

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 FRIDAY, 20TH MAY 2022 - DAY 177

177

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

GWEN MALONE STENOGRAPHY
SERVICES

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FORMER PRESIDENT OF THE COURT OF
APPEAL

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I N D E X

W I T N E S S

P A G E

MR. PAUL BARRY

DIRECTLY-EXAMINED BY..... 5

MR. MCGUINNESS

1 THE HEARING RESUMED, AS FOLLOWS, ON FRIDAY, 20TH MAY
2 2022:

3
4 CHAIRMAN: Good morning, everybody. Good morning,
5 Mr. Barry. 11:00

6 THE WITNESS: Good morning.

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

10
11 Q. MR. MCGUINNESS: Morning Mr. McGuinness? 11:00

12 A. Morning Mr. McGuinness.

13 1 Q. We had just, before we concluded yesterday, looked at
14 Chief Superintendent Dillane's decision to transfer you
15 to Fermoy? 11:00

16 A. That's correct.

17 2 Q. Could I just ask you to give what was your reaction to
18 that at the time yourself?

19 A. I was shocked because of the certificate that was in
20 place and that he would be putting me back in a 11:00
21 situation that I could not work in.

22 3 Q. I mean, I don't want to oversimplify your position, but
23 you had made a complaint against a senior officer?

24 A. That's correct.

25 4 Q. He was stationed in Fermoy and he was your superior 11:00
26 officer?

27 A. That's correct.

28 5 Q. You certainly believed that it wasn't a frivolous
29 complaint, you believed it to be a very serious

1 complaint?

2 A. Absolutely.

3 6 Q. I take it you, in fact, saw it as part of your duty to
4 make the complaint?

5 A. Yes, it was my duty. 11:01

6 7 Q. And as far as you were concerned then in terms of your
7 personal health, you had this reaction to the
8 circumstances and you had been to the different doctors
9 we've heard about, and you regarded it as injurious to
10 your health to have come in contact with him? 11:01

11 A. Yes.

12 8 Q. It wasn't simply a matter that you didn't want to have
13 contact with him, it was a matter of protecting your
14 own health?

15 A. That's correct. 11:01

16 9 Q. Then it's less of a management issue but more of a
17 health and safety issue, and that is way you understood
18 your doctors were regarding it?

19 A. Yes.

20 10 Q. Now, at this time then in 2014, Superintendent Comyns I 11:01
21 think says he sent text messages, presumably not just
22 to you but perhaps part of a group text, instructing
23 people to come to PAF meetings, do you recall getting
24 any such text?

25 A. No, I didn't get the text. 11:02

26 11 Q. And there's apparently one scheduled for the 10th
27 February 2014 that you didn't attend. Have you any
28 recollection of that or was it just now your practice
29 not to attend?

1 A. It was my practice not to attend. I did not want to
2 attend at Fermoy Garda Station.

3 12 Q. I think on the 20th you received a communication from
4 Superintendent Comyns asking you to explain your
5 absence, do you recall getting that? 11:02

6 A. I do.

7 13 Q. And just to look at that, I think that's at 777 in our
8 documents. It's addressed to you through the sergeant
9 in charge. It says non-attendance, et cetera, et
10 cetera. 11:03

11
12 "I refer to above. Sergeant Barry was notified by text
13 on Sunday 9th February 2014 at 8.41pm that he must
14 attend the district performance accountability
15 framework meeting on Monday 10th February 2014, at 2pm. 11:03

16
17 Sergeant Barry did not attend the meeting. I require
18 an explanation from Sergeant Barry for his
19 non-attendance." 11:03

20
21 Can I ask you to comment: Did you take it yourself
22 that he knew well why you didn't attend, hadn't
23 attended?

24 A. Of course, he did, I had submitted a certificate.

25 14 Q. All right. Did any of the senior officers speak
26 directly to you about the certificate in the sense of
27 saying, look, we have this but we're not either going
28 to pay attention to it or follow it? 11:03

29 A. Well, Inspector O'Sullivan dismissed it shortly after

1 it was submitted and Chief Superintendent Dillane said
2 that it was not acceptable either.

3 15 Q. I think you did reply to this and if we look at 778,
4 just scroll down to the next page. And you say:

5
6 "I refer to the above. Sergeant Barry has made
7 disciplinary/criminal allegations against
8 Superintendent Comyns. Investigations are ongoing." 11:04

9
10 You say what it relates to. And you say: 11:04

11
12 "Accordingly, I don't wish to have any contact either
13 by text or phone call from Superintendent Comyns to my
14 private phone. As regards Superintendent Comyns'
15 allegation that he notified me by text on Sunday 9th, I 11:05
16 wish to say I was not notified and whether I was or not
17 I will abide my doctor's certificate which was on file
18 at Fermoy Garda Station."

19
20 So you are making your position completely clear? 11:05

21 A. Yes, that was my position.

22 16 Q. And I think in the interim, I think your name had
23 appeared on the personnel bulletin 03/2014, which
24 you've included in the papers, and that showed the
25 intended transfer to Fermoy, isn't that correct? 11:05

26 A. That's correct.

27 17 Q. I think you appealed against that on the 5th March and
28 if we look at page 4148. It's sent up through the
29 sergeant in charge obviously and you're making the

1 point that the transfer doesn't conform with the Code
2 8.3 and that you're appealing the decision to transfer
3 and you're in the process of preparing an appeal for
4 the consideration of the assistant commissioner. You
5 request that HRM records be updated accordingly. Did 11:06
6 you know that Superintendent Comyns apparently sought
7 an exemption from the code the following day?

8 A. I believe it was Chief Superintendent Dillane.

9 18 Q. Is that right?

10 A. I think, from my memory it was. 11:06

11 19 Q. Okay. Perhaps we will look at 4151. And just to look
12 at the signature there, it is Superintendent Comyns?

13 A. Oh sorry, I thought it was Chief Superintendent
14 Dillane.

15 20 Q. Yes. And that was parentally granted by the assistant 11:07
16 commissioner, 4153, if we just go down two pages there.
17 That was dated the 6th March then. Were you informed
18 of that at the time?

19 A. I would have been, I believe.

20 21 Q. Pardon? 11:07

21 A. I'm sure I was, yes.

22 22 Q. Yes. All right. Just going back a little bit earlier
23 to the previous month in February, I think you had
24 another meeting with Chief Superintendent Kehoe and
25 Inspector O'Driscoll, where you furnished them with a 11:08
26 further statement of 20th February 2014. That's in our
27 papers at page 1268. We don't need to go there, but
28 you recall that?

29 A. I accept that. I don't dispute it.

1 23 Q. Yes. Now, if we go to page 780, it appears that
2 Superintendent Comyns furnished a report to Chief
3 Superintendent Dillane, at page 780, about the alleged
4 non-attendance at the PAF meeting. He says there in
5 the third paragraph down that he had phoned your mobile 11:09
6 at 2.03 and that it rang out and left a message. And
7 also then contacted Garda wall to get him to speak to
8 you, to ask you to contact him. Do you recall either
9 getting a mobile message and/or a message from Garda
10 wall in that context? 11:09

11 A. I did not receive the call or message to the best of my
12 memory, but I do recall Garda wall informing me.

13 24 Q. Yes. Anyway he's sending this up to Chief
14 Superintendent Dillane and Chief Superintendent Dillane
15 apparently spoke to Assistant Commissioner Fanning in 11:09
16 the matter, if we look at page 344, where he describes
17 this. If we go down the page, towards the bottom of
18 the page, and onto the following pages. Next page.
19 And just at the top of the page he seems to be
20 expressing his frustration and he recites in the fifth 11:10
21 line down then, Assistant Commissioner Fanning telling
22 him that he should consider disciplining Sergeant
23 Barry. Now, I think on that point, no discipline was
24 initiated against you in respect of your non-attendance
25 at any stage, isn't that correct? 11:11

26 A. That's correct.

27 25 Q. That remained the position. So effectively, would you
28 agree, that management were, they might not have been
29 happy about it but they certainly tolerated it in the

1 sense that they were doing nothing adverse to you about
2 it, perhaps otherwise than you might think the transfer
3 issue?

4 A. well, I believe requesting that I attend at the
5 performance accountability meetings was adverse to my 11:11
6 mental health at the time because I was being asked to
7 attend at meetings in Fermoy when my doctor stated that
8 such meetings would be injurious to my health.

9 26 Q. So, persisting in that line of requiring you to do that
10 had an adverse effect on you? 11:11

11 A. Of course it did, yes.

12 27 Q. All right.

13 A. It placed me under more stress.

14 28 Q. I think at this point in time obviously you were
15 concerned at the pace of the investigation being 11:12
16 conducted by Chief Superintendent Kehoe and you wrote
17 to her on 20th March 2014, isn't that correct?

18 A. That's correct.

19 29 Q. If we look at page 1207. This relates back to the date
20 in the first instance when you had made the statement 11:12
21 that I've referred to earlier in February and in the
22 second paragraph here you say:
23

24 "At our meeting on 20th February 2014 you stated it was
25 never your intention to conduct an investigation into 11:12
26 bullying complaint number 9 until you had dealt with
27 bullying complaints number 1-8 which was subject to the
28 policy on harassment, sexual harassment and bullying.
29 I expressed my surprise that you had investigated the

1 sexual complaint at the same time as the bullying
2 complaint due to the serious nature of the sexual
3 complaint. Chief Superintendent Kehoe made it clear
4 once again that you never intended to deal with the
5 sexual complaint until the bullying complaint and its 11:13
6 appeal were finalised and you apologised for not making
7 this clear to me from the outset.

8
9 Your comments at our meeting on 20th February 2014 are
10 in total contradiction to your letter dated 12th March 11:13
11 2013, which is addressed to me. In this letter you
12 stated, as you will appreciate this is a complex
13 investigation that requires parallel investigation
14 under both Garda policy --"

15
16 which is referred to then. You went on to further
17 state in this letter, as you were aware:

18
19 " -- that the matters subject to discipline regulations
20 are not governed by the same timeframe. However, it is 11:13
21 my intention to ensure this aspect will be
22 expeditiously investigated. Your investigation to date
23 under the Garda Síochána discipline regulations has not
24 been parallel or expeditious and is contrary to what
25 you promised me on 12th March 2013. Exactly one year 11:13
26 later now and I would appreciate an explanation as to
27 why you did not conduct this investigation in the
28 manner in which you alluded to in your letter to me
29 dated 12th March 2013. "

1
2 Then there's reference to another issue about a
3 statement. But you conclude it by asking her to supply
4 you with a progress report on the current status of the
5 investigation. I think she replied to you, if we go to 11:14
6 page 1210. This is a letter dated the 9th April in
7 reply to you. And she referred as follows:

8
9 "On 21st November 2012 you made a statement of
10 complaint to Superintendent Lordan." 11:14

11
12 And she recites the different allegations there.
13 Number 2, she was appointed. Number 3, she was also
14 appointed to do the discipline, or to enquire into the
15 sexual abuse reported by Superintendent Comyns. And 11:15
16 then on paragraph 4 she says:

17
18 "On the 21st February I wrote to you and outlined that
19 I received the appointment as already stated. I also
20 advised I had appointed Superintendent Lordan in 11:15
21 continuance of the investigation, he having already
22 taken a statement from you in the matter, and that I
23 had appointed Detective Inspector William Leahy and
24 Detective Garda Mary Gilmartin. On the 12th March 2013
25 I again wrote to you seeking an extension of time in 11:15
26 the matter subject to human resource policy. I further
27 stated, as you correctly point out in your later
28 correspondence, this was a complex investigation that
29 required parallel investigation under both the policy

1 and the discipline regulations. This was accurate and
2 the factual position at the time and for the record, a
3 number of statements that support the
4 criminal/discipline investigations were taken in the
5 months of March and April 2013, following on from this 11:15
6 correspondence. "
7

8 Now, just pausing there. Did you know at that point in
9 time that some statements had been taken for that
10 purpose? 11:16

11 A. No, I was not informed.

12 30 Q. All right. "6. On 30th May 2013 I submitted the
13 complex investigation file under the human resource
14 policy to assistant commissioner Southeastern Region.

15 11:16
16 7. Detective inspector Leahy continued to assist me in
17 the criminal investigation and on 9th August 2013 gave
18 me an update of the investigation.

19
20 8. On the 9th October 2013 I sought clarity from the 11:16
21 assistant commissioner Southeastern Region in relation
22 to the appointment under the Garda Síochána discipline
23 regulations, with specific reference to Regulation
24 14.5, which specifies that the deciding officer should
25 not have prior involvement in any capacity in relation 11:16
26 to an earlier aspect of the case.

27
28 9. On receipt of advice that this matters could proceed,
29 I contacted you on 30th January 2014 and I, accompanied

1 by Inspector O'Driscoll, met with you on 20th February
2 2014. "

3
4 Had you been previously aware that she was concerned
5 about not having anything irregular about her 11:17
6 appointment in the matter?

7 A. Yes, I understand she mentioned something about being
8 appointed under Regulation 14, that there was a delay,
9 that she was querying her appointment under that
10 regulation. 11:17

11 31 Q. And she had explained that in one of the previous
12 meetings, is that right?

13 A. I believe so, yes.

14 32 Q. Okay. Paragraph 10: "As explained to you when we met
15 on 20th February 2014, I concluded the bullying and 11:17
16 harassment investigation given the time constraints
17 governing such investigation and the necessity to
18 obtain consent from both parties to any extensions.

19
20 It would be incorrect to interpret that the parallel 11:17
21 investigation has been inactive. However, it would not
22 have been possible for me to interview Superintendent
23 Comyns on both the human resource policy issue and also
24 on the disciplinary issues as a distinct difference
25 applies in the approach governing both investigations. 11:18
26 The investigation under Garda (discipline) regulations
27 2007 (Garda Síochána) incorporate any criminal matters
28 which will take precedence in our investigation in the
29 completion and submission of a file to the Director of

1 Public Prosecutions. "

2
3 Then she continues. I think that is probably the
4 conclusion of the letter but just to go over the page.

5
6 "Finally, I can confirm that the connection has been
7 spoken to."

8
9 And then she says:

10
11 "I am reluctant to give any further detail at this time
12 as this may hinder the investigation, which I have no
13 doubt you will fully appreciate."

14
15 Did the reply issued by the chief superintendent give
16 you any comfort that matters had progressed on the
17 criminal discipline front?

18 A. Yes, it did, because I was unaware of what the
19 progression was and that's why I wrote to her, to find
20 out what was happening.

21 33 Q. Okay. I think Assistant Commissioner Fanning got in
22 touch with you on the 21st March to thank you in
23 relation to updating your relatives issue, is that
24 right? If we look at page 4156. He also told you of
25 the intent to consult with the CMO in relation to the
26 medical certificate that you state you have. He also
27 then I think wrote further to you on the 31st March, if
28 we look at page 4159. And I think there's nothing
29 further than that, other than saying he was considering

1 your transfer appeal, isn't that right?

2 A. That's correct.

3 34 Q. It would appear that the CMO clarified matters for him
4 on the 1st April and addressed a number of issues.
5 Could we look at page 4160, the next page down? The 11:20
6 CMO says:
7
8 "As per mine of the 9/4/2013 --"
9
10 And that's a note we have seen before 11:20
11
12 " -- following the last review of the service on
13 11/3/2013, there are no compelling clinical
14 consideration to bar the member undertaking normal
15 policing duties in a safe and supportive working 11:20
16 environment.
17
18 2. The temporary accommodations advised in point 3 of
19 mine on 09/04/2013 were specifically in the context of
20 the subsisting local workplace situation at the time. 11:21
21
22 3. On the basis that appropriate risk assessment has
23 determined that the new or proposed station is a safe
24 and supportive workplace environment, there are no
25 clinical considerations to debar the member working 11:21
26 there based on the information available to me."
27
28 So were you aware of that? Were you made aware of that
29 at the time?

1 A. I believe I would have been made aware of it, yes, it
2 was addressed to me.

3 35 Q. Yes. Sorry, if we just scroll up to the top, just to
4 see that. Is that addressed to you, this copy of it?
5 No, that is addressed to Assistant Commissioner 11:21
6 Fanning?

7 A. I believe I received it after that.

8 36 Q. Yes.

9 A. Yes.

10 37 Q. It appears that Chief Superintendent Dillane met the 11:21
11 Chief Medical Officer a couple of days after this, on
12 the 3rd April, and Superintendent Comyns records him as
13 having told him that the medical opinion was that it
14 would be injurious for you to work with him in Fermoy.
15 If we look at an e-mail that he then sent afterwards. 11:22
16 This is to Chief Superintendent Dillane on the 4th
17 April, at 4163. And if we just scroll down there. It
18 goes to Assistant Commissioner Fanning in HRM, through
19 the assistant commissioner southeast region. But this
20 is what Chief Superintendent Dillane reported: 11:23
21

22 "I wish to inform you that on the 3rd April I attend
23 add meeting at Garda Commissioner with Dr. Donal
24 Collins and Dr. Oghuvbu in relation to Sergeant Paul
25 Barry. On 29th January 2014 I submitted an application 11:23
26 to commissioner HRM to transfer Sergeant Barry to
27 Fermoy Garda Station with immediate effect in
28 accordance with Garda Code 8.13.
29

1 During the meeting, Dr. Oghuvbu brought a matter to my
2 notice which in my view throws a different light on my
3 application to transfer the member to Fermoy, it may be
4 prudent to discuss this matter further with HRM."

