 as regards that. I never had sight of that but from
3 reading the work that Sergeant Hughes had put into it
4 from his chronology of events, it was quite detailed
5 and very professional.

14:12

6 300 Q. Yes. And the members, presumably including -- I mean
7 possibly including Sergeant McEneaney, but that they
8 did admit that there were threats, as such, over time,
9 to her, and they knew of them, but -- yes, well, that
10 they were aware of them over time. But he recommends
11 then that in order to clarify -- or sorry, to clearly
12 outline the facts in existence, I respectfully suggest
13 that this matter be formally investigated. So he is
14 recommending an investigation. He seems to have said
15 that they completed a complex investigation in a very
16 professional manner. He hasn't made any criticism of
17 them in respect of not reading the document in the
18 circumstances, is that fair?

14:12

14:13

19 A. Well, my reading of it was, it's compliments in respect
20 the way they dealt with the child abduction case. I
21 would find it hard now to interpret it differently, but
22 I know you are putting the opposite to me.

14:13

23 301 Q. I am.

24 A. And I'm not in agreement with you.

25 302 Q. Okay. But one way or the other, I suppose -- I mean
26 the point I was going to make about this is, this
27 clearly focuses on those two garda, right? Or sorry,
28 that is correct?

14:13

29 A. Well, certainly Inspector Mangan has covered quite a

1 bit in respect of Sergeant Hughes and Garda Nyhan in
2 that.

3 303 Q. well, I think there is only mention of one other guard
4 in the whole --

5 A. I beg your pardon? 14:14

6 304 Q. I think there is only mention of one other guard in the
7 whole report.

8 A. Yeah, that's all.

9 305 Q. So, given -- and I am going to come back -- I realise,
10 and you have said it a couple of times, that you say 14:14
11 you didn't see this report, is that correct?

12 A. I -- until Chief Superintendent Feehan submitted his
13 final report on, I think the 24th March, or whenever I
14 received it afterwards, that's the first time I had any
15 view of any of these documents. 14:14

16 306 Q. Okay. But you have said a couple of times -- now this
17 is more just for clarification. Did you see that
18 document even at that point?

19 A. No.

20 307 Q. When you received the later document from -- 14:15

21 A. Well, my recollection is --

22 CHAIRMAN: The Feehan report included this document.
23 And he saw it at the time, he says, when he got the
24 Feehan report, is that correct?

25 MR. O'DWYER: Perhaps can I -- 14:15

26 CHAIRMAN: I mean is that what your evidence is?

27 A. That's my recall. It's 16 years ago, but that's my
28 recall.

29 CHAIRMAN: That is your recollection. There's been no

1 mystery about this, Mr. O'Dwyer, there's been no
2 mystery about this. So that's what he said. He saw
3 the Mangan report, which was appended, if I'm
4 understanding, was appended to the Feehan report. Is
5 that correct, as far as you can remember? 14:15

6 A. That's --

7 CHAIRMAN: well, that's what I thought he said. Does
8 anybody think he said anything different?

9 MR. O'DWYER: I thought he had said, but subject -- I
10 mean -- 14:16

11 CHAIRMAN: No, no, tell me what you think.

12 MR. O'DWYER: -- he hadn't seen this document at all --

13 CHAIRMAN: Sorry, I'm relying on my memory, I may be
14 wrong. Tell me in simple language what you think he
15 said, so that we can actually get a question as to see 14:16
16 which is right. Tell me what you think he said. I am
17 sorry, please --

18 MR. O'DWYER: when did you see -- I know.

19 CHAIRMAN: Let me lower the tone of my intervention. I
20 am sorry, I don't want to be expressing frustration. 14:16
21 what is your understanding, Mr. O'Dwyer? No, don't ask
22 him a question, address to me what you understood the
23 witness to have said so that we'll see if there is any
24 misunderstanding.

25 MR. O'DWYER: I -- 14:16

26 CHAIRMAN: You wanted to talk about the Mangan report.

27 MR. O'DWYER: I thought he had said, Chairman, that he
28 didn't see this document at all.

29 A. I didn't say that.

1 308 Q. Oh sorry.

2 A. What I said was, that when I received the report from
3 Inspector Feehan -- or Chief Superintendent Feehan at
4 the end of March, that this was part of the --

5 CHAIRMAN: This was appended to the report.

14:17

6 A. Yeah.

7 CHAIRMAN: That's what he said and that's when he saw
8 it. That's his evidence. You may want to challenge
9 it, and that's nothing -- there is no reason why you
10 shouldn't challenge it, if you think there is a basis
11 for doing so. Anyway... thank you.

14:17

12 MR. O'DWYER: Thank you chair. Sorry I was just
13 responding.

14 309 Q. So you had seen that --

15 CHAIRMAN: Mr. O'Dwyer, don't apologise. Let's just
16 move on, no apology is required. If people
17 misunderstand, it happens to me all the time, it
18 happens. Don't worry in the slightest. Okay. So now
19 let's move on.

14:17

20 MR. O'DWYER: Yes.

14:17

21 CHAIRMAN: You were asking, the Mangan report, you
22 said, focussed on the two, Sergeant Hughes and Garda
23 Nyhan, that's your point. Isn't that right?

24 MR. O'DWYER: Yes, that's correct.

25 CHAIRMAN: And you were going to suggest that that was
26 unreasonable because it should have cast its net more
27 widely, according to the instructions that the
28 Assistant Commissioner had given.

14:17

29 MR. O'DWYER: Yes.

1 310 Q. CHAIRMAN: So, what do you say to that? Don't think
2 I'm agreeing with that, but I am just trying to
3 encapsulate what I understand to be where we're going.
4 A. Well, at the end of the day, my -- the conclusions in
5 the Chief Superintendent Feehan's report were the 14:18
6 conclusions that I relied on.

7 311 Q. MR. O'DWYER: Yes. So if we move on to the report of
8 Chief Superintendent Feehan, which was at page 1963 in
9 the papers. And this appears to be a little bit
10 different from Inspector Mangan's report, in that it 14:18
11 does deal with some of the other guards who had
12 interactions with Baiba Saulite. And if we can go down
13 through it, Mr. Kavanagh, if that's possible. You can
14 see there is some background. And it goes through --
15 and perhaps we'll speed through that quite quickly. It 14:19
16 goes through background about your involvement and
17 Garda records, just Pulse, if we could go down through
18 those, and it mentions -- sorry, if we could just stop
19 for a second -- it deals with all of the Pulse records
20 in respect of her, as was mentioned I think earlier on, 14:20
21 it doesn't really link in with Mr. Hennessy, with John
22 Hennessy, but nonetheless, if we can go onto the -- and
23 it continues with these reports and deals with the
24 earlier statements in the violence and intimidation
25 that had been given to Garda McNally, statements that 14:20
26 had been made to Garda McNally at the very beginning of
27 2005. You can see that was exhibit 1 and exhibit 2.
28 And then it goes into some of the child abduction
29 matters. And then it refers to Sergeant Hughes's

1 report to Inspector Mangan, and it just simply -- if I
2 could -- it refers to the McEneaney report. And then
3 we move to the end where it goes to views and
4 recommendations. And it doesn't deal -- sorry, if we
5 could -- if you wouldn't mind -- well we can go a 14:21
6 little bit further, just to see what it recommends, and
7 this is really -- it's dealing here again with the
8 victim impact statement, it seems to be focussing on
9 that. It is discussed -- and I am sorry we scanned by
10 it, but it was discussed, as we heard earlier, it's 14:22
11 discussed the Osman case, which is about Article 2, the
12 right to life. Sorry, perhaps if we could just go to
13 the end, Mr. Kavanagh, sorry.
14 Yes. And it makes a similar finding, I suppose, to
15 what Inspector Mangan does. It says that there was 14:22
16 knowledge in existence and available to Garda Síochána
17 in relation to threats to Baiba Saulite. He has
18 previously described what happened with the draft
19 victim impact statement, and he makes an almost
20 identical finding to Inspector Mangan, which is that 14:23
21 a -- he says a full investigation should be carried out
22 into this matter.
23
24 There is no mention in either report -- now he doesn't
25 -- he doesn't mention Inspector Mangan's finding about 14:23
26 exemplary, you know about, that the investigation had
27 been carried out perfectly, very well, but nonetheless
28 he says that "I recommend a full investigation be
29 carried out". He doesn't mention discipline. Is that

1 correct?

2 A. He doesn't mention what?

3 312 Q. He doesn't mention discipline or disciplinary process?

4 A. No, he doesn't, no.

5 313 Q. Okay. And I think in respect of the fact-finding 14:24
6 investigation, there was really no question of that
7 being part of a disciplinary process; that never arose?

8 A. There was no --

9 314 Q. Part of a disciplinary process is what I mean, so
10 not -- 14:24

11 A. The word discipline or anything else was never
12 mentioned in regard to the fact-find. The fact-find
13 was purely a scoping exercise, preliminary inquiries to
14 guide me as to what direction, if any, I would take on
15 its receipt. 14:24

16 315 Q. Is it fair to say that these investigations -- the
17 results of these investigations are focussing very much
18 on Sergeant Hughes and Garda Nyhan?

19 A. Well certainly, from reading the document, quite a lot
20 of the report had reference to Sergeant Hughes and 14:24
21 Nyhan, purely because of their close interaction with
22 the deceased on the days prior to the -- her death.

23 316 Q. Well that's what I meant. It appears to be very much
24 focussing on that aspect. It's not focussing on other
25 interactions with other guards. It's not focussing on, 14:25
26 to any extent at all. It's really focussed on these
27 two guards.

28 A. Well the purpose of it was to, whatever the outline at
29 the beginning was, to -- rather than bringing it up

1 there -- "The level of knowledge in possession of An
2 Garda Síochána prior to Ms. Saulite's murder." And
3 that was the report that I received and the conclusions
4 of the report.

