

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 THURSDAY, 19TH MAY 2022 - DAY 176

176

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

APPEARANCES

SOLE MEMBER: MR. JUSTICE SEAN RYAN,  
FORMER PRESIDENT OF THE COURT OF  
APPEAL

REGISTRAR: MR. PETER KAVANAGH

FOR THE TRIBUNAL: MR. DIARMAID McGUINESS SC  
MR. PATRICK MARRINAN SC  
MS. SINÉAD McGRATH BL

INSTRUCTED BY: MS. CIARA WALSH  
SOLICITOR FOR THE TRIBUNAL

FOR SERGEANT PAUL BARRY: MR. SHANE COSTELLOE SC  
MR. DAVID PERRY BL  
MS. LYDIA DALY BL

INSTRUCTED BY: MS. DEBORAH CODY  
MR. ADRIAN CAREY  
MICHAEL KELLEHER SOLICITORS  
149 JAMES STREET  
DUBLIN 8

FOR THE COMMISSIONER  
OF AN GARDA Síochána: MR. SHANE MURPHY SC  
MR. MÍCHEÁL P O'HIGGINS SC  
MR. JOHN FITZGERALD SC  
MR. DONAL McGUINESS BL  
MS. SHELLEY HORAN BL  
MS. KATE EGAN BL

INSTRUCTED BY: MS. MAIREAD BURKE  
MR. CORMAC FORRISTAL  
CHIEF STATE SOLICITOR'S OFFICE  
OSMOND HOUSE  
LITTLE SHIP STREET  
DUBLIN 8

FOR MICHAEL COMYNS: MR. MARK HARTY SC  
MR. JOHN FERRY BL

INSTRUCTED BY: MR. CARTHAGE CONLON  
O'MARA GERAGHTY McCOURT  
51 NORTHUMBERLAND ROAD  
DUBLIN 4

FOR FINTAN FANNING  
& ANTHONY O' SULLIVAN:

MR. PAUL MCGARRY SC  
MR. PATRICK O' BRIEN BL

INSTRUCTED BY:

MR. ANDREW FREEMAN  
SEAN COSTELLO & COMPANY SOLICITORS  
HALIDAY HOUSE  
32 ARRAN QUAY  
SMITHFIELD  
DUBLIN 7

FOR JOHN QUILTER:

MR. PAUL CARROLL SC  
MR. BREFFNI GORDON BL

INSTRUCTED BY:

MR. ROBERT PURCELL  
ME HANAOE SOLICITORS  
SUNLIGHT CHAMBERS  
21 PARLIAMENT STREET  
DUBLIN 2

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WITNESS

PAGE

MR. PAUL BARRY

DIRECTLY-EXAMINED BY MR. MCGUINNESS ..... 5

1 THE HEARING RESUMED, AS FOLLOWS ON THURSDAY, 19TH MAY  
2 2022:

3  
4 CHAIRMAN: Good morning, Mr. Barry, thanks very much.  
5 Sit down there, Mr. Barry. Thank you very much. 11:00

6  
7 MR. PAUL BARRY CONTINUED TO BE DIRECTLY-EXAMINED BY MR.  
8 McGUINNESS, AS FOLLOWS:

9  
10 1 Q. MR. McGUI NNESS: Good morning, Mr. Barry? 11:00

11 A. Morning, Mr. McGuinness.

12 2 Q. We had just left it yesterday evening at the stage  
13 where arrangements were being made for you to see the  
14 CMO in late January, in the last week of January 2013?

15 A. That's correct. 11:00

16 3 Q. But I think early in 2013 Assistant Commissioner Nolan  
17 had been in touch with you in connection with the  
18 investigation. Could we look at page 2489. I think he  
19 was contacting you to seek your permission to extend  
20 the period, in this case. If we look at 2489. This is 11:01  
21 addressed to you, if we scroll down. He states there,  
22 that he had been appointed by the assistant  
23 commissioner to investigate your complaint of  
24 unacceptable behaviour alleged against Superintendent  
25 Comyns. 11:01

26  
27 "Further to a meeting with Superintendent Lordan on  
28 21/11 in accordance with the provisions of section 58.5  
29 of the above policy, I wish to seek an extension to 1st

1 March 2013 to conduct my investigation. Please advise  
2 if this extension of time is agreeable to you."

3

4 You recall receiving that, I take it?

5 A. That's correct.

11:01

6 4 Q. What was your attitude to that, at that point in time?

7 A. Well I wasn't happy with the delay, because I was still  
8 out sick and it meant that I would continue on without  
9 my allowances.

10 5 Q. Yes. Did you have an understanding at this stage, as  
11 to whether there would be a different number of  
12 investigations to 1, 2 or 3?

11:02

13 A. No, myself, my personal view was, having spoken with my  
14 solicitor at the time, was that there would be a  
15 bullying investigation and then a criminal  
16 investigation.

11:02

17 6 Q. Yes. That's the sequence that you thought would happen  
18 and it did happen that way?

19 A. Yes.

20 7 Q. Subject to issues about delays obviously that we will  
21 come on to?

11:02

22 A. Yes.

23 8 Q. I think you made your position known about pay in an  
24 e-mail to Ms. Egan, isn't that right? You sent an  
25 e-mail on the same date. If we look at page 1638  
26 first. If we scroll down there. You knew obviously  
27 from Inspector O'Sullivan there was a case conference  
28 going to be held and you sent on material to Ms. Egan.  
29 If we go down to 1640, two pages further down. You

11:03

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said:

"Dear Claire, please bring the following to the attention of those attending your case conference on whatever date it takes place.

11:03

When I decided to report Superintendent Michael Comyns for bullying and attempting to coerce me into perverting the course of justice, I was told that my illness would not be classified as being work related and that I would be starved into submission."

11:04

Can I just pause there? Is that recounting something that somebody in authority said to you?

A. No, it would have been a colleague of mine.

11:04

9 Q. A colleague of yours?

A. Yes.

10 Q. Was this somebody who had advised you not to make a complaint because it would become long drawn out?

A. Yes, it was somebody who had been through the complaints procedure before.

11:04

11 Q. Okay. You go on to say then:

"I did not believe this but nevertheless I instructed my auctioneer to advertise 15 acres of my land for sale and he this he is in September 2012. I have an offer on my land for half of its current value and quarter of its peak value. The land was supposed to provide a means to support my wife and family when I retire. If

11:04

1 HRM do not classify my illness by February 2013 I will  
2 be forced to sell my land to continue my fight for  
3 justice. I will hold the State and its agents  
4 responsible for this loss at below market value and the  
5 loss of future earnings from my land. I have supplied 11:05  
6 medical reports to the CMO from Dr. Margaret Kiely,  
7 Dr. J Dennehy, consultant psychiatrist. I have  
8 provided a statement to Superintendent Patrick Lordan  
9 together with all documentation and proofs of same. I  
10 have also had my phone contents stand to support and 11:05  
11 prove my complaint. HRM have sufficient proofs to  
12 classify my injury as work related and yet they refuse  
13 to do so. I believe this conference is another  
14 delaying tactic and nothing will come of it. I have  
15 been informed by Claire Egan, HRM, that my presence is 11:05  
16 not required at this conference. I understand that the  
17 divisional officer Cork north is to attend even he has  
18 nothing to do with the investigation along with the  
19 CMO, who appears to have no input into classifying my  
20 injury. The file representatives will be from HRM, who 11:05  
21 are supposed to be investigating the matter but have  
22 thus far taken one statement in four months. With in  
23 excess of ten witnesses to interview, this will take at  
24 least three years to get a file together at the current  
25 rate of progress, provided of course it can be decided 11:05  
26 if and by whom a superintendent can be investigated  
27 when he is alleged to have committed a criminal act.  
28  
29 I request confirmation of receipt of my above views and



1 I want to be informed immediately if there is a result  
2 of this conference so as I can make arrangements to  
3 deal with having my pay cut in half. I can assure all  
4 in attendance cutting my pay will not deter me and in  
5 the end justice will be done. It is not surprising to 11:06  
6 me that my colleagues who attempted to expose alleged  
7 penalty points abuse by senior gardaí had to go to an  
8 Oireachtas Committee to get results."

9

10 Can I just ask you a couple of questions about that 11:06  
11 e-mail?

12 A. Yes.

13 12 Q. You refer on the previous page, as we have seen, to  
14 having the contents of your phone downloaded, isn't  
15 that correct? 11:06

16 A. That's correct.

17 13 Q. Was that done by an officer in connection with the  
18 investigation?

19 A. That's correct. Mary Gilmartin I believe.

20 14 Q. Yes. And the phone was returned to you on that date,  
21 isn't that correct? 11:06

22 A. That's correct.

23 15 Q. And Chief Superintendent Kehoe had nothing to do with  
24 either retaining your phone or returning it back to you  
25 at that point, isn't that right? 11:06

26 A. That's correct.

27 16 Q. Now, insofar as your position was concerned, you were  
28 still actually on full pay at this point in time?

29 A. Full pay but I was on basic pay without allowances.

1 17 Q. without the allowances?  
2 A. Yes.  
3 18 Q. But you were foreseeing that if the investigation got  
4 extended, as would seem necessary, you may be going on  
5 to half pay if you were to remain certified out of work 11:07  
6 into February and beyond, is that right?  
7 A. That's correct.  
8 19 Q. I think Inspector O'Sullivan met with you on 8th  
9 January 2013 and you emphasised to him that you were  
10 under great stress, is that right? 11:07  
11 A. That's correct.  
12 20 Q. Perhaps we would just see a report of that meeting, at  
13 1642 on the next page. This was confirmation that you  
14 would attend the appointment which had been sent on up  
15 to HRM. If we look at Inspector O'Sullivan's report 11:08  
16 then on the next page, 1641. In the second paragraph  
17 he reports:  
18  
19 "In relation to non-medical issues, Sergeant Barry  
20 requested me to include the following. The delay in 11:08  
21 the investigation and the prospect of half pay from  
22 February 2013 is causing me considerable stress and  
23 anxiety. My illness is still not classified despite my  
24 full cooperation with the Chief Medical Officer, human  
25 resource and the investigation people team." 11:08  
26  
27 Can I ask you, did you still regard it as being  
28 necessary that the investigation had to be completed  
29 before the issue of injury at work would be addressed?

1 A. No, I didn't. I had sent in a report from my doctor  
2 and my psychiatrist and both of those had stated they  
3 believed that my illness was work related.

4 21 Q. Yes.

5 A. So I did not see why the CMO could not -- I had 11:09  
6 attended with the CMO as well, he knew the position.

7 22 Q. Yes.

8 A. He said he couldn't classify my illness until HRM  
9 concluded their investigation but I couldn't see why.

10 23 Q. Yes. But did anyone advising you not say, well, the 11:09  
11 fact that the doctors think it is work related isn't  
12 conclusive or may not be regarded as sufficient for it  
13 to be classified as an injury on duty?

14 A. No. Well, I assumed that when the CMO looked for my  
15 medical reports from my specialist that that was what 11:09  
16 he wanted those reports for, to conclude whether or not  
17 my illness was work related.

18 24 Q. Okay. Well in any event a case conference took place  
19 between a number of different parties on the 22nd and  
20 we have put the notes of that in the documents. 11:09  
21 Perhaps we will look at 1515. And this is a summary  
22 there on your position on the left, it says:  
23

24 "Member was sanctioned due to being late for start of  
25 shift. Member's complaint against superintendent that 11:10  
26 initiated sanction. Member was offered transfer to  
27 Glanmire. Refused. Member seeking IOD classification  
28 for absence. Member seeking medical retirement as  
29 well. Member has claimed he will institute legal

1 proceedings for any financial loss he suffers as a  
2 result of ongoing circumstances."  
3  
4 The reference there to retirement, can you just assist  
5 us as to where that came from? Did it come from you to 11:10  
6 somebody?  
7 A. Which is the retirement now, sorry?  
8 25 Q. It says it there, sort of six lines up from the bottom  
9 of the left-hand column?  
10 A. "The member is seeking medical retirement as well"? 11:10  
11 26 Q. Yes.  
12 A. That did not come from me. That came from a  
13 conversation I had the evening before this at an AGSI  
14 conference, where the AGSI then president, Willy  
15 Gleeson, came up to me and said, you should talk to 11:11  
16 your solicitor about a medical pension. I made a note  
17 of it in my diary at the time and I never heard any  
18 more about it until I saw discovery and saw this  
19 reference. That reference was not ever put forward by  
20 me. 11:11  
21 27 Q. Okay. It doesn't seem to have got any consideration at  
22 that stage and certainly your solicitor never applied  
23 on your behalf. You initiated ultimately the  
24 retirement application?  
25 A. No, but it doesn't make -- it makes it look like I'm 11:11  
26 going through this just to get a medical pension, which  
27 would be more than an ordinary pension, which was not  
28 the issue.  
29 28 Q. All right. Anyway, in the middle column it notes that

1 you're to see the CMO on the 25th, "may need  
2 independent medical adviser assessment". And then on the  
3 management side it says "nothing can be done in  
4 relation to IOD classification until official  
5 investigation complete. A/C wrote to member extending 11:12  
6 investigation until March 2013."  
7

8 And is it the position as of this time you hadn't  
9 consented yet to extending the investigation time?

10 A. I don't believe I had. 11:12

11 29 Q. In any event, you attended the CMO on the 25th. Did  
12 you have a discussion with him about him signing off at  
13 that stage on injury on duty?

14 A. Yes, I asked the CMO why my illness hadn't been  
15 classified as work related. 11:12

16 30 Q. And what did he explain to you?

17 A. He said he cannot make a decision until HRM conclude  
18 their investigation.

19 31 Q. Yes. Was that a surprise to you or was it --

20 A. It was a surprise to me, because I said to him, why did 11:13  
21 you look for the medical reports then from my  
22 psychiatrist and my doctor. If you couldn't make a  
23 decision, why put me through that?

24 32 Q. Yes. But he explained the procedure to you that he  
25 couldn't sign off on it until there had been a factual 11:13  
26 investigation, as it were, in relation to your issues?

27 A. Yes. That was his opinion.

28 33 Q. You later referred to this meeting, where you described  
29 him in an e-mail as having been upset, did you recall

1 putting that in an e-mail?

2 A. Yes. When I said to him -- when I pointed out to him  
3 that both my medical team had said that my illness was  
4 work related, he said they cannot decide it's work  
5 related until there is an investigation complete. And 11:13  
6 I said, they were independent people, they can form an  
7 opinion from assessing me, they don't have to have an  
8 investigation.

9 34 Q. Yes. He provided a report, which you've seen, it's at  
10 page 157, dated 31st January. Perhaps we would just 11:14  
11 ask you to have a look at that. He offers the advice  
12 as follows:

13

14 "1. The member continues to present with features of  
15 disrupted health and sense of wellbeing for which he is 11:14  
16 in receipt of treatment and follow-up by appropriate  
17 specialist. Recent updates from his treating doctors  
18 have been noted.

19

20 2. The member's clinical status is significantly 11:14  
21 impacted by grievances which relate to certain events  
22 he reports as occurring in the workplace, which I  
23 understand are currently the subject of an official  
24 investigation.

25

26 3. In relation to the official investigation, the 11:15  
27 member expressed his grievance with what he described  
28 as the slow pace of the investigation to date. It is a  
29 matter for Garda management to progress such processes

1 in a timely and appropriate manner to diminish negative  
2 impact on wellbeing and to expedite objective and  
3 constructive resolution which benefits recovery in such  
4 circumstances. Based on the information available to  
5 me, while some progress in recovery has been made, the 11:15  
6 member is recommended as temporarily unfit to attend  
7 regularly, render effective service.

8  
9 5. The member is due review by his treating specialist  
10 in early February 2013, maybe a return to work could be 11:15  
11 recommended at that time. In that context a return to  
12 work in a safe and supportive workplace environment  
13 facilitated by local management is recommended."

14  
15 And he said he intended to offer further advices on 11:15  
16 receipt of relevant updates. And did the CMO explain  
17 to you really that's what he was doing at that point in  
18 time?

19 A. Yes, he seemed frustrated that -- to me he seemed  
20 frustrated that he couldn't decide, his hands were tied 11:16  
21 basically, that he would have to let the internal  
22 investigation continue. There wasn't much he could do  
23 in relation to classifying my illness.

24 35 Q. Yes.

25 A. But that he would agree to temporary workplace 11:16  
26 accommodations.

27 36 Q. Was there any discussion with him about what a  
28 temporary workplace accommodation could be?

29 A. No, I don't recall. I don't recall suggesting anything

1 to him in relation to it.

2 37 Q. I mean, you hadn't raised directly with him any  
3 difficulties about any particular person that you were  
4 working with or any particular place where you had to  
5 work?

11:16

6 A. Well I had told him my problems with Superintendent  
7 Comyns, that I didn't want to have any contact with  
8 him. But I was stationed in Mitchelstown, which was  
9 ten miles away, I didn't see it as an issue at the  
10 time.

11:17

11 38 Q. Yes, okay. In any event we know the CMO sent his  
12 report on to Assistant Commissioner Fanning to Chief  
13 Superintendent Dillane and to HRM. But your solicitor  
14 had written in the interim to Assistant Commissioner  
15 Nolan in relation to the delay on the 1st February,  
16 isn't that right?

11:17

17 A. I believe so.

18 39 Q. Perhaps we would just look at that letter. 2498. It  
19 is marked "Urgent", and recites obviously in the first  
20 paragraph that you had provided a full statement to  
21 Superintendent Lordan and you had been advised that

11:17

22  
23 "Assistant Commissioner Nolan, due to vital factors,  
24 including workload, is not in a position to conclude  
25 the investigation, which leaves my client in an  
26 impossible position in circumstances where a decision  
27 concerning his absence from duty reduces his pay  
28 significantly impacts on him financially with the  
29 attending stress that brings."

11:18



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I think a reply was sent to Mr. Costello on the 7th, did he inform you of that? If we look at page 1655. You see this is addressed to Mr. Costello. It's from Assistant Commissioner Fanning. He's really referring to the scheduled appointment, that you are still currently recommended as being temporarily unfit, you wee due for review. I think that review was intended to be with your own specialist and it didn't take place in February, is that right? 11:18

A. I believe so, yes. 11:19

40 Q. And I think before this was sent to Mr. Costello, you had been on to Chief Superintendent Grogan in HRM, isn't that correct?

A. Yes. 11:19

41 Q. You sent him an e-mail on the 4th February, isn't that correct?

A. That's correct.

42 Q. And perhaps we would look at a series of e-mails then, starting at 4081. And if we just scroll down to see the body of your e-mail there. If we go back to get the start of it. You are reciting that you had to attend the Chief Medical Officer in Dublin. 11:19

"He stated that the sole reason he wanted to see me was to discuss the medical reports submitted by Dr. Kiely and Dr. Dennehy. The CMO is upset because both Dr. Kiely and Dr. Dennehy expressed the opinion that my medical condition was work related." 11:20

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Now, you have probably seen a statement from the CMO where he doesn't agree that he would have expressed that in those terms at all. Have you seen that in his statement?

11:20

A. I have, yes.

43 Q. Do you have any comment to make on that? Do you accept the way he explained it in a statement?

A. No, I don't because that was my view of what occurred in that meeting I had with him at the time.

11:20

44 Q. You do go on to recite what he has said in his statement:

"He not believe that they could do so without first conducting an investigation. Dr. Oghuvbu stated that he could not give an opinion on my illness until HRM concluded the investigation. Both Dr. Kiely and Dr. Dennehy as private sector workers are entitled to express their opinions and Dr. Oghuvbu cannot express an opinion until HRM give it to him. Dr. Oghuvbu did mention a safe working environment and it is to this end that I want to ask the following questions

11:21

11:21

1. Does HRM find it acceptable that I should have to work with a person against whom I have made an allegation of bullying and criminal behaviour?

11:21

2. What steps have HRM taken to provide me with a safe working environment."

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Those two questions. Did you ever receive a direct answer to those questions?

A. I believe the only answer I received to it was Chief Superintendent Grogan said he forwarded my concerns to the Assistant Commissioner Southern Region. That was the only response I recall getting to those questions. 11:21

45 Q. Yes. You do recite there that you had spoken to him, in the paragraph there on the screen at the end:

"I spoke with Chief Superintendent Grogan on 29th January 2013 and outlined the above concerns. I also expressed my view that a transfer was not an option for me because of the nature of my complaint and the persons mentioned therein." 11:22

I take it there was discussion with him about the possibility of a transfer?

A. That's correct, and I outlined why I would not feel that a transfer would have been suitable for me at the time. 11:22

46 Q. Yes. But this is the first occasion now where we have to ask this question: If the CMO was contemplating accommodations in the workplace, as it were, just to put it in that general way, would a transfer not be an obvious solution to your problem? 11:22

A. I didn't think so. I thought the CMO was recommending temporary accommodations in my workplace, which was Mitchelstown, to facilitate me remaining at

1 Mitchelstown, because I had outlined those to  
2 Dr. Tobin.

3 47 Q. Yes. Well, I don't think the CMO mentions Mitchelstown  
4 as such in his recommendation?

5 A. No, he doesn't. But when I spoke with the CMO, I told 11:23  
6 him I wanted to remain at Mitchelstown, that was where  
7 I wanted to return to work.

8 48 Q. Yes. But I mean there were no difficulties for you in  
9 Mitchelstown?

10 A. No. 11:23

11 49 Q. The difficulties were in the district, in Fermoy, isn't  
12 that right, where your district officer was and the  
13 divisional headquarters were?

14 A. That's correct.

15 50 Q. Isn't that right? 11:23

16 A. Yes.

17 51 Q. So was it your position at this point in time that  
18 anything other than staying in Mitchelstown wasn't a  
19 temporary workplace accommodation?

20 A. No. As I had outlined to Chief Superintendent Dillane 11:23  
21 when I met with him in Glanmire, I was not going to  
22 apply for a transfer but should I be transferred I  
23 would have accepted going to a district where I would  
24 not have contact with Superintendent Comyns or other  
25 persons mentioned. 11:24

26 52 Q. Yes. Well perhaps we will just go up this page, up to  
27 4080. Scroll up the page. We can see that Chief  
28 Superintendent Grogan forwards it on for his  
29 observations in respect of points 1 and 2. And he

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says:

"When I spoke with Sergeant Barry last week I offered him a transfer, he declined."

11:24

Now, you've raised an issue obviously, part of your complaint, about the fact that this was forwarded to the Assistant Commissioner Southern Region, but he was the regional commander, isn't that correct?

A. That's correct.

11:25

53 Q. And leaving aside any issue of connection to any other person arising from the events of February 2012, you had made no allegation against the Assistant Commissioner?

A. No.

11:25

54 Q. And you had no basis for making one, isn't that correct?

A. No.

55 Q. Right. If we just scroll up the page then to see what happens. It's sent on to Chief Superintendent Grogan then for his views and observations, and then Superintendent Dillane sends a report up back to the commissioner. He's reporting firstly about when you first went out on illness. And then in the second paragraph there he refers to his meeting with you on the 13th October. And I think we've seen the text of that in a previous report that he sent up before. If we go down on to the next page then. But he is recording there at the end of the page:

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"Immediately he refused my offer and told me that if anyone was to move it would be the superintendent."

So, I don't know, does that assist your memory as to whether you had in fact raised that issue about the superintendent? 11:26

A. I never raised the issue about the superintendent. The only issue I raised with Chief Superintendent Dillane was that the bullying and harassment policy stated that neither the superintendent nor I should be transferred unless we applied for same. That didn't mean that I was looking for the superintendent to be transferred. I was just merely referencing the policy document. 11:26

56 Q. Okay. 11:27

A. And he took it to mean that.

57 Q. Okay. In any event he says:

"I told him I could not facilitate that scenario. He's reporting then I made it very clear to him my offer was without prejudice to the outcome of his complaint. I had in mind to facilitate Sergeant Barry at Glanmiere which is Cobh district. He is residing [blank] in Glanmiere and it would have made his commuting time to work much shorter. I was also aware he is originally from [blank] and a move to Glanmiere station would not have been a breach of Code 8.30." 11:27

And that is forwarded for his information. That's of

1 the Assistant Commissioner. So if we just scroll back  
2 up then, it's sent on to the Assistant Commissioner,  
3 and then the Assistant Commissioner sends it on to  
4 Chief Superintendent Grogan saying:

5  
6 "Please see attached from divisional officer Cork  
7 north, I believe you have also offered to facilitate  
8 this member with a transfer to ease his plight. I do  
9 not know how the member can be facilitated in any other  
10 way pending outcome of A/C Nolan's investigation." 11:27

11  
12 How did you see yourself being facilitated?

13 A. Just in relation to Chief Superintendent Dillane's  
14 report there, he said that a transfer to Glanmire  
15 wouldn't have been in a breach of Code 8.3, and it 11:28  
16 would have been because of my relations, it would have  
17 been in breach. So Glanmire wasn't an option at the  
18 time and that was the station he was looking to  
19 transfer me to.

20 58 Q. Yes. 11:28

21 A. But he also offered to transfer me to Carrigtwohill at  
22 that meeting on the 13th October.

23 59 Q. But had Glanmire not been assimilated into the Cork  
24 City division?

25 A. Not yet. 11:28

26 60 Q. At that point in time?

27 A. No, not at that point in time.

28 61 Q. Could he not also have sought an exemption in relation  
29 to any issue concerning 8.3?