11:23

5
6 were you informed that they would be holding then a
7 case conference?

8 A. I believe I was, yes.

9 38 Q. We have a note of it at page 447, perhaps if we just
10 look at that. It was apparently held on the 17th
11 April. In the left-hand column it says:

11:23

12
13 "Bullying and harassment claims against superintendent
14 investigated not upheld. Member submitted GP
15 certificate saying that he cannot can superintendent.
16 Member to be transferred. Appeal against transfer
17 currently being reviewed. Member declined transfer
18 offers. Superintendent reports member is undermining
19 him. Member will not engage with superintendent at
20 all. Will not attend meetings, report to him.
21 Organisational risk. Member is having detrimental
22 effect on station and colleagues."

11:24

11:24

23
24 would you care to comment on that last portion of what
25 has been recorded there?

11:24

26 A. Sorry, what was the date of that meeting?

27 39 Q. This is 17th April 2014?

28 A. On the 4th April -- or sorry, on the 3rd April

29 Superintendent Comyns delegated Inspector O'Sullivan to

1 deal with me on all matters until the investigations
2 were complete.

3 40 Q. Yes. And was that adhered to for the remainder of your
4 service?

5 A. I was never approached by Inspector O'Sullivan to say 11:25
6 that he was in charge of all my dealings. That was
7 never relayed to me, that information.

8 41 Q. Yes. But did Superintendent Comyns attempt to or have
9 any further dealings or contact with you after that?

10 A. He did, yes. At a golf event in Fota. 11:25

11 42 Q. Okay, we will come to that in a few minutes, that took
12 place in June, as we know. But it specifies:
13 "Management actions" then, just to go back to the stop
14 of that. It says:
15
16 "Chief superintendent to meet with member to discuss
17 again transfers, options Middleton, Mallow, Glanmire.
18 Discuss hazard and risk management issues. Three
19 issues. 1. No bullying claim, harassment claims
20 upheld. 2. Superintendent willing to work with the 11:25
21 member."
22

23 Presumably that made no difference to you?

24 A. Pardon?

25 43 Q. Presumably that made no difference to your position, 11:26
26 that he was willing to work with you?

27 A. No.

28 44 Q. Okay. "3. Member reporting difficulty working with
29 superintendent through doctor."

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And then it says "Options: 1. Superintendent cannot be moved, no basis to transfer, no complaints against upheld. 2. Can offer mediation to resolve member's perceived difficulty with superintendent. LRC will provide service for free, both members must agree. 3. Move member away from superintendent. Health and safety issue three points above. Member can say yes or no. If member decides to remain in current role, must comply with organisational procedures and deal with superintendent as any sergeant is obliged to deal with their superintendent."

11:26

11:26

Again, that seems to be back sliding away from the certificate that had been produced?

11:26

A. Pardon?

45 Q. That seems to be not having regard to the certificate, that last sort of comment, would you agree with that?

A. Yes. And the recommendation at the very top of the column there, in relation to offering me Glanmire or Middleton, Mallow, Glanmire.

11:27

46 Q. Yes.

A. Yeah, there was no communication from Chief Superintendent Dillane to me in relation to that case conference.

11:27

47 Q. Okay. Just to note the CMO's advice on the right-hand side is that you're fit for work, obviously subject to what he has previously advised?

A. That's correct.

1 48 Q. Now, you did meet with Chief Superintendent Dillane
2 then a couple of days after this, isn't that right, on
3 the 21st April?
4 A. If there's a record of it. I'm not sure that I did.
5 49 Q. Yes. 11:27
6 A. I thought he was directed not to meet with me.
7 50 Q. Chief Superintendent Dillane?
8 A. Yes.
9 51 Q. He describes it in a statement to the Tribunal at pages
10 346 and 347 of the Tribunal papers. Just to go to that 11:28
11 for the moment. I am not sure if you see sort of -- if
12 we scroll down the page, two or three lines down from
13 where the page ended there. You see the last three
14 lines on the screen there?
15 A. Yes. 11:29
16 52 Q. "On Monday, 21st April -"
17
18 I may have said the 24th April, I stand corrected.
19
20 " - I met with Sergeant Paul Barry at Fermoy Garda 11:29
21 Station, he was accompanied by Inspector Eddie Golden."
22
23 A. That's correct, that was in relation to Pulse.
24 53 Q. Yes. And he was accompanied by Inspector Tony
25 O'Sullivan? 11:29
26 A. That's correct.
27 54 Q. And he says here at the top of the next page:
28
29 "I explained to Sergeant Barry I had raised concerns

1 with assistant commissioner and CMO in relation to his
2 work practices. I asked him was the problem he had
3 working with Superintendent Comyns, working at Fermoy
4 Garda Station or both. I told him that the CMO had
5 informed me that he, Sergeant Barry, perceived he had a 11:29
6 problem working Superintendent Comyns. I told him I
7 felt there was not any problem working with
8 Superintendent Comyns or at Fermoy Garda Station but I
9 would respect his perception. I told him I could not
10 allow him to continue working in the fashion he was at 11:30
11 that time."

12

13 Do you recall any of this?

14 A. Yes, I believe that was said at the time. But I
15 couldn't believe that he was saying it. 11:30

16 55 Q. Yes.

17 A. Considering he'd already said that for me to work with
18 Superintendent Comyns could be injurious to my health,
19 that was the advice he got from the CMO and yet he's
20 dismissing it here on the 21st. 11:30

21 56 Q. Yes. Well, he says he told you that "if he wished to
22 continue working with Fermoy Garda Station, he must
23 comply with all processes and procedures which are in
24 place for the sergeants there, which included the
25 parading of the members of the unit in the mornings and 11:30
26 the evenings. I then offered Sergeant Barry the
27 facilities of the LRC to Sergeant Barry to try and
28 resolve his problems with Superintendent Comyns and I
29 explained the process to him."

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And he asked him to think about it.

"He then told me that he would not discuss any matters with me without having presence of Inspector Gallagher, the AGSI clear division present with him."

You then agreed to meet with him and Inspector Gallagher on the 24th at Mitchelstown Garda station. And he says:

"Before the meeting ended, I asked Sergeant Barry if he had any practical suggestions as to how he could solve this problem and that..."

If you had, he was willing to listen. Do you recall him saying that.

A. I don't recall him saying that, no.

57 Q. Okay. Is it something you dispute, as it were?

A. Chief Superintendent Dillane was well aware of my solutions, what I perceived as being solutions to the problem from day one.

58 Q. Yes.

A. And my position hadn't changed.

59 Q. Yes.

A. But I was willing to engage with the Labour Relations Commission to see if we could iron out problems.

60 Q. Yes. I mean that was a new feature, as it were, an independent third party being introduced?

1 A. That's correct.

2 61 Q. And it may seem logical that he might have asked you if
3 you had any possible solutions that, you know, bring
4 them to the table, as it were?

5 A. Well he would have been aware of my solutions prior to 11:32
6 this.

7 62 Q. In any event, part of the purpose of the meeting with
8 Inspector Golden was to address the Pulse issue, isn't
9 that right?

10 A. Yes. 11:32

11 63 Q. And this is the appearance of you on Pulse as having
12 been transferred to the other station?

13 A. That's correct.

14 64 Q. Following the publishing in the bulletin of the
15 transfer order? 11:32

16 A. That's correct. From my diary entries, I asked
17 Inspector Eddie Golden to contact Chief Superintendent
18 Dillane and he did on the 10th March. He spoke to
19 Chief Superintendent Dillane about my transfer on Pulse
20 and he saw that I was in Mitchelstown Garda station on 11:33
21 Pulse, he mentioned. Then on Friday, the 14th March, I
22 spoke with Inspector Eddie Golden and he said that
23 Chief Superintendent Dillane had told him that I am to
24 be transferred to Glanmire and that he's meeting with B
25 branch to arrange same. So, on one hand he's trying to 11:33
26 offer the Labour Relations Commission, on the other
27 hand then he's telling Inspector Golden he's going to
28 contact B branch to transfer me to Glanmire. That
29 again is his solution.

1 65 Q. Yes. But in terms of the appearance of the transfer on
2 Pulse, is it the case that Chief Superintendent Dillane
3 disclaimed any responsibility for having any function
4 in that regard?
5 A. Well, I wasn't party to his conversation with Inspector 11:33
6 Golden.
7 66 Q. Yes.
8 A. But I was changed -- I was allocated to Fermoy when
9 Inspector Golden spoke to Chief Superintendent Dillane,
10 and after he spoken to him I was reassigned to 11:34
11 Mitchelstown on Pulse and a week later I was back in
12 Fermoy.
13 67 Q. But have you any knowledge as to how or where or who
14 was in control of that process? Is it a HRM function?
15 A. It was a HRM function. I believe I contacted Nicola 11:34
16 McAulay in relation to it, and she said it was beyond
17 her control, that it would have been senior officers
18 within Garda headquarters who would decide.
19 68 Q. But was it your understanding that this is something
20 that is done automatically or that it's is something -- 11:34
21 A. No, I believed I was targeted, because when the
22 bulletins would issued there could be five sergeants on
23 the bulletin and I would be the only one transferred
24 immediately on Pulse.
25 69 Q. That's your belief in any event? 11:34
26 A. That was my view. And that's why I asked Inspector
27 Golden to approach Chief Superintendent Dillane in
28 relation to it.
29 70 Q. I think on the 23rd May you met with Inspector

1 O'Driscoll in connection with Chief Superintendent
2 Kehoe's investigation and provided another additional
3 statement, which is at page 1262 of our papers. There
4 was a statement in relation to your telephone taken as
5 well at the same time, do you recall that? 11:35

6 A. Yes.

7 71 Q. It's just being shown on the top of the page there. Do
8 you agree that you made those statements?

9 A. I agree, yes.

10 72 Q. I think on the 24th of April you indicated that you 11:35
11 would accept a mediation in the matter?

12 A. That's correct.

13 73 Q. Perhaps we would just look at 4170. 4170, yes. Had
14 you left a message with the chief superintendent's
15 office on foot of which he was then able to call or do 11:36
16 you recall meeting Chief Superintendent Dillane to
17 confirm it?

18 A. Yeah, I believe it was Inspector Gallagher notified
19 Chief Superintendent Dillane that I was willing to
20 engage. 11:36

21 74 Q. Inspector Gallagher did it?

22 A. I believe so, yes.

23 75 Q. All right. Now, at this time an issue seemed to arise
24 about Haddington Road duty, is that correct?

25 A. That's correct. 11:37

26 76 Q. And could you just explain in your own words what the
27 issue was?

28 A. Myself and Garda Ward incurred Haddington Road duty. I
29 had to travel to, I believe it was Limerick or

1 somewhere, I had to take a statement anyway in relation
2 to -- I accompanied Garda Ward to take a statement in
3 relation to some criminal investigation. And when I
4 returned to Mitchelstown then I was cataloguing
5 interview tapes with D Garda Fitzpatrick.

11:37

6 77 Q. Yes.

7 A. And this duty was sanctioned by Sergeant Dunne, as the
8 practice of me incurring Haddington Road duty prior to
9 this.

10 78 Q. Yes. I think you provided a number of exhibits at

11:37

11 appendix X of your statement. If we just go perhaps to
12 page 247. This is coming from Superintendent Comyns,
13 referring to the applications and he's looking for a
14 report clarifying who sanctioned this duty prior to the
15 date. Then he is asking both members to explain

11:38

16 exactly what they did for ten hours. He refers to a
17 statement then that had been taken. I think that was
18 endorsed down to you, if we could just look at the
19 bottom of that, "for a report please". And I think you
20 furnished a report, if we go to page 245. You're

11:38

21 reporting there that "The duty was sanctioned prior to
22 the date by Sergeant Barry Mitchelstown and upon your
23 return from there you assisted in cataloguing of
24 interview tapes by D Garda Fitzpatrick and again
25 Sergeant Aidan Dunne had sanctioned this duty prior to
26 me performing it. Forwarded for your information
27 please and Garda Ward to explain his duty upon return
28 from sick leave."

11:39

1 And just the form then submitted in connection with
2 this, page 249. It's seems to require the signature of
3 the sergeant who had approved of the extra duty prior
4 to it occurring. And it seems to then, the other
5 column seems to require the signature of the district 11:39
6 office to sanction it, isn't that correct?

7 A. That's correct.

8 79 Q. Was that not always the position in relation to
9 Haddington Road duty? It did have to be sanctioned by
10 the district officer? 11:40

11 A. The duty -- the extra duty involved was sanctioned by
12 the district officer after the duty was incurred
13 following sanction by Sergeant Dunne.

14 80 Q. Yes?

15 A. By the sergeant in charge. The sergeant in charge 11:40
16 approved the extra duty. He was the person who
17 approved it.

18 81 Q. Yes.

19 A. The date involved.

20 82 Q. And you have made an issue on it in your complaint to 11:40
21 the Tribunal, you are saying you were singled out in
22 some way?

23 A. That's right.

24 83 Q. Can you explain that to the Tribunal?

25 A. Because following that it should be attached to this 11:40
26 documentation, Superintendent Comyns wrote out saying
27 that in future --

28 84 Q. I'm sorry, you just dropped your voice?

29 A. Superintendent Comyns wrote out saying that in future

1 any Haddington Road duty that I was to apply for was to
2 be sanctioned in advance by either himself or Inspector
3 O'Sullivan.

4 85 Q. And what's the date of that?
5 A. I don't know. The document should be on file there. 11:41

6 86 Q. Perhaps we will look at 246 and 248. 246 first. This
7 is obviously Sergeant Dunne's report up firstly.
8
9 "I did sanction the Haddington Road hours incurred by
10 both Sergeant Barry and Garda Ward. 11:41
11
12 I was aware that Garda Ward was going to hospital for
13 an operation, which would mean he would not be at work
14 for up to two weeks. We had --"
15 11:41
16 I think " -- investigation file as stated --"
17
18 I can't read it there. It says at the bottom:
19
20 "Sergeant Barry, in his action, assisted with the 11:41
21 cataloguing of interview tapes for transport to
22 divisional property store."
23
24 Is that right?
25 A. That's correct. 11:42
26 87 Q. "I have now instructed Sergeant Barry as to the
27 procedure for working any extra duty in the Fermoy
28 sub-district."
29

1 Is that right?

2 A. That's correct.

3 88 Q. And what were you instructed?

4 A. To apply to either Superintendent Comyns or Inspector
5 O'Sullivan in advance of applying to incur Haddington 11:42
6 Road duty.

7 89 Q. Yes. We have a statement from Sergeant Dunne and you
8 have probably seen that, he said that matters changed
9 under Superintendent Comyns and all sergeants had to
10 apply for prior sanction, is that not correct? 11:42

11 A. Not to my recollection. Sergeant Dunne had sanctioned
12 all my Haddington Road duty prior to this date.

13 90 Q. Yes. Well he is saying that the position had changed
14 under Superintendent Comyns?

15 A. It changed for me. 11:43

16 91 Q. Did it not change for all?

17 A. Not that I'm aware of, I believe Sergeant Quinn still
18 had his Haddington Road duty sanctioned by Sergeant
19 Dunne.

20 92 Q. We will hear further evidence on it in any event? 11:43

21 A. Yes.

22 93 Q. Okay. Perhaps we will look at 248, in case we haven't
23 covered something. Sorry 246. Did we look at 246?
24 Sergeant Dunne's report. I think we have looked at all
25 the documents there. Going back then to Chief 11:43
26 Superintendent Dillane, he e-mailed the CMO on the 6th
27 May. If we look at page 452. Obviously this is
28 subsequent to his earlier meeting with you. And he
29 says:

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"Dear Dr. Donal Collings, further to our meeting in relation to Sergeant Paul Barry in Mitchelstown with Dr. Oghuvbu on the 3rd April. I wish to confirm I attended a case conference at HRM on Thursday, 17th April 2014, at which it was agreed I should offer the mediation process to Sergeant Barry and Superintendent Comyns in an effort to try and resolve the matter. I have since met both parties and after seeking advice Superintendent Comyns has declined to engage in the mediation process.

11:44
11:44

During the case conference, Dr. Oghuvbu stressed that having discussed Sergeant Barry's problems with his doctor, he has concluded that this matter is a health and safety issue for the organisation as Sergeant Barry perceives that having contact with Superintendent Comyns will affect his health and wellbeing."

11:44

And presumably that does represent your position at the time, isn't that correct?