5 317 Q. Yes. I suppose the point I'm making is that the report 14:25
6 of the -- the Inspector Mangan report, which was
7 appended to this, you say, and the chief superintendent
8 -- or Chief Superintendent Feehan's report suggest an
9 investigation, a full investigation I think is the
10 words he used, and the next stage, as you know is a 14:26
11 disciplinary, it moves into the disciplinary arena.
12 But where, in any of these, is there reference to
13 discipline or the disciplinary procedure?

14 A. Well I don't think it was necessary for either to make
15 a recommendation for disciplinary procedure. That was 14:26
16 a matter for myself, who had appointed him to carry out
17 the investigation. As I said already, the original
18 intention of it was to guide me as to what direction I
19 would take on its receipt.

20 318 Q. Yes. Well, that report was from the -- that second 14:27
21 report, which included the report of -- as you say,
22 included the report of Inspector Mangan, was the -- was
23 delivered on the, I think the 26th March, so presumably
24 you got that?

25 A. Yeah, I got Chief Feehan's report on the, I think 26th, 14:27
26 2th or 26th March.

27 319 Q. And then on --

28 A. When I say I got his report, I got his investigation
29 file.

1 320 Q. Yes. The fact-finding investigation file I suppose, is
2 that the -- which included all of those documents?

3 A. Yes.

4 MR. McGUI NNESS: Chairman, I wonder could I just
5 intervene there. It's not clear to me that the 14:28
6 proposition that Mr. O'Dwyer has been putting to the
7 witness is perhaps correct in the sense that, as I
8 understand Chief Superintendent Feehan's report, which
9 is some 19 pages, it has a list of exhibits to it, and
10 I don't understand that it does include either of 14:28
11 Inspector Mangan's report. And, Chairman, you will I
12 think understand that Inspector Mangan wrote his first
13 report to Chief Superintendent Feehan in December, and
14 he wrote his second report in February to Chief
15 Superintendent Feehan. But those reports, as I 14:28
16 understand it, were not sent, either at that time, in
17 December or February, nor were they a formal part of
18 the appendices.

19 CHAIRMAN: Thank you very much.

20 MR. McGUI NNESS: That's my understanding. Unless 14:28
21 Mr. O'Dwyer can point to some document in the documents
22 that were attached to Chief Superintendent Feehan's
23 report.

24 MR. O' DWYER: I am very grateful to My Friend for that,
25 Judge. I suppose that was the -- that was my 14:29
26 understanding; that they weren't, but the witness
27 indicated, and that's why you asked the question, I
28 think, chair, that they were, and he saw them, because
29 I had understood him to say that he didn't see them.

1 CHAIRMAN: Sorry, you are talking about them,
2 Mr. O'Dwyer.
3 MR. O'DWYER: Sorry --
4 CHAIRMAN: No, we have two things. I know that the
5 Mangan report went through, so to speak, two versions 14:29
6 or two editions, I know that. Up to now there's been
7 no suggestion that the two of them came. But you asked
8 had Assistant Commissioner McHugh seen the Mangan
9 report.
10 MR. O'DWYER: Yes. 14:30
11 CHAIRMAN: And he said, as I understand, yes, he did
12 because he thought it came with the -- he said,
13 included with or appended or, whatever it was, with the
14 Feehan -- Chief Superintendent Feehan's report. So he
15 did say that. Yes. Now we're clear. 14:30
16 321 Q. When you think back on it, Assistant Commissioner, we
17 don't seem to have a record that the report by Chief
18 Superintendent Feehan, namely his first report, namely
19 the fact-finding report that he submitted, there seems
20 to be no record of his including in that the Inspector 14:30
21 Mangan report. Can you help us on that?
22 A. Well, unfortunately, Chairman, I can't at this stage,
23 after 15 or 16 --
24 322 Q. CHAIRMAN: Don't apologise. If you can't, you can't.
25 A. I genuinely -- 14:31
26 323 Q. CHAIRMAN: To the best of your -- we're here to ask you
27 to the best of your recollection.
28 A. Yeah.
29 324 Q. CHAIRMAN: If somebody wants to suggest that you're

1 wrong or deliberately wrong or whatever it is, that's
2 another day's work. But I'm just concerned, you say
3 look, to the best of my recollection. So what is the
4 situation, as you recollect it now on the, whatever
5 date it is in February 2022. what's your recollection? 14:31

6 A. well, I'm certainly not deliberately wrong, Chairman,
7 but --

8 325 Q. CHAIRMAN: No, no, don't mind me. I am just allowing
9 for any possibility that anybody can make any
10 suggestion -- 14:31

11 A. My recollection --

12 326 Q. CHAIRMAN: But what's your recollection
13 A. -- of 15 or 16 ago is that it came with that. If
14 counsel for the Tribunal is saying there is no record
15 of it, I accept that. 14:31

16 CHAIRMAN: Okay. Does everybody understand that? Very
17 good.

18 MR. O'DWYER: And, to be fair, I do understand it is a
19 long time ago, and I'm not -- I mean it's possible
20 people can remember things differently of course after 14:32
21 all of this time.

22 327 Q. But nonetheless, I suppose what I was trying to get at
23 about that was that the Mangan report appears -- it's
24 been referred to several times in evidence to date that
25 -- certainly Sergeant Hughes's view of it after the 14:32
26 fact, when he finally got that, now he only received
27 that report in 2012, but that that was effectively an
28 exoneration of him, that part I highlighted was an
29 exoneration of him and what he had done in respect --

1 including in respect of the victim impact statement,
2 and that's why I was asking you about it because
3 that --

4 A. Well, if it's, I won't say suggested, but if the
5 inference is that I didn't see the Mangan report, I 14:33
6 kind of genuinely can't comment on that. Inspector
7 Mangan will have to speak on that whenever he is
8 called.

9 328 Q. Yes. But that's tied in with my next point, which is
10 moving on to what happened after this; that these 14:33
11 reports, if nothing else, do appear to have narrowed
12 down very much, certainly Mangan's is very much
13 focussed on the two guards. This, I would say to you,
14 is focussed on a limited number of guards, there were
15 many other guards -- well, Sergeant Hughes has given 14:33
16 evidence that there was many other guards who had
17 contacts with Baiba Saulite over a period of time,
18 including one which is alleged to have happened
19 after -- it was a telephone conversation, but after
20 this, after the victim impact statement event. 14:34

21 A. What conversation?

22 329 Q. That there may have been another -- that she rang --
23 this is Sergeant Hughes's evidence -- that she rang on
24 another date after that, I'm not making -- nothing
25 turns on it for you, but just that there were other 14:34
26 guards who had contact with her.

27 A. Well, I don't know.

28 330 Q. Okay. Thank you. So, we have these reports and they
29 seem, I would suggest to you, to be focussing in on

1 these two guards, and then immediately after this,
2 almost immediately after this should I say, the
3 following month, Sergeant Hughes makes a disclosure to
4 Mark -- or certainly Sergeant Hughes's evidence is he
5 makes a disclosure to Mark Curran in relation to 14:34
6 allegations of systems failure, and that he actually
7 mentioned systems failure to him. And then subsequent
8 to that --

9 CHAIRMAN: Sorry, hold on. Did you know of any
10 revelations by Sergeant Hughes to Superintendent Curran 14:35
11 in April '07?

12 A. Chairman, when I received the issue papers -- the
13 schedule of issues, and the first issue is did myself
14 or Michael Feehan target, discredit Sergeant Hughes
15 because he made a protected disclosure to 14:35
16 Superintendent Mark Curran, I said, this must be a
17 typographical error. Not that anyone in the Tribunal
18 secretarial team would make a typographical error. But
19 I just could not understand where Mark Curran came out
20 of. 14:35

21 331 Q. CHAIRMAN: well, the suggestion of where Superintendent
22 Curran comes into the picture is that Sergeant
23 Hughes -- this is disputed by Superintendent Curran --
24 but Sergeant Hughes says he had a conversation with
25 Superintendent Curran when the superintendent sent for 14:36
26 him and they spoke, in April '07, and he said he spoke
27 about system failure, or systems failure, to
28 Superintendent Curran. That's not what Superintendent
29 Curran remembers about the conversation, but that's

1 Sergeant Hughes's evidence. So where we go from that
2 is that the question is: did you know about any
3 revelation made to Superintendent Curran when you made
4 the decision in June to direct a disciplinary inquiry?
5 A. Chairman, I read the transcripts the other day in which 14:37
6 this reference was made. And I can assure you, I know
7 nothing about what Sergeant Hughes is alleged to have
8 said to Mark Curran. I was never speaking to Mark
9 Curran. I think the last time I had been speaking to
10 Mark Curran -- or Superintendent Mark Curran was when 14:37
11 he was a superintendent in Lucan, where there had been
12 an incident and where I had to call there. And that
13 was at least two months prior to he being allocated to
14 Coolock. And I actually feel there to be a terrible
15 injustice that I am being accused of targeting or 14:37
16 discrediting Sergeant Hughes on that basis. I had no
17 knowledge whatsoever of that assertion.
18 CHAIRMAN: Okay. Right. Thanks very much.
19 332 Q. MR. O'DWYER: And Assistant Commissioner, can I -- I
20 understand that's your position in respect of -- 14:38
21 A. Sorry?
22 333 Q. I understand that's your position in respect of that.
23 But Sergeant Hughes -- can I -- sorry, I don't want to
24 interrupt you.
25 A. No. I know nothing about it. I saw it in the papers 14:38
26 discovered, or the papers the Tribunal circulated there
27 in the last few weeks, voluminous amounts, where
28 Superintendent Curran did a report. I know nothing. I
29 never saw that report. He did a report to his chief

1 superintendent. I never saw it.

2 334 Q. Yes. And Sergeant Hughes has said that his evidence
3 was that he had discussed a systems failure with
4 several people before this point in time, or at least
5 he may not have used that phrase but he had talked 14:39
6 about systems failure, including yesterday we heard
7 from Inspector Cryan that he had talked about a lack of
8 coordination of investigations. Simply put, did you
9 know anything about any of these other claims?