1 A. He could have looked for an exemption if Glanmire had  
2 been assimilated into the Cork City division.

3 62 Q. Yes.

4 A. Because I would then be in a different division.

5 63 Q. In any event, you have referred to meeting with Chief 11:29  
6 Superintendent Dillane, he had been informed of the  
7 outcome of your appointment with the CMO, in terms of  
8 what the CMO had recommended, you met him on the 14th  
9 February, isn't that correct?

10 A. That's correct. 11:29

11 64 Q. Perhaps, we will just look at -- well, perhaps could  
12 you give your own evidence about the circumstances of  
13 that meeting?

14 A. The meeting on the --

15 65 Q. On the 14th February. 11:29

16 A. The 14th. I'd have to refer to my statement.

17 66 Q. Have you a memory of the meeting yourself?

18 A. Not really, no.

19 67 Q. Okay. well perhaps I would open what the chief  
20 superintendent has said about it. If we go to page 336 11:30  
21 of his statement for the moment. Sort of about ten  
22 lines down he says there:  
23

24 "On 14th February 2013, I received a sick report from  
25 Ms. Monica Carr." 11:30  
26

27 Et cetera et cetera. He says:  
28

29 "On the 14th February at 10am I spoke to Sergeant



1 Barry. "

2

3 You'd have been on duty at that stage.

4 A. No, I was still on sick leave.

5 68 Q. You were still on sick leave, of course. 11:31

6 A. I just brought my diary in today, there where I

7 recorded the conversation I had with him, my

8 recollection of it.

9 69 Q. Do you want to tell us what that is from your diary

10 there? 11:31

11 A. Yes. I noted this: "First day on half pay, €393. "

12 And then I have "At 9.59am Chief Superintendent Dillane

13 rang to say he was trying to contact me yesterday on an

14 087 prefix. My phone is 086. He offered me a transfer

15 out of concern that I was going on half pay. He 11:31

16 suggested unit A or E in Glanmire until it goes into

17 the city in June. He says the CMO says I cannot work

18 in Mitchelstown. He said he would create two positions

19 for a sergeant in Carrigtwohill. I then rang Séan

20 Costello, solicitor, who is sending a fax to Chief 11:31

21 Superintendent Dillane to accommodate me in

22 Mitchelstown. "

23 70 Q. Pardon?

24 A. Sorry, I said, "I rang Séan Costello solicitor, who is

25 sending a fax to Chief Superintendent Dillane to 11:31

26 accommodate me in Mitchelstown".

27 71 Q. Yes. And is that what you said to the superintendent

28 on the day?

29 A. That I was going to send a fax to my solicitor?

1 72 Q. Yes.

2 A. No, I didn't refer that to --

3 MR. COSTELLOE: Excuse me, Chairman, I beg your pardon

4 Mr. McGuinness, and, Chairman, forgive me for

5 interrupting. 11:32

6 CHAIRMAN: No problem.

7 MR. COSTELLOE: Again this is something that is due to

8 my lack of the system, but it is recording Chief

9 Superintendent Grogan, and I heard the witness to say

10 Chief Superintendent Dillane, and in case that is not 11:32

11 something that is not clarified, is that something that

12 needs to be pointed out to you now or is that something

13 that gets picked up later in corrections?

14 CHAIRMAN: No, thanks very much.

15 MR. COSTELLOE: It would appear to be an important 11:32

16 distinction on this particular point.

17 CHAIRMAN: Sorry, my understanding of the situation,

18 correct me if I am wrong, gentlemen, including

19 Mr. McGuinness, and Mr. Barry, my understanding is that

20 Mr. McGuinness asked about a meeting or an encounter, 11:33

21 an engagement a conversation between Mr. Barry and

22 Chief Superintendent Dillane. That happened on the

23 14th February 2013. And Mr. Barry said he had no

24 memory of that. And Mr. McGuinness said, let me remind

25 you of the chief superintendent's statement about that. 11:33

26 And Mr. Barry said, well, I'm referring to my diary and

27 my diary says the following. And I thought that his

28 diary referred to his conversation with Chief

29 Superintendent Dillane. That's where we are at this

1 stage. Mr. Barry, am I right in understanding that  
2 that's where we are?

3 A. That's correct, Chair.

4 CHAIRMAN: Okay. Mr. McGuinness, am I right in  
5 understanding that's where we are? 11:34

6 MR. MCGUINNESS: Yes, Chairman. What then occurred is,  
7 I understood Mr. Barry to say in evidence that he --

8 CHAIRMAN: Have you got your microphone on?

9 MR. MCGUINNESS: Yes. That he then decided to instruct  
10 his solicitor to send a fax and I think he first said 11:34  
11 Chief Superintendent Grogan and then corrected it to  
12 Chief Superintendent Dillane.

13 CHAIRMAN: Sorry, I thought Mr. Barry said that he  
14 phoned Mr. Costello, his solicitor, and from that  
15 emerged Mr. Costello's intention to send a fax about it 11:34  
16 to say that he was saying he needed to be accommodated  
17 in Mitchelstown.

18 73 Q. MR. MCGUINNESS: And your intention was that it would  
19 be sent to Chief Superintendent Dillane and it was so  
20 sent? 11:34

21 A. That is correct. It was sent the same day.

22 CHAIRMAN: So are we all clear on that?

23 MR. MURPHY: Chairman can I raise one brief question,  
24 if I might. Just in relation to the witness, he  
25 appeared to refer to his diary, as you indicate, and I 11:35  
26 wonder is there a page reference for that document?

27 74 Q. CHAIRMAN: I am sure you provided that to us, did you,  
28 Mr. Barry? I am sure you provided that.

29 A. I provided the diary.

1 75 Q. CHAIRMAN: To the Tribunal.

2 A. Yes.

3 CHAIRMAN: Do we have that, Mr. McGuinness, or can we  
4 come back to it?

5 MR. MCGUINNESS: Yes. We have diary entries. 11:35

6 CHAIRMAN: That's all right. We'll look in due course,  
7 Mr. Murphy, in due course we will identify the  
8 particular page and we will refer you to it. Okay.

9 MR. MURPHY: Thank you, Chairman.

10 76 Q. MR. MCGUINNESS: But my understanding, again it's from 11:35  
11 Chief Superintendent Dillane's statement, is that you  
12 undertook to consider his offer. You didn't reject it  
13 out of hand and you said you would get back to him?

14 A. That's correct.

15 77 Q. But in fact you got on to your solicitor and he sent 11:35  
16 the letter the same day then?

17 A. Yes.

18 78 Q. And perhaps if we just look at that, at page 382. If  
19 we scroll down, at the end of the first paragraph he  
20 says: 11:36

21  
22 "Inordinate delay in progressing that investigation.  
23 In the meantime my client remains certified unfit to  
24 work. As he said in correspondence, he would agree to  
25 return to work if that were to be a safe environment 11:36  
26 that would not exacerbate his ongoing issues. In your  
27 telephone conversation with him this morning you  
28 indicated that you would transfer him to Glanmire Garda  
29 station. With due respect and having regard to the

1 circumstances of this matter, it would not be proper or  
2 appropriate to have our client transferred. As a  
3 compromise and so that our client may return to work,  
4 he would accept such return on the basis that he would  
5 not come under the direct command of the party whose 11:36  
6 identity is known to you, about whom such complaints  
7 have been made by him. In this respect therefore my  
8 client wishes to return to work under the direct  
9 management of Inspector O'Sullivan. I would be obliged  
10 if you would confirm this is in order and represents a 11:37  
11 without prejudice compromise on his part. "  
12

13 I just want to perhaps put this suggestion to you at  
14 this stage: Chief Superintendent Dillane, it would  
15 appear, having received the CMO's advice, as it were, 11:37  
16 more or less, phoned you within a couple of days to  
17 offer you an accommodation in a different station,  
18 which would have taken you away from contact with the  
19 person you didn't want to have contact with.

20 A. That wasn't the CMO's advice. The CMO's advice was 11:37  
21 temporary workplace accommodations. There was only one  
22 accommodation offered, and that was transfer.

23 79 Q. Well, you seem to be construing the interpretation as  
24 you had to have an accommodation by remaining and being  
25 in Mitchelstown? 11:38

26 A. Well I was guided by the advice I received in relation  
27 to making my complaint, that if I made it under the  
28 bullying and harassment policy document that I would  
29 not be transferred until I applied for same. Until I

1 applied for same. So I could see no accommodation  
2 being offered under that policy.

3 80 Q. Well, was it your interpretation of the bullying and  
4 harassment policy that it precluded the exercise of the  
5 normal transfer provisions? 11:38

6 A. Yes.

7 81 Q. And that you had veto over where you might be  
8 transferred to?

9 A. It wasn't that I had veto, it's just the policy  
10 document was stating that would you not be transferred, 11:38  
11 even if the bullying and harassment complaint was not  
12 upheld, that neither the superintendent nor I could be  
13 transferred unless we applied for same. That was my  
14 reading of the document.

15 82 Q. Yes. But it gave you an option - 11:39

16 A. To apply.

17 83 Q. - to apply, which would appear to be, as it were, a  
18 binding option if exercised but it wouldn't necessarily  
19 include a transfer, would it?

20 A. No, no, but I outlined to Chief Superintendent Dillane 11:39  
21 that I was not going to apply for a transfer, because  
22 if I applied then would I have to incur the costs of  
23 that transfer. And it was to suit management, then I  
24 believe they should have transferred me at public  
25 expense. 11:39

26 84 Q. So the cost issues obviously in your circumstances was  
27 a significant factor?

28 A. Of course. Yes.

29 85 Q. In any event, if we look at page 382, the chief

1 superintendent reports on the contact with you up to  
2 HRM, at page 383. Page 383 is the next page down.  
3 He's reporting -- if we keep going down, you see on the  
4 second page?

5 A. Sorry, Mr. McGuinness, just back a line there, please. 11:40

6 86 Q. Yes.

7 A. In that report he states, Chief Superintendent Dillane  
8 states that he met me on 13th September 2012 by  
9 appointment.

10 87 Q. Yes. 11:41

11 A. That meeting did not happen. That was a phone call  
12 conversation. It was not a physical meeting.

13 88 Q. You think that was not a meeting?

14 A. No.

15 89 Q. Yes. But this is what we had some discussion about 11:41  
16 yesterday?

17 A. That's correct.

18 90 Q. You seem to be recalling the details of the October  
19 meeting by reference to the --

20 A. That's correct. 11:41

21 91 Q. -- September. So what is your recollection of the  
22 conversation you had with him on 13th September 2012,  
23 if you want to go back to that?

24 A. Just in relation to that conversation, I think Chief  
25 Superintendent Dillane rang me just to know how I was 11:41  
26 and I told him, at that stage I hadn't made my client,  
27 so I wasn't willing to discuss anything with him.

28 92 Q. Yes.

29 A. And we arranged then to meet again on the 21st





1 A. I can remember telling him I didn't want to speak to  
2 him in relation to anything to do with the case.

3 102 Q. CHAIRMAN: You say, I don't want to speak to you about?  
4 A. About this case because you're stationed in the same  
5 station as the person I am making my complaint about. 11:43

6 103 Q. CHAIRMAN: Okay. Can you remember what he had said  
7 that gave rise to your answer?  
8 A. He was enquiring as to how I was and was I going to  
9 come back to work or whatever and I said I didn't want  
10 to discuss it. 11:43  
11 CHAIRMAN: Okay.

12 104 Q. MR. MCGUINNESS: You may recall yesterday I did ask you  
13 about this and you did agree with me at that stage that  
14 he said he didn't want to discuss the details of the  
15 case with you and you agreed with that, that you didn't 11:43  
16 want to discuss it?  
17 A. Sorry, that was the meeting on the 13th October in  
18 Grandons that I was referring to, when I met him  
19 physically in his car. He said he didn't want to know  
20 about my complaint. Because I had made my complaint at 11:44  
21 that stage, he said he didn't want to know the details  
22 of the complaint.

23 105 Q. Well I better just for completeness open the portion of  
24 his statement where he deals with this meeting in  
25 September again. If we go to the bottom of page 333. 11:44  
26 He says:  
27  
28 "At the start of the meeting he told me that he was  
29 suffering from work-related stress and he informed me

1 that he did not want to discuss the details of his  
2 absence with... " you, as you were stationed in the  
3 same Garda station as Superintendent Comyns.  
4

5 And do you agree with that? 11:44

6 A. I would.

7 106 Q. Yes. He then goes on to say that you said you wanted  
8 an officer from outside the Cork north division to  
9 investigate the matter, and he informed you that he had  
10 requested a chief superintendent from outside the 11:44  
11 division to be appointed to look into his complaint.  
12 Do you agree that --

13 A. That could have been said, yes, I would agree.

14 107 Q. Okay. He then says:

15 11:45  
16 "I encouraged him to let me help him and to come back  
17 to work. I told him he could be facilitated somewhere.  
18 He wouldn't have contact with Superintendent Comyns  
19 until the issues were resolved."  
20

21 De make that offer? 11:45

22 A. I don't recall that on that phone conversation.

23 108 Q. You don't recall that. He says:

24  
25 "At the time he was on basic pay and I was conscious he 11:45  
26 a wife and three children to support. We then arranged  
27 to meet again on the 21st after he had some time to  
28 reflect on matters."  
29



1 A. No.

2 112 Q. And that he made this clear to the doctor, it would  
3 seem?

4 A. In relation to the 22nd January?

5 113 Q. Yes. 11:47

6 A. Sorry?

7 114 Q. Yes.

8 A. But he also told the doctor I was looking for a medical  
9 pension on the same date.

10 115 Q. Well, I am not sure who said that. We will come down 11:47  
11 to the meeting then on the 14th or the conversation, if  
12 we just scroll down there. He reports as follows:  
13

14 "At 10am on 14th February 2013 I spoke with Sergeant  
15 Barry. I enquired about his welfare and expressed my 11:48  
16 concern he was now reduced to half pay and informed him  
17 that I had met Superintendent Patrick Lehane, Cobh  
18 district on 13th February and we agreed that if  
19 Sergeant Barry was agreeable he could be facilitated on  
20 either unit D or unit E at Glanmire Garda station." 11:48  
21

22 Do you recall mention of Superintendent Lehane then?

23 A. No.

24 116 Q. Okay "I stressed the offer was made for the wellbeing 11:48  
25 of his family, it was felt there was no need for him  
26 being on half pay when he could be facilitated in a  
27 station much closer to his home."  
28

29 Did he explain that to you in those terms?

1 A. Not that I recall.

2 117 Q. Okay. In any event, he does record that you requested  
3 some time to consider the offer and undertook to  
4 contact him in a day or two. Then he refers to the fax  
5 that we have seen from Mr. Costelloe. And it just goes 11:48  
6 on then, if we scroll down further. He makes reference  
7 to receiving the sick report and then expresses the  
8 view that he believes "Sergeant Barry is fit to work  
9 and carry out his duties, however I feel it would be  
10 inappropriate to have him stationed in Mitchelstown 11:49  
11 pending outcome of the investigation which is currently  
12 being carried out by Assistant Commissioner Jack Nolan.  
13 I considered the offer made by Sergeant Barry through  
14 Séan Costello is not practical at this time."  
15  
16 And it is forwarded on for directions. In relation to  
17 the first sentence there, you I think, perhaps I am  
18 wrong in suggesting it to you, you felt that you were  
19 fit to work and carry out your duties in Mitchelstown  
20 provided you didn't have contact? 11:49  
21 A. No, I didn't believe I was fit to return to work at  
22 that time.

23 118 Q. Okay.

24 A. I was enquiring if I was to return to work in the  
25 future, what accommodations would be made for me. 11:50

26 119 Q. Yes.

27 A. But I was certainly in no position to return to work at  
28 that stage.

29 120 Q. Yes. And going into March, I think you had previously

1 given the CMO permission to refer you to a specialist,  
2 isn't that correct?

3 A. That's correct.

4 121 Q. You were due for review by the CMO and the specialist  
5 and a date was fixed I think for the 11th March, isn't 11:50  
6 that correct?

7 A. That's correct.

8 122 Q. And I think you received a reply from Chief  
9 Superintendent Grogan on the 8th March to one of your  
10 e-mails and perhaps we would just look at page 4074. 11:50  
11 If we just go down the page. You referred to Chief  
12 Superintendent Grogan's earlier e-mail there that we  
13 see on screen, that he said he would ensure it would be  
14 brought to the attention of all concerned. You had  
15 asked him then to tell you to whose attention you 11:51  
16 brought it and why you are not being given to answers  
17 to questions that you have asked. And you say:  
18  
19 "I am being denied the right to work and provide for my  
20 family by the inaction of HRM." 11:51  
21  
22 If we just scroll up there, to see the start of that  
23 e-mail. You sent that to him on the 18th. And then he  
24 replied, I think he had been away or in the High Court,  
25 and if we go back up, if we scroll up, rather than 11:52  
26 down, you can see his reply to you on the 8th March  
27 there, that he had forwarded to Assistant Commissioner  
28 Southern Region for his views and observations and he  
29 said he understands that Chief Superintendent Dillane

1 was willing to facilitate you with a transfer to  
2 Glanmire and to enquire if you wished to make an  
3 application for Glanmire. And you replied to that then  
4 I think, we just see it there now.

5  
6 "In my e-mail to your office of the 7/2 I stated that a 11:52  
7 transfer was not an for me because of the nature of my  
8 complaint and the persons mentioned therein. As  
9 Assistant Commissioner southern region is one of the  
10 persons mentioned therein, I find it strange you would 11:52  
11 forward my e-mail to him for his views and  
12 observations. Mitchelstown Garda station is my  
13 workplace and has been for the past 13 years and it is  
14 to this workplace I will return when and if HRM provide  
15 me with a safe working environment to which I can 11:53  
16 return. I will not be facilitated with a transfer to  
17 Glanmire. It is my view that transfer is not an option  
18 for me because of the nature of my complaint, the  
19 persons mentioned therein and the fact that I have  
20 relations in the Glanmire sub-district. The delay in 11:53  
21 inaction by HRM in addressing my complaint is causing  
22 me considerable financial and welfare hardship and I  
23 now for the fourth time want HRM to answer the  
24 following questions. "

25  
26 And you set out the same two questions there, 1 and 2,  
27 and yours sincerely. Now, I am not sure you got a  
28 reply directly from Superintendent Grogan to that, but  
29 you saw Dr. Tobin on the 11th March, is that correct?

1 A. That's correct.

2 123 Q. And the CMO had, as it were, asked Dr. Tobin to address  
3 five questions. Perhaps we would look at those, page  
4 1532. And the CMO is looking for the following, he  
5 says: 11:54  
6  
7 "I would be most grateful for your assessment and  
8 opinion in respect of the following:  
9 1. His formal clinical diagnosis or clinical status.  
10 2. What specific clinical considerations are present 11:54  
11 that preclude him from a return to work or policing  
12 duties at this time.  
13 3. What, if any, extra safeguards will foster his  
14 wellbeing and effectiveness should a return to work be  
15 indicated at this time. 11:55  
16 4. His longer term clinical prognosis in relation to  
17 his effectiveness in undertaking policing duties.  
18 5. Any other advice that would be useful in fostering  
19 his wellbeing and facilitating occupational  
20 rehabilitation both in the short and the longer term." 11:55  
21  
22 Did Dr. Tobin sort of raise issues relating to these  
23 questions with you when you saw him?  
24 A. Yes. Dr. Tobin asked me if I wanted a transfer or did  
25 I want to remain where I worked. And I told him that I 11:55  
26 wanted to remain at Mitchelstown Garda station and he  
27 said well, if you do, then we will have to look for  
28 temporary workplace accommodations to be put in place  
29 to facilitate it. And he also told me that if what I



1 was telling him was true in relation to my complaint,  
2 to continue with it, because it wasn't the first time  
3 that something like this came out of that division.

4 124 Q. Yes. Perhaps we would look at -- I think you saw the  
5 CMO in advance of that, isn't that correct? 11:56

6 A. That's correct.

7 125 Q. And do you know whether they consulted together  
8 afterwards?

9 A. I believe they did, indeed, there was a new list of  
10 recommendations carried out following the meeting with 11:56  
11 Dr. Tobin.

12 126 Q. Perhaps we would look at page 1534. This is report  
13 from Dr. Tobin. He goes into different details there.  
14 At the bottom of the page on screen, as you say, he  
15 describes your mood, according to yourself there. He 11:56  
16 goes into more detail in your background, but in his  
17 conclusion on page 1535, he offered this opinion in his  
18 conclusion.

19

20 "From the mental health point of view it appears that 11:57  
21 Sergeant Barry has developed a mixed anxiety/depressive  
22 reaction secondary to events that occurred at work.  
23 These events are to be the subject of formal  
24 investigation. In the meantime, without prejudice to  
25 the findings of the inquiry, I would recommend that 11:57  
26 Sergeant Barry returns to work when a mutually agreed  
27 safe supportive working environment is available for  
28 him."  
29



1 Regulations to conduct an investigation in respect of  
2 your complaint dated 21st November 2012:

3  
4 "...specific reference to the allegation that  
5 Superintendent Comyns interfered with the 11:59  
6 investigations into the alleged sexual abuse reported  
7 at Mitchelstown Garda station on 2nd February 2012. I  
8 have appointed Detective Inspector William Leahy in  
9 accordance with Regulation 14.6 to assist you.

10  
11 As you will appreciate, this is a complex investigation 11:59  
12 that requires parallel investigation under both the  
13 Garda policy and procedures and the bullying harassment  
14 one, and the Garda discipline regulations 2017. To  
15 this end I would ask for further forbearance in 12:00  
16 allowing a further extension of two weeks in respect of  
17 the matters 1-8 subject to the policy of harassment is  
18 fully complied with in relation to this investigation.

19  
20 As you are aware the matters subject to discipline 12:00  
21 regulations are not governed by the same timeframes.  
22 However, it is my intention to ensure this aspect will  
23 also be expeditiously investigated."

24  
25 You were conscious of the time constraints under the 12:00  
26 bullying and harassment policy yourself, isn't that  
27 correct?

28 A. That's correct.

29 133 Q. Presumably you knew from your ordinary knowledge and

1 experience as a sergeant that there was no specific  
2 timeframe set out in the discipline regulations for the  
3 conduct of an investigation?

4 A. Pardon?

5 134 Q. There was no specific timeframe laid down in the 12:01  
6 discipline regulations as opposed to the bullying and  
7 harassment policy?

8 A. No, there was a timeframe stated for the bullying and  
9 harassment, but there wasn't a timeframe stated for the  
10 discipline regulations. 12:01

11 135 Q. And the same position obtained and obtains in relation  
12 to a criminal investigation, there's no set specific  
13 timeframe laid down for the conduct and completion of a  
14 criminal investigation?

15 A. Well, while there's not - 12:01

16 136 Q. Yes.

17 A. - if I took three years to investigate a sexual  
18 assault, I would be in trouble.

19 137 Q. Yes. Well there's no doubt that it should be done  
20 expeditiously. I don't think anyone would say that any 12:01  
21 delay should be avoided where possible?

22 A. Yes.

23 138 Q. But there is no specific timeframe as such?

24 A. No, not that --

25 139 Q. Now, you've mentioned there the investigation of a 12:02  
26 sexual assault. Your complaint in incident number 9  
27 related to what Superintendent Comyns was suspected of  
28 having done or alleged by you to have done, isn't that  
29 correct?

1 A. That's correct.

2 140 Q. Chief Superintendent Kehoe wasn't appointed to  
3 investigate the original sexual assault offence, isn't  
4 that correct?

5 A. That is correct, but when Superintendent Patrick Lordan 12:02  
6 took my statement in November of 2012, he felt that the  
7 original investigation should be revisited because of  
8 the allegations I mentioned in my statement.

9 141 Q. Well, at no stage were you, or were you, was it  
10 conveyed to you by Chief Superintendent Kehoe at any 12:02  
11 stage, in writing or otherwise, that she was  
12 investigating the original offence?

13 A. No.

14 142 Q. In fact, she said the contrary to you?

15 A. Yes. 12:03

16 143 Q. Isn't that correct?

17 A. That's correct.

18 144 Q. Now, I think you did meet Chief Superintendent Kehoe on  
19 the 14th and an additional statement was taken from you  
20 on the 14th, isn't that correct? 12:03

21 A. That's correct.

22 145 Q. On the 15th Chief Superintendent Grogan sent an e-mail  
23 then to Assistant Commissioner Fanning, perhaps we  
24 would look at that, at 4073. At 4073. Just if we go  
25 down to the bottom. This starts with an e-mail from 12:04  
26 you on this page. And we have seen this just a moment  
27 ago, but it goes to Chief Superintendent Grogan and  
28 then he forwards this on, if we go back up to 4073, and  
29 he's saying:

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"Please see e-mail below. Sergeant Barry was offered a transfer to Glanmire by local management. He rejected this offer. I am at a loss to identify a solution in light of the member's refusal."

12:04

So it seemed to have been causing some concern that following the meeting with the CMO, following Dr. Tobin's recommendations and following your conversation with Chief Superintendent Dillane, what was being proposed by way of a workplace accommodation was being required by you to be left in Mitchelstown and nothing else would do?

12:05

A. Sorry, that is what I discussed with Dr. Tobin and he said he would recommend temporary workplace accommodations to facilitate me to remain in Mitchelstown. That was my conversation with Dr. Tobin.