11:45

A. Yes. And also, when my doctor issued her certificate, Dr. Oghuvbu was in touch with her the day after Inspector O'Sullivan having visited her. And Dr. Oghuvbu had no problem with the contents of my doctor's certificate, according to my doctor.

11:45

94 Q. I think your doctor has noted that in the consultation notes that we have seen at page 4773?

A. That's correct. So I am surprised by Dr. Oghuvbu

1 hadn't relayed this prior to this.

2 95 Q. He goes on to say:

3

4 "At present I am in a situation where Sergeant Barry is
5 not performing his duties as set out by his district 11:45

6 officer Superintendent Comyns. When challenged on it

7 he quotes his doctor's certificate, which states he

8 should have no contact with Superintendent Comyns or

9 Fermoy Garda Station. This scenario is totally

10 unacceptable to me as the divisional officer. All 11:46

11 members stationed in the Fermoy district are subject to

12 the instructions of the district officer and all

13 members stationed in the Cork north division have had

14 at some time to interact with the divisional

15 headquarters, which is Fermoy garda station. By 11:46

16 allowing Sergeant Barry to continue serving in the Cork

17 north division, it may appear that I am compounding the

18 perceived health and safety issues. I now wish to have

19 your medical advice on this burning issue."

20

11:46

21 I am not sure if there's a nuance there, that he's in a

22 sense not reflecting the position of Superintendent

23 Comyns but his own position as a divisional officer,

24 which might impact on your attendance at Fermoy if the

25 certificate were adhered to. Do you see any difference 11:46

26 there?

27 A. No. I just don't understand why he is saying this when

28 it was arranged back on the 3rd April that Inspector

29 O'Sullivan would have charge of all matters relating to

1 me.

2 96 Q. He seems to be focusing, certainly at the end there, on
3 whether you should continue to serve in the divisional
4 area, but I mean wasn't that the focus of all
5 discussion about transfers to other places? 11:47

6 A. Well, Mallow is within Cork north division.

7 97 Q. Is it, I'm sorry?

8 A. But he never entertained that option.

9 98 Q. Okay. Well, I think in any event, you wrote to HRM
10 about the transfer issue yourself on the 12th May. 11:47
11 Perhaps we will look at 4173. If we scroll down the
12 page. You say:
13
14 "With reference to your above and your letter 31st
15 March 2014, I wish to report I have furnished all 11:47
16 medical certificates to the Chief Medical Officer and
17 there are no certificates outstanding.
18
19 In relation to An Garda Síochána's bullying and
20 harassment policy, I was considered same when my 11:48
21 transfer was being dealt with, as I believe the
22 transfer should it go ahead is in breach of the above
23 policy."
24
25 That is obviously the transfer to Fermoy that was under 11:48
26 contemplation. So you're, as it were, signalling that
27 if it were to go ahead it would become a bullying issue
28 for the organisation?
29 A. That's correct.

1 99 Q. "On Monday, 21st April 2014, I was contacted by
2 Inspector O'Sullivan Fermoy at approximately 1pm. I
3 was informed that I was to attend at Fermoy Garda
4 Station at 2.15 to meet with Chief Superintendent
5 Dillane. I attend at Fermoy Garda Station with 11:48
6 Inspector Golden, Mallow Garda station. I was informed
7 by Chief Superintendent Dillane that both he and
8 Inspector O'Sullivan had met with assistant
9 commissioner HRM on Thursday, 10th April 2014. Chief
10 Superintendent Dillane stated he was asked by assistant 11:48
11 commissioner HRM to offer mediation by the Labour
12 relations Commission between myself and Superintendent
13 Comyns. Chief Superintendent Dillane also stated he
14 had not discussed the matter with Superintendent
15 Comyns. I agreed to discuss the matter with Chief 11:49
16 Superintendent Dillane on Thursday, 24th April at
17 Mitchelstown Garda station with my AGSI rep Inspector
18 Gallagher. Chief Superintendent Dillane and I met in
19 the presence of Inspector Gallagher and Inspector
20 O'Sullivan at 4pm at Mitchelstown Garda station. At 11:49
21 this meeting I agreed to the mediation which was
22 offered by the Labour Relations Commission. Chief
23 Superintendent Dillane stated he would have to contact
24 Superintendent Comyns to see if he would agree to same
25 and that he would let Inspector Gallagher know the 11:49
26 outcome. "

27
28 So you did in fact meet in person to confirm your
29 agreement, it would seem, from your own letter?

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"On Friday, the 25th April, I received a call from Inspector Gallagher, who informed me that he had been informed by Chief Superintendent Dillane that Superintendent Comyns was to seek legal advice before he would agree or not to enter mediation. Thursday. 29th April, Inspector Gallagher again contacted me to tell me that Chief Superintendent Dillane had informed him that Superintendent Comyns will not engage with the Labour relations Commission.

11:49
11:50

I am awaiting the outcome of this mediation attempt before I replied to your letter dated 31st March 2014. I apologise for the delay in responding to same."

11:50

So, I suppose Assistant Commissioner Fanning, who had suggested this, it was appropriate for you to tell him you were willing to do it and you were waiting for an outcome as to whether it could be achieved before replying to him?

11:50

A. That's correct.

100 Q. It would appear Chief Superintendent Dillane wrote to Assistant Commissioner Fanning then on the 16th May. If we look at page 453. And he says:

11:51

"Further to our meeting in your office on the 17th April in relation to Sergeant Barry, I wish to respectfully make the following submission. As you are already aware, the mediation process which I have tried

1 to invoke is not acceptable to one of the parties and
2 cannot proceed.

3
4 At present Sergeant Barry continues to work out of
5 Mitchelstown. He is under the control of 11:51
6 Superintendent Michael Comyns and to carry out his
7 duties will have interaction with Fermoy Garda Station.

8
9 During our recent meeting Dr. Oghuvbu stressed that
10 having discussed Sergeant Barry's problem with his 11:51
11 doctor, he has concluded that Sergeant Barry perceives
12 that having contact with Superintendent Comyns of
13 Fermoy Garda Station will affect his health and
14 wellbeing and that this matter is a health and safety
15 issue for the organisation. 11:51

16
17 He has a doctor's certificate to back this up.

18
19 I was not aware of this when I made application to
20 transfer Sergeant Barry to Fermoy Garda Station." 11:51
21

22 would you like to comment on that?

23 A. He's not aware of...?

24 101 Q. He's stating that he wasn't aware of that?

25 A. That it's a health and safety issue? 11:52

26 102 Q. That you had a doctor's certificate or the health and
27 safety --

28 A. But he had a doctor's certificate.

29 103 Q. Is it ambiguous?

1 A. It's ridiculous. He had a doctor's certificate from
2 April 2013, and a year later he's saying he didn't
3 realise that there was a doctor's certificate. I don't
4 know what he's saying.

5 104 Q. Perhaps he is saying that he wasn't directly aware that 11:52
6 it was a health and safety issue?

7 A. Well, I don't suppose my doctor would put what she did
8 on the cert unless it was a health and safety issue.
9 It is issued by a doctor in relation to my health and
10 safety. 11:52

11 105 Q. Yes. He goes on to say:

12

13 "Sergeant Barry has invoked the appeal process with
14 regard to the transfer to Fermoy Garda Station, which
15 is under consideration at your office at present. 11:52

16

17 I believe that in the light of the health and safety
18 highlighted by Dr. Oghuvbu and Sergeant Barry's doctor
19 I should withdraw my application to transfer Sergeant
20 Barry to Fermoy Garda Station. 11:53

21

22 Furthermore, I would suggest that Sergeant Barry be
23 transferred immediately to Glanmire Garda station,
24 where he will not have to come into contact with
25 Superintendent Comyns or Fermoy Garda Station. 11:53

26 Glanmire Garda station is much closer to Sergeant
27 Barry's home and is now in the Cork City division.
28 Sergeant Barry would be... the terms of 8.3. I have
29 discussed the matter with Chief Superintendent Michael

1 Finn and with your approval he would be willing to
2 accept Sergeant Barry."

3
4 Can I ask you, were you informed at the time, either
5 there or thereabouts, that Chief Superintendent Dillane 11:53
6 was going to abandon the Fermoy transfer?

7 A. Yes, as I stated earlier, I was told by Inspector
8 Golden in April that it was the intention of Chief
9 Superintendent Dillane to transfer me to Glanmire. He
10 had relayed that information to Inspector Golden. 11:54

11 106 Q. Yes. But he doesn't -- from the documents it would
12 seem, perhaps on one interpretation, he seemed to have
13 been persisting with a transfer up to Fermoy until the
14 meeting with the doctors and at the case conference in
15 April? 11:54

16 A. He should never have applied for that transfer to
17 Fermoy from day one. He was of knowledge, he knew what
18 my cert stated and he had the advices of the CMO.

19 107 Q. Yes. But is it your understanding in fact that he was
20 intending to forego the transfer to Fermoy in lieu of 11:54
21 -- replacing it with Glanmire as far as back as March?

22 A. No, he abandoned the transfer to Fermoy because I had a
23 relation living in the watergrasshill sub-district.

24 108 Q. And that's what you were told by Superintendent Golden,
25 is it? 11:54

26 A. No, sorry, that was part of my appeal to HRM; that my
27 relation was living in the watergrasshill sub-district
28 and, therefore, I could not have an exemption to the
29 terms of Code 8.3.

1 109 Q. Okay. It would appear that this was followed by a more
2 formal letter on the 18th June, for some reason. If we
3 look at page 454. It sets out the position as he's
4 stated in the former e-mail we've looked at of the 16th
5 May, with the addition at the end then: 11:56
6
7 "I wish to advise you that Sergeant Barry is not
8 seeking a transfer out of Mitchelstown and is firmly of
9 the belief that Superintendent Michael Comyns should be
10 transferred." 11:56
11
12 Had you raised the latter issue at any stage in the
13 recent past?
14 A. Never.
15 110 Q. Pardon? 11:56
16 A. I never, from day one I have never raised the issue of
17 transferring to the superintendent.
18 111 Q. Okay.
19 A. But it was reiterated to HRM by Chief Superintendent
20 Dillane on numerous occasions, that that was what I 11:56
21 wished to have done.
22 112 Q. Yes. Was that his interpretation of your position,
23 that you were staying in Mitchelstown and, therefore,
24 Superintendent Comyns should go? Or did you ever say
25 anything from which he could have taken that you wanted 11:56
26 the superintendent to go?
27 A. The only thing I ever stated to him was the bullying
28 and harassment policy document, which stated that
29 neither the superintendent nor I should be transferred

1 unless we applied for same. Now how he interpreted
2 that to facilitate my transfer, I don't know, but he
3 did on numerous occasions tell HRM that I was looking
4 to have the superintendent transferred.

5 113 Q. Yes.

11:57

6 A. If I wished to have the superintendent transfer, which
7 I wouldn't, I would have written to HRM and expressed
8 my views there.

9 114 Q. Yes.

10 A. It was never my view or belief that the superintendent
11 could be transferred.

11:57

12 115 Q. Okay. HRM seems to have taken the view at this point
13 in time, the perhaps surprising view, I'm not sure
14 whether you were aware of it at the time, that the
15 application couldn't be withdrawn. Were you informed
16 of that at any stage?

11:57

17 A. No, I just only found that in discovery.

18 116 Q. Okay. Perhaps we would just look at the next page,
19 455. In the second paragraph it says:

20
21 "Sergeant Barry has appealed his transfer to Fermoy. I
22 am directed that the original application to transfer
23 him cannot now be withdrawn. Then I am to enquire if
24 it is your contention that Sergeant Barry's appeal
25 against the transfer should be allowed.

11:58

11:58

26
27 It is noted that in your correspondence dated 18th June
28 2014 you state that Sergeant Barry is not seeking a
29 transfer out of Mitchelstown. I am to enquire if the

1 option of transferring to Glanmire Garda station has
2 been offered or suggested to Sergeant Barry."

3
4 Obviously it had previously been discussed with you?

5 A. But not in this context. 11:58

6 117 Q. Yes, that is what I was going to ask you?

7 A. He didn't offer -- he said it to Inspector Golden that
8 he was going to transfer me to Glanmire but he never
9 asked me or put it to me on this occasion. He had
10 previously. 11:59

11 118 Q. Okay. Just I suppose to look at the next document
12 then, page 456. Chief Superintendent Dillane is
13 replying. He says:

14
15 "I refer to above and related correspondence from your 11:59
16 office on 16th July 2014, I note that you have been
17 directed that my original application to transfer
18 Sergeant Barry cannot be withdrawn. I wish to state
19 that my actions were based solely on the advice given
20 by the CMO and I still require a member of sergeant 11:59
21 rank to man a unit in Fermoy Garda Station and at
22 present Sergeant Barry is the most suitable person to
23 carry out that duty.

24
25 When this matter initially came to light I met with 11:59
26 Sergeant Barry on 13th October 2012, and later on 9th
27 April 2014, and on both occasions I offered to transfer
28 him to Glanmire Garda station. He informed me that he
29 would not be asking anywhere and if anyone was to be

1 transferred, it would be Superintendent Comyns."

2

3 A. There again.

4 119 Q. Pardon?

5 A. There again he states it. 12:00

6 120 Q. There again he's stating it, okay, and that's not
7 correct as far as you are concerned?

8 A. That's a lie.

9 121 Q. That's a lie, is it?

10 A. That's a lie. 12:00

11 122 Q. All right. I think slightly earlier this month you had
12 written again to Chief Superintendent Kehoe in
13 connection with her investigations, isn't that correct?
14 If we look at page 1214. I think the impetus perhaps
15 that arose out of this was an event where you had, in 12:00
16 the course of your duties, come across the family of a
17 party?

18 A. That's correct.

19 123 Q. We don't need to go into the detail of that, but you
20 say: 12:01

21

22 "With reference to the above and your correspondence
23 dated 9th April 2014, I wish to report that I have not
24 received any progress report on the current status of
25 this investigation. I would like to know how long more 12:01
26 this investigation will be delayed for."

27

28 You then outline this meeting and you conclude at the
29 end saying you:

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"... would appreciate an update into the current investigation and a possible date for concluding this investigation, it will be two years and two months since I made my initial complaint."

12:01

I think the chief superintendent replied to you on the 9th July, if we look at page 1218. She says in the second paragraph:

12:01

"Your complaint of 21st November 2012 continues to be investigated. I am not in a position to give a specific timeframe within which it be concluded. My correspondence on 9th April 2014 fully addressed the position in relation to the progress of your complaint. I do not accept there has been a delay given the complexities of the investigation. As you are aware, this investigation centres on your allegations Superintendent Michael Comyns manipulated the nature of the investigation into an alleged sexual abuse case and your ability to perform it by deliberately giving you ambiguous instruction and withholding crucial information in order to undermine your performance. My investigation had been conducted to establish the facts as it relates to your assertions surrounding the investigation. Please be advised that following a case conference on this investigation held on 3rd July 2014. Inspector O'Driscoll, Detective Sergeant White will arrange to meet with you to clarify matters that have

12:02

12:02

12:02

1 arisen from our investigation to date. Your continued
2 cooperation in the matter is appreciated."

3
4 I think you then met on the 23rd July those members in
5 connection with that last paragraph, is that right? Do 12:02
6 you recall that?

7 A. I can't recall the date but I accept I did meet them.

8 124 Q. Okay. At this time then the issue of Fota, your
9 attendance at the Fota golf course, where the Irish
10 Open Golf Championship was being held arose, isn't that 12:03
11 correct?

12 A. That's correct.

13 125 Q. And I think that was a large scale public event that
14 required policing in a number of respects, which was
15 organised I think through the Midleton division, is 12:03
16 that correct?

17 A. That's correct.

18 126 Q. I think a number of members from three different
19 divisions had to be recruited to man the event over the
20 number of days that it ran on? 12:03

21 A. That'd be correct.

22 127 Q. And I think there was an operational order formally
23 issued in relation to the matter, it's in our papers.
24 Your duty is set out in the order on two different
25 dates, we don't need to open them, 4560, 4568. You 12:04
26 were on duty at Carrigtwohill roundabout I think on
27 those two dates?

28 A. That's correct.

29 128 Q. I think you had to be on duty from early in the morning

1 until effectively the days -- duty finished early in
2 the evening of I think the 17th and 18th of June, isn't
3 that correct?

4 A. Yes, two dates, yes.

5 129 Q. I think on those dates you didn't in fact have any 12:04
6 direct contact with Superintendent Comyns at or the
7 place where you were stationed for your duty. But you
8 had to attend a briefing in the morning, is that right?

9 A. That's correct, in the same room.

10 130 Q. And was this a large briefing for all of the members 12:04
11 who were coming on duty?

12 A. That's correct.

13 131 Q. Did he give the briefing?

14 A. Yes.

15 132 Q. Okay. what sort of a room was it? 12:05
16 A. It'd be a room similar to the size of this room.

17 133 Q. How many members would have attended it?

18 A. I don't know. There was a good -- a large number.

19 134 Q. A hundred or more?