10 A. The first time I became aware of systems failures, 14:39
11 lacked coordination, everything else I can think of,
12 was when I received the papers from the Tribunal
13 exactly this month two years ago. It was actually on
14 my daughters' double birthday. I can remember the day
15 well. 14:39

16 335 Q. So it is your evidence that you didn't know anything
17 about these other, you know, that these conversations
18 that Sergeant Hughes was --

19 A. No knowledge whatsoever. None .

20 336 Q. At this point anyway. We're talking now about April, 14:40
21 May, June of --

22 A. 2007.

23 337 Q. -- 2007. And at this point we move on to your decision
24 to issue or to launch the disciplinary procedure.

25 A. Yeah, I did that on the 2nd May. 14:40

26 338 Q. And I have already pointed out that the reports --
27 neither report mentions disciplinary action of any form
28 or initiation of disciplinary proceedings.

29 A. No, but I considered there may have been a breach of

1 discipline. There may have been a breach of
2 discipline, not that there was a breach of discipline.

3 339 Q. And what did you think that breach of discipline was?
4 A. Well, you wouldn't -- you wouldn't decide on what the
5 breach of discipline was until such time as a report 14:41
6 would have been submitted and then you would draw from
7 the schedule in the '89 regulations as to what breach
8 of discipline would have been appropriate to the
9 particular report that you received.

10 340 Q. Well, as you know, the regulation 9 notice does include 14:41
11 a statement of the allegation, or the omission that may
12 have occurred?

13 A. Yeah, that's required as an outline to the person, the
14 recipient of the notice of -- to give he or she a
15 general idea of what the inquiry is about. It's not 14:41
16 specific as to a breach of discipline within the
17 schedule attached to the regulations.

18 341 Q. And perhaps we could look at that at page 2083. We
19 have seen this already, but...
20 Now, this is obviously, at the point we have moved on 14:42
21 to something very much aimed at Sergeant Hughes and
22 Garda Nyhan. I mean, clearly they are the people to
23 whom this is addressed.

24 A. Sorry, I can't hear you too well. What are you saying?

25 342 Q. We have moved on now to a situation where the two 14:42
26 guards are very much the subject of this?

27 A. That's correct, but --

28 343 Q. And they are the people --
29 A. Yes, but in the covering note, or the covering document

1 that I submitted with those, it's very clear that if
2 during the -- this was addressed to Superintendent
3 Feehan. "-- during the course of your investigation,
4 should you identify further breaches of discipline
5 against other members--" It was very open to the 14:43
6 investigation team if other breaches of discipline
7 emerged, that that would be reported on arising out of
8 this investigation.

9 344 Q. Yes. But nonetheless this allegation is -- well first
10 of all, it's extremely serious; it's linked -- and you 14:43
11 have said that earlier -- it's linked -- is this
12 correct, it's linked to the reference in the Feehan
13 report to Osman, to the Osman case, and Article 2,
14 European Convention on Human Rights?

15 A. It's information for both members, or whoever receives 14:43
16 a discipline notice, to give them a flavour for what
17 the investigation is about.

18 345 Q. Would you accept that it's a very, very serious
19 allegation?

20 A. I wouldn't have looked on it as very serious. It's 14:44
21 really, what you are speaking about are the acts of
22 commission or omission. It didn't say that they
23 committed any offence.

24 346 Q. No, but it's an allegation that -- I accept it's "may",
25 but nonetheless it's a formulated allegation that 14:44
26 something occurred that's a very serious matter, is
27 that correct?

28 A. I suppose any person who is the subject of discipline
29 will consider the fact that there is a discipline

1 investigation, there's been a serious matter, and I
2 have no doubt in this case, and from reading the
3 transcripts, Sergeant Hughes went off and sought
4 advice. And my own view was that that advice that he
5 got really drove him, I won't say mad, but drove him 14:45
6 angry, and concerned as regards the type of advice that
7 was given.

8 347 Q. Yes, he received advice, but if we could just --
9 A. But I mean I was never alleging that they were -- that
10 it was tantamount to manslaughter. 14:45

11 348 Q. But it says that "they knew or ought to have known at
12 the time of the existence of a real and immediate risk
13 to the life of Baiba Saulite and failed in their duty
14 to take measures that might have been expected to avoid
15 that risk", that's the risk of her death? 14:45

16 A. Well, the trend going through all of Sergeant Hughes's
17 fact-finding report is that any time there was any kind
18 of a complaint from Baiba Saulite, he reported it up
19 the ladder, or reported it to his supervisor. And in
20 this case, the document was put in a drawer for a 14:46
21 number of days where she had expressed that in the
22 end -- at the moment, what is it, I am very concerned
23 for my life, or words to that effect.

24 349 Q. Yes. Do you accept this is a very, very serious
25 charge? 14:46

26 A. No, I don't accept --

27 350 Q. Or allegation, I should say?

28 A. No, I accept that it's an outline of what had to be
29 investigated.

1 351 Q. Yes. I have to put it to you, Assistant Commissioner,
2 that this doesn't reflect what was in -- if you looked
3 particularly at the combination of those reports, and
4 that this was really unwarranted, if you knew that what
5 had happened, as described particularly in the Mangan 14:47
6 report and in Sergeant Hughes's statement about what
7 had happened with the draft victim impact statement,
8 what in fact had happened, that this was completely
9 unwarranted and was a very serious allegation to make
10 in those circumstances? 14:47

11 A. Well, this was coupled -- as you speak about the draft
12 impact, it was coupled with also the knowledge that on
13 the contents of the two statements the deceased made on
14 the 4th January, I think 2005, in which serious
15 outlines of similar outrages were outlined, plus the 14:48
16 fact at the time he knew that John Hennessy's life was
17 under threat as well from a specific threat.

18 352 Q. But that part could be said about obviously many other
19 guards, including yourself?

20 A. Say that again. 14:48

21 353 Q. I mean you knew that John Hennessy's life was under
22 threat as well, and you had the information we referred
23 to earlier about Baiba Saulite.

24 A. I did, but combining all of those factors together --

25 354 Q. Yes? 14:48

26 A. -- Sergeant Hughes must have concluded that he should
27 have done something about the victim impact statement
28 if he had read it.

29 355 Q. But Assistant Commissioner, I have just -- what did you

1 -- were you aware that Sergeant Hughes hadn't read the
2 report?

3 A. Yeah, I think he had referred to it in his --

4 356 Q. Yes. In his statement?

5 A. In his report to, I think, inspector Mangan. 14:49

6 357 Q. So how could he be -- in those circumstances, and you
7 were aware that the victim impact statement was -- the
8 draft was a handwritten document which didn't contain
9 the information that such a statement would properly --
10 this is what Inspector Mangan had pointed to, and he 14:49
11 had said - and it's never been controverted - that he
12 hadn't read -- or he had looked at it, realised it
13 wasn't suitable, sent her -- you said you knew he sent
14 her, he had told her to get medical advice and they
15 would develop it after that. How could you say that he 14:49
16 knew or ought to have known of an existence of a real
17 and immediate threat to her life from that in those
18 circumstances, knowing all of that?

19 A. He said he glanced through the victim impact in his
20 report. 14:50

21 358 Q. Yes...

22 A. But there was a very defining sentence in the last
23 paragraph when Baiba Saulite said at the moment -- she
24 didn't say now, yesterday, all the time -- at the
25 moment I am very scared for my life. It was then in 14:50
26 the present tense.

27 359 Q. Yes. But that -- even if he had read it, and you knew
28 -- well, certainly you knew he was saying and Garda
29 Nyhan was indicating that they hadn't read it in any

1 detail, to come to that, and certainly he hadn't read
2 that part, and the reasons for that, how could you say
3 that they knew or ought to have known?
4 A. well, I'd have expected that, in view of what she had
5 said, which I found alarming, that he would have 14:51
6 brought the notice to someone, he'd have gone down to
7 the detective unit, he'd have got on to his inspector,
8 reported the matter.
9 360 Q. Given what you have said about not knowing anything
10 about disclosures, anything about systems failures, I 14:51
11 put it to you this would be at least scapegoating?
12 A. This would be at least?
13 361 Q. This would be scapegoating of Sergeant Hughes and Garda
14 Nyhan?
15 A. well, I would certainly never see it as scapegoating, 14:51
16 and I could never be accused of scapegoating anyone.
17 Anyone who has ever dealt with me.
18 362 Q. And I think you just mentioned it a couple of minutes
19 ago, but you may be aware of John Hennessy's evidence,
20 who is a person who was involved in all of this, that 14:52
21 this was completely unwarranted in the circumstances; I
22 think that's a fair summary.
23 A. That's John Hennessy's view.
24 363 Q. Yes. Do you reject that view?
25 A. Of course I do. 14:52
26 364 Q. And what he also makes the point, and, in fairness, he
27 slightly -- you know, he indicates that he was, at the
28 time when he saw this, he was so shocked -- or he was
29 shocked and he indicated that he considered it to be

1 equivalent to a charge of manslaughter.

2 A. Say the last bit again.

3 365 Q. That he -- well, he considered this to be equivalent to
4 a charge of -- or an allegation of manslaughter.

5 A. Well, I'm not a legal person, but I would have 14:53
6 considered that very extreme advice.

7 366 Q. But you did know that it referred to -- or it linked
8 back to what Chief Superintendent Feehan had said about
9 Osman and the duty to protect life?

10 A. Yeah. 14:53

11 367 Q. So it is a very -- perhaps the choice of manslaughter
12 may not be -- I mean that's for mother day to debate
13 that, but certainly that it was a charge of
14 recklessness and --

15 CHAIRMAN: I think we have been over the meaning of the 14:53
16 charge sufficiently Mr. O'Dwyer, I don't need a debate
17 with the witness -- a further debate on it.

18 MR. O'DWYER: Okay.

19 368 Q. One way or the other, the threat that was referred to
20 by -- or the concern for her safety that was referred 14:54
21 to by Baiba Saulite, that couldn't be described as a
22 specific threat, she wasn't giving details. It wasn't
23 the same as, for example, a hit had been order on the
24 her or anything like that. Is that correct?