12:05

146 Q. Yes. Well I am not criticising Dr. Tobin, but he doesn't appear to have expressed it in any way in relation to any specific management action or any specific Garda station?

12:05

A. That's correct.

147 Q. I mean, it would be fair to say that?

A. Absolutely.

148 Q. He wasn't laying down, as it were, for Garda management what that meant?

12:06

A. No, no.

149 Q. Okay. Were you concerned that he hadn't gone as far as what you had expressly wanted of him, as it were?

1 A. No, I wasn't. Because I understood temporary workplace  
2 accommodations would relate to my place of work, that  
3 they would be accommodations for where I worked, in  
4 line with the Garda bullying policy document.

5 150 Q. But up to August 2012 you had also worked in Fermoy 12:06  
6 Garda Station?

7 A. Not to my knowledge.

8 151 Q. Pardon?

9 A. Not to my knowledge.

10 152 Q. You'd attended - 12:06  
11 A. Sorry.

12 153 Q. - the briefings then?

13 A. Absolutely, yes, but I was stationed in Mitchelstown,  
14 Mitchelstown was my --

15 154 Q. Yes. But you had performed duty as a sergeant in 12:06  
16 Fermoy and you would attend the PAF meetings there, as  
17 we previously discussed?

18 A. Yes, but I would have performed my duty out of  
19 Mitchelstown. I would have attended a half-hour  
20 meeting in Fermoy, but Fermoy wasn't my place of work. 12:07

21 155 Q. You're a sergeant attached to a district -

22 A. That's correct.

23 156 Q. - in a division, in a region. Does your duty not  
24 require you to be available to work within your  
25 district and your division? 12:07

26 A. Yes, it did.

27 157 Q. You had worked within your division, not just at  
28 Mitchelstown, but all over your division at different  
29 stages?

1 A. Yes.

2 158 Q. Throughout your period of what was to become 16 years?

3 A. That's correct.

4 159 Q. Isn't that correct?

5 A. That's correct. 12:07

6 160 Q. That had included going to Fermoy, being in Fermoy,  
7 attending meetings in Fermoy and being on duty in  
8 connection with your position as a sergeant in the  
9 district and division?

10 A. That's correct. But my allocated station was 12:07  
11 Mitchelstown.

12 161 Q. Yes.

13 A. But I performed duty all over Cork north.

14 162 Q. Yes. But is it not slightly erroneous to be saying  
15 that your only place of work was Mitchelstown and that 12:08  
16 you had to be accommodated by working in Mitchelstown  
17 only?

18 A. I didn't see it as erroneous. I was able to perform my  
19 duty as far as I could see it by working from  
20 Mitchelstown without having contact with Superintendent 12:08  
21 Comyns.

22 163 Q. Okay. If we just go on up to the page then. Certainly  
23 Chief Superintendent Grogan seemed to be at a loss to  
24 identify a solution there. Assistant Commissioner  
25 Fanning writes as follows: 12:08  
26

27 "Thanks, it's a pity to see this man is in the position  
28 he is especially as he was given so much of his life to  
29 An Garda Síochána. I am glad that he is utilising the



1 agreed policy and at this remove a few issues arise."

2

3 Now, he appears to be sympathetic there to your  
4 position, you'd agree with that, I take it?

5 A. I didn't think so.

12:09

6 164 Q. You didn't think so?

7 A. Because it was my understanding that he would have been  
8 told that if they were to transfer me to Mallow I would  
9 not have objected, but there was no mention of that in  
10 any of the correspondence from HRM, either Chief  
11 Superintendent Grogan or Assistant Commissioner  
12 Fanning. So at the time I thought they were ignoring  
13 that, that that hadn't been relayed to them.

12:09

14 165 Q. Okay. He does identify issues obviously here as set  
15 out:

12:09

16

17 "1. I don't accept that the Garda station in  
18 Mitchelstown is an unsafe working environment nor can I  
19 conclude in the absence of the investigation/review  
20 that there is any finding of bullying/harassment.

12:09

21 2. However, the policy does set out that Sergeant  
22 Barry can apply for a transfer if he wishes to. Can  
23 you establish if he would wish to be considered for a  
24 transfer to any Garda station to help him during the  
25 period of investigation? I can give the matter very  
26 serious consideration and then at the final outcome of  
27 the process I can transfer the member back.

12:09

28 3. On the investigation of the file, is it close to  
29 being concluded?

1 Let us know if there is anything else I can do."

2

3 And then if we go up the page, Chief Superintendent  
4 Grogan replies back:

5

12:10

6 "All parties have agreed to an extension of timeframes  
7 for the investigation up to the 1st April.

8 I will again advise Sergeant Barry of the policy and  
9 the right to apply for a transfer."

10

12:10

11 Do you recall having a conversation afterwards or not  
12 with Chief Superintendent Grogan after that?

13 A. I don't recall it now, I don't know if I have a record  
14 of it.

15 166 Q. I think you did send a further e-mail to Chief 12:10

16 Superintendent Grogan yourself on the 15th. If we look  
17 at page 4100. If you go down the page, because it  
18 starts off with you're forwarding a copy of an e-mail  
19 that you had sent to Chief Superintendent Kehoe here,  
20 where you say:

12:11

21

22 "Please bring to attention of Chief Superintendent  
23 Kehoe.

24

25 On Monday 11/3 I attended the CMO in the Phoenix Park 12:11

26 where there I was assessed by Dr. Tobin. Dr. Tobin  
27 encouraged me to discuss and share the problems I have  
28 to endured with my family. This is what I did  
29 following my meeting with you in Mitchelstown. We

1 realised that I am not the only victim and that my wife  
2 and children are suffering also because of  
3 Superintendent Comyns' s actions and subsequent inaction  
4 by HRM A/C Nolan. As he only received your appointment  
5 on 18/2/2013, you are seeking a two-week extension. I 12:12  
6 hereby agree to your request. This extension will  
7 bring the combined delay to 1st April, which is exactly  
8 six months since A/C Nolan was appointed to deal with  
9 this matter. My wife wanted me to object to your  
10 extension and has given me and my authorities an 12:12  
11 ultimatum that if this matter is not fully resolved by  
12 1st April 2013 (fool's day) she will be making a formal  
13 complaint to the Garda Síochána Ombudsman Commission on  
14 that date."

15  
16 So that speaks for itself, but you sent that on to  
17 Chief Superintendent Grogan. And I am wondering,  
18 there's no mention there of any Garda station or  
19 workplace accommodations at all. Is there any reason  
20 why you omitted that, particularly in the context of 12:12  
21 the advice from CMO and Dr. Tobin?

22 A. Because I had already indicated to Chief Superintendent  
23 Dillane that I would not apply for a transfer and if I  
24 had applied to a transfer to HRM and nominated a  
25 station, then if I looked to return to my original 12:13  
26 station afterwards, they would say, well, you looked  
27 for the transfer, you stay where you are, you were the  
28 one who looked to get out of there. And if I looked --  
29 nominated a station or looked for a transfer, then it

1 would be at my own expense?

2 167 Q. Yes.

3 A. So I had relayed that I wanted my transfer to be

4 directed, that I would be going at public expense.

5 168 Q. Yes. 12:13

6 169 Q. CHAIRMAN: what expense would there be? If you were to

7 transfer, for the sake of argument, to Glanmire?

8 A. Yes.

9 170 Q. CHAIRMAN: what expense would there be?

10 A. You're entitled to 15 months of allowances when you go 12:13

11 on transfer and suppose I was transferred to Mallow, as

12 I had hoped, I could sell my house without paying stamp

13 duty and purchase another place without incurring --

14 171 Q. CHAIRMAN: So there would be considerable advantages?

15 A. Yes. 12:14

16 172 Q. CHAIRMAN: If you were doing it?

17 A. Same as when I moved from Dublin in 2000, and I was

18 aware of that.

19 173 Q. CHAIRMAN: Okay. would that happen if you applied for

20 a transfer? 12:14

21 A. No.

22 174 Q. CHAIRMAN: Okay.

23 A. You debt nothing.

24 175 Q. CHAIRMAN: So there was a big advantage to being

25 assigned rather than to voluntarily do so? 12:14

26 A. Yes. And because of the financial situation I was in.

27 176 Q. CHAIRMAN: I understand, yes. Thanks very much. No,

28 when you mentioned expense of travelling I wasn't

29 entirely sure what was involved but now you have

1 explained it?

2 A. It's considerable.

3 177 Q. CHAIRMAN: Thank you very much.

4 A. And solicitors fees as well.

5 CHAIRMAN: Yes, thank you very much. 12:14

6 178 Q. MR. MCGUINNESS: Did you correspond with Chief  
7 Superintendent Kehoe about the prioritisation of the  
8 investigation on the 20th March?

9 179 Q. CHAIRMAN: Sorry, can I just come back for a moment,  
10 I'm sorry. Am I understanding then, if Glanmire was 12:15  
11 nearer to your home than Mitchelstown, this wouldn't  
12 arise, no matter who ordered it?

13 A. I don't think so, because initially there used to be a  
14 15-mile --

15 180 Q. CHAIRMAN: I follow. 12:15

16 A. If you were living outside 15 miles of your new station  
17 you wouldn't get your costs but that was changed in  
18 1999 I think.

19 181 Q. CHAIRMAN: Okay.

20 A. So that he's how I got my costs when I moved to 12:15  
21 Mitchelstown, I was living more than 15 miles from the  
22 station.

23 182 Q. CHAIRMAN: I understand that. But my question is this:  
24 If it had happened that you were assigned or  
25 volunteered, or whatever, if you went to Glanmire, am I 12:15  
26 right in thinking that wouldn't apply because it was  
27 closer to your home?

28 A. That's correct.

29 183 Q. CHAIRMAN: So for this benefit to be gained you needed

1 to be sent more than 15 miles away from your home?

2 A. That's correct.

3 184 Q. CHAIRMAN: Is that right?

4 A. That's correct, yes.

5 CHAIRMAN: All right, thank you very much. 12:16

6 185 Q. MR. MCGUINNESS: I was asking you, am I correct in  
7 saying that you wrote to Chief Superintendent Kehoe on  
8 the 20th March in connection with the prioritisation of  
9 the investigation?

10 A. I believe so, yes. 12:16

11 186 Q. I will come back to that later. But following that,  
12 you did return to work in Mitchelstown?

13 A. That's correct.

14 187 Q. I just want to get the sequence right, for every  
15 reason. But at that point in time you hadn't been, as 12:16  
16 it were, certified by the CMO as being fit to return to  
17 work?

18 A. That's correct.

19 188 Q. You had been to your doctor on the 28th and she hadn't  
20 given you a certificate on the 28th? 12:17

21 A. No, she said I wasn't fit to return.

22 189 Q. And you did return to work then without a certificate  
23 from either on the 29th?

24 A. That's correct.

25 190 Q. Was it on the night of the 28th? 12:17

26 A. 29th. Friday, 29th.

27 191 Q. Okay. First of all, why did you do that?

28 A. For financial reasons.

29 192 Q. All right. Obviously if you went back to work, as you

1 did, and then you continued at work, you were restored  
2 to full pay and allowances -  
3 A. That's correct.  
4 193 Q. - for your duties?  
5 A. Yeah. 12:17  
6 194 Q. whatever duties you were doing. I think factually  
7 speaking, you never had any further extended periods  
8 out on sick leave, you had the odd day here or there I  
9 think until your actual retirement?  
10 A. Yes, but nothing -- 12:18  
11 195 Q. Nothing substantial -  
12 A. No.  
13 196 Q. - anyway from the end of March 2013 until the middle of  
14 June 2016?  
15 A. That's correct. 12:18  
16 197 Q. You saw your doctor. Did she refuse you a certificate  
17 on the 28th?  
18 A. Yes. She didn't want me to return.  
19 198 Q. Pardon?  
20 A. She didn't want me to return. 12:18  
21 199 Q. Perhaps we would just look at her note of that. You've  
22 probably seen a statement from her that has become  
23 available in the last few days?  
24 A. That's correct.  
25 200 Q. But if we look at page 4773. For that date there, the 12:18  
26 28/3, it seems to be saying:  
27  
28 "Patient brought letter from Assistant Commissioner,  
29 same scanned. Feel he has no option but to return to

1 work. I have spoken with a colleague who is awaiting a  
2 High Court date for the last five years as garda will  
3 not agree sick leave was work related. Stated will not  
4 have admitted that it is work related. He was sent to  
5 consultant psychiatrist by Garda Dr. Tobin on the 25/2 12:19  
6 due to see Dr. Dennehy 14/4. Under severe financial  
7 pressure not being able to pay mortgage. Has to return  
8 to work for financial reasons. Doesn't feel able but  
9 feels he has no choice. Tearful during consultation.  
10 Denies that with sleep currently broken... annual leave, 12:19  
11 work nights as long as possible to avoid  
12 superintendent."

13  
14 Then there is just her own sort of notes there about  
15 that. You seem to have, correct me if I am wrong, I am 12:19  
16 just trying to ascertain the position, you seem to have  
17 realised that the investigation could take a  
18 substantial period of time

19 A. Absolutely, yes.

20 201 Q. And you'd correspondence to and fro with Chief 12:20  
21 Superintendent Kehoe and a meeting with her as well on  
22 the 14th?

23 A. I'd said it in an e-mail to, I think it was to John  
24 Grogan.

25 202 Q. Yes. 12:20

26 A. That they had only taken one statement in so long and  
27 that if they if they continued with it at this pace it  
28 could be three years. And as it turned out that was  
29 right.



1 203 Q. Obviously that concern and the financial position seems  
2 to have propelled you to consult with your doctor to  
3 try and persuade her to give you a certificate and then  
4 go back to work with the certificate?  
5 A. Yes. 12:20  
6 204 Q. But she didn't give it to you on that date?  
7 A. No.  
8 205 Q. And then you did return and you met Inspector  
9 O'Sullivan on the 29th?  
10 A. Pardon? 12:20  
11 206 Q. You met Inspector O'Sullivan on the 29th?  
12 A. No. I returned to work on the 29th.  
13 207 Q. Yes. Sorry, you returned to work on the 29th?  
14 A. I think it was the following night that I met Inspector  
15 O'Sullivan. 12:21  
16 208 Q. Okay. In your statement you describe it as sort of an  
17 inspection and a demand on his part that you produce a  
18 medical certificate. I mean, from his point of view he  
19 must have known or suspected that you hadn't in fact  
20 been certified as fit for coming back to work? 12:21  
21 A. No. When I met with him he asked me had I a  
22 certificate.  
23 209 Q. Yes.  
24 A. To say I was fit to return and I told him I hadn't,  
25 that my doctor wouldn't issue it, she didn't want to 12:21  
26 give me a cert.  
27 210 Q. Yes.  
28 A. And he said why, and I told him that she didn't want me  
29 coming in contact with the cause of my stress.

1 211 Q. Yes.

2 A. He said, you're going to have to have a certificate if  
3 you want to go back on full pay, because you will stay  
4 on halfway otherwise. And I said, she won't give it to  
5 me unless what she wants is in it. And he said, 12:22  
6 whatever conditions she wants, she can put in her cert.

7 212 Q. But had you discussed conditions with her on the 28th?

8 A. No. But she had said to me that she didn't think it is  
9 safe for me to come back in contact with the  
10 superintendent. 12:22

11 213 Q. Okay. But in terms of Inspector O'Sullivan, you may  
12 not have intended it to be portrayed in this way, but  
13 you sort of suggest inferentially anyway that it was a  
14 sort of oppressive action by Inspector O'Sullivan, that  
15 he was inspecting you formally and that he was making 12:22  
16 an unreasonable demand for a certificate. Surely he  
17 was entitled to see had you been certified fit for  
18 work?

19 A. Absolutely. But it was the timing of his visit and the  
20 fact he could have rang me and say, Paul, I want to 12:22  
21 meet you tonight, are you working tonight. But to  
22 arrive unannounced, I felt that that was an inspection.

23 214 Q. Okay. well he said he was actually there by chance.  
24 And he hadn't arranged to meet you, isn't that right?

25 A. That's not right. 12:23

26 215 Q. But he hadn't arranged to meet you?

27 A. No, he hadn't arranged to meet me.

28 216 Q. No. And you didn't --

29 A. What I am saying is, he wasn't there by chance, he was

1           there to tell me that I needed a cert before I could  
2           resume.

3 217 Q.    Okay. Well, I mean, just to be blunt about it, you  
4           should have had a cert, isn't that right?

5           A.    Yes. 12:23

6 218 Q.    Under normal circumstances?

7           A.    I agree.

8 219 Q.    Okay. But I mean, you're not suggesting he did  
9           anything improper?

10          A.    Not in the least. 12:23

11 220 Q.    Okay. All right. He reported that to the  
12          superintendent and presumably you wouldn't fault him  
13          for doing that?

14          A.    No, that was his job.

15 221 Q.    The superintendent rang Chief Superintendent Dillane 12:24  
16          and there was contact then made with HRM and it  
17          happened to be the Easter weekend, isn't that correct?

18          A.    That's correct.

19 222 Q.    There seemed to be an expectation that, let him back to  
20          work and the paperwork will follow afterwards? 12:24

21          A.    Yeah.

22 223 Q.    Isn't that right?

23          A.    That's correct.

24 224 Q.    But is it clear in your recollection that you told  
25          Inspector O'Sullivan that your doctor had refused to 12:24  
26          give you a certificate?

27          A.    Absolutely. I told him she wasn't going to issue me  
28          with a cert. He said, you have to have a cert or you  
29          won't be put back on full pay.

1 225 Q. Over the next few days then, whatever, the 30th, 31st,  
2 1st, 2nd, 3rd you still didn't have a cert?  
3 A. No, I think it was because of the Bank Holiday.  
4 226 Q. Right. Okay. You went to see the doctor then again on  
5 the 4th, isn't that correct? Or did you phone in? The 12:25  
6 note says you phoned actually, but presumably you then  
7 went to collect the cert from the doctor?  
8 A. Yes, I probably would have phoned to make an  
9 appointment with her first and went in and told her I  
10 needed a cert. 12:25  
11 227 Q. Perhaps you would look at the note there on the 4th.  
12 It seems to be saying:  
13  
14 "Patient phoned. Planned to return for financial  
15 reasons. Was told by inspector today that he cannot 12:25  
16 return with a letter for me stating he is fit to work.  
17 Mr. Barry told inspector that I said I could not  
18 provide same as in my opinion he was not fit to return  
19 to same position. Inspector said to put conditions on  
20 letter. Discussed with patient and happy with 12:25  
21 wording."  
22  
23 So, do you recollect that discussion then happening in  
24 the doctors surgery?  
25 A. I recollect discussing with the doctor because she 12:26  
26 didn't want me to go back to work, I told her I had to  
27 and I needed a cert to go back. And she said I  
28 couldn't have contact with the superintendent if I was  
29 to go back or else she wouldn't certify me.

1 228 Q. She saw it as a health issue, is that right?  
2 A. Yes.

3 229 Q. And you got a cert from her on the 4th April, is that  
4 right?  
5 A. That's correct. 12:26

6 230 Q. Perhaps we would just look at page 388. And if you  
7 just scroll a little bit back up so you can see the  
8 heading there. The 4th April is crossed out. You  
9 crossed that out I think, did you?  
10 A. No. 12:27

11 231 Q. Did she cross it out?  
12 A. I don't recall whether she crossed it out or her  
13 secretary or whoever, but it wasn't me. That's not my  
14 writing.

15 232 Q. Okay. Do you recollect looking at it when you got it 12:27  
16 and was it crossed out when you got it do you think?  
17 A. No, it wasn't crossed out. When she handed it to me in  
18 the clinic, it came out as the 4th April and I told her  
19 that I resumed on the 29th and that that cert wouldn't  
20 cover me from the 29th. 12:27

21 233 Q. Okay.  
22 A. And I believe that's why the cert was amended.

23 234 Q. Yes.  
24 A. The computer, because it's computerised, the computer  
25 spits out the date when she issued the cert, that's 12:28  
26 what she told me.

27 235 Q. Okay. So you then had possession of this on the 4th  
28 April and you brought it to Inspector O'Sullivan and  
29 he --

1 A. No, I gave it to a garda, Garda wall and he took it  
2 from my station and he handed it to the district  
3 officer's secretary.

4 236 Q. I see. Okay.

5 A. Inspector O'Sullivan rang me that day again looking for 12:28  
6 it and told him that Garda wall had taken it to Fermoy.

7 237 Q. Yes. He certainly refers to a phone call, Inspector  
8 O'Sullivan, on the 3rd. The chief superintendent says  
9 that he received it at 4pm on the 4th and it was sent  
10 off to the CMO then. On the 5th of April then, 12:29  
11 Assistant Commissioner Fanning sent an e-mail, I don't  
12 know have you seen this in the discovery? Page 1666.  
13 This is back to Chief Superintendent Dillane there. He  
14 says:  
15  
16 "I am directed by Assistant Commissioner Fanning to 12:29  
17 acknowledge receipt of your e-mail. He understands a  
18 case conference is continuing for Monday morning to  
19 discuss this matter, can you please confirm. Assistant  
20 Commissioner Fanning has directed that arrangements 12:29  
21 should be made to have an inspector establish the  
22 non-medical nature of this certificate with the person  
23 who issued same, the non-medical issues are those which  
24 concern local management, medical issues cannot be  
25 discussed." 12:29  
26  
27 And that is sent at 8.51 in the morning. Now, we know  
28 Inspector O'Sullivan did visit Dr. Kiely to enquire  
29 whether she had issued the certificate and obviously

1 the issue was raised about the date which was struck  
2 out on the copy that you had produced, isn't that  
3 right?

4 A. From Assistant Commissioner Fanning?

5 238 Q. No, no. The certificate you produced had the date of 12:30  
6 the 4th struck out, isn't that right?

7 A. Oh that's correct.

8 239 Q. Yes. And Chief Superintendent Dillane apparently  
9 instructed Inspector O'Sullivan to proceed to  
10 Dr. Kiely's clinic to speak with her about the 12:30  
11 circumstances in which it had been issued and whether  
12 she had issued it, isn't that right?

13 A. That's what Dr. Kiely understood, but when I see what  
14 the Assistant Commissioner has directed, it's not  
15 non-medical issues or the medical issues concerning 12:31  
16 local management. So that's not the date.

17 240 Q. Yes, but Inspector O'Sullivan was concerned with the  
18 date also himself?

19 A. Perhaps he was. He said that. And the signature.

20 241 Q. And Chief Superintendent Dillane? 12:31

21 A. Yes, he says he couldn't -- the doctor's signature  
22 which -- I don't think anyone can read a doctor's  
23 signature.

24 242 Q. Yes, perhaps you're right about that. But in any  
25 event, Inspector O'Sullivan went back and maybe we'd 12:31  
26 just revert back to Dr. Kiely's notes. 4773. On the  
27 5th, it says:

28

29 "Inspector Anthony O'Sullivan called to surgery to

1 speak with me, he wanted to check medical letter  
2 stating fit to work was from me and had not put date of  
3 return to work on it. Aware I cannot speak about the  
4 patient. I am just the middleman. I am friends with  
5 Paul. Says Chief Medical Officer phoned me as he feels 12:32  
6 letter will not be accepted. Letter amended with date  
7 of return to work on it."

8  
9 She issued a new certificate on that date, is that  
10 correct? 12:32

11 A. I believe so, yes.

12 243 Q. Perhaps we would look at that, it's on page 4109. If  
13 you just scroll up a little bit, the date is now on the  
14 left-hand side of the 4th, dated 4/4. The text has  
15 been amended to include the phrase after the words 12:33  
16 "under circumstances", "from Thursday 28/3/2013  
17 Mr. Barry should not work or attend Fermoy Garda  
18 Station and he should not come into contact with  
19 Superintendent Michael Comyns."

20 12:33  
21 It is again signed by Dr. Kiely and there is a date  
22 stamp further down in a slightly different position.  
23 But Inspector O'Sullivan says he didn't seek to speak  
24 about your medical condition.

25 A. That's correct. 12:33

26 244 Q. And Dr. Kiely refused to speak about the circumstances  
27 in which it was issued, isn't that correct?

28 A. Yes, I believe so.

29 245 Q. She told you that?



1 A. Yes.

2 246 Q. The issue of the date and when it was effective from to  
3 allow you to go back to work from the 29th, the  
4 certificate was amended there in the way we have seen  
5 there, isn't that correct? 12:34

6 A. That's correct. Dr. Kiely rang me that morning.

7 247 Q. Yes. She rang you that day to tell you that?

8 A. She rang me after Inspector O'Sullivan visited her.

9 248 Q. Yes.

10 A. And she thought he was asking was the cert forged, 12:34  
11 that's what she understood.

12 249 Q. Well, he was looking for confirmation that it had been  
13 issued by her?