20 A. Possibly. 12:05

21 135 Q. All right. And just to be clear, your complaint is
22 that there was a conspiracy indulged in by
23 Superintendent Quilter to put you in the same room with
24 Superintendent Comyns?

25 A. I believe so, yes. 12:05

26 136 Q. Okay. what's that based upon, can I ask you?

27 A. Based upon the fact that Superintendent Quilter had
28 changed duties with Superintendent Comyns,
29 Superintendent Comyns took charge of the event. I had

1 explained to Superintendent Quilter the problems I
2 would have if I had to come in contact with
3 Superintendent Comyns at the event. He told me that I
4 would have no contact with him and I was happy with
5 that, but I did actually have to attend at the briefing 12:06
6 and as Superintendent Comyns himself stated in his
7 report to the Tribunal, his statement to the Tribunal,
8 had any event occurred in my area of responsibility he
9 would have had to make contact with me. So that placed
10 me in a situation where I would be in contact with 12:06
11 Superintendent Comyns had anything happened at the
12 event.

13 137 Q. So if something had happened where you were stationed,
14 you feared that you might have been in direct contact
15 with him? 12:06

16 A. I feared it and he confirmed it.

17 138 Q. I see. Is there anything else you wish to add in
18 relation to that?

19 A. No. But I believe Chief Superintendent Dillane was
20 involved in the allocation, as was Superintendent 12:06
21 Comyns. I believe the three of them together conspired
22 to me in that situation.

23 139 Q. Well, perhaps we would just look at the operational
24 order. Page 4527 and page 4528. I'm sorry, perhaps I
25 have the wrong page. If we look at page 4549. This is 12:07
26 the final order I think that was drafted and it
27 certainly has Chief Superintendent Dillane in overall
28 charge of the policing operation. And it has then
29 Superintendent Comyns in charge of the implementation

1 of the plan and all matters relating to traffic,
2 public, ordnance security over the relevant. So is it
3 the fact that Superintendent Comyns was assigned to
4 implement the plan for the golf event and the risk of
5 contact that it posed for you. Is that the essence of 12:08
6 your complaint?

7 A. That's the essence of my complaint. It was effectively
8 changing the scenario from Fermoy to Cobh, or to
9 Carrigtwohill, whereby I could be in contact with the
10 superintendent contrary to my doctor's advice. 12:08

11 140 Q. Okay.

12 A. And the CMO's advices.

13 141 Q. I see.

14 A. Of which they were aware.

15 142 Q. I think in your statement you say you took at advice 12:08
16 from your own AGSI rep in relation to the matter?

17 A. Yes, because I had considered not attending the event.

18 143 Q. Okay. Is there anything else you wish to say in
19 relation to that?

20 A. No. Just in relation, my AGSI adviser told me that if 12:08
21 I didn't attend the event that it would be another
22 reason to transfer me, and that's why he encouraged me
23 to attend it.

24 144 Q. All right. You, I suppose, were put in the dilemma of
25 following his advice, even though the doctor's advice 12:09
26 was --

27 A. Well, I had been assured by Superintendent Quilter and
28 Inspector Healy that I would not come in contact with
29 Superintendent Comyns, but his view was different to

1 theirs.

2 145 Q. Do you regard your attendance at the briefing with a
3 very large number of other members in breach of that?

4 A. Yes, I do.

5 146 Q. You do? 12:09

6 A. Because it made me physically sick.

7 147 Q. Can we turn to a slightly different issue, another
8 issue, the changing of units and sergeants. I think
9 you provided a report in relation to another member,
10 the details of which we are not particularly concerned 12:10
11 with I think?

12 A. Yes.

13 148 Q. But it appeared to suggest that that member, another
14 member, hadn't been supervised in relation to some
15 incidents in the past? 12:10

16 A. Yeah.

17 149 Q. And I think --

18 A. Just that member, sorry.

19 150 Q. Pardon?

20 A. Just that member, a number of incidents. 12:10

21 151 Q. They had occurred some time previously, as I understand
22 it, these other incidents, we have seen the papers?

23 A. Yeah.

24 152 Q. I think Superintendent Comyns had a report from
25 Inspector O'Connor and then he appointed Inspector 12:10
26 Healy?

27 A. I believe it was Chief Superintendent Dillane appointed
28 Inspector Healy.

29 153 Q. Inspector Healy?

1 A. Yeah.

2 154 Q. And there was a sort of lengthy report prepared in
3 relation to the different versions of the incidents as
4 such?

5 A. That's correct. 12:11

6 155 Q. And who might have had duties to perform or not perform
7 in the circumstances. But at the end of the day it was
8 suggested to you that you would change your duty as
9 supervising one unit to another unit, is that right?

10 A. That's correct. 12:11

11 156 Q. You agreed to that I think on the suggestion of
12 Sergeant Dunne, is that correct?

13 A. Sergeant Dunne put it to me that if I didn't move from
14 one unit, then the whole unit wouldn't move to my unit
15 and all my unit would move to that unit. 12:11

16 157 Q. Yes.

17 A. So to avoid moving Garda members who would have holiday
18 and work arrangements, I accepted that I would move, so
19 that they would not be put out.

20 158 Q. Yes. 12:11

21 A. And prior to that, prior to that in one incident, two
22 gardaí were moved off my unit and I believed it was as
23 a result of making the complaint at the time.

24 159 Q. Well, I mean, you weren't making a complaint, you had
25 made a report? 12:12

26 A. Yes.

27 160 Q. Yes. Then these further reports were commissioned.
28 Who was it then who took the decision, or was it a
29 decision that the units would be changed, was it

1 Superintendent Comyns that you're blaming?

2 A. Superintendent Comyns for the initial transfer of two
3 members off my unit.

4 161 Q. Well, you have seen his explanation and you don't
5 accept that, is that right? 12:12

6 A. No.

7 162 Q. Well the Tribunal will hear further evidence on the
8 matter. I think later on in the year you had a phone
9 call with Inspector O'Driscoll, which gave rise to
10 correspondence with Chief Superintendent Kehoe; is that 12:13
11 correct?

12 A. That's correct.

13 163 Q. You wrote to her on the 16th October in relation to an
14 issue which you thought arose in which she should be
15 seeking further statements from members who had been 12:13
16 involved in the original investigation on foot of which
17 your complaint was made about Superintendent Comyns?

18 A. Yes, that would be correct.

19 164 Q. You gave an account of the phone call with Inspector
20 O'Driscoll and she wrote back to you saying that he 12:13
21 hadn't accepted the detail that you had set forth in
22 the letter to her. And she proceeded with her
23 investigation in the way that she determined to do it?

24 A. No, she actually did what I recommended; she went back
25 and took statements from the members, putting the 12:14
26 allegation to them. So she did what I asked.

27 165 Q. Well, it may be a different perception. She did what
28 she had intended to do?

29 A. No, she had already taken statements from the members

1 and I pointed out to her that these statements were not
2 proper and then she had to revisit and arrange to have
3 the statements taken again with the allegation put to
4 them.

5 166 Q. So, can I ask you this then: You're not making any 12:14
6 complaint about her investigation in that respect?
7 A. I am.

8 167 Q. You are making a complaint?
9 A. Yeah, I don't think that was proper.

10 168 Q. Pardon? 12:14
11 A. I don't think the interaction I had with Inspector
12 O'Driscoll was proper.

13 169 Q. Proper in what sense?
14 A. As in, he rang me to make an appointment to take a
15 statement off me, we arranged the date and I contacted 12:14
16 my AGSI rep to attend. And two days before he was
17 supposed to take the statement off me, he cancelled,
18 saying that he would only be going back over things
19 already covered.

20 170 Q. Well -- 12:14
21 A. And I had attended at conference, he had already taken
22 statements from the gardaí who attended the conference,
23 but he declined to take mine.

24 171 Q. Yes. But was a statement taken from you later in
25 relation to the matter? 12:15
26 A. It was, when I wrote to Chief Superintendent Kehoe
27 demanding that my statement be taken.

28 172 Q. But in terms of the propriety of the enquiry conducted
29 by Chief Superintendent Kehoe in this respect, have you

1 a complaint against her in relation to that?

2 A. Yes. I believe the allegation that was made at that
3 conference was not put to the members when their
4 statements were taken and it should have been.

5 173 Q. Okay. Moving on then to an event slightly later in 12:15
6 2014, I think Chief Superintendent Dillane met Chief
7 Superintendent McLoughlin and was seeking to clarify
8 matters in relation to the medical certificate issue.
9 I think, did you see an e-mail back from the Chief
10 Medical Officer to Chief Superintendent McLoughlin? 12:16
11 Perhaps if we would look at that, at page 464. The
12 doctor is replying about the status of the medical
13 certificate.

14
15 "By way of your response to your enquiry, I offer 12:16
16 advice as follows:

17
18 1. I have not had cause to view the member's medical
19 fitness since 11th March 2013. My advices of 9/4/2013
20 refer in that regard. 12:16

21
22 2. As there has been no new clinical circumstances
23 reported to this service, my previous advices on the
24 member's medical fitness and mine of 9/4/2013 stand. 12:17

25
26 3. Without prejudice to the outcome of any
27 investigations in the reported workplace, interpersonal
28 relationship issues, based upon the information
29 available to me, it would appropriate to facilitate the

1 member with a safe and supportive workplace environment
2 that precludes obligatory interactions between the
3 parties concerned as far as this is reasonably
4 practicable.

5
6 There are no clinical considerations known to this
7 service at this time to preclude the member from
8 attending regularly and undertaking normal policing
9 duties in an appropriate workplace environment in
10 keeping with point 3 above." 12:17

11
12 So, this seems to go further, would you agree, in being
13 a bit more specific from the doctor in terms of
14 written, as it were, advice?

15 A. That's correct. He has now gone from medical advice to 12:17
16 management advice.

17 174 Q. That's the way you see it, is it?

18 A. That's the way I see it.

19 175 Q. But is it not issued by him in order to address your
20 health issues? 12:18

21 A. Well he hadn't reviewed me since 11th March 2013.
22 Surely he should have consulted with me before he
23 issued this amendment to his original.

24 176 Q. Well, you see it as an amendment, but is it not a
25 continuation of something that you pointed out 12:18
26 yourself; that he had spoken to your own doctor on 6th
27 April 2013?

28 A. Yes, 2013, but not since.

29 177 Q. Agreeing, you say, essentially with what she had

1 certified?

2 A. Yes.

3 178 Q. And does this not simply just make it clear that, you
4 know, the workplace environment should preclude
5 obligatory interactions? Presumably you were made
6 aware of this at around the time? 12:18

7 A. I was, yeah. He initially recommended temporary
8 workplace accommodations and he has now gone to
9 preclude obligatory interactions. He's now gone into a
10 management mode as opposed to a medical mode. There 12:19
11 were no temporary workplace accommodations put in place
12 to facilitate me.

13 179 Q. Well, I don't want to reopen what Dr. Tobin had
14 recommended, he had recommended an agreed solution, as
15 it were? 12:19

16 A. Yes.

17 180 Q. It had then developed into being prescribed, and I
18 don't say that in a negative way, by your own doctor,
19 Dr. Kiely. Is this not simply making it clear that
20 he's agreeing with that? 12:19

21 A. No, I don't think so.

22 181 Q. You think it goes further?

23 A. No, because he never consulted me since the 11th March
24 to see were these recommendations as of 9th April '13
25 implemented, was I ever offered temporary workplace 12:19
26 accommodations. He got one side from HRM, he didn't
27 have my side of the story, that I was never facilitated
28 with temporary workplace accommodations.

29 182 Q. Well, I mean, you had not applied for transfers out of

1 Mitchelstown, and I am not criticising you in any way
2 for that. You had in response to whatever efforts had
3 been offered to you, you had not accepted offers of
4 transfer, as it were, and then you had taken steps to
5 appeal the transfer to Fermoy that was under 12:20
6 consideration here still apparently?
7 A. Well I had made it clear I would not apply for the
8 transfer.
9 183 Q. You've offered your opinion about this in any event.
10 You think he has gone too far? 12:20
11 A. I believe he is facilitating Garda management with a
12 reason to transfer me and override my doctor's
13 certificate without consulting with me.
14 184 Q. You think it was offered for that purpose?
15 A. Yes. 12:21
16 185 Q. Okay, right. And you don't see it as helpful in
17 assisting you in --
18 A. It's helpful to facilitate a transfer, but it wasn't
19 helpful to my position.
20 186 Q. Okay. 12:21
21 187 Q. CHAIRMAN: Could you help me, Mr. Barry? Could you
22 help me in saying where does this help transfer.
23 A. To preclude obligatory interactions.
24 188 Q. CHAIRMAN: Say again?
25 A. To preclude obligatory interactions. 12:21
26 189 Q. CHAIRMAN: where are we? Oh number 3. "It would be
27 appropriate to facilitate the member with a safe and
28 supportive workplace environment that precludes
29 obligatory interactions between the parties concerned

1 as far as reasonably practicable."

2

3 I mean, it's a bit complicated, to be honest, but it
4 looks to me like it's supportive of your position. Am
5 I misreading that?

12:22

6 A. Well, I believe -- my view on it was that he was saying
7 that my remaining at Mitchelstown was not attainable as
8 there should be obligatory interactions between me and
9 the district officer.

10 190 Q. CHAIRMAN: Okay.

12:22

11 A. That was my view of it.

12 191 Q. CHAIRMAN: Rightly or wrongly, you're seeing that,
13 you're interpreting that, rightly or wrongly, you're
14 interpreting that in one way and we will have to look
15 into that and hear what people have to say insofar as
16 it has to be interpreted, is that a reasonable way to
17 do it?

12:22

18 A. That's --

19 192 Q. CHAIRMAN: Okay. So we don't need to get into sort of
20 parsing and analysing it too much, that's your view and
21 you also say that he gave this opinion without
22 examining you?

12:22

23 A. Yes.

24 CHAIRMAN: Okay, thanks very much.

25 193 Q. MR. MCGUINNESS: Just I think it is correct to note
26 that Chief Superintendent Dillane had met Chief
27 Superintendent McLoughlin on the 5th November, before
28 this instruction or advice was proffered. And
29 certainly, if we look at 460, Chief Superintendent

12:22

1 Dillane is enquiring whether there was any response
2 from the CMO with regard to the up-to-date position
3 with Sergeant Barry's medical certificate, which states
4 that he cannot work with Superintendent Michael Comyns
5 and attend Fermoy Garda Station. Does that change your 12:23
6 view as to whether the certificate could be regarded as
7 bolstering your position?

8 A. It appears there he's looking for an update from the
9 CMO with regards to my medical certificate. So, the
10 CMO updated the conditions by inserting the words 12:24
11 "precludes obligatory interactions" -

12 194 Q. Yes.

13 A. - without consulting with me or my doctor.

14 195 Q. If we just scroll up the page, we will see the response
15 from Chief Superintendent McLoughlin there at the time. 12:24
16 He says:

17
18 "Ger, none yet but I spoke to him. I will follow up.
19 Tony."

20 12:24

21 And then there's a further communication we will come
22 to in due course but just staying in 2014, I think you
23 met Chief Superintendent Kehoe on 2nd December 2014 in
24 connection with her enquiries, do you recall that?

25 A. Could be, yeah. I'd have to see the... 12:25

26 196 Q. Yes. There's certainly a further communication from
27 you on 22nd November then, if we just look at that,
28 page 1222. Yes. You had sought an update and she's
29 replying to you here.

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"Wish to acknowledge receipt of your correspondence dated 22nd December 2014, which I received on the 5th January on resumption of duty.

12:26

Detective Sergeant White and Sergeant Sheeran will be in contact with you this week to make an appointment to meet with you regarding your most recent disclosure of 10th December 2014.

12:26

I note you indicate that I did not mention receiving your report on your interaction with [blank] family when I acknowledge your correspondence of 2nd July 2014. Please be advised that my acknowledgment and correspondence of 9th July 2014 in response to yours of 2nd July 2014 I understood to do so."

12:26

Did you have a perception that she hadn't acknowledged the issue that you had raised about --

CHAIRMAN: She hasn't specified.

12:26

MR. MCGUINNESS: Specified.

197 Q. CHAIRMAN: She hadn't referred to it, I think that's correct, isn't that right? The letter didn't expressly say, I refer to the interaction, isn't that right?

A. That's correct.

12:26

198 Q. MR. MCGUINNESS: If we then go back to Chief Superintendent Dillane and his enquiries in relation to the medical certificate. On the 5th January he sent an e-mail, if we look at page 461. If we go down the

1 page, we can see he e-mailed. If we go down the page.
2 He had e-mailed the doctor himself and he said:

3
4 "I wish to make enquiries of the present status of the
5 attached medical certificate, which is still live on 12:27
6 Sergeant Barry's file. During the last meeting I had
7 with you on this matter which was in Dr. Collins' '
8 office you advised me that after consulting with
9 Sergeant Barry's GP you were of the belief that if he
10 were to have contact with Superintendent Comyns of 12:27
11 Fermoy Garda Station it may have a detrimental effect
12 on his health. As a certificate was issued on 20th
13 March, I wish to enquire as to the current status of
14 the medical certificate as Sergeant Barry is continuing
15 not to engage with Superintendent Comyns of Fermoy 12:28
16 Garda Station. Forwarded for your attention please."
17

18 The doctor then replies on the same day I think, if we
19 just scroll up. Not scroll down, if we scroll up. And
20 the doctor replies to him: 12:28
21

22 "Chief Superintendent Dillane, I issued a report by
23 return on 18th November 2014..."
24

25 which is the preclusion one we've just looked at that. 12:28
26

27 "...to Chief Superintend Anthony McLoughlin in relation
28 to this matter. He would be in a better position to
29 update you on the current status of things."