25 A. Is that the last sentence you are referring to? "At 14:54
26 the moment I am scared for my life."

27 369 Q. Yeah, the sentence you have referred to?

28 A. Yes, that's fair enough.

29 370 Q. So it's not a specific threat?

1 A. Well, I'd see it as an extremely specific concern.

2 371 Q. Because, I mean isn't that really what, at the end of
3 all of this, more than two years later, is that not one
4 of the things that Chief Superintendent Feehan found,
5 that this wasn't a specific threat. That even if 14:55
6 Sergeant Hughes had read it --

7 A. Yeah, that's at the conclusion of the discipline
8 investigation, yes.

9 372 Q. And could that not -- I mean, that's something that you
10 could have made a call on yourself? 14:55

11 A. Sure that was the reason I established the discipline
12 investigation, to see was there any breaches of
13 discipline.

14 373 Q. Just one other thing I am reminded of. I mean
15 obviously the victim impact document that referred -- 14:56
16 or the statement that, the draft statement that
17 referred to the immediate risk, I mean that was
18 prepared before -- you know this was prepared before
19 the meeting with Sergeant Hughes, it was written by
20 somebody -- it was actually written by a neighbour. 14:56
21 So...

22 A. That's true, yeah.

23 374 Q. Okay. So it was prepared before. So the immediate
24 reference is some time before they met?

25 A. Yeah, I don't know, was it that day or the day before 14:56
26 or when.

27 375 Q. Okay. So, returning to the issue of the serious
28 threat. I mean if that's not a serious threat, you
29 know, not -- I mean why would you launch these

1 disciplinary proceedings, even -- so what I'm saying to
2 you is: even if Sergeant Hughes had read it, or Garda
3 Nyhan, they would have been -- they would have been
4 entitled to say this isn't what I think we have all
5 been referring to as a serious threat. It's a general 14:57
6 threat.

7 A. Well, the way I interpret it is that the clear
8 intention of the regulations is that an investigation
9 should follow once there has been determination that
10 there may have been a breach of discipline, yes. That 14:57
11 was quoted in the High Court case.

12 376 Q. Yes. Can I put something else to you: there wasn't
13 any need for a disciplinary procedure here. Sergeant
14 Hughes has said -- and I think it's correct -- that
15 this could have been sorted out with a short, a 14:57
16 relatively short interview with him, and he could have
17 described the circumstances around the draft victim
18 impact statement coming to his -- ending up in his
19 locker and what he was keeping it for and why he held
20 on it -- by the way, that was a copy of it, but why he 14:58
21 did that. What do you say to that?

22 A. Well that was my view at the time, and that was why I
23 established the disciplinary investigation.

24 377 Q. Did you consider, in doing that, the effect that might
25 have on Sergeant Hughes? 14:58

26 A. I beg your pardon?

27 378 Q. Did you consider, when doing that, the effect that
28 issuing those disciplinary proceedings --

29 A. Well, any disciplinary investigation has an impact on

1 the individuals involved, I'm well aware of that myself
2 from personal experience when I was a young person, so,
3 I'm well aware of it.

4 379 Q. well what was your view on that?

5 A. well fortunately, the discipline regulations are there 14:59
6 for a purpose. They were drafted by Government. The
7 contents of them, or the different regulations, I am
8 sure at some stage are run past the Attorney General of
9 the day, and I was view that a breach of discipline may
10 have occurred, and that was why I initiated the 14:59
11 discipline investigation.

12 380 Q. Okay. And what do you say in respect of what I
13 mentioned about there being an alternative, it didn't
14 have to be disciplinary -- you could have had a further
15 investigation, you could have had a further interview 14:59
16 outside of the disciplinary process.

17 A. I didn't consider it at the time.

18 381 Q. You didn't?

19 A. No.

20 382 Q. And if we perhaps move on from that, and I know -- 14:59
21 sorry, I have been -- it is, you can imagine, very
22 important to the Tribunal, this particular issue. So,
23 I'm sorry if I have laboured it a little bit, but
24 moving on to the issue of what happened after that.
25 So, in terms of the progress, I think regulation 8, 15:00
26 under which that -- the notice was issued, that refers
27 to this investigation being done as soon as
28 practicable. And there is references thereafter to --
29 can I just use shorthand and say -- expedition in

1 getting these investigations done.

2 A. Yes, I am in total agreement with it be done as soon as
3 practicable. It's gone through various challenges in
4 the High Court. As I said earlier, the late
5 Mr. Justice Hamilton, in the McVey case, 15:01
6 copper-fastened it many, many years ago that it must be
7 done as soon as practicable. In fact I think he said
8 that it was -- I'm not sure did he say it was
9 mandatory. But there was delays. There was nothing
10 intentional in any of those delays. If one goes 15:01
11 through -- I am sure Chief Feehan will deal with those
12 issues himself.

13 383 Q. Well, I know you have been -- we have gone through this
14 this morning and I don't want to repeat everything My
15 Friend dealt with earlier, but -- well, can I just ask 15:02
16 you: what would you think was a reasonable period for
17 an investigation like this to take place? Just in --
18 from your general experience, you are very experienced.
19 Well now you are retired, but...

20 A. Well, okay, I don't want to be adding any hurt to 15:02
21 Sergeant Hughes, but Sergeant Hughes was on sick leave
22 and it would be completely inappropriate, in those
23 circumstances, to delve into his private personal life
24 in terms of his illness to try and advance this
25 investigation. But, in ordinary terms, like, Garda 15:02
26 Nyhan's was dealt with within a year. He was on sick
27 leave as well, but as far as I remember, he came
28 forward during sick leave to be interviewed -- now I
29 may be subject to correction --

1 384 Q. That's correct.
2 A. I may be subject to correction on that. But normally
3 this thing should have been wrapped up, in the event of
4 no illness, in a matter of some eight to twelve weeks,
5 maybe less. 15:03
6 385 Q. Yes, that would seem...
7 So eight to twelve weeks, so I suppose --
8 A. Providing everything was normal, no illness, no letters
9 from solicitors saying that my client is unavailable
10 due to illness, suffering from sickness, none of that. 15:03
11 If it was a straightforward thing where there was no
12 interruptions I would expect that it would have been
13 dealt with much quicker.
14 386 Q. So what did you reckon on what happened here? Even
15 immediately straight off? I mean, you would have 15:03
16 expected, from what you have said, you would have
17 expected -- you would have expected a report within,
18 what did you say, eight weeks?
19 A. Eight to twelve weeks. You know, three or four months.
20 387 Q. And -- 15:04
21 A. Like I mean, the superintendent and the chief
22 superintendents, in case the impression is going out
23 that all we have to do is deal with discipline, Chief
24 Feehan and all the other chief superintendents in the
25 city at that time were snowed under in murder 15:04
26 investigations. And they have other duties too. We
27 don't have the luxury of having a dedicated
28 investigation service, whereas, you know, things have
29 moved on now and GSOC are there. But they are still

1 involved with GSOC, superintendents are. But in the
2 ordinary term of events, if the investigating officers
3 involved had nothing else to do, I'm just saying it
4 could be we have weeks, provided, provided it was
5 straightforward and no interruptions. 15:04

6 388 Q. Just you mentioned GSOC, you didn't consider them, I
7 think that was --

8 A. GSOC at that stage hadn't come into being. I think
9 they didn't come in until sometime in June, June 2007.

10 389 Q. But we're -- 15:05

11 A. This started in the 2nd May, 2007.

12 390 Q. But I'm understanding from that, could you have -- I am
13 afraid I don't know the date it was set up, but I mean
14 that you would have considered possibly a different
15 route if it had been in existence at the time? 15:05

16 A. No. This would have been purely a case being
17 investigated under the discipline regulations. If it
18 was to be deferred to GSOC, I don't know what stage it
19 took later on in the year, the Commissioner would have
20 delegated functions to superintendents to do referrals 15:05
21 to GSOC, and with memorandum of understandings and all
22 the rest that went with it.

23 391 Q. But you could have -- I mean, presumably if a
24 superintendent could, you could?

25 A. I beg your pardon? 15:05

26 392 Q. Presumably if a superintendent could refer the matter,
27 you could?

28 A. Well in certain types of cases, yeah.

29 393 Q. Okay.

1 A. But this is post I had commenced the investigation.
2 The Garda discipline regulations were still in being.
3 The legislation underpinning GSOC hadn't been
4 established.

5 394 Q. I am informed GSOC was established on the 9th May 2007. 15:06
6 Now, I have just been given that, so I don't want to --
7 and perhaps it can be checked --

8 A. Yes. It may have been established by the Minister, but
9 my recollection, and I am subject to correction, is
10 that the machinery or the workings didn't kick in until 15:06
11 sometime later in the year.

12 395 Q. But even if that's the case, I mean obviously the
13 matter could have been transferred to them?

14 A. Well, if I had commenced an investigation under the
15 1989 regulations, how could I then, hypothetically 15:06
16 speaking, how could I then, after initiating a
17 statutory investigation, technically, how could I then
18 refer it to GSOC, another statutory agency? I mean, it
19 would be challenged, overnight, in the High Court.

20 396 Q. Possibly. So, going to the length of -- returning to 15:07
21 the length of time this was taking. As far as I am
22 aware, and given what you have said about eight
23 weeks --

24 A. I said eight to twelve weeks, four months maybe --

25 397 Q. I'm not -- I'm really not trying to catch you -- 15:07
26 CHAIRMAN: You don't have to correct it, I am not
27 missing the point. You said eight to twelve. If
28 counsel says eight, you can take it I put a bracket to
29 twelve. Don't worry.

1 A. Okay, we agree on that then.

2 398 Q. MR. O'DWYER: But it seems to be the 1st November
3 before Sergeant Hughes is even asked to attend for an
4 interview about this, these matters.