14 A. Yes. She said he asked her was the cert issued by me  
15 or her. 12:34

16 250 Q. Well, Inspector O'Sullivan apparently says otherwise,  
17 but that's a matter --

18 A. I understand, but that's the conversation I had with  
19 Dr. Kiely at the time.

20 251 Q. It's a matter we may need to clear up, or not. 12:34  
21 Inspector O'Sullivan wrote a report about the matter,  
22 perhaps I should open that, at page 5353. He's  
23 referring -- if we just go up the page, it's a report  
24 to the Chief Superintendent and it says:  
25  
26 "With reference to above the instructions of 4/4, I  
27 called to Dr. Margaret Kiely at the Glanmire Medical  
28 Centre on the 5/4 in relation to medical certificates  
29 from Sergeant Paul Barry on the 4/4. I informed

1 Dr. Kiely I wasn't there to discuss any matters of  
2 patient confidentiality and only to discuss the  
3 validity of the medical certificate. Dr. Kiely  
4 informed me that it was a valid certificate issued by  
5 herself on the 4/4, albeit it was dated 28/3. 12:35  
6  
7 I queried the work related conditions attached to the  
8 medical certificate but she declined to discuss them.  
9  
10 For your information, Inspector Anthony O'Sullivan." 12:36  
11  
12 Can I just ask you about the extent of discussions you  
13 had with your doctor about what are referred to as the  
14 work related conditions. I mean, presumably all she  
15 knew about your position and your working position and 12:36  
16 your duties was what you had told her yourself?  
17 A. That's correct.  
18 252 Q. Would it be fair to say that effectively the conditions  
19 put down in the letter are what you told her you would  
20 require? 12:36  
21 A. No, that would be incorrect.  
22 253 Q. Okay.  
23 A. Dr. Kiely made her own decision. She did not want me  
24 to return to work. She refused to issue me a cert on  
25 the 28th. I requested a cert off her to return to 12:36  
26 work, she refused, she didn't think I was fit to  
27 return.  
28 254 Q. Yes.  
29 A. And she said I couldn't return until certain conditions

1 were part of the cert.

2 255 Q. But I mean, I take it that there must have been  
3 discussion between you and her, led factually by you,  
4 about what conditions would make you happy to return to  
5 work? 12:37

6 A. And consultations between her and my psychiatrist who  
7 were dealing with me at the time in relation to what  
8 was causing my work-related stress.

9 256 Q. Okay. In any event, did you expect any reaction from  
10 Garda management when presented with such a 12:37  
11 certificate?

12 A. Well, naturally I would.

13 257 Q. Yes. Chief Superintendent Dillane describes it at page  
14 337 in the papers. Firstly, in the middle of the page,  
15 further down on the screen, he says there, the second 12:38  
16 last line on screen at the moment:

17

18 "I asked Inspector O'Sullivan to find out from  
19 Dr. Kiely if the certificate was genuine and also to  
20 explain how she could say that a member of An Garda 12:38  
21 Síochána could not work at Fermoy Garda Station. I  
22 interpreted the certificate by Dr. Kiely as saying that  
23 Fermoy Garda Station was an unsafe place for a member  
24 of An Garda Síochána to work in. I wanted to know the  
25 basis for that statement as I believe there is nothing 12:38  
26 wrong in working with Fermoy Garda Station or with any  
27 person working in Fermoy Garda Station."

28

29 He then refers to Inspector O'Sullivan there. But I

1 think later that day you received a letter from  
2 Inspector O'Sullivan?

3 A. That's correct.

4 258 Q. Dated 5/4?

5 A. Yes.

12:39

6 259 Q. And perhaps we'd look at that on page 5348. And he  
7 says:

8

9 "I wish to acknowledge receipt of medical certificate  
10 received at Garda station Fermoy at 4pm on Thursday 4th 12:39  
11 April 2013 from Dr. Margaret Kiely, Glanmire Medical  
12 Centre in relation to your return to work. The  
13 contents of this medical certificate have been noted.  
14 However, I must inform you that all Garda members are  
15 subject to and operate under the authority of local 12:40  
16 garda management and the Garda Síochána Code directives  
17 and instructions. Accordingly, while your return to  
18 work is welcomed, the non-medical as set out in the  
19 medical certificate submitted cannot be acceded to.  
20 Any medical issues can be referred to the Chief Medical 12:40  
21 Officer by your medical doctor.

22

23 As you are aware, directions have issued from  
24 Superintendent Comyns that all sergeants and gardaí are  
25 to attend a district briefing at Fermoy Garda Station 12:40  
26 at 7.30am each morning and 9.30pm each night and you  
27 are required to attend at Fermoy Garda Station at the  
28 above time to brief your unit when you are working. "  
29

1 So, you received that and can I ask you, how did you  
2 take that?

3 A. I was half expecting something like it because of the  
4 attitude of management up until that point. I didn't  
5 see they were going to change their view that there'd 12:40  
6 be no accommodations offered or put in place.

7 260 Q. I mean, it goes back to a question I asked earlier, did  
8 you not regard the discussions about transfers,  
9 wherever they might be or however they might be  
10 achieved, as in fact a genuine attempt to provide 12:41  
11 workplace accommodation for you?

12 A. Well, accommodations plural didn't apply, it was one  
13 accommodation, from the outset, from everyone, from  
14 Chief Superintendent Grogan, Chief Superintendent  
15 Dillane, and HRM. The only accommodation was a 12:41  
16 transfer. There was nothing else. The offer by my  
17 solicitor to have Inspector O'Sullivan deal with me  
18 directly wasn't even entertained.

19 261 Q. Well, would that have dealt with your attendance at  
20 Fermoy, for instance, the mere fact that you might be 12:42  
21 under Inspector O'Sullivan, as it were?

22 A. It would affect me coming in contact with  
23 Superintendent Comyns, yes.

24 262 Q. Did you consider sort of remaking that offer at any  
25 stage? 12:42

26 A. In relation to?

27 263 Q. Inspector O'Sullivan.

28 A. No, because it was dismissed.

29 264 Q. Okay. I mean, Inspector O'Sullivan here and in the

1 last paragraph particularly, seems to be expressing a  
2 clear view about the extent of what your duty requires  
3 you to do vis-à-vis Fermoy. You were now in possession  
4 of a medical certificate, did you see it as shielding  
5 you from/excusing you from doing your duty? 12:43

6 A. No, I saw it as protecting my mental health.

7 265 Q. All right. Is it the position then that you weren't at  
8 that stage and didn't ever get to the stage where you  
9 thought you could protect it by taking yourself out of,  
10 as it were, the caldron where the danger was, into an 12:43  
11 other district?

12 A. Well Chief Superintendent Dillane already had the  
13 option of another district and I clearly outlined to  
14 him that I would not apply for it but I would take a  
15 transfer at public expense. 12:43

16 266 Q. That view, did you ever put that in writing?

17 A. No, and I never would. I would never mention a station  
18 in writing, because as soon as I would it'd be taken as  
19 that's the station I want to go to and you'd be  
20 transferred at your own expense. 12:43

21 267 Q. Well I mean, it could be done without it being regarded  
22 as your application to transfer. Would you not agree  
23 that that was a real possibility?

24 A. I didn't think management would do that. That's why I  
25 wouldn't mention it in writing. 12:44

26 268 Q. Okay. We've seen from the papers, did you get to learn  
27 that a case conference was held on the 8th April in  
28 relation to the matter? Perhaps if we look at page 390  
29 of the papers. And in the left-hand column it says:

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"Medical certificate from GP. Member should not work with superintendent. Recommendations of GP not considered reasonable and practical by local management. No medical issue to preclude him from work once mutually agreed safe supporting working environment provided as recommended by an independent specialist. Member has declined officer of work location of divisional chief that would preclude him from working with the superintendent in question."

12:44  
12:45

Do you agree factually with that last comment there, that a transfer would preclude from working with the superintendent in question?

A. It would have. It would have precluded.

12:45

269 Q. All right. Under the middle column then it says:

"Management actions: Meet with member to put in place suitable arrangements - inform that GP's recommendations cannot be met on the basis of reason ability and practicability."

12:45

All communication with member should be in writing.

If member rejects offers made follow organisational management procedures to manage situations.

12:45

Check transfer rules - can member be transferred without applying for same?

1 HRM awaiting report from OHP. Action complete."

2

3

And then:

4

5

"Occupational health actions: Make appointment for member if new medical issues emerge."

12:46

6

7

8

Now, I think on the evening after that conference Chief Superintendent Dillane met with you, isn't that correct?

12:46

10

11

A. I wouldn't say he met with me, I would say he inspected me.

12

13

270 Q. He inspected you?

14

A. He arrived unannounced with Inspector O'Sullivan at my place of work at ten to nine, I arrived at Mitchelstown to find the two of them sitting in the car park at Mitchelstown.

12:46

15

16

17

18

271 Q. You make it appear, perhaps unintentionally, that he shouldn't come without telling you that he is going to be coming?

19

20

12:46

21

A. I think it would have been a courteous thing to do.

22

272 Q. You used the phrase in your statement a number of times "inspected you" what do you mean by that?

23

24

A. Because it was the commencement of my tour of duty, that's why I believed the previous inspections by Inspector O'Sullivan and Chief Superintendent Dillane were to inspect me at the commencement of my tour of duty. They could have arrived at ten o'clock.

12:47

25

26

27

28

29

273 Q. Right?



1 A. Half nine.

2 274 Q. Did he carry out an inspection?

3 A. Pardon?

4 275 Q. Did he carry out an inspection of you?

5 A. Not of me, but of my reporting for work, I believe. 12:47

6 276 Q. Right. But this was nothing formal, you didn't have to  
7 parade and be subject to scrutiny about whether you  
8 were wearing the proper uniform or, it's not an  
9 inspection in that sense?

10 A. Not in that sense, because I arrived prior to my time 12:47  
11 of work and I would have fitted my uniform accordingly  
12 when I entered the station.

13 277 Q. And can you tell the Chairman then what happened at  
14 that meeting, what was said by you and him and how did  
15 it go? 12:48

16 A. Chief Superintendent Dillane referred to the meeting he  
17 had with the CMO in Dublin and he asked me was I aware  
18 of the content of the report from the CMO and I told  
19 him I was familiar with it, I had already received it.  
20 And because he had arrived with Inspector O'Sullivan, I 12:48  
21 told him I didn't want to discuss any further matters  
22 unless I had a rep, my own rep present. It was a short  
23 meeting.

24 278 Q. You do seem to emphasise, you may not have intended it,  
25 that he seemed to your way of observing him to be in 12:48  
26 full uniform?

27 A. That's correct. When I saw him that night he was  
28 wearing his tunic with the Sam Browne belt and his cap  
29 under his shoulder.

1 279 Q. You have probably seen both his statement and Inspector  
2 O'Sullivan's statement and they don't appear to agree  
3 with that description of him being in full uniform with  
4 a Sam Browne belt?

5 A. Well, Chief Superintendent Dillane says he wasn't but 12:49  
6 Inspector O'Sullivan isn't a hundred percent sure.

7 280 Q. Right. But you seem to have been suggesting that this  
8 was an attempt to intimidate you?

9 A. Absolutely.

10 281 Q. And just to be clear, this is what you say represented 12:49  
11 the first targeting of you by Chief Superintendent  
12 Dillane in your complaint to the Tribunal, isn't that  
13 correct?

14 A. That's correct.

15 282 Q. Now can I ask you just to describe as fully as possible 12:49  
16 how and on what basis you say this represents a  
17 targeting of you?

18 A. Because I believe it was in effect an ambush when he  
19 arrived with a witness to speak with me. He had  
20 arranged to have Inspector O'Sullivan with him. He 12:50  
21 didn't give me any opportunity to have a representative  
22 with me and at the hour of night as well, the chance of  
23 me finding someone to sit in on the meeting with me  
24 would have been diminished.

25 283 Q. Well what conversation was there between you? 12:50

26 A. The conversation was in relation to the recommendations  
27 put out by the CMO in relation to my return to work.  
28 He said there was temporary workplace accommodations  
29 and he offered me a transfer.

1 284 Q. One of the issues is that Inspector O'Sullivan says  
2 that you maintained that the super had to go, the  
3 superintendent had to go?  
4 A. No, that was the statement Inspector O'Sullivan made  
5 recently to the Tribunal. He didn't make notes at the 12:51  
6 time or he didn't reference the notes. But Chief  
7 Superintendent Dillane's notes of that meeting mention  
8 no mention of the superintendent to be transferred or  
9 my reference to same.

10 285 Q. Is there anything else you want to say from your 12:51  
11 recollection about the meeting?  
12 A. I terminated the meeting when I said I did not want to  
13 discuss any further matters with either of them until I  
14 had a rep with me. And my rep at the time was  
15 Inspector Gallagher. 12:51

16 286 Q. Yes. Can I just sort of open Chief Superintendent  
17 Dillane's account of it for the moment, and it's at  
18 page 338. You have probably seen the account but I  
19 would like to get your response to what you say there.  
20 You see where it starts in the middle of the screen 12:52  
21 there, 9th April. It says:  
22  
23 "On the 9th April 2013 at 9pm, accompanied by Inspector  
24 O'Sullivan, I met Sergeant Barry at Mitchelstown Garda  
25 station. I knew Sergeant Barry was due to be on duty 12:52  
26 at 9pm and was refusing to attend the briefings in  
27 Fermoy as directed by the district officer. At the  
28 outset I welcomed Sergeant Barry back to work and  
29 enquired about his health."

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Do you agree with that?

A. I wouldn't dispute it, no.

287 Q. Okay. "I informed Sergeant Barry I had attended a case conference in relation with the Chief Medical Officer previously day at Garda headquarters." 12:52

He told you that, do you think?

A. Sorry?

288 Q. Did he say that to you? 12:52

A. He did, yes.

289 Q. Okay. "I also informed Sergeant Barry that I had received correspondence from Assistant Commissioner Human Resource Management on that date. I handed Sergeant Barry a copy of his correspondence and then read the correspondence over to him." 12:53

Do you agree with that?

A. I do.

290 Q. Okay. If we just scroll up so everyone can see there. Slightly further up, thank you. He says as follows: 12:53

"I told Sergeant Barry that anything we do in respect of providing him with a temporary safe workplace accommodation has to be done by mutual agreement but also must be reasonable and practicable." 12:53

Do you recall him saying that?

A. I don't. But I wouldn't dispute that he did say it.

1 291 Q. "I told Sergeant Barry that the conditions set out in  
2 his GP's medical certificates cannot be met on the  
3 basis of reasonability and practicability and that his  
4 current work arrangements had to cease immediately."

12:53

5  
6 Do you recall him saying that?

7 A. No.

8 292 Q. It would seem, well, perhaps logical that there ought  
9 to have been some discussion about whether --

10 A. I don't dispute that he said it, I just don't recall  
11 it.

12:54

12 293 Q. Okay, you don't recall it, okay. At the bottom line  
13 there, continuing down it says:

14

15 "I told him that as far as I was concerned as  
16 divisional officer the conditions outlined in the  
17 medical certificate which stated that he should not  
18 work or attend at Fermoy Garda Station and should not  
19 come into contact with Superintendent Michael Comyns  
20 were neither reasonable or practicability."

12:54

12:54

21

22 Do you recall him saying that?

23 A. I don't. I don't he went into -- I think his  
24 conversation on the night was in relation to the  
25 instructions from the CMO. I didn't go into a  
26 conversation, a long conversation. It was a short  
27 meeting.

12:54

28 294 Q. Yes.

29 A. Because I didn't have a rep with me, I wasn't

1 discussing everything and anything, especially my  
2 doctor's cert with him.

3 295 Q. He then goes on to refer to Superintendent Comyns and  
4 says:

5  
6 "I hold him that Superintendent Michael Comyns was the  
7 appointed district officer for Fermoy district by the  
8 Garda Commissioner. As such, Superintendent Comyns was  
9 in charge of Fermoy Garda District in accordance with  
10 the Garda Síochána Code. I told him that a district  
11 officer's authority and responsibility cannot be taken  
12 from him by me, Dr. Kiely or any other person."  
13

14 Do you recall a discussion -

15 A. No. 12:55

16 296 Q. - about the position that Superintendent Comyns had?

17 A. No.

18 297 Q. No. You don't dispute it though?

19 A. I do dispute it. I don't -- I wouldn't have -- I  
20 didn't get into a conversation with him in relation  
21 to -- 12:55

22 298 Q. Well this is what he is saying he said to you?

23 A. Oh I know, and that's why he brought Inspector  
24 O'Sullivan with him.

25 299 Q. Pardon? 12:55

26 A. And that's why I believe he brought Inspector  
27 O'Sullivan with him. He can say whatever he wants.  
28 Hes had a witness. I had nobody.

29 300 Q. But are you saying that this is an account which is

1 made up or one which didn't happen or...?

2 A. I say it's one that didn't happen.

3 301 Q. Okay.

4 A. The meeting was very short. We went through the  
5 certificate from the CMO. As far as I recall, the  
6 meeting lasted about ten minutes. It wasn't a long,  
7 drawn out conversation.

12:56

8 302 Q. Yes. He goes on to say that he referred to what the  
9 duties and responsibilities of a district officer were  
10 and they're well documented and that he referred you to  
11 the findings of the Morris Tribunal report. Does that  
12 ring a bell with you?

12:56

13 A. No.

14 303 Q. Okay. He records you as saying:

15

16 "Sergeant Barry told me he was complying with the  
17 superintendent's instructions. He then asked Sergeant  
18 Barry if he had attended the briefings at Fermoy Garda  
19 Station as directed by Superintendent Comyns since his  
20 return to work and he said that he had not as his  
21 doctor had certified he could not attend at Fermoy  
22 Garda Station."

12:56

12:57

23

24 Do you recollect any discussion about that issue?

25 A. Yes, I think I mentioned that to him, yes.

12:57

26 304 Q. Okay. He says:

27

28 "I put it to him that Superintendent Comyns was never  
29 in the station at 7.30am or 9.30am when he was required

1 to parade and brief the working units."

2

3 Is that something he said to you?

4 A. Not that I recall.

5 305 Q. Is that factually correct?

12:57

6 A. I cannot say it is factually correct, whether he would  
7 be there, there are circumstances he may be in, I know  
8 of occasions where he was there.

9 306 Q. But you wouldn't expect him to be normally there?

10 A. Not normally, no.

12:57

11 307 Q. Not normally?

12 A. But then I couldn't predict when he would or wouldn't  
13 be there.

14 308 Q. Yes. He says:

15

12:57

16 "He again replied that Dr. Kiely said he could not  
17 attend at Fermoy Garda Station. I then outlined the  
18 importance of the briefings for the policing of the  
19 district and said in my opinion he could not give the  
20 correct policing service to the people of Fermoy  
21 district without conducting the briefings."

12:57

22

23 Was there mention made of that by him, in your  
24 recollection?

25 A. No, but I find it strange that he would mention

12:58

26 briefings and -- what is it exactly he says? "Correct  
27 policing service to the district without conducting the  
28 briefings". I had been sick for 139 days and I was not  
29 briefed when I returned to duty, and he wasn't worried



1 about that.

2 309 Q. But it is in the context of the letter you had received  
3 the previous week from Inspector O'Sullivan, the last  
4 paragraph, which we opened, and referred to the issue  
5 of briefings and that it was, as he was putting it, 12:58  
6 your duty to attend for the briefings?

7 A. That's what he says, yes, but I don't recall this  
8 conversation.

9 310 Q. But I am saying in the first instance this was put in  
10 writing to you by Inspector O'Sullivan? 12:58

11 A. Oh by Inspector O'Sullivan, yes, but not on the night  
12 of the 9th April.

13 311 Q. You don't recollect it being put on the 9th?

14 A. No.

15 312 Q. Okay. He then says: 12:59  
16  
17 "I then outlined to Sergeant Barry it was he who  
18 invoked the policy and procedure and in doing so he had  
19 an obligation to abide by the policies and procedures  
20 as outlined." 12:59  
21

22 And he says he told you that he:  
23  
24 "...believed Fermoy Garda Station and working with  
25 Superintendent Comyns was a safe working environment. 12:59  
26 However, if he honestly felt it was not a safe working  
27 environment, he would respect his opinion."  
28

29 Do you recollect anything like that being said?

1 A. No, I don't.

2 313 Q. "I then outlined to him that if he really believed he  
3 could not work in Fermoy Garda district or with  
4 Superintendent Comyns, he had an option under Section  
5 8.8 of the Bullying and Harassment policy to apply for 12:59  
6 a transfer temporarily or permanently to another  
7 station."  
8  
9 Do you recollect any mention of that possibility?

10 A. No. The only mention of that possibility was in 12:59  
11 October 2012 when I met him.

12 314 Q. He then said that:  
13  
14 "I offered Sergeant Barry the opportunity to be  
15 facilitated at Cobh or Mallow Garda Stations, where 13:00  
16 there was a vacancy for a unit sergeant at the time and  
17 I assured him that a transfer application would be  
18 given every consideration under the circumstances."  
19  
20 Do you recall any mention of that? 13:00

21 A. No, I don't. But he would have known -- he would have  
22 mentioned Cobh, not Cobh, but Carrigtwohill, which was  
23 in the Cobh district, or Mallow, in our conversation in  
24 October 2012.

25 315 Q. He quotes you sort of directly in inverted commas, 13:00  
26 saying "I'm not taking that option, I'm going nowhere".  
27 Do you re recollect saying anything like that?

28 A. I don't recall saying that.

29 316 Q. Is that something that did represent your view, that

1           you weren't going to take the option and you weren't  
2           going to go anywhere?

3           A.    I wasn't going to apply for a transfer. That would  
4           have been my view. I would not apply, and he knew that  
5           already. 13:01

6 317 Q.    Is it likely that you would have said to him this was  
7           your position, I am not going to go anywhere  
8           voluntarily?

9           A.    My view would have been, I would have said I would not  
10          apply for a transfer, as I already said it to him 13:01  
11          previously. That was my position, I was not going to  
12          apply for a transfer.

13          MR. MCGUINNESS: Chairman, I see it's just one o'clock.

14          CHAIRMAN: I thought you might finish with the  
15          conversation with Chief Superintendent Dillane, it 13:01  
16          might be convenient, if it seemed like that,  
17          Mr. McGuinness.

18 318 Q.    MR. MCGUINNESS: Yes. He then says that he tried to  
19           explain the complexity of the situation and that, in  
20           his words, you couldn't have it both ways, as it were. 13:01  
21           And he said that you then accused him of trying put him  
22           back into the situation that was under investigation.  
23           Do you recollect any of that?

24          A.    No. I would have told him that I did not want to  
25           discuss matters without having my rep with me. This 13:02  
26           was a very, very short meeting.

27 319 Q.    Okay.

28          A.    And all this conversation could not have taken place in  
29           that timeframe and discussing the cert as well.

1 320 Q. How long do you think that the meeting took?  
2 A. Maximum ten minutes. I know it was very brief, because  
3 I was conscious I didn't have someone with me.  
4 321 Q. This took place inside in the station?  
5 A. That's correct. 13:02  
6 322 Q. Yes. In what part?  
7 A. In the sergeant's office, as far as I remember.  
8 323 Q. He said that he informed you that he was offering you  
9 the option of removing yourself from the situation, but  
10 that if you wanted to work in the Fermoy Garda District 13:02  
11 you had to obey all the instructions and directions of  
12 the district officer. Did he put it to you in those  
13 terms?  
14 A. No.  
15 324 Q. "I then requested Sergeant Barry to reflect on the 13:03  
16 situation and he said that he was not going anywhere.  
17 He then requested time to consult with his AGSI  
18 representative."  
19  
20 And you did do that? 13:03  
21 A. I did.  
22 325 Q. Now, if he didn't say some of these things to you and  
23 the conversation was very short, just to be clear, what  
24 do you say represents the targeting of you then on this  
25 night when he came to Mitchelstown Garda station? 13:03  
26 A. The fact that he was there at the commencement of my  
27 tour of duty.  
28 326 Q. Okay.  
29 A. I believe that was an inspection.

1 327 Q. Okay. And I mean, looking at it, I suppose, from this  
2 point in time, you had got the CMO sort of view, he had  
3 got the CMO view, the CMO view was about safe,  
4 supportive environment, temporary workplace  
5 accommodations, you had got Dr. Kiely's certificate and 13:04  
6 was it not entirely both reasonable and logical and  
7 proper for him to come to talk to you about the  
8 situation as it then existed?

9 A. Absolutely. I can see why he would have come with the  
10 certificate, it's the time that he came is what I 13:04  
11 was -- what disturbed me and the fact that he came with  
12 an inspector with him. He didn't give me an  
13 opportunity to have somebody with me to reflect this  
14 conversation that was allegedly said.

15 328 Q. So is it an unfair procedure rather than anything 13:04  
16 improper he did or said to you?

17 A. Procedure, I would say.

18 329 Q. It's a procedural unfairness, is that it?

19 A. Yes.

20 330 Q. But it would appear from his account that at the time 13:04  
21 when you said you wanted to consult with your AGSI,  
22 that that's when the meeting ended?

23 A. That's correct.

24 331 Q. Okay. And presumably you did go off and consult with  
25 your AGSI at that point in time? 13:05  
26 A. Yes.

27 332 Q. And was that with Inspector Gallagher?

28 A. Yes.

29 333 Q. And what did you tell him or what did he say to you

1 about it, about the matter, at that point in time?

2 A. I reflected the conversation at the time and I asked  
3 Inspector Gallagher if he could attend with any future  
4 meetings I would have with Chief Superintendent  
5 Dillane, as I didn't feel comfortable without having 13:05  
6 someone with me for these meetings and he recommended  
7 that I do that, that he would attend meetings in future  
8 with me.

9 334 Q. There was some slight delay I think in you getting to  
10 meet Inspector Gallagher? 13:06

11 A. Yeah, because he's in the Clare division and he was  
12 involved in the AGSI association itself, so with his  
13 duties and other commitments, it would be hard to  
14 arrange a time.