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So then Chief Superintendent Dillane writes the following e-mail, saying:

"On this date I e-mailed Dr. Oghuvbu in relation to the present status of Sergeant Paul Barry's medical certificate. In answer to my query he has referred me to you. Can you please enlighten me as to the current status of the sergeant's medical certificate and his working conditions." 12:28

HRM then got in touch with Chief Superintendent Dillane on 13th January 2015. If we look at page 462. Page 462. Just to see who it's addressed to, just to scroll up a little portion of the page. It's to Chief Superintendent Dillane there. It says: 12:29

"In reference to above, please find attached letter from Dr. Oghuvbu, specialist occupational physician, Garda Occupational Health Department, dated 18th November 2014." 12:29

And it's quoting the third point there and it says:

"Taking into consideration the advice of Dr. Oghuvbu, Sergeant Paul Barry's transfer to Fermoy Garda Station will be cancelled." 12:30

So, it seems to be -- would you agree with this

1 interpretation, it seems to be that the fact that he
2 has offered that view in point 3 was used to confirm
3 that any obligatory contact which would have been
4 required if you had transferred to Fermoy, was a basis
5 for cancelling the transfer to Fermoy? 12:30

6 A. No, I believe the cancellation of the Fermoy transfer
7 was -- that was just an excuse to dismiss it and it was
8 then used as an excuse to transfer me outside the
9 division. It was used for both purposes.

10 199 Q. Well, there's obviously a sequence of events. The 12:30
11 transfer to Fermoy, as we have seen, HRM wouldn't seem
12 to allow Chief Superintendent Dillane to withdraw it.
13 And he's now being told by HRM that in the light of
14 this advice it's being cancelled. And he met with you
15 then -- the cancellation was then published in the 12:31
16 personnel bulletin that you provided the Tribunal with,
17 isn't that right, on the 15th -

18 A. That's correct.

19 200 Q. - of January. And then he a meeting with you on the
20 20th January, in his office? 12:31

21 A. I believe so, yes.

22 201 Q. Have you got a recollection of that?

23 A. It may be --

24 CHAIRMAN: Just remind him about it, Mr. McGuinness.
25 It's very hard to remember dates and so many 12:31
26 conversations.

27 MR. MCGUINNESS: Yes.

28 202 Q. The Chief Superintendent has given an account in his
29 statement at page 349, in which he asked you to

1 nominate a station and gave you a deadline, does that
2 help you remember it?

3 A. Yeah, I recall that.

4 203 Q. Yes. Perhaps we would just look at the detail of that,
5 if you wish. If you go to the last third of page 349. 12:32
6 Under the reference to the bulletin, do you see the
7 reference to the bulletin?

8 A. Yes.

9 204 Q. He says: "During the meeting I outlined to Sergeant
10 Barry the contents of the minute from Human Resource 12:32
11 Management and I explained it clearly to him. Sergeant
12 Barry acknowledged that he had a copy of the minute
13 containing the advices of the CMO."
14

15 You had got it perhaps even before he had. 12:32

16 A. Yes.

17 205 Q. "I told Sergeant Barry that in my opinion I could not
18 preclude obligatory interaction between Superintendent
19 Comyns and himself if they were both stationed in the
20 same district. I told Sergeant Barry that I believed 12:33
21 he would have to transfer out of Fermoy district."
22

23 would you like to comment on that? Did he do that?

24 A. That's what he said, yes, I believe so.

25 206 Q. "I clearly explained to him the reasoning behind my 12:33
26 rationale and outlined that it was he, Sergeant Barry,
27 who had a problem working with Superintendent Comyns
28 and that Superintendent Comyns had no problem working
29 with Sergeant Barry. I told Sergeant Barry if he

1 wished to nominate a suitable station, I would forward
2 it to HRM for consideration. I gave a deadline of 11am
3 on Friday, 23rd January 2015 to communicate to my
4 office or to Human Resource Management the name of the
5 station he wished to nominate. I told him that Human 12:33
6 Resource Management would select one otherwise."

7
8 Now, would you agree with this suggestion that he has
9 taken the preclusion of interaction with you to wholly
10 remove you from any risk of interaction? 12:34

11 A. Out of concern.

12 207 Q. By offering you a transfer?

13 A. Well, they used it as a reason to cancel the transfer
14 into Fermoy, which would have caused obligatory
15 interactions. And then when that was cancelled, they 12:34
16 used it as an excuse to transfer me out of the
17 division.

18 208 Q. But do you see that as punitive?

19 A. Yes, because, as I already outlined to Chief
20 Superintendent Dillane, he could have transferred me to 12:34
21 Mallow, where there would be no obligatory
22 interactions.

23 209 Q. But you see, there doesn't -- I mean, I don't want to
24 go over it unnecessarily, there doesn't appear to be
25 any discussion on your part or by Chief Superintendent 12:34
26 Dillane about the issue of expense of transfer. I
27 mean, that was at the heard of it for you, that would
28 you have to pay for it if you chose to go?

29 A. Yes, I told him that. I told him I would not apply for

1 a transfer but I would accept a transfer if I am
2 directed, at public expense.

3 210 Q. I don't see any reflection of that, maybe I have missed
4 it, in any of the documents, on your part or on his
5 part, that this was part of the discussion? 12:35

6 A. I never committed that to writing. My conversation
7 with Chief Superintendent Dillane in relation to that
8 was verbal. I would never nominate a station on paper
9 because it could be used as an excuse to transfer me.
10 It would make it looked like I was applying for that 12:35
11 station and I explained that to him on that date as
12 well.

13 211 Q. I am just trying summarise your position as I
14 understand it to reflect it to the Tribunal. You don't
15 see this as helpful in any way, you don't see this as 12:35
16 copper fastening any interaction with Superintendent
17 Comyns by getting you out of the division and
18 safeguarding you in that way?

19 A. I believe it was an attempt to put me back into the
20 same situation again, because at that time there was 12:36
21 rumours that Superintendent Comyns would be going back
22 into Cork City division, and if that was the case then
23 I would be back in a situation where there would be
24 obligatory interactions, contrary to what the Chief
25 Medical Officer had advised. whereas if I was 12:36
26 transferred to Mallow, there would be no obligatory
27 interactions.

28 212 Q. Okay.

29 213 Q. CHAIRMAN: How far is Mallow from your home?

1 A. About the same as Mitchelstown. And I never looked to
2 move closer, I didn't want to be working where I lived.

3 214 Q. CHAIRMAN: I know, you wanted to be a distance away
4 from home?

5 A. Yes.

12:36

6 215 Q. CHAIRMAN: which a lot of people would think is pretty
7 reasonable. Okay. But Mallow had the big advantage
8 that it was the relevant distance that gave you a very
9 considerable benefit, if you like?

10 A. Yes.

12:37

11 216 Q. CHAIRMAN: Okay. would you have had to move house?

12 A. I could have. I probably would have under the
13 circumstances.

14 CHAIRMAN: I follow, yes.

15 217 Q. MR. MCGUINNESS: In any event, you replied immediately
16 by letter to him on the same day, isn't that right?

12:37

17 A. That's correct.

18 218 Q. If we look at that at page 466. Again, it comes
19 through the sergeant in charge in Mitchelstown, isn't
20 that right? And if we just start at the top:

12:37

21
22 "I wish to acknowledge receipt of the attached
23 communication from Chief Superintendent McLoughlin of
24 Human Resources and People Development."

25 12:37

26 That was the doctor's report, as it were.

27

28 "Following receipt of attached correspondence on the
29 20th January, I was summoned to attend at Fermoy Garda

1 Station to meet Chief Superintendent Dillane. Chief
2 Superintendent Dillane indicated to me he had a meeting
3 with Chief Superintendent McLoughlin in the past week
4 at Garda headquarters. Chief Superintendent Dillane
5 indicated he could not allow the present situation 12:38
6 between myself and Superintendent Comyns to continue.
7 He then asked if I would supply him with a named
8 station outside Fermoy district to which I wish to be
9 transferred and that I was to supply this information
10 to him before Friday, 23rd January 2015. He indicated 12:38
11 that if I did not supply this transfer request that he
12 would let HRM deal with me. This demand has upset and
13 caused me considerable distress. I am anxious to know
14 it is HRM who is demanding that I apply to be
15 transferred, or is it at Chief Superintendent Dillane's 12:38
16 request? I would appreciate that the above matter be
17 clarified before I approach my AGSI representative in
18 relation to same."

19
20 Now, I just want to clarify one matter. At the close 12:38
21 of evidence yesterday, you said that you had asked HRM
22 in 2014 who was making the decision, him or them?

23 A. That was an error on my behalf.

24 219 Q. I couldn't find that?

25 A. Sorry, I meant 2015. 12:39

26 220 Q. It was this, 2015. Thank you. I think Chief
27 Superintendent Dillane forwarded this to HRM. If we
28 look at 467, the next page. In fact, is this a reply
29 to you which came down through the superintendent's

1 office, is that correct?

2 A. That's correct.

3 221 Q. Yes. He says:

4

5 "With reference to the above and to the minutes of 12:40

6 Sergeant Barry on the 20th January, I wish to clarify

7 the following. I outlined to Sergeant Barry on 20th

8 January 2015 I had recently spoke to Chief

9 Superintendent McLoughlin HRM, who informed me that he

10 had been advised by Dr. Oghuvbu of the Garda CMO's 12:40

11 office, Sergeant Barry should be facilitated with a

12 safe and supportive workplace environment that

13 precludes obligatory interactions between him and

14 Superintendent Comyns. I clearly explained to him that 12:40

15 the reasoning between transferring him was because it

16 was he, Sergeant Barry, who has a problem working with

17 Superintendent Comyns and Superintendent Comyns has no

18 problem working with Sergeant Barry. I informed

19 Sergeant Barry it was the intention of HRM to transfer

20 him from Fermoy district in order to place him in a 12:40

21 safe working environment in which he would not have any

22 obligatory interaction with Superintendent Comyns and

23 if he wished to nominate a station that would suit him,

24 it would be considered.

25

12:40

26 At no stage did I ever demand that Sergeant Barry apply

27 for transfer. I also informed him that if he did not

28 wish to nominate a station, that HRM would select one

29 for him.

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I thought I had explained in clear terms to Sergeant Barry that his doctor's states that he could not work or come in contact with Superintendent Comyns and in order to facilitate this both men cannot work in the same district.

12:41

At the end of our meeting Sergeant Barry indicated to me he clearly understood what I informed him."

12:41

He seems to be saying there that you didn't have to plump for one and that HRM would choose one and that would address the issue of you not perhaps having to select one and be transferred at your own request?

A. Sorry, in the third last paragraph there, he says.

12:41

"At no stage did I ever demand that Sergeant Barry apply for a transfer."

Then he goes on to say:

12:41

"I also informed him that if he did not wish to nominate a station, then HRM select one for him."

So if I nominated a station, then it would look like I wanted to be transferred there. why would I nominate a station unless I wanted a transfer?

12:41

222 Q. well, is it not giving awe stay in where you might want to go and then allowing you to let HRM choose it, so

1 information please."

2

3

what do you wish to say to the assertion that you were
in a sense ignoring the advice from the CMO, because
you were remaining in a place where you might not be
able to avoid some sort of interaction?

12:44

6

7

A. But according to the statement of Superintendent
Comyns, temporary workplace accommodations were put in
place where I would not have obligatory interactions,
as in 3/4/14, Inspector O'Sullivan was appointed to
have charge of all interactions with me until all
investigations were complete. All investigations were
not complete at this stage. So, according to that, the
only obligatory interactions I would have would be with
Inspector O'Sullivan and not Superintendent Comyns.

12:44

15

16

226 Q. Yes, but there is also the locational issue of
attending at or near Fermoy Garda Station itself. I
mean, that would still be, as it were, off limits by
virtue of your doctor's certificate and there was no
mechanism which could be put in place to avoid that, or
was there?

12:45

21

22

A. Well, as you suggested earlier, meetings, any meetings
or briefings I could have had through Inspector
O'Sullivan.

23

24

25

227 Q. But you still wouldn't ever have been going to Fermoy
on the basis of your own doctor's certificate?

12:45

26

27

A. No.

28

228 Q. Under any circumstances?

29

A. No. Well not under any circumstance, because I did

1 attend when Chief Superintendent Dillane summoned me
2 and assured me that Superintendent Comyns was not in
3 the building.

4 229 Q. Okay. Just to keep the chronology, I am moving to a 12:46
5 different issue, which was an issue of attendance at a
6 conference for a rape case. I think at the end of
7 January there was an allegation and a complaint made of
8 a rape in Mitchelstown. Apparently you were the
9 nominated supervisor of one of the gardaí in question,
10 who was the investigating member, isn't that correct? 12:46

11 A. That's correct.

12 230 Q. Apparently there was a conference scheduled, which I
13 think was Friday, 30th January, which was meant to be
14 scheduled at 4pm, to be presided over by Superintendent
15 Comyns. That got adjourned, as it were, to the 12:46
16 following Monday. The suggestion is that you were
17 informed of the conference by Detective Garda
18 Fitzpatrick and you should have attended on Monday, the
19 2nd, to be present at the conference at 12pm, is that
20 correct? 12:47

21 A. That's not correct.

22 231 Q. Could you correct me in my understanding of the
23 sequence? Could you explain the sequence to the Chair?

24 A. I was not notified to attend -- I was not notified of
25 the original conference date nor the adjourned 12:47
26 conference case by Detective Garda Fitzpatrick.

27 232 Q. Or by anyone?

28 A. Or by anyone, verbally or in writing. And also,
29 Superintendent Comyns was made aware on 3rd April 2014

1 that him having contact with me would be injurious to
2 my health. So why he would request that I be in
3 attendance at a meeting with him at Mitchelstown Garda
4 station? And furthermore, when I was notified I had to
5 attend a golf conference in Fota, I immediately 12:47
6 contacted my AGSI rep, and I would have done the same
7 in this situation if I was notified to attend a meeting
8 --

9 233 Q. CHAIRMAN: But it didn't arise because you didn't get
10 the notification? 12:48

11 A. No.

12 234 Q. CHAIRMAN: Full stop, end of, is that right?

13 A. That's correct.

14 235 Q. CHAIRMAN: If you had got it, that would have been a
15 different story? I take it you wouldn't have gone? 12:48

16 A. I would not have the attended.

17 236 Q. MR. MCGUINNESS: I think factually, just to be clear
18 about the facts, this was a conference in Mitchelstown?

19 A. That's correct.

20 237 Q. Yes. It didn't require you to go to Fermoy? 12:48

21 A. That's correct.

22 238 Q. But I think you did turn up for duty as usual on the
23 Monday to Mitchelstown?

24 A. Yes.

25 239 Q. And you came in to the station? 12:48

26 A. Yes.

27 240 Q. And you went out immediately?

28 A. I came in to the station, I was notified that there was
29 a conference taking place with the superintendent and I

1 saw him in the public office and I immediately went
2 into my office, got my patrol jacket and hat and went
3 out on patrol.

4 241 Q. I mean, I am not criticising you, but just in terms of
5 knowledge, obviously you say you weren't notified, 12:49
6 there's an issue about that, if it's an issue, by
7 Detective Garda Fitzpatrick. But in any event, you
8 turned up and you knew the conference was on?

9 A. I didn't know the conference was on, and if I knew
10 Superintendent Comyns was attending a conference in 12:49
11 Mitchelstown, I would have gone sick that day.

12 242 Q. Perhaps I am misunderstanding your earlier evidence to
13 the Chair, did you not understand the conference was on
14 when you turned up for duty on that day?

15 A. No, I did not. I didn't know the conference was on. 12:49

16 243 Q. At all, even though you turned up?

17 A. I was working, I turned up for my normal tour of duty,
18 I was unaware of a conference taking place.

19 244 Q. It is just, Superintendent Comyns draws attention to
20 what you said in your own statement, that you weren't, 12:49
21 you say you weren't told of it, but you did say in your
22 statement:
23

24 "The first time I realised it was when I turned up for
25 duty at 12pm." 12:50

26 A. That's correct.

27 245 Q. Did you not understand that there was a conference when
28 you did turn up for duty at 12pm and then you went out
29 on duty yourself?