5 A. No, I don't know the specifics of the dates at this 15:08
6 stage. Okay, you can put them up if you want, but,
7 like, it was -- the investigating officer was Chief
8 Superintendent Feehan, and I'd say he'd be in a better
9 -- give a more truer response to -- if I give responses
10 now that conflict with his tomorrow, and not I seeing 15:08
11 -- seeing that he was the person who was investigating,
12 I was the appointing officer.

13 399 Q. Well I suppose, I might put it to you a different way:
14 did you know that it was a couple of months before he
15 was asked -- more than a couple actually? 15:08

16 A. Yeah, I would have been in contact with him with other
17 issues to do with his work, and I would have inquired
18 about delays, I don't know what -- I would have got
19 updated reports, I'm not sure when Sergeant Hughes
20 reported on sick leave. Was he on sick leave during 15:09
21 some of that period? I don't know at this stage.

22 400 Q. Sergeant Hughes's evidence, just that you know, was
23 that what happened in November of 2007 was that yes,
24 there was this communication about him being ill, which
25 he was certainly at the time, but that he had contact 15:09
26 with Chief Superintendent Feehan and that he indicated
27 he would -- that he felt awful but that he would do an
28 interview, but it was Chief Superintendent Feehan who
29 decided that he would pursue it with the CMO. Were you

1 aware of that?

2 A. I mean I was reading all the documentation that was
3 served and my recollection was, he did contact --
4 Sergeant Hughes did contact Chief Superintendent
5 Feehan, but I think Mr. Costello had been very specific 15:10
6 in his letter --

7 401 Q. This was subsequent to that?

8 A. No, this was on the 7th November.

9 402 Q. Yeah.

10 A. And -- 15:10

11 403 Q. No, I just mean the conversation was subsequent to the
12 contact by -- that was certainly my understanding was
13 that the --

14 A. I am not sure. I saw -- I read something there around
15 that time that he had contact with Chief Feehan. 15:10

16 404 Q. Yes. And I mean we have been through the
17 correspondence this morning, there was this to-ing and
18 fro-ing with the CMO, but I mean what was your view on
19 all of this? I mean... I mean, one way or the other,
20 this is your, can I put, for want of a better phrase, 15:11
21 but you are in charge of this, this is your
22 investigation. I know Chief Superintendent Feehan is
23 running it and everything, but I mean still, it's under
24 your command as such?

25 A. All right. Usually -- not usually, but I think it 15:11
26 would be completely inappropriate for the appointing
27 officer to become involved with the investigating
28 officer lest it would be seen as trying to influence
29 how the investigation should proceed. So, all I would

1 have ever sought for were updates as to the progress --
2 in this case the lack of progress -- of the
3 investigation.

4 405 Q. But surely you'd be entitled -- in fact, I'd say
5 obliged -- to get him to hurry up, or try to get him to 15:12
6 hurry up rather than just asking for updates?

7 A. Well, I was satisfied from what I was being told by the
8 chief that he was making efforts to contact the CMO --
9 or rather, to get a response from the CMO. I mean, it
10 was vital. There was no way that any of the 15:12
11 investigators could approach Sergeant Hughes until such
12 time as it was medically clarified that it was safe or
13 permissible to do so.

14 406 Q. What about just as a -- I mean, the documents have
15 already been opened about the various requests coming 15:12
16 from the other Assistant Commissioner, Catherine
17 Clancy, and, you know, looking for updates, looking for
18 updates, what's happening. Would of it -- would it not
19 have struck anyone that you could possibly -- even if
20 there were a difficulty or continuing difficulty with 15:13
21 Sergeant Hughes, that he was, for some reason, unable
22 to do an interview -- now, remember there had been no
23 determination of this at all, so otherwise there's an
24 assumption he wasn't --

25 A. He had no what? 15:13

26 407 Q. That this interview could have been done in writing?

27 A. I don't know about that now. You know, when I mean I
28 don't know about that, I mean I'm not knowledgeable on
29 that, what you are saying.

1 408 Q. Okay. But did you make any suggestion to chief
2 superintendent as to what might be done to move things
3 along?

4 A. Well, from reading all the papers that were served,
5 it's very evident that all communications seemed to 15:13
6 have been between Sergeant Hughes's solicitor and the
7 investigation team, rather than with Sergeant Hughes
8 and -- whether that was the way the solicitor wanted it
9 or Sergeant Hughes wanted it, I don't know.

10 409 Q. I have to put it to you it was almost painfully slow, I 15:14
11 mean it ended up being two and a half -- or maybe not
12 -- a little bit less, but over two years.

13 A. Oh yeah, I mean I can't say otherwise. I have said it
14 in the questions I was asked, that I was satisfied that
15 it was taking too long. And in the hypothetical 15:14
16 situation, if, at the end of that period, that if the
17 case was there that breaches would have to be
18 preferred, I have no doubt that the High Court would be
19 entered the following morning to challenge it because
20 of the length of time, it wouldn't hold up. But I have 15:15
21 to factor in the efforts being made to get medical
22 opinion as to whether he should be interviewed or not.

23 410 Q. Yes. But they weren't forthcoming?

24 A. Well, not to Chief Feehan anyway.

25 411 Q. Can I put it to you that all of these delays -- well 15:15
26 sorry, before, can I just, you are aware from the end
27 result, the report, the disciplinary report which is at
28 page 907 in the papers, if I could open that, this is
29 the end result, after all of this time, that in fact

1 the interview with Sergeant Hughes was very short and
2 there was a -- it's at page 915. It was an extremely
3 short interview.

4 A. Was that the interview where he met them in the foyer
5 of Sean Costello solicitors? 15:16

6 412 Q. I don't know about the foyer, but he met them in the
7 solicitors, yes.

8 A. Yeah. From my reading -- or from my recall, there was
9 a much more formal interview with the solicitor and
10 Sergeant Hughes on the 29th October 2008. I think 15:17
11 these were initial questions that were put to him.

12 413 Q. Yes, that's right. Sorry, there was a further
13 interview about some of the other issues that were
14 raised.

15 A. Yeah. 15:17

16 414 Q. But the point I'm making to you: this appears -- this
17 was the first -- I mean this was the interview they
18 wanted to have. It was at this they received the
19 25-page document; you know that. But this was all of
20 the questions that they wanted to ask Sergeant Hughes, 15:17
21 do you follow what I mean?

22 A. I can, yeah.

23 415 Q. So otherwise it was only because of the 25-page
24 document that some other issues arose that were
25 clarified. But this was what they wanted to ask and 15:18
26 what they wanted to interview him about?

27 A. Yeah... em...

28 416 Q. But, can I just put it to you that this -- certainly an
29 awful lot of this information was already within their

1 knowledge before -- well, certainly as the
2 investigation began?

3 A. I can't answer for them, and I am unable to address
4 those issues because I wasn't there.

5 417 Q. It was clear, given the way it's laid out, that it 15:18
6 could certainly have been done in writing?

7 A. Say that again.

8 418 Q. It would appear, on the way it's laid out here anyway,
9 that it could have been very easily done in writing; so
10 they could have sent him at any point? 15:19

11 A. I think that's a question that you'll have to ask to
12 someone that was there, I can't answer that.

13 419 Q. Right. I suppose what I have to put to you is that
14 there was a bit more behind this delay; that this delay
15 was connected to the -- well, at the later stage, to 15:19
16 the confidential recipient, which certainly was a
17 disclosure, if not earlier disclosures made by Sergeant
18 Hughes, including the one which we're focussing on,
19 which was the April?

20 A. Well, I said already to the Tribunal lawyers, I knew 15:19
21 nothing about the confidential -- the disclosure to the
22 confidential recipient. I initiated my investigation
23 on the 2nd May 2007, and my recall is that the
24 disclosure was made to the confidential recipient some
25 time, I don't know, is it, August or October 2008. 15:20
26 CHAIRMAN: September. I think, is that right?
27 September '08? I'll give you the date.

28 420 Q. MR. O'DWYER: Yes. But the Tribunal, as you know at
29 this point --

1 CHAIRMAN: The 16th September 2008. Sorry. The 16th
2 September 2008.

3 A. So I had no knowledge of that.

4 421 Q. MR. O'DWYER: You didn't know anything --

5 A. I said already this morning -- 15:20

6 422 Q. I understand, I'm not going to go over --

7 A. -- I knew nothing at all about that.

8 423 Q. So, you knew nothing at all about the confidential
9 recipient?

10 CHAIRMAN: That's what he said. You may accept it or 15:20
11 not accept it, but what he said is I knew nothing
12 whatsoever about the confidential recipient.

13 424 Q. MR. O'DWYER: or any allegations -- did you know
14 anything about any allegations about a systems failure
15 prior to the... 15:21

16 CHAIRMAN: He said he discovered the words systems
17 failures on his daughter's birthday two years ago. So
18 that's 2020. You may disagree with it, Mr. O'Dwyer,
19 but there is no point in asking him again because he
20 has already said it 15:21

21 425 Q. MR. O'DWYER: And how can you --

22 426 Q. CHAIRMAN: Am I right? Is that what you said earlier?

23 A. Yeah, both my double daughters, both of them had a 40th
24 and a 30th and I had to go out to the --

25 CHAIRMAN: But the same birthday, have they? 15:21

26 A. Yeah. Well, it wasn't the same dates but they
27 celebrated together. And I had to go to the sorting
28 office to collect this big parcel and I said, what's
29 this? And I just opened it and closed it and went off.

1 427 Q. CHAIRMAN: Systems failures, that, you say, was the
2 first time you heard about systems failures, is that
3 right?

4 428 Q. MR. O' DWYER: And in respect of -- well, was there any
5 other reason that this delay had been allowed to go on 15:22
6 for so long?