15 MR. McGUINESS: Perhaps, Chairman, we would leave it 13:06  
16 at that until whenever you think appropriate.

17 CHAIRMAN: Thanks very much. We will say ten past two.  
18 Thank you.

19

20 THE HEARING THEN ADJOURNED FOR LUNCH AND RESUMED, AS 13:06  
21 FOLLOWS:

22

23 CHAIRMAN: Yes, thank you, Mr. Barry.

24 335 Q. MR. McGUINESS: Mr. Barry, you referred before lunch  
25 to Inspector O'Sullivan's account and I think pointing 14:11  
26 out that it is a recent statement from him in relation  
27 to this meeting that we are talking about on the 9th  
28 April 2013. Perhaps I should ask you to look very  
29 briefly at that. Page 5317. I think you were

1 observing he didn't seem to have any note of this, is  
2 that right? If we just go down to his answer there,  
3 which is at the bottom, he is being asked to describe  
4 the interaction. He wasn't sure that Chief  
5 Superintendent Dillane was in full uniform. And if we 14:12  
6 go on to the next page then. He thinks it took ten to  
7 15 minutes, he didn't take any entries, but he sort of  
8 summarises it as Chief Superintendent Dillane offering  
9 you another station, and said that you couldn't work in  
10 Mitchelstown as you were refusing to work with the 14:12  
11 superintendent and to his recollection, you said "I'm  
12 going nowhere, the super will have to go", you don't  
13 recall that or you think you did say that?

14 A. I do recall that that was not said.

15 336 Q. You do recall that you didn't say that? 14:12

16 A. Yes.

17 337 Q. In any event, just going back to the previous day, just  
18 to note that I think on the 8th April Chief  
19 Superintendent Kehoe met with you and she read over all  
20 the statements that she had obtained in the bullying 14:13  
21 and harassment inquiry, and gave all copies of the  
22 statements to you in order for you to formulate your  
23 response, in particular to Superintendent Comyns's  
24 accounts in relation to the eight incidents, isn't that  
25 right? She gave you all the statements? 14:13

26 A. She did.

27 338 Q. To enable you to reply, which you did in due course?

28 A. Yes.

29 339 Q. Now, this night of the 4th April, I think later that

1 night you had cause to be called to the scene of what  
2 turned out to be a fatal fire?

3 A. Sorry, that was the 9th.

4 340 Q. The 9th, yes, on the 9th. I beg your pardon?

5 A. Yes, it was almost immediately after Inspector 14:13  
6 O'Sullivan and Chief Superintendent Dillane had left.

7 341 Q. Yes.

8 A. It was in relation to what could possibly be a fatal  
9 fire in our district.

10 342 Q. I think you attended there with a number of uniform 14:14  
11 gardaí?

12 A. I attended there with Garda Wall and Garda Ward.

13 343 Q. I think Inspector O'Sullivan was off duty but I think  
14 you phoned him at some stage and spoke to him?

15 A. No, it was Garda Ward phoned him. 14:14

16 344 Q. Garda Ward phoned him?

17 A. Yes.

18 345 Q. Did you not speak to Inspector O'Sullivan at all that  
19 night?

20 A. No, I tried to contact him after I returned to the 14:14  
21 station after the fatal fire, but he didn't answer.

22 346 Q. Okay. Now, it would appear that Chief Superintendent  
23 Dillane wrote on the 11th April, wondering why he  
24 hadn't received a critical incident report about the  
25 matter. Did you see a copy of that? If we could go to 14:14  
26 page 392. Perhaps if we could try page 147 instead, it  
27 might be a better copy. This is to Superintendent  
28 Comyns, the district officer. And he says:  
29



1 "Communications from this office dated 3rd August 2012  
2 clearly states a report on all critical incidents  
3 should be reported to regional office within 30 minutes  
4 of the incident occurring, with a follow up report  
5 being submitted to regional office by 8.15am the 14:15  
6 following morning.  
7  
8 This was not adhered to in this case and I require a  
9 full explanation as to why this direction was not  
10 complied with in respect of this incident." 14:15  
11  
12 Do you agree that he's correctly reciting what is  
13 required there under --  
14 A. No.  
15 347 Q. You don't? 14:16  
16 A. No.  
17 348 Q. Okay. what do you disagree with?  
18 A. That the report should be submitted, a full report --  
19 that a report should be submitted to the regional  
20 officer within 30 minutes of the incident occurring, by 14:16  
21 me.  
22 349 Q. Yes.  
23 A. I don't see how I could possibly do that when I was on  
24 my way to a house fire. The first priority for me was  
25 to -- 14:16  
26 350 Q. No, was he not more concerned with the follow-up  
27 report?  
28 A. well it's the 30 minutes that's indicated in that.  
29 351 Q. well it says "occurring with a follow up report

1 submitted to the regional office by 8.15am the  
2 following morning"?

3 A. I understood it was "within the 30 minutes" because the  
4 subsequent report was submitted by Garda Ward.

5 352 Q. But my understanding is that Garda Ward provided what 14:16  
6 is required for notification to a coroner?

7 A. It's also notification to the superintendent, that says  
8 clearly it's a report to the coroner and the  
9 superintendent.

10 353 Q. Yes. But I think this was referred on to you, isn't 14:17  
11 that correct?

12 A. That's correct.

13 354 Q. Perhaps we will look at page 14 -- is it 147. 146. If  
14 we go up a page. Superintendent Comyns is referring  
15 this on to the sergeant in charge in Mitchelstown, who 14:17  
16 is not you, isn't that correct?

17 A. No.

18 355 Q. But he refers to the correspondence and says:  
19  
20 "I have not received a report on this fatal fire as of 14:17  
21 today's date.  
22  
23 An immediate and full explanation is required as to why  
24 a report was not completed and forwarded. I have will  
25 to rely on the Pulse incident and the form C 71 when 14:17  
26 details relating to fatal fire were requested."  
27  
28 I think it was referred on to you, was it? If we look  
29 at page 145. And is this your report endorsed on it

1 here?

2 A. Correct.

3 356 Q. Perhaps we'll just look at that. It says:

4

5 "With reference to attached, on the 10/4/2013, 14:18

6 following a fatal fire, I requested Garda Ward to

7 complete a detailed report on form C 71 and told him to

8 he was to leave a copy for the district officer Fermoy

9 and that he was to take the other with him to the

10 postmortem. When Garda Ward completed his report, he 14:18

11 placed a report for the district officer in the

12 sergeant in charge's post box and not in an envelope

13 either to be delivered by himself or the oncoming unit

14 to Fermoy. Forwarded for your information."

15

14:18

16 And you sent that look to the sergeant in charge, is

17 that correct?

18 A. That's correct.

19 357 Q. And if we just scroll up the page. That was received 14:19

20 then in Mitchelstown. And if we go up to the previous

21 page, 144, Sergeant Dunne reports to Superintendent

22 Comyns then:

23

24 "Report of Garda Ward forwarded for your information

25 please."

14:19

26

27 Isn't that right? And then this is -- is this your

28 writing here as well?

29 A. No, that's Superintendent Comyns'.

1 358 Q. That's Superintendent Comyns' writing, yes. He says:  
2  
3 "A sergeant and five gardaí attended this scene. I  
4 require a full explanation as to why a report on the  
5 incident was not completed and forwarded before the end 14:19  
6 of the tour of duty."  
7  
8 Was that forwarded on to you then?  
9 A. I think it was sent to Garda Ward.  
10 359 Q. Okay. If we continue up then to the previous page, 14:19  
11 143. Superintendent Comyns reports up to the chief  
12 superintendent:  
13  
14 "Sergeant Barry was working and attended at this fatal  
15 fire. His report in relation to your query of 11th 14:20  
16 April is attached."  
17  
18 And that was your endorsement about what had happened,  
19 is that we have just seen, is that right?  
20 A. Pardon? 14:20  
21 360 Q. Your handwritten endorsement on the form, that was your  
22 report?  
23 A. That was my report, yes.  
24 361 Q. And he says:  
25  
26 "Due to the ongoing investigation I will not be making  
27 any comment/recommendation in relation to the matter."  
28  
29 And then if we go up to page 142, and this is Chief

1 Superintendent Dillane writing back to Superintendent  
2 Comyns, who refers to this:

3  
4 "I have noted Sergeant Barry's report. In future for  
5 any critical incident that occurs in your district I 14:21  
6 expect a comprehensive report to be submitted by the  
7 working sergeant in line with Assistant Commissioner  
8 Quilter's minute dated 3rd August 2012."

9  
10 Now, you've asserted in your statement that it wasn't 14:21  
11 your duty to provide a report?

12 A. No, sorry, within the half hour. It wasn't my duty to  
13 notify the regional office within half an hour of the  
14 critical incident occurring.

15 362 Q. Yes. But do you accept that it was your duty to ensure 14:21  
16 there was a report by the following morning?

17 A. I did, I instructed Garda Ward to complete his report.

18 363 Q. Well, there's a difference of opinion, it would seem,  
19 between yourself and Inspector O'Sullivan. You  
20 suggested it was Inspector O'Sullivan's duty to provide 14:21  
21 that report?

22 A. No, no, no, sorry. I said I could not have notified  
23 the regional office within half an hour of the incident  
24 occurring.

25 364 Q. I am not talking -- 14:22

26 A. Not that I would submit a report, the report for the  
27 following morning.

28 365 Q. I am not talking about the report within a half an  
29 hour. My question is: Do you accept that it was your

1 duty to submit a report by half eight the following  
2 morning?

3 A. No, it was Garda Ward's responsibility to submit the  
4 report.

5 366 Q. And what do you say to the assertion by Superintendent 14:22  
6 Comyns and Inspector O'Sullivan that it was in fact  
7 your duty as the senior sergeant there to produce that  
8 report, not a C 71 that Garda Ward had produced?

9 A. It was Garda Ward was supposed to submit the report.  
10 He completed the C 71, he was then to forward a full 14:22  
11 report afterwards.

12 367 Q. Yes.

13 A. Which he did.

14 368 Q. But in any event, what Chief Superintendent Dillane was 14:22  
15 looking for was for an explanation about the reports  
16 and you were asked to provide an explanation and my  
17 question then is: In what sense do you say that's  
18 targeting of you?

19 A. Because he clearly indicated that I was to submit the  
20 report within 30 minutes of the incident occurring. In 14:23  
21 his initial correspondence 30 minutes is mentioned.

22 369 Q. Is that not a different sort of, just an oral  
23 notification to the Assistant Commissioner's office  
24 that --

25 A. It's a report to the regional office. As far as I was 14:23  
26 concerned I was being questioned as to why the regional  
27 office was not notified within 30 minutes of the  
28 incident occurring.

29 370 Q. Well, Superintendent Comyns's query seems to be why

1           there wasn't a report for him by 8.30 the following  
2           morning, on the basis of which he could have forwarded  
3           it to Chief Superintendent Dillane. Did you not  
4           understand that from the request?  
5           A.     From the...? 14:24  
6 371 Q.     From the request made by Superintendent Comyns?  
7           A.     No, I was referring to Chief Superintendent Dillane's  
8           initial query as to why the report wasn't submitted  
9           within 30 minutes.  
10          CHAIRMAN:    Could we go back to that for a moment 14:24  
11          please, Mr. McGuinness?  
12          MR. MCGUINNESS:    Yes.  
13          CHAIRMAN:    Just go back to the original --  
14          MR. MCGUINNESS:    The original request?  
15          CHAIRMAN:    The original request, yes. 14:24  
16 372 Q.     MR. MCGUINNESS:    Yes. If we can look at page 147. The  
17           paragraph in the middle is referring to two forms of  
18           reporting, one is within 30 minutes.  
19           A.     That's the one mentioned in his...  
20 373 Q.     And was that done by somebody, to your knowledge? 14:24  
21           A.     Pardon?  
22 374 Q.     Was that done by somebody to your knowledge?  
23           A.     That should have been done by the divisional office in  
24           Fermoy to the people who take the 999 calls. That is  
25           who I would understand would report that to the 14:25  
26           regional office within 30 minutes of the incident  
27           occurring.  
28 375 Q.     Yes. And the second thing is the follow up report  
29           submitted to the regional office by 8.15 the following

1 morning. Now, is that not what you understood you were  
2 doing required to account for, why you hadn't made such  
3 a report the following morning?

4 A. Garda Ward had submitted a report on the C 71 and as he  
5 explained, he didn't have time to fill out a written or 14:25  
6 typed report.

7 376 Q. Yes.

8 A. Due to his having to attend the coroner's court the  
9 following morning.

10 377 Q. Well, isn't this the point, that he attended the fire 14:25  
11 with you?

12 A. That's correct.

13 378 Q. He filled out the C 71. He went off to the postmortem  
14 in Limerick with the report, with a copy of the report?

15 A. With a copy of it. 14:25

16 379 Q. And you yourself didn't provide any report the  
17 following morning?

18 A. I didn't understand it was my -- it wasn't my  
19 obligation to supply the report. It was Garda Ward who  
20 would supply the report following the postmortem, where 14:26  
21 he could include all the details relevant to the  
22 report, to the C 71 which weren't in the C 71s.

23 380 Q. Yes. But the issue, was it not your duty as the  
24 sergeant at the scene to ensure that the district  
25 office and the divisional office had a report from you 14:26  
26 the following morning?

27 A. No, it was not to be a report from me. It was a report  
28 from Garda Ward, and Garda Ward could not submit his  
29 final report until he had attended the postmortem.



1 381 Q. But you disagree then with Superintendent Comyns and  
2 Inspector O'Sullivan that it was your duty to provide  
3 the report?  
4 A. Yes, I disagree.  
5 382 Q. Okay. Now, in the context where, I suppose, Chief 14:26  
6 Superintendent Dillane is concerned, he's writing his  
7 request two days after the fire and it seems that he  
8 didn't regard the C 71 as a report that complied with  
9 the critical incident reporting directive?  
10 A. His complaint relates to the matter not being reported 14:27  
11 to the regional office within 30 minutes of the  
12 incident.  
13 383 Q. Well, you see, you seem to be ignoring the second part  
14 of it in fact there?  
15 A. I have stated that the report submitted by Garda Ward 14:27  
16 on the C 71 would have been sufficient for an e-mail to  
17 be forwarded to the regional office the following  
18 morning.  
19 384 Q. Yes. But doing back to the issue, you're making a  
20 complaint about this, and my question is: In what 14:27  
21 sense do you see this as targeting, when the chief  
22 superintendent raises an issue, it goes up and down the  
23 chain of command and there are reports back from,  
24 yourself included and the chief superintendent accepts  
25 the report or does nothing further, takes no action as 14:28  
26 such, in what sense is that targeting?  
27 A. Well the fact that he didn't take any further action  
28 would indicate that the report should not have been --  
29 I shouldn't have been questioned in relation to this

1 matter, as far as I'm concerned. I did everything that  
2 was obliged to do on the night. I attended a fatal  
3 fire, having just been inspected by Chief  
4 Superintendent Dillane and Inspector O'Sullivan and I  
5 wasn't best fit to attend that fire and witness 14:28  
6 somebody burned in a house. Nobody asked me after that  
7 how I felt or how that affected me. But they were only  
8 interested to know was a report submitted within 30  
9 minutes or did Garda Ward submit a report the following  
10 morning. 14:28

11 385 Q. well, can we just look again at the document that  
12 concluded the exchange of requests and reports, at page  
13 142. This goes back down to Superintendent Comyns and  
14 he says:

15 14:29  
16 "I have noted Sergeant Barry's report. In future for  
17 any critical incident that occurs in your district, I  
18 expect a comprehensive report to be submitted by the  
19 working sergeant in line with Assistant Commissioner  
20 Quilter's minute." 14:29

21  
22 That seems to be suggestive, at least, that in fact it  
23 was your duty as the senior man there, Garda Ward  
24 having gone off, to submit a report in the matter by  
25 the next morning? 14:29

26 A. I had no further information from the scene other than  
27 what was contained in the Pulse incident report and the  
28 C 71, there was nothing more I could add to a report.  
29 Garda Ward could, having attended the postmortem the

1 following day.

2 386 Q. He could, of course. Was this sent back down to you  
3 here? If we just scroll down? It's sent down to  
4 sergeant in charge, Mitchelstown "for your information,  
5 that Sergeant Barry should note and return this file", 14:30  
6 and did you do that?

7 A. I would have noted and returned.

8 387 Q. Now, having looked at the issue, how and who do you say  
9 targeted you here in relation to this?

10 A. Chief Superintendent Dillane by initiating the report. 14:30  
11 I don't see anyone questioned in relation to the  
12 reporting within 30 minutes of the incident occurring  
13 if he's not saying that was to be done by me.

14 388 Q. Well --

15 A. Because he does query the fact that the regional office 14:30  
16 wasn't notified within 30 minutes and to the best of my  
17 knowledge nobody else was queried as to why that  
18 direction was not complied with.

19 389 Q. Yes. But I mean, I thought you told me it was Garda  
20 Ward who had notified them, notified Inspector 14:31  
21 O'Sullivan, and did Inspector O'Sullivan notified the  
22 regional office, to your knowledge?

23 A. I wouldn't say so, no.

24 390 Q. Okay.

25 A. I would expect the radio room personnel in Fermoy Garda 14:31  
26 station to do that.

27 391 Q. Yes.

28 A. Because I had attended numerous critical incidents in  
29 my service and I never notified the regional office

1 within 30 minutes myself.

2 392 Q. CHAIRMAN: Is Fermoy the regional office?

3 A. No, Fermoy is the divisional office. The regional  
4 office would have been Anglesea Street in Cork.

5 393 Q. CHAIRMAN: So the officers, when they go to an 14:31  
6 incident, if I am understanding, they're required to  
7 notify the regional officer that something terrible has  
8 happened, some big event has happened. There's a fire,  
9 there's an accident, there's a whatever it is, and they  
10 are to do that within 30 minutes, is that right? 14:32

11 A. Well I don't understand that it's the persons who would  
12 go to the scene. I would say it's the divisional  
13 office in Fermoy who are aware through radio  
14 communication, they would have directed us to the call  
15 and they would have been updated from the scene as to 14:32  
16 what was happening.

17 394 Q. CHAIRMAN: Sorry, let's go back to basics for a second.  
18 Say a big car accident happens, is it your  
19 understanding, this is just what you understand, right  
20 or wrong, it looks to me as if the gardaí who 14:32  
21 investigate should notify the regional office within 30  
22 minutes that something big has happened, do you agree  
23 with that?

24 A. No, Chairman.

25 395 Q. CHAIRMAN: I mean, don't just agree with me because I 14:33  
26 am saying it?

27 A. No, because --

28 396 Q. CHAIRMAN: No, don't tell me because, just tell me  
29 what's your understanding. Sorry, I don't mean to get

1 into an argument about it. I just want you to tell me,  
2 what's your understanding? A big accident occurs,  
3 gardaí, including a sergeant, members and gardaí go to  
4 the scene?

5 A. We would notify the divisional office in Fermoy and 14:33  
6 they would in turn --

7 397 Q. CHAIRMAN: They would pass it on, okay.

8 A. They would notify, because it is to be done by text.

9 398 Q. CHAIRMAN: But somebody has an obligation, is that what  
10 the 30 minutes refers to? 14:33

11 A. Yes, somebody has to notify the regional office within  
12 30 minutes.

13 399 Q. CHAIRMAN: Okay. And the way you say it's done is that  
14 you get in touch with your district office?

15 A. Yes. 14:33

16 400 Q. CHAIRMAN: Or divisional office and they would pass it  
17 on?

18 A. Yes.

19 401 Q. CHAIRMAN: Okay, that's the 30 minutes out of the way?

20 A. Yes. 14:33

21 402 Q. CHAIRMAN: Okay. Now, there's also an obligation, if I  
22 understand, to furnish a report, I think it says a full  
23 report is what it says, to furnish a report by 8.30 the  
24 following morning?

25 A. Yes. 14:34

26 403 Q. CHAIRMAN: Is that clear?

27 A. That's correct.

28 404 Q. CHAIRMAN: Somebody has the obligation to do that?

29 A. Yes, that's correct.

1 405 Q. CHAIRMAN: And who do you say has the obligation to do  
2 that in the situation we're imagining, a big car or  
3 lorry accident and sergeant and gardaí go there, who  
4 has the obligation to make the report in the morning?  
5 A. The investigating guard or sergeant. If there was -- 14:34  
6 406 Q. CHAIRMAN: How am I to know from that, if it is the  
7 sergeants or the guards? whose obligation?  
8 A. Well, if a guard went to a fatal accident, the guard  
9 would submit the report. If a sergeant was  
10 investigating a fatal accident on his own, then he 14:34  
11 would do it.  
12 407 Q. CHAIRMAN: On his own? If he's not doing it on his  
13 own, if he's doing it with other members, whose  
14 obligation is it? As you understand it. I mean it  
15 doesn't mean that that's absolutely the case but as you 14:35  
16 understand it?  
17 A. The investigating garda.  
18 408 Q. CHAIRMAN: And who is that?  
19 A. The investigating garda was Garda Henry Ward, and I  
20 directed him to submit -- 14:35  
21 409 Q. CHAIRMAN: Who decides who is the investigating garda?  
22 A. If it was a fatal accident, a car accident, then it's  
23 on the sergeant to investigate a fatal car accident,  
24 but for a fatal fire, it's okay for a guard to  
25 investigate a fatal fire. 14:35  
26 410 Q. CHAIRMAN: The sergeant and the gardaí go there?  
27 A. Yes, but it's the guard who is the investigating  
28 member.  
29 411 Q. CHAIRMAN: Who decides who is the investigating member?

1 A. The district office decided that for fatal accidents  
2 that a sergeant would take charge of an investigation.

3 412 Q. CHAIRMAN: Right. And the district office said for  
4 fatal fires?

5 A. A guard can investigate, as Garda Ward did in this 14:35  
6 case, he was the investigating garda.

7 413 Q. CHAIRMAN: Sorry, I am still lost on this. I am not  
8 disputing, it seems obvious that a guard can  
9 investigate, but if a sergeant and gardaí go there,  
10 whose obligation is it to make the report? 14:36

11 A. The investigating garda.

12 414 Q. CHAIRMAN: Who decides who is the investigating garda?

13 A. The sergeant.

14 415 Q. CHAIRMAN: Right. So in this case, did you decide that  
15 Garda Ward would be the investigating garda? 14:36

16 A. Yes.

17 416 Q. CHAIRMAN: And you told him that?

18 A. Yes.

19 417 Q. CHAIRMAN: You're the investigating garda?

20 A. Yes. 14:36

21 418 Q. CHAIRMAN: Okay?

22 A. And I told him to submit the report.

23 419 Q. CHAIRMAN: Very good. The 8.30 report?

24 A. Pardon?

25 420 Q. CHAIRMAN: The before 8.30 report? 14:36

26 A. No, no, sorry, not the 8.30 report. The report before  
27 8.30am.

28 421 Q. CHAIRMAN: Yes?

29 A. Sorry.

1 422 Q. CHAIRMAN: That's the one I am talking about?  
2 A. Oh yeah, not the one within half an hour.

3 423 Q. CHAIRMAN: Wait now, we can forget the one within half  
4 an hour, we know the story about the one within half an  
5 hour, we don't have to keep going back to the one 14:36  
6 within half an hour because that does not apply to the  
7 report we are talking about, isn't that right?  
8 A. That's correct.

9 424 Q. CHAIRMAN: I'm sorry, I sound cantankerous, I am sorry?  
10 A. No, I understand. 14:37

11 425 Q. CHAIRMAN: I am not intending that, so please forgive  
12 me. If that sounds crabby, it's not intended to be  
13 okay, I am trying to get to the bottom of this. Okay.  
14 So the fact is, you said, Garda Ward, you're the  
15 investigating garda and you make the report? 14:37  
16 A. That's correct.

17 426 Q. CHAIRMAN: And in saying that, you were referring to  
18 the report that has to be done before 8.30 in the  
19 morning?  
20 A. That's correct. 14:37

21 427 Q. CHAIRMAN: Thank you very much.  
22 A. Thank you.

23 428 Q. CHAIRMAN: Now, as I say, I am not trying to give you a  
24 hard time over it, I am trying to get it clear in my  
25 own mind. 14:37  
26 A. I understand that, Chairman.

27 CHAIRMAN: Okay. Now, Mr. McGuinness.

28 429 Q. MR. MCGUINNESS: I mean, the critical incident  
29 reporting directive requires the superintendent to send



1 it to the regional office but he has to have it first  
2 in order to send it, isn't that right?

3 A. Yes, and it's sent via e-mail.

4 430 Q. Inspector O'Sullivan says at page 5323, that in his  
5 experience, a C 71 report wouldn't be sufficient to  
6 satisfy the requirement in that and that it was your  
7 responsibility to furnish a report in the morning that  
8 could be transmitted then to the regional office via  
9 the superintendent?

14:38

10 A. I had no further information other than what was  
11 contained within that, I couldn't determine if this was  
12 a crime or how the person had deceased. So therefore I  
13 couldn't determine a report into how the investigation  
14 should proceed or how I thought the investigation  
15 should proceed until the postmortem was concluded.

14:38

16 431 Q. But just looking at the question that Inspector  
17 O'Sullivan is being asked there:

18  
19 "I have been asked from my experience whether a C 71  
20 report (notification to the coroner) would ever have  
21 been used to satisfy the obligations of reporting  
22 matters to the regional office as per A/C Quilter's  
23 instruction.