1 A. Exactly. I was notified, when I took up duty I was
2 informed that the conference was taking place.

3 246 Q. Okay. In any event, there was a report made about it.
4 If we look at page 474. You feel, if I understand your
5 evidence and your position, you feel you shouldn't have 12:50
6 been in the position where you had to attend such a
7 conference with him, in your own station or in Fermoy?

8 A. Yes.

9 247 Q. Anyway, this is a report, if we just go down to the
10 bottom, it's from Superintendent Comyns. If we just go 12:50
11 back then, we will look at some of the body of the
12 text. He's referring to the facts there. He says he
13 asked Detective Garda Fitzpatrick, there, second last
14 paragraph, Sergeant Barry had been notified of the
15 conference. 12:51
16

17 "Detective Garda Fitzpatrick notified Sergeant Barry of
18 the original scheduled conference on Friday at 4pm, the
19 rescheduled conference at 12 midday."
20 12:51

21 That's not correct, as far as you are concerned?

22 A. That is not correct.

23 248 Q. "He said, I had not seen Sergeant Barry in Mitchelstown
24 Garda station on Monday 2nd February 2015. I checked
25 the station diary to find that Sergeant Barry was 12:51
26 marked on duty at 12 midnight. I signed the station
27 diary.
28

29 The situation with Sergeant Barry was allowed to

1 continue for almost two and a half years by An Garda
2 Síochána. I have previously reported I cannot perform
3 my duty as district officer because of Sergeant Barry's
4 behaviour. Assistant Commissioners Kenny and Ó Cualáin
5 have spoken in the last week about challenges staff who
6 do not perform. When I challenged Sergeant Barry I was
7 left in a situation where he has ignored me for two
8 years and I have got no backing by the hierarchy in An
9 Garda Síochána. "

12:52

10
11 I don't want to put words in your mouth, but presumably
12 you just see that as him refusing to accept the
13 position you were in and with your doctor's
14 certificate.

12:52

15 A. Yes, and he did it previously on the 15th June, if I
16 refer to my diary entry. There was an aggravated
17 burglary and when I arrived at work at Mitchelstown at
18 8.40pm, Superintendent Comyns was in a meeting in
19 relation to this aggravated burglary. I waited until
20 8.55pm and went out on patrol and left the station.

12:52

12:52

21 MR. MURPHY: Sorry, Chairman, can I make one
22 observation or one request, if possible: The witness
23 appears to be looking at a document as he is speaking,
24 which I can't see and I wasn't aware that he had a
25 document with him in the witness box.

12:53

26 249 Q. CHAIRMAN: I wasn't either. What are you looking at?

27 A. My diary entry supplied to the Tribunal.

28 CHAIRMAN: You have your own computer, is that right?

29 A. Yes. It's from the --

1 250 Q. CHAIRMAN: That's okay. There is no criticism here or
2 no suspicion here, but counsel is entitled to say what
3 are you referring to, and you say your diary as
4 supplied to the Tribunal.
5 A. Yes. 12:53
6 251 Q. CHAIRMAN: You're referring to that.
7 A. Yes.
8 252 Q. CHAIRMAN: Can you just give me, do we have the
9 reference for the pages of Mr. Barry's diary? We can
10 get those over lunchtime. 12:53
11 MR. MURPHY: Thank you, Chairman. It would be very
12 helpful if there is a reference to it.
13 CHAIRMAN: Sorry, what's that.
14 MR. McGUI NNESS: My learned junior tells me it's page
15 4845. 12:53
16 CHAIRMAN: 4845.
17 MR. MURPHY: Thank you, Chairman. If the witness is
18 referring to a page, we would be very grateful if we
19 could be told.
20 CHAIRMAN: No, it's a perfectly legitimate question. 12:53
21 Thank you for clearing that up, that's fine. That is
22 no problem.
23 MR. McGUI NNESS: They're on the screen there.
24 CHAIRMAN: Sorry.
25 MR. McGUI NNESS: They're in the papers and it's on 12:54
26 screen there.
27 CHAIRMAN: Absolutely. There's no issue. It's simply
28 what was Mr. Barry referring to, and Mr. Barry has
29 brought along his own computer and has his diary on own

1 computer to help him remember the events that we're
2 talking.

3 MR. McGUI NNESS: As he is entitled to. There is no
4 criticism from the Tribunal.

5 A. That's fine, I understand that. 12:54

6 253 Q. CHAIRMAN: Mr. Barry, you were just saying there was
7 another incident?

8 A. Yes, on 15th June 2013 there was an aggravated burglary
9 in the Mitchelstown sub-district. I arrived for work
10 at 8.40pm that night to find that Superintendent Comyns 12:54
11 was in a meeting. I waited until 8.55pm and went and
12 got my patrol jacket and left the station.

13 254 Q. CHAIRMAN: If I am understanding, as far as you're
14 concerned, you wanted nothing to do with Superintendent
15 Comyns? 12:55

16 A. That's correct.

17 255 Q. CHAIRMAN: Not only that, as far as you were concerned
18 it was a matter of your health, your mental health,
19 whatever, not to even be in the same building as him?

20 A. That's correct. 12:55

21 256 Q. CHAIRMAN: And even if there were a hundred other
22 people around, that was still deleterious to your
23 health, simply to be there?

24 A. Yes.

25 257 Q. CHAIRMAN: Can I ask this: what happened if you met
26 him on the street or if you saw him on the street? 12:55

27 A. I did see him on the street.

28 258 Q. CHAIRMAN: Presumably that would happen. Would that
29 damage your health?

1 A. It would upset me because it brings it all back.

2 259 Q. CHAIRMAN: I understand, okay. Did you go to the
3 doctor about that? I mean, did you get any counselling
4 or drugs or anything like that?

5 A. Yes. 12:55

6 260 Q. CHAIRMAN: You did? I don't want to be prying now, but
7 is that something you got some counselling about?

8 A. Yes.

9 261 Q. CHAIRMAN: Did that help?

10 A. I still do. 12:56

11 262 Q. CHAIRMAN: Did the counselling help?

12 A. Yes, big time.

13 CHAIRMAN: Thanks very much. Thank you.

14 263 Q. MR. MCGUINNESS: we've seen the report of
15 Superintendent Comyns to the chief superintendent, but 12:56
16 Chief Superintendent Dillane then on the same day was
17 in communication with Chief Superintendent McLoughlin
18 to seek the transfer outside of the Fermoy district.
19 Perhaps we will just look at 476. Now, I'm putting
20 this forward for your response, he's looking at it in 12:57
21 the context of the nature of the offence, as it were,
22 that was to be considered at the conference and the
23 effect of the present situation, perhaps without
24 intending to blame you but let's look at your
25 interpretation of the -- you said: 12:57
26

27 "With reference to the above and my minute to your
28 office of the 23rd January. I wish to state that on
29 this date I received the attached report from

1 Superintendent Comyns, in which he outlines how the
2 present situation is seriously interfering with
3 administration of justice in the Fermoy district.
4 Superintendent Comyns called for a case conference for
5 Mitchelstown Garda station 12 noon on Monday, the 2nd 12:57
6 February in relation to an alleged rape reported at
7 Mitchelstown station on the 29th January. All members
8 of the investigation team attended, except Sergeant
9 Barry, who was also working in the station at the time.
10 Sergeant Barry continues his non-cooperation with the 12:57
11 district officer and this is not serving the
12 administration of justice in the Fermoy district any
13 good. "

14
15 Now, could I pause there and see, would you agree that 12:58
16 it is not ideal at all that if you, a supervising
17 member, can't attend a conference about a rape offence,
18 in principle, would you agree with that in principle?

19 A. Sorry?

20 264 Q. would you agree with the principle that it's far from 12:58
21 ideal that the supervising member in a rape case
22 investigation doesn't attend the conference?

23 A. Under normal circumstances, but these weren't normal
24 circumstances.

25 265 Q. I understand all of that? 12:58

26 A. Yes.

27 266 Q. But would you agree that behind this issue there is
28 that issue, that ideally you should be attending?

29 A. Ideally, in an ideal world, but this wasn't in an ideal

1 situation.

2 267 Q. He then goes on to say:

3

4 "In my report of the 23rd January I outlined that I met
5 with Sergeant Barry in my office on 20th January 2015." 12:59

6

7 I don't think we need to read that. If he just
8 continue on down. He refers to the correspondence that
9 you had previously stated. And in the last line:

10 12:59

11 "This is not possible if he is to remain to be
12 stationed at Mitchelstown Garda station."

13

14 And he concludes by saying:

15 12:59

16 "I now wish to have Sergeant Barry transferred to a
17 district outside Fermoy Garda District immediately."

18

19 You probably didn't become aware of that at the time
20 but I think did it appear in a bulletin then? 12:59

21 A. Yes.

22 268 Q. On the 5th February, if we look at page 478. You've
23 included the bulletin in your own papers but this is
24 confirmation back to the Chief Superintendent that :

25 13:00

26 "Sergeant Paul Barry will transfer at public expense
27 from Mitchelstown Garda Station to Anglesea Street
28 Garda Station on 24th February 2015, as per your report
29 of 23rd January 2015, subject to the provisions of

1 Garda Code 8.13. I would appreciate if you would
2 inform Sergeant Barry of his transfer and the rationale
3 for same."
4
5 Perhaps, Chairman, that is a convenient time to break 13:00
6 for lunch.
7 269 Q. CHAIRMAN: Thanks very much. Can I just ask you
8 something, Mr. Barry? You've described this incident
9 about the crimes and Superintendent Comyns there, was
10 there not a fairly constant risk of you bumping into 13:00
11 him while you were in Mitchelstown?
12 A. Not unless he was over for the likes of a conference or
13 something else because I would have worked in
14 Mitchelstown.
15 270 Q. CHAIRMAN: Let me put it this way, in the normal way, 13:01
16 assuming there was no problem between members of the
17 force, would it not be normal for the superintendent to
18 visit the outlying station?
19 A. In relation to --
20 271 Q. CHAIRMAN: In normal circumstances? 13:01
21 A. In normal circumstances.
22 272 Q. CHAIRMAN: would it be normal? I would have imagined
23 it would be very normal and routine for the
24 superintendent in Fermoy to call in to Mitchelstown?
25 A. Not on a weekly basis. 13:01
26 273 Q. CHAIRMAN: Not on a weekly basis?
27 A. No, not on a weekly basis.
28 274 Q. CHAIRMAN: No.
29 A. And to avoid that I used my leave --

1 275 Q. CHAIRMAN: No, no, I understand that. I am just
2 talking in general terms, let's leave aside
3 Mitchelstown?
4 A. Right.

5 276 Q. CHAIRMAN: Let's talk about Glanmire? 13:01
6 A. Yes.

7 277 Q. CHAIRMAN: would the district officer call in to
8 Glanmire station pretty regularly?
9 A. I wouldn't say on a weekly basis, no.

10 278 Q. CHAIRMAN: Okay, something less than weekly? 13:02
11 A. Yes. It'd be more that Glanmire members would go to
12 the district headquarters.

13 279 Q. CHAIRMAN: Okay. I follow thanks very much. So the
14 risk of bumping in casually is less than I might have
15 thought? 13:02
16 A. Yes.

17 CHAIRMAN: Okay. Thank you very much. Very good, we
18 will say two o'clock, shall we. Very good.
19

20 THE HEARING THEN ADJOURNED FOR LUNCH AND RESUMED, AS 13:02
21 FOLLOWS:
22

23 CHAIRMAN: Mr. Barry, I probably should have said, you
24 seem to be managing very well. It is quite an ordeal
25 to be giving evidence for a long period and you will 14:04
26 probably be doing it for a good while next week, but,
27 as Mr. McGuinness said, if you need a break at any
28 stage.
29 THE WITNESS: No.

1 CHAIRMAN: I am just saying, if you find yourself, your
2 brain is in a spin or something like this, if you need
3 a break, just let us know okay.

4 THE WITNESS: Thank you very much.

5 CHAIRMAN: Okay. Anyway, thanks very much. Now 14:04
6 Mr. McGuinness.

7 280 Q. MR. MCGUINNESS: Mr. Barry, just lunch we had seen the
8 confirm from HRM to Chief Superintendent Dillane in
9 relation to your transfer to Anglesea Street?

10 A. That's correct. 14:04

11 281 Q. And he was instructed to inform you of the rationale
12 for it, and I think he did so in writing, if we look at
13 page 479 of our papers. In the final paragraph it's
14 stated:

15 14:05

16 "The rationale for this transfer as referred to in the
17 attached communication is as I explained to you at our
18 meeting in our office on 20th January 2015. Your
19 doctor certified that you should not work or attend at
20 Fermoy Garda Station and you should not come into 14:05

21 contact with Superintendent Michael Comyns. The Garda
22 Chief Medical Officer has advised that it would be
23 appropriate to facilitate you with a safe and
24 supportive workplace environment that precludes
25 obligatory interaction between Superintendent Comyns and 14:05
26 yourself as far as reasonably practicable. I explained
27 to you that in order to ensure there was an obligatory
28 interaction between yourself and Superintendent Comyns
29 that you would have to transfer out of the district."

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So, that seems to be consistent with what he told you before?

A. That's correct.

282 Q. Would you care to make any further comment on that?

14:05

A. No.

283 Q. Okay. You appealed the transfer and it got deferred and that appeared in the bulletin and you provided us with a copy of the bulletin. But you then set out your transfer appeal grounds. And you've identified this to the Tribunal as a protected disclosure in its own right?

14:06

A. That's correct.

284 Q. In answer to the Tribunal. We asked you a number of questions and this is one that you identified in your response to that and in interview with the investigator?

14:06

A. That's correct.

285 Q. It's a lengthy document, which commences at page 98. It sets out all your arguments for it and you are probably very familiar with them, I don't intend to go through them, but is there any one would you highlight particularly? I mean, you do refer in this to the rumours of an impending transfer of Superintendent Comyns, amongst other matters?

14:06

14:06

A. That's correct, yes. And on the basis of that, Superintendent Comyns was to transfer to Mayfield was the rumour, if that was correct, then I'd be in the same division as him, which would be contrary to the

1 CMO's advice.

2 286 Q. Yes. And you made that amongst other points. Is there
3 any other aspect of it you would like to comment on?
4 You did refer to an issue about signing off on
5 overtime, et cetera, et cetera, as an issue for 14:07
6 Superintendent Comyns that should be investigated, but
7 as I understand it, you're not saying that that arose
8 from anything to do with your primary protected
9 disclosure of wrongdoing?

10 A. No. 14:07

11 287 Q. At the same time, I think a day later you wrote to the
12 minister for the first time and you have identified
13 that. It's at page 96, we don't need to see it at the
14 moment, maybe at all. You identified that as a PD to
15 the minister, where you're complaining that the matter 14:08
16 hasn't been fully investigated and that the chief
17 superintendent was effectively sitting on it for last
18 two and a half years or two years, do you recall making
19 that case to the minister?

20 A. I do, yes. 14:08

21 288 Q. I think you got a holding letter, which you've included
22 in the documents in reply, at page 104, and you wrote a
23 second letter to the minister then on the 24th June,
24 which is at page 105 and we don't necessarily need to
25 see it, but you made a very strong case, as it were, in 14:08
26 the sense that you categorised the delay of the chief
27 superintendent itself as a perversion of the course of
28 justice, do you recall that?

29 A. I do.

1 289 Q. I suppose just asking you directly, do you stand over
2 that now at this point in time, bearing in mind that
3 you're now in possession of all of the material
4 relating to all of the three investigations that she
5 had conducted. Is it fair still in your own view to 14:09
6 characterise such delay as did take place as a
7 perversion of the course of justice?
8 A. More so in relation to the documentation that I hadn't
9 sight of before discovery, because I believe -- as I
10 said previously, I believed that there would be a 14:09
11 separate investigations in relation to the bullying and
12 into the criminal aspect.
13 290 Q. Yes.
14 A. And that was also recommended by Chief Superintendent
15 Grogan or it was, he said that it should be given 14:09
16 consideration and I did not feel that Chief
17 Superintendent Kehoe should have dealings with all of
18 the different matters. I thought there was a conflict
19 in relation to that.
20 291 Q. Yes. 14:10
21 A. In her appointment under Regulation 14.5.
22 292 Q. Well, I am not sure I have seen you make that case
23 before?
24 A. No, but I didn't make it because I didn't know about it
25 until I got discovery. 14:10
26 293 Q. Okay. But I mean, that wasn't the basis of your
27 complaint to the minister and I am just really only
28 asking you about what your contention to the minister
29 was. We're not enquiring into what the minister did,

1 but this is a, I will call it an attack in a neutral
2 sense on Chief Superintendent Kehoe, that she was
3 herself engaged in a per investigation of the course of
4 justice by reason of the delay?

5 A. By the delay and the interaction I had in relation to 14:10
6 Inspector Paul O'Driscoll, I wasn't happy with that
7 aspect of the investigation either.

8 294 Q. Well, you see, on your own account you say that is
9 something that was righted, if it was wrong, and was
10 done in the course of your investigation? 14:11

11 A. But the taking of my statement was cancelled without
12 proper explanation. I had to write to have those
13 statements taken again with the allegation put to the
14 members.