7 A. Well, I assure you, I didn't contribute to any delays
8 in this investigation. I would have been as anxious to
9 have it completed as soon as possible if that was the
10 case. 15:22

11 429 Q. If that were the situation, could you get somebody
12 else, if Chief Superintendent Feehan, as you have, I
13 think, indicated he earlier, was very busy - which I
14 can imagine may be the case, but - you know, get
15 somebody else to complete it? 15:22

16 A. No. The regulations were very specific. I would have
17 to start from scratch again. And it would be very hard
18 to justify -- maybe on the retirement of someone, yes,
19 but how could I justify on a subsequent challenge that
20 in the middle of an investigation I discontinued and 15:22
21 decided to appoint a new investigating officer? What
22 would that convey across to any party in a challenge?

23 430 Q. And it was the 21st July 2009 that the proceedings were
24 finally discontinued?

25 A. That's correct. 15:23

26 431 Q. That's just over two years, a little bit more than two
27 years?

28 A. Yeah.

29 432 Q. And you let Sergeant Hughes know the result?

1 A. I did, in compliance with the regulations, there is a
2 clause there where I discontinued it and I notified
3 him.

4 433 Q. Okay. And you didn't provide him with a copy of the
5 report?

15:23

6 A. Well, a copy of the report wasn't sought and I have
7 never heard of copies of reports being sought, but in
8 his case a copy wasn't sought.

9 434 Q. But you didn't provide it?

10 A. No, I didn't.

15:24

11 435 Q. Why would you not provide, after all of that time?

12 A. Well, I think that I never saw -- I don't know would I
13 have been setting a precedent; I have never heard of a
14 copy of an investigation report being appended to when
15 an appointing officer has decided to discontinue an
16 investigation, I don't know would it have been a
17 precedent, I think it would. There was no ulterior
18 motive, I assure you.

15:24

19 436 Q. And you know that Sergeant Hughes hadn't been
20 provided -- didn't see Inspector Mangan's report, all
21 throughout this process, didn't really know what was
22 happening with these particular investigations and
23 never saw the, what I think -- I mean I think Inspector
24 Feehan's report can really -- I mean certainly whatever
25 about Inspector Mangan's, the chief superintendent's
26 report can be seen as an exoneration I think, would
27 that be fair to say? I mean --

15:24

15:24

28 A. I am a bit perplexed about this exoneration. I'd have
29 to read it again. If there was any exoneration, it

1 was, I'd say, a compliment in terms the commendable way
2 in which the abduction investigation was carried out.

3 437 Q. But I mean even the end result of all of this, the
4 report of the -- the disciplinary report itself, the
5 one that was at 907 that we had opened -- it's still on 15:25
6 the screen, and if you, I suppose, go to the
7 conclusions in that -- sorry, if I could just -- And:
8

9 "This investigation has not established that the member
10 concerned was aware of the existence of a real and 15:26
11 immediate threat on the 20th October 2006, apprised of
12 his concerns of Ms. Saulite. However, there was
13 nothing to indicate that her life was under threat.
14 Sergeant Hughes denies having read the victim impact
15 statement wherein she actually states that she feared 15:26
16 for her life and there was no evidence to hand that
17 would indicate otherwise. Even if he had read the
18 report in full it is unlikely that the contents could
19 be interpreted as a real and immediate risk to the life
20 of Ms. Baiba Saulite." 15:26

21 A. Yes --sorry?

22 438 Q. I respectfully put to you that that could have been
23 decided at the earliest possible stage after the
24 reports of Mangan and Feehan.

25 A. I think I have answered that already. I think you 15:27
26 asked me that question already. And I have answered
27 it. I initiated the discipline investigation. I was
28 guided by regulations that -- whether there was a
29 determination that there may have been a breach of

1 discipline, that I established the discipline
2 investigation.

3 439 Q. Yes...

4 A. I can't comment any further on that then on the basis
5 of that he was exonerated. 15:27

6 440 Q. The proceedings, nonetheless, were discontinued on the
7 21st July 2009?

8 A. Sorry?

9 441 Q. The proceedings --

10 A. Yes. 15:27

11 442 Q. And then can I ask you, finally, about The Star
12 article. You know the article in The Star and the
13 investigation in that? Sorry, well, I should clarify,
14 you have mentioned already -- you said you knew nothing
15 about the confidential recipient investigation, so you 15:28
16 had nothing to do with the appointment of Chief
17 Superintendent Feehan to that or anything like that?

18 A. To the confidential --

19 443 Q. -- recipient investigation.

20 A. No, most definitely not. 15:28

21 444 Q. Okay. So The Star article -- you appointed Chief
22 Superintendent Feehan on the 22nd September 2008.

23 A. Yeah. That was as a result of Mr. Costello, solicitor,
24 writing to the Commissioner -- I can't recall what the
25 complaint was -- in regard to an article in The Star, 15:28
26 and it came down to the Deputy Commissioner and the
27 Deputy Commissioner, my recall is that it was sent to
28 me, I can't find -- well, I don't know whether -- it's
29 there somewhere, I presume -- my appointment, and I

1 appointed Chief Feehan to, I think he was Assistant
2 Commissioner at that stage, to carry out that
3 investigation. I had no other part in that.

4 445 Q. And did he report to you?
5 A. No. I think I was retired, I'd say, when the report 15:29
6 was finished, I think it was in 2010 at least.

7 446 Q. Right. And were you aware, in appointing him, that
8 what was alleged, the leak -- and we have had a lot of
9 evidence about this in the past couple of days -- the
10 leak was about the disciplinary investigation itself 15:29
11 that he was running?

12 A. There was so many -- I mean, if I was to get upset over
13 all the articles that were written after every murder
14 in Dublin, I don't think I'd have been able to do my
15 job. I avoided reading the articles on some of the 15:30
16 papers, I was more of a broadsheet reader myself, and I
17 had no input into that, absolutely none.

18 447 Q. No, but in terms of the appointment of Chief
19 Superintendent Feehan, I mean you knew what -- I mean
20 you must -- well sorry, did you know what the article 15:30
21 said?

22 A. Yeah, I think Mr. Costello, solicitor, did write -- I
23 don't know did he write to the Commissioner or to me --
24 anyway, the letter landed on my desk and I think I
25 responded in terms of, that I was satisfied with the 15:30
26 integrity of Chief Feehan and that I had no difficulty,
27 that he was a man of the highest standards, that I had
28 no difficulty in appointing him to carry out the
29 investigation. That's, in general terms, now I think.

1 I haven't seen the letter in years.

2 448 Q. Okay. The 25-page report that was submitted to the
3 disciplinary investigation, you were obviously aware of
4 that because you responded to it. You are aware of the
5 25-page report that was submitted by Sergeant Hughes to 15:31
6 the disciplinary -- remember we -- sorry, we talked
7 about it earlier, that when they went to interview him
8 at Sean Costello's office, they were given a 25-page
9 statement?

10 A. Report, yeah. 15:32

11 449 Q. And so, you were aware of all of the matters in that.
12 And to be fair, earlier you indicated you responded to
13 some of them, or at least you responded to Chief
14 Superintendent Feehan in respect, for example, of
15 bullying and things like that? 15:32

16 A. I did, yeah. I took the report serious where there was
17 reference made that there were issues outside the ambit
18 of the discipline investigation. And, as a result, I
19 prepared a two-page document writing back to Chief
20 Feehan -- or he was Assistant Commissioner at this 15:32
21 stage -- that there were issues that should be followed
22 up and inviting Sergeant Hughes to respond to those.
23 And I think in a letter in the beginning of January,
24 there were a number of letters from Inspector Dwyer to
25 Sean Costello, solicitor, in the intervening months, 15:33
26 that that actually further delayed the process as well
27 because there was big gaps in getting responses from
28 Mr. Costello to a number of the letters. I'm sure that
29 will be covered by others. And it was clear there, if

1 those issues were to be followed up, there was an
2 opportunity there, and he had a very experienced
3 solicitor with him on almost every move he made. So,
4 there was an opportunity there then to respond to what
5 I had sent back to him.

15:33

6 450 Q. And did you think about any -- given that this was a
7 disciplinary investigation with a quite specific ambit
8 that there might be another -- that they might give
9 rise -- something similar to what you had been talking
10 about earlier -- that they might give rise to a
11 different investigation, not the confidential
12 recipient, your own?

15:33

13 A. Well, I didn't know anything about the confidential
14 recipient at this stage. But there was issues there,
15 if he wanted to raise them separately. The solicitor
16 was there with him, I am sure he got good advice from
17 him.

15:34

18 MR. O'DWYER: Thank you, Assistant Commissioner.

19 CHAIRMAN: Thanks very much. Now, Mr. O'Higgins?

20
21 THE WITNESS WAS CROSS-EXAMINED BY MR. O'HIGGINS AS
22 FOLLOWS:

15:34

23 MR. O'HIGGINS: Thank you Chairman.

24 451 Q. Assistant Commissioner, can I bring you back to the
25 fact-finding, the decision to order the fact-finding
26 investigation. I think you have told the Tribunal
27 already that you had learned of the existence of the
28 document, that is to say the victim impact report, and
29 I think you also indicated you had learnt that the

15:34

1 sergeant himself had concerns about its contents, is
2 that so?

3 A. That's correct.

4 452 Q. So, I think you have told -- it's not in controversy --
5 you impressed upon Chief Phillips your desire that you 15:35
6 wanted to see the document promptly?

7 A. Yeah, that's correct.

8 453 Q. Just very briefly, we might have the document up,
9 please -- page 713. You have mentioned, in response to
10 questions from Mr. O'Dwyer, this -- in particular, 15:35
11 impressed upon you as a result of reading it, what we
12 might scroll down towards the --

13 A. Second last page and the last page.

14 454 Q. Yes. So this is the second last page. Just pause
15 there, if we could, if we could go back up. 15:35

16 A. Hold there...

17 455 Q. You see where it says, about five lines from the bottom
18 of the penultimate page of the victim impact:
19
20 "I was industrial very afraid of Mr. A. I knew he had 15:36
21 a network of people outside of prison to do his dirty
22 work. When I started to bring children to visit him
23 things were okay for a while. When I moved house and
24 started to get my life together he became nasty again."
25 15:36

26 And then into the final page, I want to ask you about
27 this line here:
28
29 "At the moment I am very scared for my life because

1 Mr. A is blaming me for everything that has gone wrong
2 in his life."

3
4 was that what you had in mind in terms of the document
5 giving rise to concerns in your mind? 15:36

6 A. Yeah, I found that a very defining statement, that she
7 was saying "at the moment", and as I said a number of
8 times, that conveyed to me at the present tense -- at
9 that time -- that she was very scared. Now, if I fear
10 for my life, but when someone says they are very scared 15:37
11 for their life, it has a different connotation
12 completely; that was my interpretation of it.