14:39

24 A. Not to my knowledge, the C 71 is solely an internal  
25 document to the coroner in cases of sudden death and  
26 when the superintendent receives that at this stage a  
27 copy would be sent to the coroner and the  
28 superintendent would write on the C 71, please forward  
29 inquest file."

14:39

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It's a separate process, the reporting obligation from A/C Quilter is a separate process.

A. The C 71 is also to the district officer.

432 Q. He also gets that? 14:39

A. It is a report to both persons.

433 Q. He also gets that too, isn't that right?

A. Yes, that's correct.

434 Q. But I mean, is it your answer in the sense that there was nothing to report beyond the C 71? 14:39

A. I had nothing I could contribute other than what was contained within the C 71 to enhance any report that was forwarded to the regional office. I had no information other than all the information supplied in the C 71 by Garda ward at that time. 14:40

435 Q. Yes. But you do accept, therefore, that the obligation to report does lie on the duty sergeant, such as yourself, who would have been at -- were at the scene?

A. To make the report?

436 Q. Yes. 14:40

A. No.

437 Q. Okay. Well, we will move on. But I mean, if Chief Superintendent Dillane is there in his office, as he appears to have been, without a report, is there anything wrong or unreasonable in him seeking to know why he hasn't got such a report? 14:40

A. But they had. He had the C 71.

438 Q. He had the C 71?

A. And the Pulse incident.

1 439 Q. He may well have thought, maybe there's another report  
2 or there's some reason why there isn't another report?  
3 A. Garda Ward would submit his report once the postmortem  
4 was concluded.

5 440 Q. You made your explanations, it was reported up and down 14:41  
6 the line, the question then comes back to: In what  
7 sense is that enquiry or any part of it a targeting of  
8 you by reason of having made a protected disclosure?  
9 A. Because the 30 minutes was specifically mentioned by  
10 Chief Superintendent Dillane when he sent that out and 14:41  
11 also, if you look at the date of the minute, we'll say,  
12 from the Assistant Commissioner in relation to critical  
13 incident reporting, that was issued on 3rd August 2012,  
14 I was not present in Mitchelstown Garda station from  
15 2nd August 2012. I was not familiar with that report 14:41  
16 and I was not briefed on it.

17 441 Q. Okay. Well, that may be another issue, but that's not  
18 something you appear to have raised at the time, that  
19 you weren't aware of this requirement?  
20 A. I was submitting -- I was doing my duty on the night as 14:42  
21 I had always done before I had gone sick. As I stated  
22 already, I have attended numerous fatal accidents.

23 442 Q. Yes.  
24 A. Suicides, et cetera, I never submitted a report as was  
25 requested there. 14:42

26 443 Q. And when you resume --  
27 444 Q. CHAIRMAN: And before 8.30? You have never submitted  
28 one of those?  
29 A. No. No, if I was at a sudden death I would fill out a

1 C 71.

2 445 Q. CHAIRMAN: Sorry?

3 A. If I was at a sudden death, if I was the investigating

4 member of a sudden death, I would complete the C 71.

5 446 Q. MR. McGUINNESS: well perhaps we will pass on then. Is 14:42

6 there anything else you wish to say about that?

7 A. No, just that there was no reflection by Garda

8 authorities that night having inspected me, where I

9 went out to a critical incident, I had to go up the top

10 of a fireman's ladder to view a body in situ and then 14:43

11 return, and to have to deal with that in the immediate

12 aftermath without anyone enquiring as to how I was.

13 447 Q. Yes. In any event, this isn't a criticism, you don't

14 seem to have reflected that in any of your responses or

15 taken any action on foot of it that at the time, is 14:43

16 that fair to say or not fair to say?

17 A. In response to Chief Superintendent Dillane?

18 448 Q. Yes.

19 A. I would not put it in. He should know that himself.

20 As he previously stated, he was very concerned for my 14:43

21 welfare on numerous occasions but not this one.

22 449 Q. Can I just touch on this aspect of it then: You were

23 transferred to Mitchelstown in the year 2000; isn't

24 that right?

25 A. That's correct. 14:43

26 450 Q. And then Chief Superintendent Dillane didn't arrive in

27 charge of the division I think for close on 12 years,

28 is that right?

29 A. That's correct.

1 451 Q. what contact did you have with him after he arrived in  
2 the division?

3 A. Sorry, after?

4 452 Q. After he arrived in charge of the division?

5 A. I had met him prior to he arriving in Cork north 14:44  
6 division, which he didn't mention in his statement.

7 453 Q. Right.

8 A. When he was the superintendent in Mallow, he was sent  
9 to investigate a complaint by a person in Mitchelstown,  
10 a fella called [redacted], who made a complaint in 14:44  
11 relation to [redacted].

12 454 Q. You don't have to name names?

13 A. Okay. So Superintendent Dillane arrived and met with  
14 me because I had been dealing with this person and I  
15 advised him not to argue with the person because he was 14:44  
16 prone to making allegations. We went to this person's  
17 house, the statement was taken from him and when the  
18 person signed the statement, Superintendent Dillane got  
19 into an argument with him and then asked him for his  
20 pen and the two of them ended up struggling over the 14:45  
21 pen. I had to separate them. And when we left the  
22 house, Chief Superintendent Dillane said to me, I want  
23 him done for assault. And I said, there was no  
24 assault, there was two adults fighting over a pen. And  
25 then he said to me, I want him done for the theft. And 14:45  
26 I said, it's a 20p Bic biro, I'll get him to send it to  
27 you. And then he said to me, you're taking the side of  
28 an English man over me. And we returned to the station  
29 he didn't speak to me all the way back. And that was

1 prior to him coming to Fermoy in 2012.

2 455 Q. well, I don't know anything about it but from your  
3 account it was his pen and it was taken from him by  
4 force, it would seem?

5 A. But the person posted it to him at Mallow Garda station 14:46  
6 and Inspector O'Sullivan is aware of this incident  
7 because he was the sergeant in charge in Mitchelstown  
8 at the time.

9 456 Q. But had you any adverse interaction with him yourself  
10 in relation to your duties - 14:46

11 A. well this was an adverse reaction.

12 457 Q. - in Mitchelstown?

13 A. That was an adverse reaction, because he accused me of  
14 taking the side of an English man, as he said, over  
15 him. 14:46

16 458 Q. Okay. Is there anything else?

17 459 Q. CHAIRMAN: How did the pen get to be an issue?

18 A. They started arguing --

19 460 Q. CHAIRMAN: Did he give him his pen to sign the  
20 statement? 14:46

21 A. That's correct.

22 461 Q. CHAIRMAN: And then did your man not give it back?

23 A. No, they started arguing and he said --

24 462 Q. CHAIRMAN: wait now. Question: what happened to the  
25 pen? 14:46

26 A. The person posted the pen to Mallow Garda station.

27 463 Q. CHAIRMAN: No, no, no, you know that's not the question  
28 I'm asking?

29 A. Sorry.

1 464 Q. CHAIRMAN: I think you know that's not the question I  
2 am asking. what happened to the pen?  
3 A. The person who was being interviewed held onto it.  
4 465 Q. CHAIRMAN: Held onto it. Yes. And the superintendent  
5 wanted it back? 14:47  
6 A. That's correct.  
7 466 Q. CHAIRMAN: Okay. So unhappy differences seem to have  
8 arisen between you and the superintendent at that  
9 stage, is that right?  
10 A. That was the only interaction I ever had with him 14:47  
11 before he came to Fermoy.  
12 CHAIRMAN: It didn't auger too well at the same time,  
13 okay.  
14 467 Q. MR. McGUI NNESS: It would appear that Chief  
15 Superintendent Dillane, on the 12th April he wrote to 14:47  
16 the CMO and was seeking some clarification or  
17 assistance about the issue of arrangements that could  
18 be made. Could I ask you to look at page 393 and 394?  
19 Now, in the first instance there's an account of the  
20 meeting on the 9th April, obviously this isn't exactly 14:48  
21 contemporaneous, but it is within a couple of days of  
22 it there. If we just go down the screen. It appears  
23 to be perhaps consistent with what he put in the  
24 statement but if we proceed further down. And down  
25 further. He includes in the last paragraph here: 14:48  
26  
27 "I then requested Sergeant Barry to reflect on the  
28 situation but he replied he was not going anywhere."  
29

1 Is that something you would have said to him?

2 A. Possibly would. As I said earlier, I would understand  
3 that I would have said, I'm not going to apply for a  
4 transfer.

5 468 Q. Okay. 14:49

6 A. which he may have interpreted.

7 469 Q. "He continued to refer to Dr. Kiely's certificate,  
8 which he claimed does not allow him work in Fermoy  
9 Garda station or have any contact with Superintendent  
10 Comyns." 14:49

11

12 Do you recollect whether you did refer to it or not?

13 A. I don't.

14 470 Q. "And he is now requesting of the doctor clarification  
15 of this situation as a matter of urgency." 14:49

16

17 He got a reply from the CMO, if we look at page 395.  
18 It should be there. 395.

19 CHAIRMAN: I think if you roll up -- oh no, continue on  
20 Peter, and we will see. 14:50

21 MR. McGUI NNESS: It may be just a very bad --

22 CHAIRMAN: It was an e-mail, Mr. McGuinness, I think.

23 MR. McGUI NNESS: Yes.

24 CHAIRMAN: And if we just keep going. Just there.

25 MR. McGUI NNESS: It's a very illegible copy, that. 14:50

26 CHAIRMAN: It looks like it didn't get copied in that  
27 one.

28 471 Q. MR. McGUI NNESS: Yes. But essentially the doctor  
29 replies saying that it's not a medical issue, it's a



1 management issue for Garda management, rather than  
2 something he is prepared to give any further medical  
3 advice on. Did you see that reply yourself?

4 A. I did.

5 472 Q. So, I just want to sort of understand your position 14:50  
6 here, to see if I have it correctly. You had been to  
7 the CMO and you had explained your position in relation  
8 to Mitchelstown and the superintendent to him?

9 A. That's correct.

10 473 Q. In the January note that we've looked at, he talks 14:51  
11 about temporary workplace accommodations, isn't that  
12 correct?

13 A. That's correct.

14 474 Q. You're then seen by Dr. Tobin on the 11th March and  
15 there's a consultation between Dr. Tobin and 14:51  
16 Dr. Oghuvbu at that time. He reports to the CMO that  
17 there should be a mutually agreed safe and supportive  
18 workplace environment for you for a return to work,  
19 isn't that correct?

20 A. That's correct. 14:51

21 475 Q. And your doctor, you return to work without  
22 certification but your own doctor, you having  
23 instructed her as to the position, she issued the  
24 certificate that we have seen.

25 A. Sorry, I didn't instruct the doctor on -- I didn't 14:52  
26 instruct the doctor.

27 476 Q. Well, you must -- I say that in the sense that you must  
28 have told her of the factual position as you saw it in  
29 relation to Superintendent Comyns and Mitchelstown and

1 Fermoy?

2 A. No, I never mentioned Mitchelstown and Fermoy to my  
3 doctor. She knew I worked in Mitchelstown, she knew  
4 the superintendent was based in Fermoy.

5 477 Q. Yes. 14:52

6 A. I did not say Mitchelstown, Fermoy to my doctor, as  
7 you're...

8 478 Q. Well, she wrote a certificate for you in relation to  
9 Fermoy Garda Station, saying that you shouldn't be  
10 going there to work? 14:52

11 A. But that would be a matter for the doctor to clarify.  
12 I did not instruct the doctor.

13 479 Q. She can only write that knowing that or believing that  
14 it would be an issue for your mental health, I thought  
15 you agreed that that was the position? 14:53

16 A. I would agree to that, yes.

17 480 Q. So you then are returning to work on the basis of one  
18 medical certificate and then the CMO's agreed position  
19 with Dr. Tobin that there should be mutually agreed  
20 workplace, a safe and supportive workplace environment. 14:53  
21 Isn't the difficulty, that your return to work wasn't  
22 on the basis of any mutually agreed position with Garda  
23 management? Did you see that as a problem?

24 A. Dr. Tobin recommended it, that a mutually agreed  
25 workplace be agreed, if there was temporary workplace 14:53  
26 accommodations put in place. My solicitor suggested  
27 one such accommodation and it was ignored by  
28 management. It wasn't even entertained.

29 481 Q. Yes. I am looking at it from -- I mean, obviously I am

1 not going to suggest that you were happy with this, but  
2 you were anxious to get back to work --

3 A. Sorry, I didn't want -- I would never have returned to  
4 work if I could have afforded it, I would never.

5 482 Q. Yes. 14:54

6 A. I hated going back to work.

7 483 Q. But in any event, your financial position was such that  
8 you decided you would have to go back to work?

9 A. Yes.

10 484 Q. And you went back to work then with, as it were, 14:54  
11 conditions that hadn't been mutually agreed by anyone  
12 in a sense?

13 A. Well, they couldn't be. It was a doctor on her  
14 volition who issued that cert. She didn't discuss it  
15 with any Garda management and would not have. 14:54

16 485 Q. Yes.

17 A. So it wouldn't be possible for her to issue a cert  
18 without discussion.

19 486 Q. Yes. Well, having given me that answer, do you see  
20 that that created a problem for Garda management in any 14:54  
21 respect?

22 A. I could see that that was a problem created by Garda  
23 management themselves because they weren't willing to  
24 entertain temporary workplace accommodations in  
25 relation to my safe return to work. 14:55

26 487 Q. Okay.

27 A. Accommodations is plural. They had only one  
28 accommodation, and that was transfer. And transfer  
29 only if I applied for it, not if I indicated I'd be

1 willing to go somewhere.

2 488 Q. Yes. I mean you've laid some stress on the plurality  
3 of accommodations as a way of dealing with it. Had you  
4 anything else in mind that you think could have or  
5 should have been offered? 14:55

6 A. I was hoping the offer of Mallow, as I indicated to  
7 Chief Superintendent Dillane, would have come instead  
8 of a transfer to Fermoy, which, as I indicated to him,  
9 I would appeal any transfer that would put me back in  
10 those circumstances. 14:55

11 489 Q. But I mean, I am just asking you to sort of narrow the  
12 options, as it were. That is a transfer, but was there  
13 anything other than a transfer that you had in mind  
14 that --

15 A. That I was to work under the direction and instruction 14:56  
16 of Inspector O'Sullivan. And that was actually put in  
17 place, according to Superintendent Comyns' own  
18 statement, in 2014, that all dealings with me were to  
19 be handled by Inspector O'Sullivan. So they weren't  
20 able to introduce it when I requested it, and they did 14:56  
21 then in 2014, when they realised that the medical cert  
22 was actually a medical problem.

23 490 Q. Yes.

24 A. And not a management problem.

25 491 Q. Yes. 14:56

26 A. As they indicated.

27 492 Q. We will come to that. There is a better copy of the  
28 CMO's reply to Chief Superintendent Dillane at page  
29 1553. Perhaps we will just look at that. And in the

1 second paragraph he does confirm there, as I suggested:

2  
3 "I am not in a position to offer further medical advice  
4 in this case, as the medical issues have been  
5 adequately addressed in previous correspondence. Based 14:57  
6 on the information currently available to me, there are  
7 no compelling medical issues that preclude the member  
8 attending at work and undertaking assigned policing  
9 duty in a safe and supportive workplace environment.

10  
11 In relation to the temporary workplace accommodations  
12 that were recommended in respect of the location of the  
13 member's place of work, the basis of accommodations to  
14 be agreed and facilitated is reasonable and  
15 practicable. 14:57

16  
17 As the member appears to be refusing to agree with or  
18 cooperate with Garda management efforts to progress his  
19 return to work in what appears to be fraught  
20 circumstances, I believe that this is an issue best 14:57  
21 addressed by Garda management utilising relevant Garda  
22 Code, Garda directives or employment contractual  
23 processes.

24  
25 I hope you find the above helpful as you progress the 14:57  
26 management of the member's return to work."

27  
28 Now, having resumed duty with Dr. Kiely's certificate  
29 enabling you to do so, did you consider that there was

1 still any scope for reaching a mutually agreed position  
2 from then on?

3 A. Absolutely. They could have transferred me to Mallow  
4 or they could have had Inspector O'Sullivan take charge  
5 of me. 14:58

6 493 Q. Okay. In any event, just turning to another issue in  
7 relation to leave. I think you had had authorised by  
8 Superintendent Comyns the carrying over of annual leave  
9 from the previous year, isn't that correct?

10 A. No, that was Chief Superintendent Dillane who 14:58  
11 authorised that.

12 494 Q. Chief Superintendent Dillane. And I think you had  
13 some, was it 34 days?

14 A. Yes, it was one less than I applied for.

15 495 Q. One less. Do you know why that was? 14:59

16 A. No, he didn't give any explanation.

17 496 Q. Did you ask?

18 A. No.

19 497 Q. In any event, you had this build up of leave and I  
20 think you made application in respect of some dates in 14:59  
21 April 2013, isn't that correct?

22 A. That's correct.

23 498 Q. And I think Inspector O'Sullivan dealt with those and  
24 was authorised to deal with those, isn't that correct?

25 A. That's correct, yes. 14:59

26 499 Q. Perhaps if we look at page 154. This is a letter of  
27 12th April 2013. He's replying to your application, it  
28 says:  
29

1 "With reference to the above, I received your form D 9  
2 on the 4th April 2013 at 3pm in public office, Fermoy  
3 Garda Station. Annual Leave application must be  
4 submitted 16 days in advance to the district office.  
5 Leave is not granted until signed off by the district 15:00  
6 officer.

7  
8 Had I received your application in advance of the  
9 4/4/2013, I would have refused the dates 4th and 5th  
10 bearing in mind Sergeant Aidan Dunne in charge of 15:00  
11 Mitchelstown was already on annual leave. I have  
12 sanctioned both dates retrospectively in the  
13 circumstances bearing in mind your recent return to  
14 work."

15 15:00  
16 So what did that result in practically for you? Had  
17 you worked those days and were you getting them, as it  
18 were, restored as annual leave, or are you not worked  
19 those days?

20 A. I had not worked those days. 15:00

21 500 Q. You had not worked those days. Had you been due to  
22 work those days?

23 A. Yes.

24 501 Q. All right. These are the days we have referred to  
25 earlier obviously. He says: 15:00

26  
27 "I have sanctioned all other dates with the exception  
28 of 15th and 16th April due to sergeant in charge  
29 Mitchelstown being already on annual leave."

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So that was three or four days coming up as and from the date of this letter. It says:

"Resubmit your application for the 17/4/2013.

15:01

I attach copy of Superintendent Comyns's guidelines in relation to new roster which includes annual leave issues."

15:01

Did you get that then on the 12th, do you recall?

A. It may have been that day or the following day. I'd say it would have been the following day.

502 Q. Would that normally have come by e-mail at this point in time?

15:01

A. No. Post.

503 Q. It's suggesting you resubmit the application, can you just enlighten us as to why that might have been requested?

A. Because he had refused the 15th and the 16th.

15:01

504 Q. Okay. And did you resubmit one for the 17th?

A. I can't recall. I may have, I'm not sure.

505 Q. Okay. I think did you have a telephone call with Inspector O'Sullivan?

A. I did.

15:02

506 Q. Subsequent to this or prior to this?

A. Prior to this. He rang me and he explained to me that he was going to have to refuse my leave for those dates and I told him that my wife had been suffering from



1 chronic back pain for a couple of months and I was  
2 taking my leave on my early tours just in case she had  
3 a recurrence, as I was the only one at home to take my  
4 kids to college or school at the time.

5 507 Q. So it was sort of precautionary leave you were 15:02  
6 envisaging, that you had a stock of leave and you  
7 thought --

8 A. If she was not sick, I would have come to work.

9 508 Q. Okay. You were due to work, I mean having been refused 15:02  
10 annual leave for these dates, you were in fact then due  
11 to appear for duty, is that right?

12 A. That's correct. The same as the 4th and the 5th  
13 previously.

14 509 Q. All right.

15 A. I was due to appear for those dates and I did not 15:03  
16 appear.

17 510 Q. Yes. I think there's no factual dispute about it, you  
18 didn't appear for duty on the 15th, 16th or 17th?

19 A. That's correct, due to force majeure.

20 511 Q. Due to force majeure. I think you subsequently signed 15:03  
21 a force majeure form, which is provided for under the  
22 Parental Leave Act, isn't that right?

23 A. That's correct.

24 512 Q. You signed that on the 18th, isn't that correct?

25 A. As soon as I returned, yes. 15:03

26 513 Q. Now, Superintendent Comyns reported to Chief  
27 Superintendent Dillane on the 19th, if we perhaps just  
28 look at page 397. There's two reports, this is the  
29 first one about the Dr. Kiely medical certificate. And

1 in the first paragraph he says:

2  
3 "I am seeking advice and directions of how I am to  
4 perform my duties as district officer taking into  
5 account the conditions set out in the medical 15:04  
6 certificate. In my opinion, Sergeant Barry cannot  
7 perform the duties which I as district officer require  
8 him to perform while these conditions are accepted as  
9 part of his medical fitness to return to work. Neither  
10 can I perform my duties as district officer by having a 15:05  
11 medical doctor certify that I cannot come in contact  
12 with a sergeant over whom I have supervisory and  
13 managerial responsibility. This certificate, if it was  
14 taken at face value, means that I cannot call to  
15 Mitchelstown Garda station at any time while Sergeant 15:05  
16 Barry is on duty. It also means that Sergeant Barry  
17 cannot work or attend at Fermoy Garda Station even in  
18 the middle of night when he is on duty.

19  
20 A number of issues have arisen since Sergeant Barry's 15:05  
21 return to work and I have not been able to deal with  
22 them because of his medical certificate.

23  
24 I would be obliged to receive advice and direction on  
25 how I am to perform my duty in the above 15:05  
26 circumstances. "

27  
28 would you like to comment on that, as to whether it is  
29 a reasonable and appropriate response to the position

1 he found himself in as a district officer?

2 A. Well I can't understand how a district officer wouldn't  
3 take a medical certificate on face value. Is there  
4 something wrong? Is he saying there's something wrong  
5 with my certificate, that my doctor shouldn't have 15:06  
6 doubt for my mental health welfare?

7 514 Q. I just want to explore the suggestion with you that  
8 it's perhaps a reasonable reflection of the  
9 difficulties that a manager would feel he faces when  
10 he's actually presented with such a certificate? 15:06

11 A. To ignore it and not accept it on face value?

12 515 Q. Well, to ask for directions, advice and directions as  
13 to how he is to perform his own duties in connection  
14 with where it leaves you?

15 A. Well, there was an option supplied by my solicitor in 15:06  
16 relation to Inspector O'Sullivan taking charge for my  
17 directions. There was also the option of classifying  
18 my sick leave as what it should be, in which case I  
19 would never have been back at work.

20 516 Q. Classifying your sick leave as...? 15:07

21 A. As what it should have been classified as, work  
22 related, in which event I would never have returned to  
23 work.

24 517 Q. In the sense that if it had been certified as injury on  
25 duty at some earlier stage, you simply just wouldn't 15:07  
26 have gone back to work?

27 A. No.

28 518 Q. You would have considered yourself based upon such  
29 certification as being permanently injured?

1 A. I would have been able to support my family without  
2 having to return to work. I wouldn't have been forced  
3 into returning.

4 519 Q. The second letter that Superintendent Comyns wrote on  
5 the same date relates to the force majeure form that  
6 you received. And it's on page 398 there. He says:

15:07

7  
8 "I refer to the above and attach notice of force  
9 majeure leave from Sergeant Paul Barry.

10

15:07

11 I received this notice at 10.05am on the 19th April  
12 2013.

13

14 Sergeant Barry had applied for annual leave on the  
15 15th, 16th, 17th April 2013, along with numerous other  
16 dates. Due to the ongoing investigation by Chief

15:08

17 Superintendent Kehoe, I did not deal with this  
18 application. The annual leave for the 15th and 16th  
19 April 2013 was refused as Sergeant Dunne in charge of  
20 Mitchelstown was already on annual leave. Inspector  
21 O'Sullivan who refused the leave, attaches this report.  
22 Inspector O'Sullivan also telephoned Sergeant Barry and  
23 explained why the annual leave was refused to him.

15:08

24

25 On the 15th, 16th and 17th April Sergeant Barry did not  
26 report for duty. Neither Inspector O'Sullivan nor I  
27 were contacted, nor had we any idea why Sergeant Barry  
28 was not at work. Again due to the ongoing  
29 investigation I could not perform my duty as district

15:08

1 office in relation to member at that time who, as far  
2 as I was concerned, was absent without leave.

3  
4 Sergeant Barry's notice of force majeure leave now  
5 explains his absence for these three dates in question 15:08  
6 but in my opinion contact should have been made with  
7 Inspector O'Sullivan on the 14th and 15th April to  
8 explain this absence."

9  
10 That last point on its face seems reasonable. 15:09  
11 Obviously you knew that Inspector O'Sullivan had  
12 refused you the leave as annual leave. And then, you  
13 don't in fact appear on the 15th. Is there any reason  
14 why, if this is correct, why you didn't phone Inspector  
15 O'Sullivan about the matter? 15:09

16 A. I contacted the Garda station to report it,  
17 Mitchelstown Garda station. And I supplied phone  
18 records to the investigating officer to show that I  
19 did. I also supplied him with phone records to show  
20 that I rang the district office in Fermoy when I was 15:09  
21 ceasing my force majeure duty. And I wasn't obliged to  
22 make either of those calls but I did. And when I was  
23 absent from duty on the 4th and 5th April, I also rang  
24 the station to them that I didn't know whether my leave  
25 was sanctioned or not and I would not be turning up for 15:10  
26 duty. Because on those dates I would have been looking  
27 after my wife as well.