15 295 Q. Well, I mean obviously we will be hearing from 14:11
16 Superintendent Kehoe, but perhaps you are making an
17 assumption that the meeting was cancelled for some
18 nefarious reason or...

19 A. That was my take on it.

20 296 Q. Pardon? 14:11

21 A. That was my opinion on it at the time.

22 297 Q. But what evidence have you got to support that, if I
23 can ask that question?

24 A. Because they had taken statements from all the members
25 who were at the conference bar me, the inspector rang 14:11
26 to take a statement from me, we arranged a time, and
27 when he stated that Superintendent Comyns would go
28 softly softly in relation to arresting the suspects, I
29 asked him was that allegation put to the members who

1 made the statements and he said he didn't take the
2 statements. And then he arranged to take my statement
3 and I told him I wanted to state in my statement that
4 that was not said at the conference. And then he
5 cancelled the taking of my statement, said that he 14:12
6 would only be going back over things already covered.

7 298 Q. Now --

8 A. And I didn't think that was acceptable.

9 299 Q. Well just on this point, I mean you had made the
10 allegation subsequently that she had had him removed 14:12
11 from the investigation for this reason and that's not
12 correct, as you know now, isn't that right?

13 A. Yes, but I didn't know it at the time.

14 300 Q. Yes.

15 A. Because that was the last contact I had with Inspector 14:12
16 O'Driscoll.

17 301 Q. Yes.

18 A. Up until that I was dealing with him on a regular
19 basis, so I assumed he was gone.

20 302 Q. I am just going back to the letter to the minister and 14:12
21 what you knew at the time or you suspected at the time.
22 You had, I suggest to you it would appear, no evidence
23 as to what Chief Superintendent Kehoe had done as a
24 matter of fact in relation to each of the
25 investigations other than knowing about the overall 14:13
26 delay to a great extent, is that not fair to say?

27 A. Well it was in relation to the overall delay.

28 303 Q. Yes.

29 A. And she did raise the issue, she notified me that she

1 was having a problem with her appointment under
2 Regulation 14.5 at the time, but I didn't take that
3 matter any further.

4 304 Q. Yes. I am not criticising you, she told you of it and
5 you didn't write and say, well, what is the problem or 14:13
6 join in and say there is a problem?

7 A. No, I looked up the regulation myself and I said well,
8 if the authorities are allowing her to continue, I am
9 not going to object.

10 305 Q. But I mean from her point of view, isn't it better if 14:13
11 she would get reassurance as to the propriety of her
12 appointment so that she -

13 A. Absolutely, to her credit.

14 306 Q. - would be confident in knowing that she should
15 continue? 14:13

16 A. Yes.

17 307 Q. All right. So I mean, if there is delay in that, it's
18 arguably justifiable in the sense that she ought to
19 know that she's in fact properly authorised to do what
20 she was now continuing to embark upon? 14:14

21 A. That's fair.

22 308 Q. Would that be fair?

23 A. That would be fair.

24 309 Q. I think you didn't get a reply to that letter from the
25 minister of any substance until December, when the 14:14
26 minister wrote back saying the decision of the DPP was
27 being awaited in relation to the investigation file?

28 A. That's correct.

29 310 Q. In fact it had been issued the previous month I think,

1 we now know, isn't that right?

2 A. That's right.

3 311 Q. But you presumably became aware that Superintendent
4 Comyns had actually transferred to Mayfield in early
5 March?

14:15

6 A. That's correct.

7 312 Q. I think in June, Chief Superintendent Kehoe was in
8 touch with you to tell you that the investigation was
9 at an advanced stage and raised the issue of taking
10 your fingerprints for elimination purposes?

14:15

11 A. That's correct.

12 313 Q. I think that letter was delivered for good or ill to
13 Anglesea Street station, isn't that correct?

14 A. That's correct.

15 314 Q. It would appear that the publication of it on the
16 bulletin, of the impending transfer on the bulletin,
17 although deferred, had made its way on to Pulse as well
18 and you have seen Chief Superintendent Kehoe's
19 explanation, that she wrote to you there for those
20 reasons?

14:15

14:15

21 A. And I replied to her in relation to that.

22 315 Q. Yes. Perhaps we would just look at the letter, page
23 1258. 1258. She makes the point that it was forwarded
24 to you under private and confidential cover, that
25 letter. She says:

14:16

26

27 "You are connect in your assertion that I was aware
28 that you were attached to Mitchelstown, hence my reason
29 for sending correspondence dated 4th March 2015 to that

1 address.

2

3 My most recent correspondence, 22nd June 2015, which
4 was forwarded to you under private and confidential
5 cover was forwarded to you at Anglesea Street. 14:17

6

7 This was as a result of a further bulletin issued dated
8 6th March 2015, indicating you had in fact transferred
9 to Anglesea Street. Pulse records also were updated on
10 10th February 2015, indicating this was your current 14:17
11 station. Copy attached."

12

13 If we just go down the page there.

14

15 "In respect of my request to you for your fingerprints 14:17
16 for the purpose of elimination..."

17

18 She goes on to deal with that.

19

20 "If you wish to meet me, please contact my office with 14:17
21 a date and time for such meetings on or before 24th
22 July 2015."

23

24 Did you take that explanation at face value and accept
25 it? 14:17

26 A. No.

27 316 Q. Can I just ask you to explain why?

28 A. Because when I corresponded with Chief Superintendent
29 Kehoe it was from Mitchelstown Garda station and I

1 would have expected that she would forward her
2 correspondence back to the address whence it came. And
3 she was also aware previously, with previous transfer
4 attempts, that I had informed her that on Pulse I was
5 in Fermoy Garda Station when I was still in 14:18
6 Mitchelstown, and yet she sent post to me during those
7 times to Mitchelstown.

8 317 Q. Yes. Well, you wrote back to her on the 20th yourself.
9 If we look at page 210. You're making the point you
10 didn't receive correspondence from her dated the 4th 14:18
11 March. And you say in the second paragraph:

12
13 "In relation to point 3 of your correspondence dated
14 16th July 2015, you were well aware of the appeal
15 process for transfers. Did you check to see if I had 14:18
16 appealed this transfer attempt? You state Pulse
17 records were updated on 10th February 2015. I informed
18 you in 2014 that I was in Fermoy Garda Station on Pulse
19 even though I had my transfer appealed. Pulse was
20 updated on 25th February 2014 even though my transfer 14:19
21 was to the to take place until the 11th March. (Copy
22 attached)."

23
24 And that's the deferral, is it?

25 A. That's correct. 14:19

26 318 Q. "You are well aware of the transfer attempt in 2014 and
27 current transfer in 2015 are retaliation for the
28 complaint I made against Superintendent Comyns, which
29 you have presided over for the past two and a half

1 years and because I am being victimised for making this
2 complaint there was no doubt but that I was going to
3 appeal that transfer attempt also.

4
5 I don't accept your excuse and I believe forwarding my 14:19
6 post to Anglesea Street Garda station (where it was
7 opened by strangers) was done with malice aforethought.
8 I have not referred to bulletin 11.15 on your Pulse
9 status in addressing this letter and I do not know of
10 anyone who does not correspond from the address to 14:20
11 which their communication was delivered. Please find
12 fingerprints attached et cetera et cetera."

13
14 The accusation that she did this with malice
15 aforethought, what do you mean by that, just to be 14:20
16 clear?

17 A. I believe she forwarded my post to Anglesea Street just
18 to intimidate me, to show that I was in Anglesea Street
19 according to Pulse.

20 319 Q. I am not sure I see what benefit there would be to her 14:20
21 for sending post somewhere she knew you weren't, if she
22 wanted to get you to do something. If she wanted to
23 you to get these fingerprints and eliminate you, why
24 would she decide to that do that?

25 A. I believe she was doing it to annoy me or to cause me 14:20
26 annoyance. My correspondence was opened by strangers
27 in Anglesea Street and sent to Mitchelstown afterwards.
28 So it was no longer private or confidential.

29 320 Q. And you think she foresaw and intended that to happen?

1 A. I do believe that, yes.

2 321 Q. Okay.

3 A. Because I did not receive the letter she previously
4 referred to either.

5 322 Q. Well, what do you base your belief on? Have you any 14:21
6 evidence?

7 A. Because I don't think she had any just cause to forward
8 my correspondence to Anglesea Street. I was not in
9 Anglesea Street and she was aware that I was attached
10 to Fermoy previously, when I was still in Mitchelstown, 14:21
11 when she was dealing with me.

12 323 Q. So you're not accepting her explanation?

13 A. No.

14 324 Q. Okay. Chief Superintendent Dillane, in the interim,
15 was enquiring shortly thereafter about what was 14:22
16 happening to your appeal in the matter. If we look at
17 page 485. It's just being confirmed there that
18 Mr. Barrett had been appointed by the commissioner to
19 carry out this review. You probably hadn't known of
20 Mr. Barrett before? 14:22

21 A. No.

22 325 Q. He was a civilian brought in as executive director of
23 the HR department essentially. There was some period
24 when there was a debate over who should be appointed to
25 conduct or hear the appeal? 14:22

26 A. That's correct.

27 326 Q. You have seen that in the papers in any event. I think
28 Chief Superintendent Kehoe sent the criminal
29 investigation file to the State solicitor on 21st

1 August 2015 and you were notified some time shortly
2 after that, isn't that correct?

3 A. That's correct.

4 327 Q. And that was sent on to the Director of Public
5 Prosecutions obviously by the Chief State Solicitor and 14:23
6 I think you came to learn that the DPP had directed no
7 prosecution in the matter?

8 A. That's correct.

9 328 Q. On the 17th November 2015. I think, just at the end of
10 September, you were informed that Mr. Barrett had 14:23
11 refused the appeal against the transfer?

12 A. That's correct.

13 329 Q. I don't think we need to open that, but you wrote
14 further to Mr. Barrett to appeal that decision, as you
15 were entitled to, to the commissioner, as it were, 14:24
16 under the transfers procedure, is that correct?

17 A. That's correct.

18 330 Q. And you wrote that appeal on the 11th October 2015, at
19 pages 116 and 117. We can open that up if you wish but
20 you did make the case, I think if you recall, that the 14:24
21 transfer now would represent a breach of the preclusion
22 of obligatory interactions advice, isn't that correct?

23 A. That's correct.

24 331 Q. So you seem to be content to rely on the advice against
25 the transfer, even though you thought that it had been 14:24
26 given in order and deliberately to facilitate the
27 transfer?

28 A. No, I was pointing out that the transfer would be in
29 contravention of what they had orchestrated in order to

1 transfer me.

2 332 Q. Yes.

3 A. Not that I was using it as a reason. I was just
4 pointing out that this is the reason you used to
5 transfer me and now you're going to breach it. 14:25

6 333 Q. Okay. I thought you did advance it as a reason why
7 your appeal should be allowed, I mean is it not put
8 forward in that context?

9 A. It is, but it's not that I was using -- I'm just
10 pointing out to them that at one point you use it as a 14:25
11 reason to transfer me and the other then you transfer
12 me into something that contravenes it.

13 334 Q. Yes. I can see the rationale in it?

14 A. They can't have it both ways.

15 335 Q. Yes. This transfer appeal, you've identified to the 14:25
16 Tribunal in the papers as being an additional protected
17 disclosure?

18 A. Yes.

19 336 Q. In terms of what it sets out in the grounds of appeal?

20 A. Yes. 14:26

21 337 Q. And the additional matters in it related to an alleged
22 fraudulent use of monies, isn't that correct?

23 A. That's correct.

24 338 Q. Alleged against Superintendent Comyns?

25 A. Yes. 14:26

26 339 Q. And again, just to be clear, that was advanced not as
27 something relating to your original protected
28 disclosure, it was something entirely separate from it
29 in a sense?

1 A. That's correct.

2 340 Q. Additional wrongdoing, as you saw it?

3 A. Yes.

4 341 Q. I think you became aware that Chief Superintendent
5 Kehoe sought additional appointment for herself in 14:26
6 connection with the continuation of the disciplinary
7 charge so that it would embrace everything that you had
8 complained of inform incident number 9?

9 A. That's correct.

10 342 Q. Is that right? So what as added on, correct me if I am 14:27
11 wrong, is the additional disciplinary action which you
12 saw as a retaliation and also the superintendent's
13 conduct on the day, isn't that right?

14 A. That's correct.

15 343 Q. Now I think Chief Superintendent Kehoe formally wrote 14:27
16 to you, notifying you of the Director of Public
17 Prosecution's decision about the criminal aspect of the
18 matter?

19 A. That's correct.

20 344 Q. Perhaps we will look at that letter, page, 175. I am 14:27
21 sorry, it is 1175, I beg your part, Mr. Murphy. The
22 earlier letter referred to in the first paragraph is in
23 relation to the submission of the file and then it
24 proceeds on:

25 14:28

26 "On completion of the investigation file forwarded to
27 the office of Director of Public Prosecutions for a
28 decision on the matter, on receipt of that decision I
29 am to advise the Director of Public Prosecutions has

1 directed no prosecution in the case. I am to further
2 advise that if you wish you can obtain a summary of
3 reasons not to prosecute."
4

5 Did you take that up? 14:28

6 A. I did. I forward it to the DPP.

7 345 Q. And then it says:

8
9 "In that regard you must make your application on a
10 prescribed form attached within 28 days of the date you 14:28
11 were told of this decision and send it to the Director
12 of Public Prosecutions at communications victims
13 liaison unit, et cetera. For more information about
14 applying for reasons, see the Director of Public
15 Prosecutions Leaflet." 14:29

16
17 You set that process in train?

18 A. Yes.

19 346 Q. In writing to the communications victims unit. And I 14:29
20 think the chief superintendent notified you of her new
21 appointment on 4th December 2015, if we look at page
22 1092, and also informed you I think of the process and
23 the witnesses that would be dealt with in that, isn't
24 that right?

25 A. That's correct. 14:29

26 347 Q. If we just go on to the next page, page 1193. And he
27 says:

28
29 "I have tasked Inspector O'Driscoll to obtain the

1 necessary statements from all the members who are
2 associated with both allegations.

3
4 I understand that arrangements were tentatively put in
5 place to interview members but had to be changed. 14:30
6 Inspector O'Driscoll with the assistance of Sergeant B.
7 Sheeran will obtain the witness statements of all the
8 members who can be of assistance in this investigation
9 in the coming week.

10 14:30
11 Should you wish to nominate any other witness for
12 interview regarding either complaint, you might inform
13 me accordingly.

14
15 I append here with the list of witnesses the 14:30
16 investigating officer proposes to interview for ease of
17 reference. "

18
19 And that was included with it, I take it?

20 A. Pardon? 14:30

21 348 Q. That list was included with the letter?

22 A. Yes.

23 349 Q. Yes. And did you have any additional people to
24 nominate?

25 A. No. 14:30

26 350 Q. I think you did write back to the chief superintendent
27 on 16th December 2015 in relation to the previous
28 letter she sent you about the prosecution, the DPP's
29 decision, isn't that right?

1 A. That's right.

2 351 Q. Perhaps we will look at page 1250. And it reads as
3 follows:

4

5 "With reference to your correspondence dated 24th 14:31
6 November 2015, it appears that you have forwarded the
7 request for a summary of reasons when the DPP decides
8 not to prosecute form to the wrong person."

9

10 Now, you had actually taken that up and applied and 14:31
11 used it for that purpose, isn't that correct?

12 A. That's correct.

13 352 Q. "The DPP which is the independent prosecuting has sent
14 through [blank] professional officer that [blank] is
15 the victim of this alleged offence." 14:31

16

17 Now, it says:

18

19 "Therefore [blank] have to be made aware of your
20 investigation, which to the best of my knowledge was 14:31
21 conducted without informing the injured party. Please

22

23 forward request for summary of reasons when the DPP
24 decides not to prosecute form to the family of [blank].
25 If you wish to meet with the family in person, I would 14:32
26 like to attend along with you so that I can give them

27

28 the reasons for my complaint and [blank] and her family
29 should be given the appropriate information in
accordance with the victims charter. I would
appreciate that you would contact me in relation to

1 your dealings with the family as if the family [blank]
2 are not treated properly as victims, I will have to
3 report the matter elsewhere."
4

5 Now the chief superintendent replied to that in early 14:32
6 January I think, isn't that correct?

7 A. That's correct.

8 353 Q. If we look at page 1252, there's her letter of the 8th
9 January. Second paragraph:

10 14:32
11 "On 11th February 2013, I was appointed to investigate
12 your complaint under the Garda policy and procedure
13 harassment, section bullying and harassment and any
14 criminal offence identified.

15 14:33
16 As you are aware, the criminal investigation centres on
17 your allegation that Superintendent Michael Comyns
18 manipulated the nature of the investigation into
19 alleged sexual assault and your ability to perform it
20 by deliberately giving you ambiguous instruction and 14:33
21 withholding critical information in order to undermine
22 your performance.