13 456 Q. Yes. Moving matters on then to Chief Superintendent
14 Feehan's report -- page 1963. We might move to the
15 conclusion at page 1979, this has been up on the screen 15:37
16 already so I won't dwell on this, but the
17 recommendation is there on page 1979. If we just
18 pause, it starts at paragraph 9.

19
20 "The content of this report chronicles a number of 15:37
21 years of abuse and violence which was allegedly
22 perpetrated on BaiBa Saulite by her partner. A number
23 of members of An Garda Síochána became involved with
24 Ms. Saulite."

25
26 Then it says, the next paragraph: 15:37

27
28 "The most significant Garda involvement with
29 Ms. Saulite appears to have been in relation to the

1 investigation on the abduction of her two children by
2 her partner Mr. A. Sergeant William Hughes, Swords,
3 was directed by the then district officer
4 Superintendent Noel McLoughlin to carry out an
5 investigation into these abductions. That 15:38
6 investigation included the taking of a number of
7 statements from Baiba Saulite in which she alleged she
8 had been assaulted and intimidated by Mr. A on several
9 occasions and that she was in fear of him. These
10 statements were included in a file which was completed 15:38
11 by Sergeant Hughes and forwarded to the Director of
12 Public Prosecutions. . . "

13
14 Then it outlines further steps taken. If we scroll
15 down to the final -- the next paragraph. 15:38

16
17 "Sergeant Hughes states that he met with Baiba Saulite
18 on the 14th November 2006 at Swords Garda Station. He
19 asserts that Ms. Saulite produced a 12-page handwritten
20 document which he glanced through. In that document, 15:38
21 Ms. Saulite states that 'At the moment I am very scared
22 for my life because Mr. A is blaming me for everything
23 that has gone wrong in his life'."

24
25 That is a reference to the document that we saw 15:39
26 previously.

27
28 "Sergeant Hughes stresses that the document was not
29 read in its entirety at that particular time. He

1 states that he photocopied the document and then handed
2 the original back to her. Sergeant Hughes also
3 stressed that Ms. Saulite did not make any formal
4 complaint regarding any matters in the 12-page
5 document. Sergeant Hughes asserts that 'in the absence 15:39
6 of any Garda intelligence to the contrary' he had no
7 reason to believe that her fears about Mr. A were of
8 much significance, as these were not untypical of
9 conversations he had with her on many occasions in the
10 past." 15:39

11
12 Then there is a reference to the Osman decision which
13 we can pass over, from the European Court of Human
14 Rights. And then the final recommendation is:

15 15:39
16 "Taking account of the foregoing, it is apparent that
17 there was knowledge in existence and available to An
18 Garda Síochána in relation to threats from Mr. A to
19 Bai ba Saulite. The members of An Garda Síochána
20 readily admit this in their reports. In order to fully 15:39
21 outline the facts in existence and the level of actions
22 taken as a result of this knowledge coming into the
23 possession of members of An Garda Síochána, I
24 recommended that a full investigation should be carried
25 out into this matter." 15:40

26
27 So just, arising from that, can I just ask you the
28 following questions: did you take Chief Superintendent
29 Feehan's recommendation into account?

1 A. As part of -- of course I did.

2 457 Q. As far as you were concerned, in the light of the
3 report and the recommendation contained at the
4 conclusion, did you regard it as a marginal call or,
5 from your point of view, was it a clear-cut issue? 15:40

6 A. To initiate the discipline?

7 458 Q. Yes.

8 A. Oh, it was a clear-cut issue to initiate it.

9 459 Q. From the point of view of Garda Síochána and the
10 reputation of the force, what is the risk if potential 15:40
11 breaches of discipline are let go without being
12 investigated?

13 A. Breaches of discipline in general?

14 460 Q. Yes.

15 A. Well, the reputation of the organisation diminishes and 15:41
16 standards drop and people do what they want.

17 461 Q. Can I ask you, and maybe this is blindingly obvious,
18 but if an investigation, for argument's sake, did
19 disclose that members were in possession of information
20 relating to a specific threat to a person's life, as 15:41
21 far as you are concerned, would such members be under
22 an actual duty to report that and take steps to
23 ameliorate such a risk?

24 A. If members were in possession of a specific threat to
25 someone's life? 15:41

26 462 Q. Yes.

27 A. Of course that would be one of the most atrocious
28 things not to do.

29 463 Q. You told us that you took your decision on the basis of

1 -- under regulation 8?

2 A. Yes.

3 464 Q. Just so everybody is aware, this wasn't the only
4 investigation into a potential disciplinary matter that
5 you had ordered; you have extensive experience in this 15:42
6 area?

7 A. Well as a chief superintendent I was involved -- I was
8 a member of the Garda Complaints Board for about 11
9 years, and they were chaired by a senior counsel and
10 solicitors, I was the Commissioner's representative. I 15:42
11 sat on a number of sworn inquiries arising out of the
12 1989 regulations and I initiated quite an amount of
13 discipline investigations myself. And I want to say,
14 most of those I initiated myself, I dealt with under
15 regulation 15, where they didn't go to a hearing or to 15:42
16 a sworn inquiry. There's provision there under
17 regulation 15 that the appointing officer, which was in
18 my case, that he could deal with those. So, most of
19 those would have been dealt with in a very fair manner
20 and anyone you would have asked would have been happy 15:43
21 with the outcomes, rather than going to a full
22 discipline investigations.

23 465 Q. It has been suggested, Assistant Commissioner, and as I
24 understand it, this is one of the core complaints of
25 the sergeant, it has been suggested that apparently you 15:43
26 had a malign motive in directing the commencement of a
27 disciplinary inquiry?

28 A. In this case?

29 466 Q. Yes.

1 A. That would be an outrageous suggestion to suggest that
2 I had a malign motive for doing that.

3 467 Q. The discipline documents that were preferred, we might
4 just very, very briefly just look at those at page
5 2082. The discipline investigation, I should say. 15:43

6
7 This is the commencement of the process under
8 regulation 8, isn't that so? And it's a document of
9 the 2nd May 2007, signed by yourself as appointing
10 officer and appointing Chief Superintendent Feehan as 15:44
11 investigating officer.

12 A. That's correct.

13 468 Q. This is the document, all right. And just if we go
14 down to the next page, we just see the actual potential
15 disciplinary breach that was preferred. And this is 15:44
16 how it's put:

17
18 "It appears that Sergeant William P Hughes and Garda
19 Declan Nyhan were in possession of --"

20 15:44
21 This is what I want to ask you.

22
23 "-- documentation and information as a result of
24 meetings with Ms. Baiba Saulite."

25 15:44
26 Was that your understanding of the matter? So, in
27 other words, document presumably covers the impact --

28 A. Yeah.

29 469 Q. -- what was information relating to?

1 A. Information was, I think I said earlier on today, was
2 the detailed outline in the statements taken on the
3 4th, that two statements that were taken on the 4th
4 January 2005 at the beginning of the child abduction
5 case, where there was a very, very disturbing 15:45
6 revelations by Baiba Saulite in respect of Mr. A.

7 470 Q. The other aspect of the allegation against An Garda
8 Síochána, and specifically against you, Assistant
9 Commissioner, is that the delay that ensued in relation
10 to the progression of the disciplinary was somehow 15:45
11 intended to apply pressure or target to the sergeant.
12 Can I just ask you to look at page, for instance, page
13 2121. And this is a document of the 15th February,
14 where you are seeking a progress report.

15 A. Yeah. 15:46

16 471 Q. And I think a number of these documents went out in
17 your name seeking updates, is that so?

18 A. Yeah, quite a few. That was -- the chief
19 superintendent who was acting for me, but quite a few
20 would have gone out from my office. 15:46

21 472 Q. We might go down to page 2125 and there is another one
22 from April 2008?

23 A. Yeah, there is another one, yeah.

24 473 Q. And you also I think engage in correspondence with
25 Mr. Costello's office - 2126 please - where you respond 15:46
26 to Mr. Costello's correspondence and indicate that you
27 have sought an update from the investigating officer
28 and will revert in due course. Was that something you
29 were concerned to do, to respond to the solicitor?

1 A. Yeah. And in the initial documents, when the documents
2 went out originally and the covering note there was a
3 line in it: "There should be no delay in ensuring that
4 this matter is fully investigated." So I mean that was
5 my belief from day one.

15:47

6 474 Q. And if we look at page 2134, we have Chief
7 Superintendent Feehan, in May of 2008, explaining the
8 reason for the hold-up. And this is a letter to
9 yourself, Assistant Commissioner DMR, from the chief
10 superintendent --

15:47

11 A. Yeah.

12 475 Q. -- setting out that, the second line:

13

14 "I am to report the Chief Medical Officer was requested
15 to assess the fitness of Sergeant Hughes... I have not
16 yet received the advice of the Chief Medical Officer
17 despite having forwarded reminders to that office..."

15:47

18

19 And he attaches a copy of the request.

20

15:48

21 "My decision to seek the advice of the CMO was informed
22 by correspondence from Sean Costello, solicitor, in a
23 letter dated 8th November 2007, stating that as
24 Sergeant Hughes was unfit for duty due to work related
25 stress he would not be attending a meeting with myself
26 on the following day. I had arranged this meeting to
27 progress the investigation into the matter at hand. I
28 attach a copy.