28 520 Q. On the 4th and the 5th; is that right?

29 A. Yes.

1 521 Q. I am just concentrating about the 15th. I think you  
2 offered an explanation to Superintendent Lehane later,  
3 isn't that correct, about phoning somebody?  
4 A. I gave him the details.

5 522 Q. Can you recall who you spoke to? 15:10  
6 A. No, because unfortunately I wasn't interviewed until  
7 about six months after this occurrence.

8 523 Q. Pardon?  
9 A. I wasn't interviewed until six months after this  
10 occurrence, so therefore I couldn't tell him exactly 15:10  
11 who I spoke to. But if this matter was brought up to  
12 me on the 18th when I resumed duty, then I would have  
13 been in a position to tell him who I spoke to.

14 524 Q. You are not and haven't been the sergeant in charge of  
15 the station, but it's common occurrence for guards to 15:11  
16 phone in when they're sick because it's considered  
17 appropriate to notify the station, whoever should be  
18 notified, that you're not now able to come in?  
19 A. Absolutely.

20 525 Q. And where would such a phone call be noted? Should it 15:11  
21 be noted, first of all?  
22 A. When a guard rings sick, as I rang sick in August, I  
23 rang my work station and I reported to the garda who  
24 was on duty.

25 526 Q. Is that the public office? 15:11  
26 A. In Mitchelstown, yes.

27 527 Q. And was it the public office then you rang on the 15th  
28 or can you recall?  
29 A. It would have been the public office in Mitchelstown,

1           yes.

2 528 Q.   Presumably that is manned by -- I mean, obviously the  
3           sergeant in charge wouldn't be there, but it could be a  
4           station orderly a guard assigned to public office  
5           duties? 15:11

6           A.   That's correct.

7 529 Q.   But it would be somebody you knew obviously fairly  
8           well?

9           A.   It would of course. The work party at Mitchelstown, I  
10          would know them all. 15:12

11 530 Q.   CHAIRMAN: would it be somebody on your own unit?

12          A.   I don't think it was. I don't think it was somebody on  
13          my --

14 531 Q.   CHAIRMAN: You be would ringing in to say, I can't come  
15          in because? 15:12

16          A.   Yes, but I would have rang the prior unit because --

17 532 Q.   CHAIRMAN: So who did you speak to?

18          A.   I don't recall.

19 533 Q.   CHAIRMAN: why not?

20          A.   As I said, I wasn't asked about this until nearly six 15:12  
21          months later.

22 534 Q.   CHAIRMAN: Is that not something you would remember?

23          A.   No. Not for me anyway.

24 535 Q.   CHAIRMAN: Okay.

25          A.   Unless I made a note of it in my diary, which I didn't. 15:12

26 536 Q.   MR. McGUI NNESS: I was just going to ask you, I mean  
27          you returned -- did you return back into the station on  
28          the 18th?

29          A.   I would have been back working on the 18th.

1 537 Q. what do you do with an F M1 form? Do you serve it on  
2 anyone or file it somewhere?

3 A. You don't serve it. You complete a form F M1 to report  
4 that you have availed of force majeure under the Act.

5 538 Q. Yes. 15:13

6 A. And then you submit it to your district office.

7 539 Q. Okay. And that's how it got to the superintendent  
8 then, is it?

9 A. That's correct.

10 540 Q. And that would be the normal practice? 15:13

11 A. That's how I did it previously, with the previous  
12 superintendent.

13 541 Q. CHAIRMAN: Did you anticipate there might be a bit of  
14 trouble about this?

15 A. No. 15:13

16 542 Q. CHAIRMAN: Given that you applied for leave and been  
17 refused and you were now availing yourself of force  
18 majeure leave, was that not something might alert you  
19 that there could be a bit of trouble about this?

20 A. I didn't think so, Mr. Chairman, because I had told 15:13  
21 Inspector O'Sullivan in the phone call that my wife had  
22 been suffering from chronic pain.

23 543 Q. CHAIRMAN: Yes, of course, I understand that?

24 A. And I told him, if she is sick on those dates I will  
25 not be at work. 15:13

26 544 Q. CHAIRMAN: Okay. So you had alerted him to the  
27 possibility?

28 A. Yes.

29 545 Q. CHAIRMAN: That you wouldn't be around?



1 A. Yes.

2 546 Q. CHAIRMAN: In other words, and he would have understood  
3 that was force majeure, is what you were talking about?

4 A. Yes.

5 CHAIRMAN: Okay. 15:14

6 547 Q. MR. MCGUINNESS: I mean obviously I just have to ask  
7 you about your contention here, because part of your  
8 complaint to the Tribunal is that you say,  
9 "Superintendent Comyns manufactured a reason to  
10 discipline" you. Could you just explain the basis of 15:14  
11 that, why you want the Chairman then to consider that  
12 assertion?

13 A. I believe his report to Chief Superintendent Dillane  
14 was without foundation under the force majeure act, as  
15 you say. I complied with what I was supposed to, I 15:14  
16 didn't do anything illegal or against code, I didn't  
17 breach any code, regulation or otherwise.

18 548 Q. I mean obviously there's a number of factual assertions  
19 in the letter, but the first paragraph, the first  
20 substantive paragraph there, that's entirely correct, 15:14  
21 isn't it?

22 A. That's correct.

23 549 Q. I mean that's what Inspector O'Sullivan wrote to you  
24 and --

25 A. And reiterated in the phone call as well, yes. 15:15

26 550 Q. There's nothing made up in that?

27 A. No.

28 551 Q. The first couple of sentences there, you didn't report  
29 for duty, that's factually correct?

1 A. Pardon?

2 552 Q. The first sentence on the next paragraph, that's  
3 factually correct as well, you didn't turn up for duty.  
4 And then the second sentence:  
5  
6 "Neither Inspector O'Sullivan nor I were contacted nor  
7 had we any idea why Sergeant Barry was not at work."  
8  
9 would you like to comment on that, whether that is  
10 actually correct? 15:15

11 A. It is not actually factual because it says I did not  
12 report for duty, but I did report that I was not  
13 available for duty.

14 553 Q. And what's the difference you're stressing there,  
15 sorry, just to help me? 15:16

16 A. I had made contact with the station to tell them that I  
17 would not be available to carry out my duty, that I was  
18 availing of force majeure leave.

19 554 Q. Okay. So there's nothing wrong with the bare statement  
20 in the first sentence, you didn't report for duty? 15:16

21 A. I was not on duty but I did report the fact that I  
22 would not be reporting for duty. So it wasn't out of  
23 the blue.

24 555 Q. And the second sentence, I mean, it's correct to say  
25 that you didn't contact either of those two officers,  
26 Inspector O'Sullivan or Superintendent Comyns? 15:16

27 A. I didn't have to. I wouldn't have contacted  
28 Superintendent Comyns.

29 556 Q. CHAIRMAN: Anyway.

1 A. Anyway.

2 557 Q. CHAIRMAN: You weren't going to contact him anyway?

3 A. And I felt I didn't have to contact Inspector

4 O'Sullivan as I already told him that if my wife was

5 sick on those dates I would not be on duty. 15:17

6 558 Q. CHAIRMAN: Did you ring each day?

7 A. No, I rang --

8 559 Q. CHAIRMAN: How did you know she was going to be sick

9 for the three days?

10 A. I didn't. 15:17

11 560 Q. CHAIRMAN: So how were they to know how long you were

12 going to be out?

13 A. Because I reported I was taking force majeure

14 initially.

15 561 Q. CHAIRMAN: For how long? 15:17

16 A. I couldn't say how long.

17 562 Q. CHAIRMAN: Okay. So you didn't ring the next day to

18 say, I'm still on force majeure?

19 A. No.

20 563 Q. CHAIRMAN: Or the next day? 15:17

21 A. No.

22 564 Q. CHAIRMAN: Why not?

23 A. Because I wasn't obliged to. I would have taken it

24 that --

25 565 Q. CHAIRMAN: Is that the way it works? 15:17

26 A. Yes.

27 566 Q. CHAIRMAN: If it's force majeure, it stays force

28 majeure until some such time as the force stops?

29 A. Well, the limit is three days in any one year.

1 567 Q. CHAIRMAN: In any one...?  
2 A. One year. It's five days in three years.  
3 568 Q. CHAIRMAN: Right. Does that mean three days together?  
4 A. You could take three days together or three separate  
5 days. You only take three in one year. 15:18  
6 569 Q. CHAIRMAN: Three days together. I'm sorry, three days  
7 is okay?  
8 A. Yes.  
9 CHAIRMAN: Okay.  
10 570 Q. MR. McGUINESS: Obviously you don't know whether 15:18  
11 Superintendent Comyns or Inspector O'Sullivan made any  
12 enquiry as to why you weren't there?  
13 A. No.  
14 571 Q. But this seems to suggest that they had no idea, do you  
15 think it's possible that they didn't know why you 15:18  
16 weren't there?  
17 A. Well it's not possible for Inspector O'Sullivan not to  
18 know.  
19 572 Q. You think he -- do you think he should have foreseen  
20 that if you didn't turn up -- 15:18  
21 A. Which I had told him.  
22 573 Q. That you would be on force majeure?  
23 A. No, I told him that if my wife was sick on those dates  
24 I would have to avail of force majeure.  
25 574 Q. You told him that expressly? 15:18  
26 A. Yes.  
27 575 Q. In the phone call?  
28 A. Yes, I told him the reason I was taking my leave at  
29 that time, was because my wife had suffered chronic

1 back pain for months previously. Not continuously, but  
2 intermittent. Some days she would be fine, other days  
3 not.

4 576 Q. Superintendent Comyns seems to suggest that your notice  
5 explained the absence but he's offering an opinion that 15:19  
6 you should have contacted Inspector O'Sullivan on the  
7 14th, 15th to explain the absence. Is that opinion a  
8 kind of fair opinion or a reasonable opinion?

9 A. Do you know, I don't think so.

10 577 Q. You don't? 15:19

11 A. Because Inspector O'Sullivan was already aware of it  
12 and while I had no obligation under the Act to ring the  
13 station, I did ring the station to report I was taking  
14 force majeure and when I completed my force majeure on  
15 the 17th I rang the station again and I supplied those 15:19  
16 phone records to Superintendent Lehane.

17 578 Q. Now, I am just going to ask you the question: The  
18 contention you made that the superintendent  
19 manufactured a reason to discipline you, is that based  
20 on this report alone or is it based on something else 15:19  
21 as well?

22 A. It is based on fact.

23 579 Q. Pardon?

24 A. It's based on fact.

25 580 Q. And what fact are you particularly -- 15:20

26 A. I availed of a legitimate reason under the force  
27 majeure act to take leave for those dates. I did not  
28 do anything legal or otherwise and I should not be  
29 subjected to an investigation. There were no grounds

1 to investigate me for what happened. I previously took  
2 force majeure under the previous superintendent and  
3 completed the F M1 when I returned, and there was no  
4 problem with it, it was sanctioned. I could have been  
5 investigated. Why wasn't I investigated for the 4th 15:20  
6 and the 5th of that month?

7 581 Q. I can't answer these questions.  
8 A. I was absent.

9 582 Q. Yes.  
10 A. And I wasn't on force majeure. 15:20

11 583 Q. Well you have a retrospective grant of annual leave for  
12 them, from Inspector O'Sullivan I think?  
13 A. And I was retrospectively cleared by Superintendent  
14 Comyns for the force majeure.

15 584 Q. Yes, we will come to that in due course, but is there 15:20  
16 anything else you want to say in support of your  
17 suggestion that this represented a targeting? Are you  
18 including Chief Superintendent Dillane in that as well?  
19 A. Yes, because he initiated the discipline investigation.

20 585 Q. All right. 15:21  
21 A. Or he sanctioned it.

22 586 Q. Yes. And I think that started sometime later. We will  
23 come to it in due course. Now, we have seen  
24 Superintendent Comyns' report to Superintendent Dillane  
25 of the same date, on the 19th. He wrote to the 15:21  
26 assistant commissioner on the 1st May. Perhaps we will  
27 just look at that letter. Page 399. This is a  
28 somewhat lengthy letter, you probably remember reading  
29 it. He sets out the history which he had set out

1 before in previous correspondence and he gives his  
2 account of the meeting on the 9th April that we have  
3 discussed already. At the top of page 401, he had  
4 recited on the previous page that he had spoken with  
5 Superintendent Comyns, that he was experiencing serious 15:22  
6 difficulties in the administration of Fermoy district  
7 due to work practices of Sergeant Barry. It continues  
8 then at the top:

9  
10 "Superintendent Comyns has a practice in place whereby 15:23  
11 all members working in Fermoy district at 7.30am and  
12 9.30 come to Fermoy Garda Station for briefing and  
13 detailing.

14  
15 The present situation where Sergeant Barry as a 15:23  
16 supervisory member is going on duty without being  
17 properly briefed placed both Superintendent Comyns and  
18 me in a position of corporate liability as his employer  
19 if anything were to happen to him.

20 15:23  
21 This situation is likely to be a protracted one as when  
22 the bullying and harassment investigation is completed  
23 disciplinary investigation is due to commence arising  
24 from Sergeant Barry's complaint.

25 15:23  
26 As the divisional officer of Cork north division I  
27 cannot allow this situation to continue. I am not in  
28 a position to override the doctor's certificate, which  
29 in my view is both impractical and unreasonable and I

1 am seeking your directions as to the correct course of  
2 action to be taken. "  
3  
4 And he refers to the correspondence from Superintendent  
5 Comyns there. Did you take any comfort from the fact 15:24  
6 that he was, as it were, accepting that he couldn't  
7 override the doctor's certificate?  
8 A. No.  
9 587 Q. Did you consider whether the issue about supervising  
10 members could have been dealt with if they paraded for 15:24  
11 duty in Mitchelstown?  
12 A. Pardon?  
13 588 Q. These were your units going to Fermoy, isn't that  
14 correct?  
15 A. Yes. 15:24  
16 589 Q. Did you consider suggesting that the easy way to deal  
17 with this was just to have them parading in  
18 Mitchelstown rather than driving back and forward to  
19 Fermoy?  
20 A. That would have been logical, yes. 15:24  
21 590 Q. Had you thought of that at the time or did you consider  
22 whether that --  
23 A. Any suggestion I had made up to that point was ignored.  
24 So I wasn't -- that's a management decision, beyond my  
25 control. But it could have been done. 15:24  
26 591 Q. Pardon.  
27 A. It could have been done.  
28 592 Q. All right. Is that something you discussed with your  
29 AGSI supervisor or when there was a discussion about



1 mediation to take place?

2 A. Pardon?

3 593 Q. Did you have any consideration of putting that forward  
4 when mediation was being talked about?

5 A. But mediation was -- Superintendent Comyns wouldn't 15:25  
6 enter into mediation.

7 594 Q. We will come to it in due course, but you had indicated  
8 an agreement to consider mediation, isn't that right,  
9 yourself?

10 A. I was willing to enter mediation. 15:25

11 595 Q. And what were the elements of mediation that you could  
12 have lived with, as it were?

13 A. That would have been one of them.

14 596 Q. And is that something that you discussed with your  
15 representatives? 15:25

16 A. No.

17 597 Q. You wrote a letter to the Assistant Commissioner HRM  
18 yourself on the 5th May, isn't that correct? Perhaps  
19 we will look at that, at page 195 and 196. You refer  
20 to the meeting here on the 9th, and you say in the 15:26  
21 middle there:

22

23 "I don't believe Chief Superintendent William Lehane is  
24 willing to offer anything other than transfer. That is  
25 not acceptable to me for the following reasons: The 15:26  
26 Garda policy on bullying and harassment provides I can  
27 apply for transfer to help me during the period of  
28 investigation and this would be fine if we were only  
29 talking about bullying. I made an allegation that the

1 district officer in Fermoy attempted to coerce me in  
2 perverting the course of justice in relation to the  
3 rape and sexual assault of a child. It is because of  
4 his behaviour that I made this allegation, as it is my  
5 duty within the law of the land to serve the whole  
6 community and protect the people whom I have proudly  
7 served for the past 13 years from all unlawful and  
8 harmful acts from whatever source."

15:26

9  
10 It just carries on there onto the next page,  
11 Mr. Kavanagh, if you scroll down.

15:27

12  
13 "I made my complaint as I believe that I have an  
14 obligation to be faithful to the principles of  
15 integrity and honour in the exercise of my duties.  
16 This obligation supersedes any perverted or misplaced  
17 loyalty in support or protection of any member of the  
18 force whom I believe may be guilty of unethical or  
19 criminal behaviour. I can only protect this community  
20 I have proudly served for the last 13 years by  
21 remaining in Mitchelstown. It is incumbent on me to  
22 see the law of the land is upheld and that no member,  
23 regardless of their rank, steps outside the limits of  
24 his or her authority."

15:27

15:27

25  
26 well, was that intended by you as a very clear signal  
27 that you just weren't going to be moving from  
28 Mitchelstown? Or how did you intend this to be taken?

15:27

29 A. That was taken -- or that was meant by me to indicate



1 A. That's correct.

2 604 Q. Had you booked the holidays already?

3 A. My wife had booked the holiday and I told her that I  
4 may not be able to get leave for those dates.

5 605 Q. All right. Okay. The officers, you've seen in their 15:30  
6 statements, they say that it's sort of better practice  
7 not to book a holiday until you know whether you have  
8 the leave, but is that something that most members  
9 follow or sergeants or...?

10 A. I know that, yeah, but it was my wife who booked the 15:31  
11 holiday because she was worried about me.

12 606 Q. Okay. In any event, this went through a large number  
13 of sort of different reports. You've exhibited them  
14 all in your Exhibit R to your statement, which is part  
15 of your complaint, isn't that correct? 15:31

16 A. That's correct.

17 607 Q. And they proceed from Exhibit R 24, going backwards  
18 down towards R 9. We can open them if necessary, but  
19 perhaps we'll try not to, if we can agree on the to-ing  
20 and fro-ing, as it were. You applied for leave, you 15:31  
21 sought to get a re-consideration of these dates that  
22 had been refused for?

23 A. For the holiday, yes.

24 608 Q. Pardon?

25 A. For the dates that reflected the holiday, I wasn't 15:32  
26 worried about the other dates.

27 609 Q. Yes. You were told essentially, and if you feel the  
28 need to go into the documents, that leave would be  
29 granted provided there was cover, adequate cover for

1 the different dates?

2 A. Provided I supplied cover.

3 610 Q. Yes. And isn't that the normal practice?

4 A. No.

5 611 Q. No? Okay. 15:32

6 A. The normal practice is if there wasn't covered, then

7 you wouldn't take leave.

8 612 Q. Pardon?

9 A. The normal practice would be that the superintendent

10 would provide cover. I can't allocate a sergeant to 15:32

11 cover. But I asked sergeants to change and accommodate

12 me, my own two sergeants in Mitchelstown especially.

13 613 Q. Yes.

14 A. They were agreeable to change their shifts to

15 accommodate me on those dates. 15:33

16 614 Q. Well, did it not come down to some dates that you

17 couldn't identify any particular sergeant to provide

18 cover for?

19 A. It did come down to one or two dates I think.

20 615 Q. Yes. Ultimately it went to Chief Superintendent 15:33

21 Dillane on the basis of a recommendation from

22 Superintendent Comyns that annual leave could be

23 granted subject to cover and you weren't able to

24 identify, correct me if I am wrong, who would cover for

25 those particular dates? 15:33

26 A. No.

27 616 Q. That's not right?

28 A. Pardon?

29 617 Q. Is that not right?

1 A. No. I am saying no, I couldn't provide cover for those  
2 dates.

3 618 Q. Yes. At the end of the day you took your leave on the  
4 2nd July?

5 A. That's correct. 15:34

6 619 Q. The chief superintendent hadn't made a decision on it  
7 at that point in time, if I am understanding the  
8 documents correctly?

9 A. I understand he granted it if cover was provided.

10 620 Q. Yes. And Superintendent Comyns was anxious to ensure 15:34  
11 that there was a cover, do you accept that?

12 A. Absolutely.

13 621 Q. And when you returned he made enquiries to attempt to  
14 determine whether cover had been achieved for the dates  
15 in question? 15:34

16 A. That's correct.

17 622 Q. And you told him in a response that, I am paraphrasing  
18 it now, and correct me if I am wrong, you said more or  
19 less, how would I know if cover was provided because I  
20 was out of the country? 15:34

21 A. Yes, because I knew that Sergeant Quinn and Sergeant  
22 Dunne had --

23 623 Q. Sorry?

24 A. I knew that Sergeant Quinn and Sergeant Dunne had tried  
25 to explain the cover to him, to no avail, is what they 15:35  
26 said.

27 624 Q. Yes.

28 A. He wasn't accepting their explanation as to the cover  
29 provided while I was on leave.

1 625 Q. Yes. Perhaps we will just look at the sort of  
2 documents that brought this to a conclusion. I think  
3 it's an explanation of yours of the 7th August to the  
4 sergeant in charge, at page 160. This is the last  
5 point you are referring to there, that Sergeant Dunne 15:35  
6 is just reporting, if we go up to the top of the page,  
7 to you, this is the report:  
8  
9 "Sergeant Quinn and I tried to explain it to the  
10 district office but to no avail." 15:36  
11  
12 And then you provide this report here, isn't that  
13 correct? At the bottom. "Re application for annual  
14 leave, Sergeant Barry. With reference to above, I  
15 would like to thank the district officer for granting 15:36  
16 me my leave. I cannot comment on cover arranged for my  
17 absence as I was not in the country for that period.  
18 Forwarded for your information and attention please."  
19  
20 And then there's a report from Superintendent Comyns I 15:36  
21 think on foot of that, at 159, if we go back, of 16th  
22 August 2013. And he says:  
23  
24 "I refer to the above.  
25 15:37  
26 Sergeant Barry's report on 17th August 2013 is  
27 forwarded for your information.  
28  
29 Unit B Fermoy district were not adequately supervised

1 during Sergeant Barry's period of absence."

2

3 He maintains that he was unable to determine who had in  
4 fact provided cover for the days that were at issue.

5 would you like to comment on that?

15:37

6 A. I think that's best left to the report by Sergeant  
7 Dunne, where he says both he and Sergeant Quinn tried  
8 to explain this to the superintendent, without avail.

9 626 Q. Yes. And the superintendent, the chief superintendent  
10 there at the bottom has simply noted it. Can we just  
11 go back up to the bottom of the previous page. You had  
12 thanked the superintendent for granting -- the chief  
13 superintendent for granting the annual leave and he has  
14 looked at this, he has noted it and he has returned the  
15 file. That appeared to conclude the matter in terms of  
16 the to-ing and fro-ing in relation to the annual leave.  
17 Are you satisfied that I have summarised it as fairly  
18 as possible in the circumstances or would you like to  
19 lever to any other parts of the documents?

15:37

15:38

20 A. No, it's just that you would have seen the report I  
21 submitted in relation to the initial request from  
22 Superintendent Comyns, I outlined the report for the  
23 whole period of my leave.

15:38

24 627 Q. Pardon?

25 A. I submitted a detailed report outlining who would be  
26 working on all dates that I proposed taking leave.

15:38

27 628 Q. Yes.

28 A. It wasn't that I didn't -- that I just said I was out  
29 of the country, I had --



1 629 Q. No, you are perfectly right to emphasise that point,  
2 you did provide details for a number of different days.  
3 Some of them, and this is not a criticism, didn't  
4 identify specifically who would be providing the cover,  
5 I think, is that fair? 15:39

6 A. That's correct.

7 630 Q. Now, in circumstances where it could be said that  
8 nothing has happened here, do you suggest that this is  
9 a form of targeting of you?

10 A. I believe it was. 15:39

11 631 Q. Would you like to explain to the Chairman what you  
12 would like to say about the basis for that and the  
13 reasons why you say it is targeting?

14 A. Because no matter what I supplied or what Sergeant  
15 Dunne or Sergeant Quinn said, he was still not 15:39  
16 accepting the explanations given. It had to go to  
17 Chief Superintendent Dillane to see reason and grant my  
18 leave.

19 632 Q. Yes. And what would you say to the proposition, as  
20 they justified the decision, that all the decisions are 15:39  
21 to grant you leave provided there is cover and that it  
22 is entirely legitimate proposition to expect cover to  
23 be maintained during the absence of a senior sergeant  
24 such as yourself?

25 A. And I did that, I got Sergeant Quinn and Sergeant 15:40  
26 Dunne, who were willing to change unit shifts to  
27 provide cover for any dates in dispute.

28 633 Q. Is it unfair to suggest that Chief Superintendent  
29 Dillane seems to have accepted that, he simply noted

1 the outcome?

2 A. Oh I believe he accepted it, yes.

3 634 Q. All right. So anyway, that took place over a  
4 protracted period, but I suppose a point that you would  
5 like to make is that this related to a family holiday 15:40  
6 and wasn't resolved, in fact wasn't resolved until you  
7 had actually then departed on it?

8 A. Yeah, it ruined the holiday.

9 635 Q. How long did you go away for in that period then, from  
10 the 2nd? 15:40

11 A. Over two weeks and I spent that two weeks preparing the  
12 appeal of the bullying file.

13 636 Q. CHAIRMAN: Did you go abroad?