15:48

29

1 Please also find a copy of the correspondence received
2 from Assistant Commissioner, Human Resources
3 Management."

4
5 we might just scroll down there. I think it is the 15:48
6 case that there were a number of subsequent pieces of
7 correspondence where you were seeking to chase up on
8 the progress of the investigation --

9 A. Yeah.

10 476 Q. -- and keep Mr. Costello's office informed? 15:48

11 A. Yeah, exactly.

12 477 Q. We might just then move to page 2169, where you, as it
13 went into the summer of 2008, updated the Assistant
14 Commissioner HRM on the continuing hold-up that was
15 being experienced. 2169. So this is your letter to 15:49
16 the Assistant Commissioner of Human Resources, where
17 you relay what was the blockage regarding the hold-up
18 in getting advices from the medical side, isn't that
19 so?

20 A. Yeah, that was to, I think, yeah, to Catherine Clancy, 15:49
21 Assistant Commissioner HRM anyway.

22 478 Q. And then as we move into -- towards book 10 of the
23 materials, we might move to page 2297, we have the
24 18-page report provided to you by Chief Superintendent
25 Feehan, which we have already seen so we needn't dwell 15:49
26 on it -- 2297.

27 And the conclusion of that, Mr. O'Dwyer brought you
28 over, and possibly also Mr. McGuinness, so I will deal
29 with this extremely briefly. But the gist of the

1 recommendation of this report from June '09 is that it
2 seems to be -- in terms of leg 1 of the investigation,
3 as to whether the members were in possession of
4 information, it's implicit that they were in possession
5 of information? 15:50

6 A. Is it what?

7 479 Q. It appears to have been found expressly or implicitly
8 that the members were in possession of information?

9 A. Exactly.

10 480 Q. But the methodology of the recommendation, as it were, 15:50
11 to discontinue, was that there was no evidence that the
12 members concerned were aware of the existence of a real
13 and immediate risk to the life of Ms. Saulite?

14 A. Yeah, that was its conclusion.

15 481 Q. Isn't that so? And again, did you take that into 15:50
16 account in reaching the decision that you were tasked
17 with reaching?

18 A. Yeah, that guided me in my decision making.

19 482 Q. The decision did rest with you, isn't that so?

20 A. Oh it did, yes, immediately. 15:51

21 483 Q. And perhaps sight has been lost of the blindingly
22 obvious: you made the decision to discontinue?

23 A. Yeah, I was the appointing officer so I then had to
24 make the decision to discontinue, which I did.

25 484 Q. Thank you very much. 15:51

26
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29

THE WITNESS WAS RE-EXAMINED BY MR. MCGUINNESS AS

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FOLLOWS:

MR. MCGUINNESS: Just a few matters.

485 Q. Mr. O'Dwyer was asking you about your ability, or
power, to do certain things in relation to the
investigation that you had commenced, as it were. And 15:51
firstly, could I ask you to look at page 6390. And
these are the discipline regulations of 2007.

A. Yes.

486 Q. And I think you may see there that they came into
effect on the 1st June. But if we go down to page 15:52
6393, you were referring, I think in your answer, to
the continued applicability of the old regulations,
under regulation 13 there, which required anything
commenced under the old regulations, which were --
there were many different ones at many stages and there 15:52
was a lot of litigation about it, but you were familiar
with that from your position on the Garda Complaints
Board?

A. I was. But I haven't seen that now for quite a few
years so... 15:52

487 Q. Yes.

A. Yeah, that copperfastens what I was saying.

488 Q. Mr. O'Dwyer was also asking you about a referral to
GSOC, and you referred to particular statutory
provision that applied to that. And could we look at 15:52
page 6296. And this is a provision which came into
effect -- this is the Garda Síochána Act, 2005, it's
section 102, which came into -- was brought into force
on the 9th May of 2007. But, that only allows the

1 Garda Commissioner to refer to the Ombudsman any matter
2 that appears to the Garda Commissioner to indicate that
3 the conduct of a member has actually resulted in the
4 death of, or serious harm to a person. And nobody was
5 making that suggestion to you, that you should get the 15:53
6 Garda Commissioner to actually refer Sergeant Hughes on
7 the basis that he had caused the death?

8 A. No. That issue, or question, was never raised until
9 today. I had never heard of it.

10 489 Q. Yes. Insofar as the 1989 Regulations are concerned, 15:53
11 Mr. O'Dwyer appeared to be suggesting to you that you
12 had power to fix time limits or intervene to require
13 things to be done at different stages. Now, I think
14 you know from the 1989 Regulations, they do not fix any
15 specific period for the initiation and conclusion of an 15:54
16 investigation. But did you have power at the time to
17 fix a time by which the investigating officer had to
18 take any step?

19 A. No. My interpretation -- I think the court's
20 interpretation would be that under Regulation 8 it must 15:54
21 be done as soon as practicable, and whether that can be
22 debated in different courts as regards what is
23 practicable, but I think the superior courts said it
24 was mandatory.

25 490 Q. Yes. But in terms of your power to direct the 15:54
26 investigating officer, you had no power to tell him to
27 take any particular step at any particular time or by
28 any particular deadline?

29 A. No. I was the appointing officer and that would be

1 seen as direct interference with the investigation.

2 491 Q. Right. Mr. O'Dwyer suggested that this was wholly
3 unnecessary and that you could have decided it
4 yourself. Now, obviously, in the first instance, you
5 can't appoint yourself to be an investigating officer 15:55
6 under the regulations, isn't that right?

7 A. Oh, no.

8 492 Q. And insofar as there was any possibility of deciding
9 anything yourself, it would have been without any
10 context and without any formal meaning or outcome if 15:55
11 you hadn't used the discipline regulations, would that
12 be accurate?

13 A. What's the final part of that question?

14 493 Q. In order for any issue of discipline to be looked at --

15 A. Yes. 15:55

16 494 Q. -- it had to be under the regulations?

17 A. Oh, it would. There is no other way --

18 CHAIRMAN: It had to be what?

19 495 Q. MR. McGUINESS: It had to be under the regulations,
20 and not otherwise. 15:55

21 A. That's the only provision.

22 CHAIRMAN: So, Mr. McGuinness, can I just clarify just
23 arising out of that because I'd like to get it clear in
24 my head. If I'm understanding, there was a
25 fact-finding investigation, the Assistant Commissioner 15:56
26 ordered a fact-finding investigation, and when he got
27 the fact-finding investigation, if there was any
28 question of following it up, it had to be under the
29 regulations, is that right?

1 MR. McGUI NNESS: Sorry, Chairman, is that question to
2 me or to the witness?
3 CHAIRMAN: No, I am just querying.
4 MR. McGUI NNESS: I am sorry, Chairman.
5 CHAIRMAN: The situation is this: if he went and said, 15:56
6 look, I think there is a disciplinary issue here, there
7 had to be an investigation on a specified basis, on the
8 basis of a specified allegation, if you like, just to
9 use as neutral a word as we can. But if he were to
10 decide to kill it there and then, he could do that? 15:57
11 MR. McGUI NNESS: Yes...
12 496 Q. Assistant Commissioner, if the fact-finding
13 investigation had recommended that there was no
14 necessity for any further investigation, that would
15 have been the end of it? 15:57
16 A. Yeah, that would have been the end, yeah.
17 497 Q. You could decide to do nothing. I mean, an exploration
18 and a reporting of the facts could lead you, in any
19 given situation, to decide there was no need to take
20 any further action? 15:57
21 A. Yeah, that would have been the outcome.
22 498 Q. Now, just insofar as Inspector Mangan's position is
23 concerned, you didn't appoint Inspector Mangan to do
24 anything, or to report to you?
25 A. No, no. 15:57
26 499 Q. And my understanding of Chief Superintendent Feehan's
27 report to you of the fact-finding, is that that was his
28 report with his recommendations that we have seen, over
29 19 pages, with all the appendices?

1 A. Yeah, correct.

2 500 Q. And just one issue then. Chief Feehan, in his question
3 and answer to our investigator, at page -- I think it's
4 8337, if we just look at that -- is describing here in
5 his answer having received correspondence from 15:58
6 Detective Inspector Mangan dated the 22nd December
7 2006, which is being referred to as his first report,
8 he said having examined the contents of that
9 correspondence, he wrote to Detective Inspector Mangan
10 on the 10th January 2007 directing that a number of 15:58
11 further matters required attention in relation to the
12 fact-finding inquiries he was conducting.

13
14 "I recall having a conversation with Detective
15 Inspector Mangan at my office in Store Street Garda 15:58
16 Station where I outlined to him the matters which I
17 felt required further attention and which I
18 subsequently included in my correspondence with him,
19 dated the 10th January. I believe that I informed
20 Assistant Commissioner McHugh that I had requested that 15:59
21 some further inquiries were to be made in the
22 fact-finding inquiry. I did not have any other
23 interaction with any other senior member of An Garda
24 Síochána in relation to this matter."

25
26 That appears to be perhaps an oral briefing to you by
27 Chief Superintendent Feehan that he had directed some
28 further inquiries on foot of Inspector Mangan's report?

29 A. Yeah, it's 15 or 16 years, and, in fairness, I accept

1 what's there -- and I might have been asked that
2 question earlier.

3 501 Q. You may or may not recall that?

4 A. No, I didn't. And I accept --

5 502 Q. Have you any reason to doubt it?

15:59

6 A. I accept that is the position.

7 MR. MCGUINNESS: Thank you very much.

8 A. Thank you.

9 CHAIRMAN: Okay. Thank you very much, Assistant
10 Commissioner. Thank you for coming to help us. I do
11 appreciate the length of time since, and having to
12 endeavour to recall everything and master everything,
13 and thank you very much for coming to assist us.

15:59

14 THE WITNESS: Thank you, Chairman. Thank you.

15

16:00

16 THE WITNESS THEN WITHDREW

17

18 CHAIRMAN: Very good. So, thank you very much.

19

20 THE HEARING ADJOURNED UNTIL THURSDAY, 17TH FEBRUARY
21 2022 AS 10:30 A.M.

16:00

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