14 A. Pardon?

15 637 Q. CHAIRMAN: Did you go abroad or were you here? 15:41

16 A. Yes, went to Cyprus and I spent the two weeks there --

17 638 Q. CHAIRMAN: with your bag of papers with you, your  
18 briefcase with you?

19 A. Yes, for an appeal.

20 639 Q. MR. McGUI NNESS: In the interim, part to this was going 15:41  
21 on, Chief Superintendent Dillane was again in  
22 correspondence with the Chief Medical Officer, if we  
23 could look at page 1681, and if we just go down the  
24 page for the --

25 CHAIRMAN: That's the reply. 15:41

26 640 Q. MR. McGUI NNESS: That's the reply. And we've seen the  
27 minute of the 1st May that he refers to there earlier,  
28 I opened that some minutes ago. He's awaiting a reply.  
29 He says:

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"As this situation is now dragging and in the interest of the running of this organisation, I wish to seek your directions on the following matter. If I direct Sergeant Barry to attend at Fermoy Garda Station and to deal with Superintendent Comyns, will it adversely affect his health? Forwarded for your professional advice."

And the reply is as above here.

"Chief Superintendent Dillane, I note your enquiry and the clarification being sought. The member reported and presented to his GP with loss of wellbeing which he associates with certain issues with his workplace, including his workplace interpersonal relationship with his district officer, Superintendent Comyns. Medical recommendations (including from independent specialist medical assessment at the request of this service) have been provided in the context of what is quite a fraught situation. There are no further advices that I can offer from a medical perspective in this case."

As I have previously advised, the management of the member's return to the workplace and the arrangements to facilitate these are the responsibility of Garda management in the context of workplace accommodations that are reasonable and practicable.

1 In the light of what appears to be an impasse at this  
2 time, further relevant processes available to Garda  
3 management should be deployed to resolve the matter in  
4 a timely and constructive manner that would preserve  
5 the member's wellbeing and Garda operational integrity. 15:43

6  
7 I have copied the above addresses in the context of  
8 previous communications in this matter issued by this  
9 service. "

10  
11 It would appear that Chief Superintendent Dillane is  
12 being told that this isn't a medical issue, it's  
13 perhaps susceptible to further relevant processes  
14 available to Garda management. Were you made aware of  
15 that enquiry and response at the time? 15:43

16 A. No.

17 641 Q. If we just scroll up the page, to see who the doctor  
18 copied it to at the time. So it's gone to Assistant  
19 Commissioner Fanning as well, and Monica Carr and Donal  
20 Collins, who is the titular Chief Medical Officer. 15:44

21  
22 On the 27th then, the chief superintendent appointed  
23 Superintendent Lehane to conduct a disciplinary  
24 investigation into the force majeure leave, isn't that  
25 correct? 15:44

26 A. That's correct.

27 642 Q. Perhaps we'd just look at page 422.

28 CHAIRMAN: Just give me the date of that, I can't read  
29 it here.

1 MR. McGUI NNESS: It's 27th May.

2 CHAIRMAN: 2013.

3 643 Q. MR. McGUI NNESS: He says in the second paragraph:

4

5 "Having considered the content of this file, I feel  
6 it's appropriate the matter be investigated under the  
7 Garda Síochána Disciplinary Regulations 2007...deciding  
8 officer under Regulation...to investigate the alleged  
9 breach of discipline as outlined...in respect of  
10 Sergeant Barry, Mitchelstown. You should ensure that 15:45  
11 the timeframe and procedures..."

12

13 Et cetera, et cetera. Can you recall when you were  
14 informed of that?

15 A. The date that -- it's in Superintendent Lehane's 15:45  
16 statement, the first I was aware of it was when he went  
17 to Mitchelstown Garda station. He had rang prior to  
18 that to make an appointment to meet him, but he didn't  
19 say what it was about.

20 644 Q. He provided a report ultimately on 17th October 2013. 15:46  
21 You've probably seen that report. You were interviewed  
22 on the 14th yourself of October, isn't that correct?

23 A. That's correct.

24 645 Q. which was some months afterwards. Perhaps we would 15:46  
25 just look at his report there, page 426. In the first  
26 page he's just talking about the process there, the  
27 arrangements being made to interview you. That was  
28 done in the presence of Inspector Gallagher, isn't that  
29 right?

1 A. That's correct.

2 646 Q. He records at the bottom of the page:

3

4 "He subsequently provided me with a copy of telephone  
5 record for April 2013, which shows a call made 10.59 to 15:47  
6 telephone number."  
7

8 And it gives there.

9

10 "This is a telephone in the public office in 15:47  
11 Mitchelstown but unable to name the member he spoke to  
12 in the morning."  
13

14 He then goes on to say:

15 15:47

16 "He subsequently established four members were working  
17 there."  
18

19 He gives their names. He says he interviewed them all.

20 CHAIRMAN: would you go up the page, please, Peter. 15:47

21 MR. McGUINESS: I beg your pardon.

22 CHAIRMAN: Just keep going down the page. Thanks very  
23 much. So we can read the next bit. Okay, thank you.

24 647 Q. MR. McGUINESS: And he just reads there that they have  
25 no recollection of receiving a telephone call from you 15:48  
26 on the morning. But you had a record to show you  
27 certainly appeared to have, from your own house phone,  
28 is it?

29 A. I think it was, yes.

1 648 Q. To phone the station number?  
2 A. Yes. It was the house phone.  
3 649 Q. Anyway, he goes on to consider the provision and at the  
4 end of the paragraph, at the bottom of the page, he  
5 considered the labour relations practice et cetera and 15:48  
6 he says:  
7  
8 "While it is inconceivable that an employee in  
9 particular a member of An Garda Síochána could absent  
10 himself/herself from work on force majeure leave 15:48  
11 without notifying their authorities in advance or  
12 during the absence. The legislation under the Garda  
13 Code regulations make no reference to a requirement to  
14 give advance notice. On that basis I found that the  
15 member was not in breach of discipline on the 16th 15:48  
16 October 2013. I have notified him of my decision. He  
17 acknowledged receipt of same."  
18  
19 He makes a recommendation then on the following page.  
20 CHAIRMAN: Surely he doesn't mean it's inconceivable, 15:49  
21 does he? "While it is inconceivable that an employee,  
22 in particular a member, could absent themselves from  
23 their work without notifying their sergeants in  
24 advance".  
25 MR. McGUINESS: "Or during the absence". 15:49  
26 CHAIRMAN: All right. It makes no reference to give  
27 advance notice, okay.  
28 650 Q. MR. McGUINESS: He seems to have not accepted your  
29 assertion that he made contact?

1 A. Yes.

2 651 Q. Do you know on what basis he did or didn't?

3 A. He only refers to the call that I made when I was

4 taking it, not to call when I was -- he didn't

5 reference the call I made when I was ending the force 15:49

6 majeure.

7 652 Q. Yes. I think that may be because of the nature of the

8 charge that he was asked to investigate, it was a

9 neglect of duty. As I understand it, you weren't being

10 investigated for taking the force majeure leave, you 15:50

11 were being investigated, as it were, for neglect of

12 duty, being absent from duty and then not notifying

13 people why you were absent at the time. Isn't that

14 right?

15 A. But I did notify them. 15:50

16 653 Q. But I am just talking about the form of the charge?

17 A. Oh the form of the charge that's set out, yes.

18 654 Q. Yes. And I take it you've no complaint against

19 Superintendent Lehane?

20 A. No. 15:50

21 655 Q. Who didn't find you in breach of anything obviously?

22 A. Just, he doesn't reference the duration of the call.

23 656 Q. Do you know how long the call was?

24 A. Well it commenced at 10.59, I gave them the phone

25 records. Like if I rang for -- 15:50

26 657 Q. CHAIRMAN: You gave your phone records?

27 A. Yes.

28 658 Q. CHAIRMAN: And while the officers interviewed and on

29 duty didn't recall any such call, the record showed



1           that you had made a -- sorry that a call was made from  
2           your home?

3           A.     Yes, to the gardaí.

4 659 Q.     CHAIRMAN: To the station number. And the relevant  
5           station number, that'd be the one? 15:51

6           A.     Yes.

7 660 Q.     CHAIRMAN: How long was that for, did it say?

8           A.     I don't --

9 661 Q.     CHAIRMAN: As far as you can remember?

10          A.     I don't recall. I would say a minute, two. Two 15:51  
11          minutes max. That's all it would take.

12 662 Q.     CHAIRMAN: That's all it would take, but you mentioned  
13          the time and I wondered, do you know what time it was?

14          A.     Yes, I think it was 10.59 or something.

15 663 Q.     CHAIRMAN: He gave the time at which you -- 15:51

16          A.     He gave the time I made the call, yes.

17          CHAIRMAN: Thank you very much.

18 664 Q.     MR. McGUI NNESS: And obviously had you been asked prior  
19          to the initiation of a discipline inquiry, presumably  
20          he would have given the same explanation at a much 15:51  
21          earlier time?

22          A.     I would have -- I believe if I was asked when I resumed  
23          duty on the 18th that I would have known who I spoke to  
24          on the 15th. I would have a better recollection.

25 665 Q.     CHAIRMAN: When you saw the names, did that ring a 15:52  
26          bell? Or when you see them here, does that ring a  
27          bell?

28          A.     No.

29 666 Q.     MR. McGUI NNESS: In any event, this was the outcome of

1 the process that was started on the 27th May and you  
2 were interviewed on the 14th October?

3 667 Q. CHAIRMAN: Sorry, I am just asking Mr. Kavanagh to go  
4 up a tiny bit, up the page a little. Thanks very much.  
5 That's what he decided anyway. Whether he was right or 15:52  
6 wrong doesn't matter, we're not concerned with that,  
7 but that's what he decided. And you're satisfied with  
8 that.

9 A. I was satisfied, yes.

10 CHAIRMAN: Thanks very much. 15:53

11 668 Q. MR. McGUINESS: I think just shortly after this Chief  
12 Superintendent Kehoe submitted her completed file,  
13 investigation file into the bullying and harassment to  
14 the appointing officer, Assistant Commissioner Nolan,  
15 on the 30th May, were you informed of that at the time 15:53  
16 or close enough to it?

17 A. I believe I was, by Chief Superintendent Kehoe.

18 669 Q. Yes. I think Assistant Commissioner Nolan conducted a  
19 review of the bullying and harassment investigation and  
20 concluded on the 17th June that all appropriate steps 15:53  
21 had been taken and there had been a thorough and  
22 impartial investigation and upheld the findings of  
23 Chief Superintendent Kehoe in that regard?

24 A. That was his report, yes.

25 670 Q. Now, you submit an appeal in relation to that - 15:54  
26 A. Yes.

27 671 Q. - on the 23rd July, we don't need to look at the  
28 grounds. The grounds were then conveyed in a later  
29 document of 12th August 2013, isn't that correct?

1 A. Yes, I submitted an appeal while I was on holiday to  
2 HRM direct.

3 672 Q. Yes.

4 A. Via e-mail, and when I returned from holidays I sent in  
5 a hard copy. 15:54

6 673 Q. Yes. With the detailed grounds as well I think, is  
7 that right?

8 A. Yes.

9 674 Q. On the 12th August. And I think Assistant Commissioner  
10 Twomey wrote to you, if I am correct, with his decision 15:55  
11 in the matter at the end of October 2013?

12 A. That's correct.

13 675 Q. Perhaps we would just look at that, on page 313, 314  
14 and 315. We don't need to read it all there, it's in  
15 the papers, you have seen that yourself? 15:55

16 A. I have seen it, yes.

17 676 Q. It was obviously a disappointment to you at the time, I  
18 am sure?

19 A. It was.

20 677 Q. He does address all of the allegations one-by-one as 15:55  
21 they were set out. And if we go to the end of, I  
22 suppose, 315, just to see his ultimate conclusion. And  
23 he says in relation to allegation 9, which is the  
24 criminal one:

25 15:56

26 "As you have highlighted you have been informed of the  
27 position regarding this matter being considered by  
28 another forum and therefore it is not within the remit  
29 of this review to comment any further."

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And he just says he has completed that at that stage.

You were continuing to work obviously in Mitchelstown?

A. That's correct.

15:56

678 Q. On full pay, with allowances, with a certificate, as it were, protecting you, as you saw it, and your mental health?

A. Yes.

679 Q. In accordance with the one, two or three doctors involved in consulting with you?

15:56

A. That's correct.

680 Q. You make I think no complaint really about any other events at this point in time for quite a while, isn't that right?

15:57

A. That's correct.

681 Q. And you weren't coming into contact with Superintendent Comyns, isn't that right, or going to Fermoy?

A. No.

682 Q. Okay. The issue that we saw Chief Superintendent Dillane raising with Dr. Oghuvbu about how or what he would think if he were ordered to Fermoy became more relevant in the context of Superintendent Comyns requesting a sergeant for Fermoy, did you become aware of that?

15:57

A. Yes.

683 Q. Okay. Perhaps we would look at that, because you were nominated for Fermoy. Perhaps we'd look at 5422 first. This is Superintendent Comyns' questions and answers

1           there. If we just go down there. He's asked about  
2           this portion of his statement, about having consulted  
3           with inspectors and sergeants in 2014. But if we just  
4           go back there, further on to the next page. If we  
5           scroll down a bit more. Sorry, that is not the right     15:59  
6           page. I will come back to it. If we go to page 430  
7           because on the 10th December Chief Superintendent  
8           Dillane nominated you for Fermoy. Had you been  
9           consulted in advance of that?

10          A.     Could I see the date on it, please?                             15:59

11   684   Q.     Yes. It's the 10/12, if we just go slightly up.  
12           CHAIRMAN: Yes, 10th December.

13          A.     Yeah, I can't be sure of the exact date but I think I  
14           did meet with Chief Superintendent Dillane at his  
15           office in Fermoy, where he indicated to me that he was     15:59  
16           going to transfer me to Fermoy.

17   685   Q.     MR. MCGUINNESS: Yes. He just sets it out here. I  
18           would ask you to comment on it. He says:  
19

20           "The reason for this transfer is to try to ensure the     16:00  
21           delivery of efficient policing service in the new  
22           Fermoy district, which has been expanded in the recent  
23           district amalgamations. The minimum requirement for  
24           Fermoy Garda Station, which is divisional district  
25           headquarters, one unit sergeant on each of the five     16:00  
26           units. Since the reduction of the new roster system  
27           there is one unit at Fermoy Garda Station without any  
28           supervising sergeant. I believe that it is more  
29           important that the unit sergeant is based in Fermoy

1           rather than in Mitchelstown, County Cork."

2

3           was that correct as far as you knew at the time?

4       A.    No, that wasn't correct. That's in relation to his

5           application to transfer? 16:00

6   686   Q.    Pardon?

7       A.    In relation to his application to transfer me?

8   687   Q.    Well, this seems to be a general statement about the

9           requirements of Fermoy and there being an unsupervised

10          unit there? 16:01

11       A.    This may have been, I had no control over how a unit

12          became unsupervised in Fermoy, so I don't know.

13   688   Q.    Okay.

14       A.    I don't know if I was aware of it at the time.

15   689   Q.    Okay. He refers back to a similar proposal in 2004

16          there on the second paragraph, and that was the one we

17          discussed I think early on in your evidence? 16:01

18       A.    Yes.

19   690   Q.    You appealed successfully on that?

20       A.    Yes. 16:01

21   691   Q.    By reason of a breach of Code 7.5, et cetera. But he

22          points out now that "On 11th November 2013 Glanmire

23          sub-district became a part of Cork City division and

24          those grounds should no longer be valid as a different

25          division exempt the terms of Code 8.3." 16:01

26

27          And I think you knew that that had happened by this

28          stage?

29       A.    Yes, but it wasn't truthful.

1 692 Q. Pardon?  
2 A. It wasn't truthful.  
3 693 Q. Which element is not?  
4 A. His report saying that I am exempt of the terms of Code  
5 8.3. 16:02  
6 694 Q. Okay.  
7 695 Q. CHAIRMAN: He said Cork City?  
8 696 Q. MR. MCGUINNESS: He said the division is exempt from  
9 it?  
10 A. Oh Cork City division is. 16:02  
11 697 Q. Yes.  
12 A. But I had a relation living in Watergrasshill, which he  
13 was aware of, which would have precluded me from moving  
14 to Fermoy because he wouldn't have been far enough  
15 away. 16:02  
16 698 Q. Okay.  
17 A. So I --  
18 699 Q. CHAIRMAN: I am sure somebody is going to ask you this,  
19 but if I am understanding this correctly, the Chief  
20 Superintendent is basing his decision on his 16:02  
21 application on the location of Glanmire in the Garda  
22 structure, and not on the question of how close the  
23 person is living, am I understanding that correctly?  
24 Anyway, don't mind that, we will tease that out in due  
25 course. 16:03  
26 A. No, I had relations living in the Glanmire  
27 sub-district.  
28 700 Q. CHAIRMAN: I understand. And when that was the case,  
29 you say you successfully appealed on the basis that

1 your relations were living too close?

2 A. Yes.

3 701 Q. CHAIRMAN: That was then?

4 A. Yes.

5 702 Q. CHAIRMAN: And what I am understanding Chief 16:03  
6 Superintendent Dillane to be saying in this memo is,  
7 that divisions have now changed so Glanmire is now in  
8 Cork?

9 A. Yes.

10 703 Q. CHAIRMAN: And therefore not affected by the rule. 16:03  
11 It's exempt from the rule?

12 A. Yes. For all the relations who are in Glanmire.

13 704 Q. CHAIRMAN: I understand that. But you weren't going to  
14 Cork City, you were staying here?

15 A. Yes, in Fermoy, but I had a relation living in 16:03  
16 Watergrasshill, which is still Fermoy.

17 705 Q. CHAIRMAN: I am understanding the point. I mean it is  
18 a bit complicated but I think I have it, yes, okay.

19 A. So I e-mailed then Assistant Commissioner Fanning to  
20 point out I had a first cousin living in Watergrasshill 16:04  
21 district, which was in Fermoy subdistrict, and he  
22 granted that exemption that morning and rescinded it  
23 that that evening.

24 706 Q. CHAIRMAN: That was back in '04?

25 A. No, this date. 16:04

26 CHAIRMAN: Sorry, Mr. McGuinness will get to that.

27 707 Q. MR. MCGUINNESS: It's perhaps a comment on the e-mail  
28 that he sent, there's no reference to the doctor's  
29 certificate or any issues connected with that and I am



1 not clear to what extent it was being considered when  
2 this e-mail was sent?  
3 CHAIRMAN: well, he can tell us all that,  
4 Mr. McGuinness.  
5 708 Q. MR. MCGUINNESS: we will hear. But are you surprised 16:04  
6 not to see any reference to it yourself in the --  
7 A. Absolutely. I couldn't understand it.  
8 709 Q. According to Chief Superintendent Dillane's statement,  
9 he met with you on Sunday the 19th January to discuss  
10 this? 16:05  
11 A. Perhaps it was. I'd have to check my notes.  
12 710 Q. Okay. Have you got your diary there?  
13 A. Not with me, no, sorry.  
14 711 Q. Pardon?  
15 A. I would take it, if he says that was the date. 16:05  
16 712 Q. CHAIRMAN: You can have a look at it overnight and tell  
17 us in the morning?  
18 A. Yes, I accept that was the date.  
19 713 Q. MR. MCGUINNESS: Yes. And he furnished a report in  
20 relation to it, which was sent to Superintendent 16:05  
21 Comyns. Perhaps we will just look at page 432. He  
22 says he met you:  
23  
24 "...at his office at 10.45. After enquiring about his  
25 well being, I explained to him that I had decided to 16:05  
26 transfer to him Fermoy Garda Station as they required a  
27 minimum of one sergeant on each unit in divisional  
28 headquarters. I outlined the reasons for transfer to  
29 him and my plan for the distribution of sergeants in

1 the Cork north division.

2

3 I told him that after much consideration I believed  
4 that he was the best man for the job. I also informed  
5 I was of the believed that an investigation into his 16:06  
6 bullying and harassment complaints had now come to a  
7 conclusion and that the constraints placed while the  
8 investigation and appeal were underway have now been  
9 removed. He told me that there was still one aspect of  
10 the allegations outstanding that he needed an e-mail 16:06  
11 from Chief Superintendent Kehoe to prove this. I told  
12 him if this were true that I would not be able to go  
13 ahead with the proposed transfer but I would check it  
14 out with human resource management at Garda  
15 Commi ssi oner. " 16:06  
16

17 Do you recall that discussion?

18 A. Yes.

19 714 Q. What were you in a position to tell him about Chief  
20 Superintendent Kehoe's enquiries? 16:06

21 A. I felt that there still was a bullying element in the  
22 ninth complaint that hadn't been the subject to -- the  
23 1-8 bullying complaints that were concluded, that it  
24 was never referenced by Chief Superintendent Kehoe.

25 715 Q. It would seem that he wasn't aware of that at the time? 16:07

26 A. Yeah, that appears so, yes.

27 716 Q. Do you accept that -

28 A. I do.

29 717 Q. - was that evident from the conversation you had with

1 him?

2 A. I do.

3 718 Q. Okay. He then said:

4

5 "During our discussion suggestion he informed me that 16:07

6 he did not wish to work in Fermoy. I explained to him

7 that with the shortage of manpower, especially at

8 sergeant rank, that I need one sergeant on each unit

9 and I could not afford luxury of having three sergeants

10 in Mitchelstown. I explained that this was in line 16:07

11 with my overall divisional plan and part of my vision

12 for the Mallow district, for I planned on having one

13 sergeant in each unit district headquarters and only

14 two sergeants in Canturk and Charleville.

15

16:07

16 I further told him that if he did not wish to come to

17 Fermoy Garda Station, I could facilitate him in Mallow

18 Garda station, where at present there are two unit

19 sergeant vacancies which I hope to fill in the near

20 future and informed him this would be a matter 16:07

21 completely up to himself.

22

23 I have since been informed by human resource management

24 at Garda headquarters that the bullying and harassment

25 part of Sergeant Barry's complaint has been fully 16:07

26 completed.

27

28 The present working situation of Sergeant Barry cannot

29 continue and in order to run the Cork north division in

1 a cohesive manner. I intend to advise commissioner of  
2 Human Resource Management that I wish to have Sergeant  
3 Barry transferred to Fermoy Garda Station immediately."  
4

5 He follows that on the same day with a letter to HRM, 16:08  
6 if we just look at page 434.

7 719 Q. CHAIRMAN: Before we leave that. Do you recall, was  
8 there a discussion about Mallow?

9 A. At that meeting, yes, I said to him, transfer me to  
10 Mallow, but, I said, I'm not going to apply for it. 16:08

11 720 Q. CHAIRMAN: When he said, I forget the exact words, it's  
12 a matter entirely for yourself, he was happy to do it.

13 A. He wanted me to apply.

14 721 Q. CHAIRMAN: He wanted to you apply for Mallow?

15 A. Yes, but I wouldn't. 16:08

16 722 Q. CHAIRMAN: And you said, I will go to Mallow if I am  
17 sent to Mallow, is that right?

18 A. That's correct.

19 723 Q. CHAIRMAN: You have to send me?

20 A. I have already said it to him numerous times. 16:08

21 724 Q. CHAIRMAN: I understand that?

22 A. I won't apply for it.

23 725 Q. CHAIRMAN: But that's the meaning, that's what I am to  
24 understand about this, when it's entirely up to  
25 yourself, is, if you want to do it well and good, okay? 16:09

26 A. Yes, that's exactly it.

27 726 Q. CHAIRMAN: Thank you. But the transfer to Fermoy that  
28 was in question, there was no question of you applying  
29 for a transfer to Fermoy?

1 A. No.

2 727 Q. CHAIRMAN: That was going to be -- that was going to be  
3 done?

4 A. Forced.

5 728 Q. CHAIRMAN: That was going to be force majeure, if you 16:09  
6 like. Okay.

7 729 Q. MR. McGUINESS: He says that he met you then again on  
8 the 30th January to explain the reasons for the  
9 transfer, is that correct?

10 A. That could be correct, yes. 16:09

11 730 Q. Have you any recollection of that.

12 A. A vague recollection.

13 731 Q. He says in his statement at page 344, we don't have to  
14 look at it, I will just read it out:  
15  
16 "On Thursday, 30th January, at 4pm, I spoke again to 16:10  
17 Sergeant Barry and clarified some issues regarding our  
18 meeting on the 19th January 2014. I have informed him  
19 as per Code regulation 8.1.3 I was obliged to give him  
20 reasons for the purported transfer." 16:10  
21  
22 Do you recall him giving you reasons?

23 A. Yes, because following this meeting I e-mailed HRM and  
24 asked them was it they were looking for me to apply for  
25 a transfer or was it Chief Superintendent Dillane. 16:10

26 732 Q. Yes. You don't appear to have had any communication  
27 with Superintendent Comyns for some time, but did you  
28 receive the text from him to attend PAF meetings in  
29 February 2014?

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A. No.

CHAIRMAN: Are you going on to something else?

MR. MCGUINNESS: Yes, Chairman.

CHAIRMAN: So we're finished with Chief Superintendent Dillane exchanges about going to Fermoy, is that right? 16:11

MR. MCGUINNESS: Yes, Chairman.

CHAIRMAN: Thank you. Okay. Well then we will it there until the morning.

MR. MCGUINNESS: Very good.

CHAIRMAN: Thanks very much. 16:11

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