23
24 I conducted a thorough investigation into your
25 allegation and submitted a comprehensive file to the 14:33
26 Director of Public Prosecutions on 28th August 2015.

27
28 On 24th November 2015 I wrote to you informing you of
29 the DPP's directions and advising you of your

1 entitlements according to the victims charter.
2
3 My sole function is to you as complainant in this
4 matter strictly in line with my appointment.
5 14:33
6 Hoping this clarifies the matters."
7
8 Then it is copied to A/C Southeastern Region and chief
9 superintendent Internal Affairs there.
10 14:34
11 So, you received that and I suppose it speaks for
12 itself, she regarded your complaint in incident 9 as
13 the complaint that she was investigating, isn't that
14 correct?
15 A. That was her assumption, yes. 14:34
16 354 Q. Was she not right to do that? I just have to suggest
17 to you.
18 A. Well not according to the DPP.
19 355 Q. Not according to the DPP?
20 A. The DPP said I was not the victim. 14:34
21 356 Q. Pardon?
22 A. The DPP said I was not the victim. I was not given the
23 reasons for no prosecution because I was not the
24 victim.
25 357 Q. Okay. In terms of the involvement of the family, you 14:34
26 took a different view than she did as to what she was
27 appointed to enquire into, is that right?
28 A. Yeah, well I understood my complaint was in relation to
29 the family.

1 358 Q. Well, your complaint was a complaint against
2 Superintendent Comyns arising out of what you suspected
3 him to be guilty of?
4 A. Yes.

5 359 Q. An offence, isn't that right? 14:35
6 A. Yes.

7 360 Q. I mean, you hadn't at that time told the family that
8 that alleged suspected offence had been committed,
9 isn't that right?
10 A. That's right. 14:35

11 361 Q. And to your knowledge they hadn't made a complaint
12 themselves in relation to the matter?
13 A. They had, the mother had requested reasons why these
14 people weren't prosecuted on two occasions from the
15 DPP. 14:35

16 362 Q. Well, that's in relation to -- I mean, she had attended
17 with the victim of the original offence on the occasion
18 when it was first reported in Mitchelstown.
19 A. That's correct.

20 363 Q. In February 2012, isn't that correct? 14:36
21 A. That's correct.

22 364 Q. Right. I think shortly after this you made a further
23 submission to the minister, which you've identified to
24 the Tribunal as your third protected disclosure, on
25 20th January of 2016. That's in pages 109 to 110 of 14:36
26 our papers. I don't think we need to look at it unless
27 you wish to. But you pointed out I think to the
28 minister that the previous reply you got in December
29 was incorrect, that the discipline investigation wasn't

1 over, isn't that correct?

2 A. That's correct.

3 365 Q. You also repeated the complaint about Chief
4 Superintendent Kehoe being involved in a perversion of
5 the course of justice? 14:37

6 A. That's correct.

7 366 Q. Did you have any other basis for it or what basis did
8 you have for it at that time, for making that
9 suggestion?

10 A. Well, I believe I mentioned in that letter as well the 14:37
11 fact that the victim, whom I believed was the victim,
12 from my correspondence with the DPP, that the victim or
13 her family had not been informed of Chief
14 Superintendent Kehoe's investigation.

15 367 Q. I think you got a reply quite some time later from the 14:37
16 minister's office, in terms of a substantive reply,
17 confirming that you were correct that it was the
18 criminal investigation that had been completed?

19 A. Yes.

20 368 Q. Informing you that the minister was referring the 14:37
21 matter under the 2005 Act to GSOC as a section 1025
22 investigation, is that correct?

23 A. That's correct.

24 369 Q. I think you for your part replied on 14th April 2016 to
25 that letter, accepting the apology from the department 14:38
26 for the error in mixing up the investigations and
27 thanking the minister for the action she had taken,
28 isn't that right?

29 A. That's correct.

1 370 Q. Before those last two letters had issued to and from
2 the minister with you, you were informed that the
3 Commissioner had rejected your transfer appeal, within
4 a few days you had submitted your application to
5 retire, I think on the 16th March? 14:38

6 A. That's correct.

7 371 Q. Would you like to explain to the Tribunal why and on
8 what basis and the reasons you had for taking that step
9 then at that point in time?

10 A. Because of the continued attempts to transfer me down 14:38
11 through the years and they were still ongoing and even
12 after I applied to retire I was put on a transfer list.
13 So that was my reason for applying to retire. And, as
14 I indicated, after the Fota golf event I applied for a
15 pre-retirement course. So it was back then that I'd 14:39
16 made up my decision that I was going to leave as soon
17 as I could.

18 372 Q. I think you had made enquiries as to essentially when
19 you'd be able to retire?

20 A. Yes. 14:39

21 373 Q. On the basis of the best sort of pension arrangements?

22 A. Yeah, because I --

23 374 Q. In terms of service?

24 A. I had some prison service before I joined the guards.

25 375 Q. Yes. 14:39

26 A. And I looked for that to be included for pension
27 purposes and that meant that I didn't have to serve up
28 until October 2016, that I could go in June instead.

29 376 Q. Yes.

1 A. That I had my 30 years completed on the 19th January.
2 377 Q. It's a technical point but just to give the Tribunal
3 the full picture, the sick days that you were out on
4 sick leave from the 6th August until the 29th March,
5 did they count as reckonable service? 14:40
6 A. I believe they did.
7 378 Q. Yes.
8 A. As far as I'm aware.
9 379 Q. They weren't deducted from it, as far as you know?
10 A. No, I don't believe they were. 14:40
11 380 Q. That'd be normal, I think?
12 CHAIRMAN: what would be normal?
13 MR. MCGUINNESS: That any properly certified sickness
14 absence would count towards reckonability.
15 381 Q. CHAIRMAN: That's my understanding. If it had 14:40
16 continued on and you were on pension rate, it might be
17 a different situation, but that never arose, isn't that
18 right.
19 A. No.
20 CHAIRMAN: Okay. 14:40
21 382 Q. MR. MCGUINNESS: You went obviously, as we know, from
22 half pay for the two months and that's got nothing to
23 do with the pension, that would have depended on
24 recovering that either -- if you had been certified for
25 injury on duty? 14:40
26 A. Yes.
27 383 Q. And you haven't recovered that yet?
28 A. No.
29 384 Q. And that may be part of proceedings that we are not

1 concerned with here, is that correct?

2 A. That's correct.

3 385 Q. Okay. Could we look at page 517. This is sending up
4 your notice of intention to retire, up to the chief in
5 Fermoy, isn't that correct? 14:41

6 A. That's correct.

7 386 Q. It confirmed that when you were appointed to the force
8 and it said that he's not involved in any criminal or
9 disciplinary proceedings. Obviously that means that
10 you're not the subject of them in any sense? 14:41

11 A. Yeah, because I wouldn't be able to retire if I was.

12 387 Q. You wouldn't be able to retire if you were, isn't that
13 right?

14 A. Yes.

15 388 Q. That provision was changed obviously. And at page 518, 14:42
16 Chief Superintendent Dillane appears to have sent that
17 up to HRM Garda pension section, which is in Navan I
18 think, your notification of intention to retire, he
19 says in the second paragraph:

20 14:42

21 "There is no reason that would prohibit him from
22 retiring on that date, accordingly his application is
23 recommended."

24

25 It says where you are residing, that you are in 14:42
26 compliance with leave entitlements. And then in terms
27 of the Garda Code, 12.12:

28

29 "I would categorise the member's service as very good

1 during his career."

2

3 You probably didn't see this at the time, isn't that

4 right?

5 A. No. 14:42

6 389 Q. And correct if I am wrong, it's not the chief

7 superintendent who issues the Certificate of Service in

8 the end, isn't that right; technically it's always

9 signed off by the commissioner?

10 A. That's correct. 14:43

11 390 Q. But it goes through HRM in Navan to be processed?

12 A. That's correct.

13 391 Q. But his function is under this provision of the Code,

14 which requires him to furnish an opinion, isn't that

15 right, in relation to the service of the member? 14:43

16 A. That's correct.

17 392 Q. Now, you may have thought that he delayed doing this,

18 did you think he had delayed doing this at this point

19 in time?

20 A. Sorry, the date on this? 14:43

21 393 Q. This is 23rd March 2016.

22 A. I hadn't even retired at that stage, so I couldn't

23 think he was delaying.

24 394 Q. No. But you didn't know that he had categorised it at

25 this? 14:43

26 A. No, I had no knowledge of that correspondence.

27 395 Q. Okay. When you did find out about the categorisation,

28 you raised queries about it?

29 A. I immediately appealed it.

1 396 Q. Now, I suppose just taking it sequentially, you've seen
2 his explanation in his statement, as to why he
3 categorised it as very good at that time?
4 A. Yes.
5 397 Q. Do you accept that? 14:44
6 A. No.
7 398 Q. Okay. would you like to add any further comment on
8 that?
9 A. Well, his district clerk, Sergeant Dave Hughes, would
10 have known me since I came to Mitchelstown in 2000, and 14:44
11 he had submitted that document to Chief Superintendent
12 Dillane with my category of service as exemplary, and
13 he was directed to change it to very good.
14 399 Q. Yes. Well was that a Mr. Cahill or...?
15 A. Dave Hughes. Sergeant Dave Hughes, he was divisional 14:44
16 clerk attached to Fermoy Garda Station.
17 400 Q. Well he does the draft of a document, isn't that right?
18 A. That's correct.
19 401 Q. And he's not required to have the opinion --
20 A. No, but he -- 14:45
21 402 Q. -- specified in 12.12?
22 A. But he had completed that draft and he has knowledge of
23 me from 2000 and my prior service in Rathmines, and it
24 was his view that my service should go forward to the
25 chief as exemplary as opposed to very good. 14:45
26 403 Q. No, I understand that, but you also understand that he
27 is not the officer specified who is meant to be
28 furnishing the opinion?
29 A. Oh I understand that, yes.

1 404 Q. Yes.

2 A. Yes.

3 405 Q. And Chief Superintendent Dillane, one way of looking at
4 it is that you might say, well he had been affected by
5 his view of your performance by reason of the events 14:45
6 that had happened in relation to your duty since you
7 had gone off sick and then resumed duty?

8 A. And he was probably including the event where I had
9 previously dealt with him as a superintendent.

10 406 Q. Well, I don't think he said that, but you suspect he 14:46
11 might have?

12 A. I suspect that influenced his decision as well.

13 407 Q. Now, I think you raised the issue of injury on duty at
14 this point in time, isn't that correct?

15 A. That's correct. 14:46

16 408 Q. As to whether your absence at that stage should now be
17 classified as injury on duty. And you wrote to the CMO
18 on 10th April of 2016, isn't that correct?

19 A. That's correct.

20 409 Q. If we look at page 1692. 14:46
21

22 "With reference to the above, I wish to report that
23 having tendered my notice to retire on 19/6/2016, I
24 contacted Garda pay section to find that you still have
25 not classified my illness in relation to above 14:47
26 complaint. You stated to me could you not do so
27 something this matter was investigated by Chief
28 Superintendent Catherine Kehoe. This investigation was
29 completed and a file submitted to the Director of

1 Public Prosecutions on 28th August 2015 by Chief
2 Superintendent Catherine Kehoe. On 24th November 2015
3 Chief Catherine Superintendent Kehoe wrote to me in
4 relation to the DPP's directions and informed me of my
5 entitlements as she deemed me to be the victim of the 14:47
6 actions of Superintendent Comyns. These actions were
7 the cause of my illness and were work related. I
8 assume you are aware of this and yet you have not
9 reclassified my illness.

10
11 I request that my sick leave from August 2012 until
12 March 2013 be now classified as work related and that
13 my pay and allowances for this period be restored as it
14 is affecting my gratuity pension. Please treat as
15 urgent at should you have any queries you can contact 14:48
16 me at [blank]. I attach correspondence from Chief
17 Superintendent Catherine Kehoe, 8/1/2016 confirming I
18 was the victim of this criminal allegation.

19
20 Forwarded for your information." 14:48

21
22 I think you must have attached the letter that have
23 seen earlier, which was her reply to you about that
24 issue?

25 A. That's correct. 14:48

26 410 Q. I think the CMO replied to this, I think if we look at
27 page 1689. This is addressed to Ms. Monica Carr in the
28 first instance but it is copied to the former CMO and
29 Chief Superintendent McLoughlin?

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"This service has received correspondence dated 10/4/2016 forwarded directly by the member in respect of the outcome of a complaint. Please find the member's copy of minute enclosed without documentation that was attached, which was investigated by Chief Superintendent Catherine Kehoe. 14:49

Having taken note of the member's assertions and request, I wish to clarify that this service was not at any time aware of or informed, not unusual, of the commencement of an investigation under the reference policy or about the conclusion and outcome of same, specifically there's been no correspondence from or to Human Resources and People Development in respect of the member since November 2014. 14:49

It would appear that the member was expecting a reclassification of the period of absence referenced in his minute on the basis of the conclusion of the investigation and the correspondence between himself and Chief Superintendent Kehoe. " 14:49

If we could scroll down there, please, Mr. Murphy, thank you. 14:49

"The issue of reclassification of absence would be a matter for HRPD in conjunction with local management following consideration of all relevant information.

1 If it is that the reclassification is an outstanding
2 matter on the basis of findings or conclusions from the
3 investigation, this should be appropriately addressed
4 in a timely fashion and communicated to the member. If
5 clarifications from this service are deemed as 14:50
6 necessary, these should be sought formally in
7 accordance with the HRM usual practice. Thank you for
8 expediting necessary action in the matter."

9
10 I think, did you get a copy of that? Could we look at 14:50
11 the next page, 1690. It's a slightly different
12 sequence of setting out the information. But it states
13 the same information in a slightly separated form. If
14 we just scroll over the page, I think that's probably
15 the matter. It says: 14:51

16
17 "I would advise you appropriately progress your
18 concerns with and seek clarifications from your local
19 management HRPD in this matter.

20 14:51
21 For reference purposes I provide a copy of your minute,
22 excluding the correspondence to HRPD to facilitate
23 appropriate further action in respect of your concerns.

24
25 I trust the above sets out the record straight insofar 14:51
26 as it pertains to the involvement of this service and I
27 and allows to suitably progress your concerns."

28
29 Presumably you did receive that shortly after?

1 A. Yes.

2 411 Q. What steps did you take on foot of that to progress the
3 matter?

4 A. I can't recall, I am sure I would have responded to it.
5 But at the outset the CMO said he couldn't make a 14:51
6 decision unless there was an investigation into my
7 illness.

8 412 Q. Yes.

9 A. Now all investigations were complete, so that was why I
10 was writing. 14:52

11 413 Q. He's making a number of points. Habitually he says
12 he's never informed of the commencement of them and
13 never normally often informed of the conclusion of
14 them. He doesn't appear to have been forwarded any of
15 the reports or minutes in relation to any of the 14:52
16 investigations?

17 A. That wouldn't surprise me.

18 414 Q. Yes. Did you in fact take this further in any step at
19 the time? I haven't seen anything?

20 A. I'd have to look at my correspondence. I believe I 14:52
21 wrote to HRM again in Navan or there was further
22 correspondence afterwards.

23 415 Q. Just in relation to the conclusion of the transfer
24 issue, not that it I think mattered to you at that
25 point in time probably, but I think had you a hearing 14:52
26 before the review body, which is meant to be
27 independent of the commissioner and can make
28 recommendations, and that review body held that the
29 reasons advanced in justification of the transfer were

1 at that point in time, when they heard it, no longer
2 valid in their view?

3 A. That's correct.

4 416 Q. They recommended that the transfer not go ahead?

5 A. That's correct. 14:53

6 417 Q. The commissioner accepted that at the time?

7 A. Yes.

8 418 Q. Again, for what it's worth?

9 A. Yeah, that was a month before I was due to retire. I
10 had to come to Dublin for the appeal. 14:53

11 419 Q. Yes. I should have asked you to confirm that, I think
12 you were made aware by Chief Superintendent Kehoe that
13 she had interviewed Superintendent Comyns in connection
14 with a breach of discipline in April of 2016, that she
15 had submitted the discipline file on the 12th May. 14:54
16 You've seen that file?

17 A. I have, yes.

18 420 Q. And that the outcome of the finding of the
19 investigation was that he was found not to be in breach
20 of discipline. So that concluded her three 14:54
21 investigations. And just could I ask for your evidence
22 on these issues. I think you've accepted and you
23 foresaw that the investigations would necessarily have
24 to take a particular sequence?

25 A. Well, Chief Superintendent Kehoe indicated from the 14:54
26 outset that they would be parallel investigations, so
27 not as in sequence.

28 421 Q. Yes.

29 A. But Chief Superintendent Dillane indicated that the

1 bullying and harassment would take place first and then
2 there'd be a criminal investigation and that seemed to
3 be the way that it progressed.

4 422 Q. well, did she not make it clear to you that because of
5 the time limits, that 1-8, the first eight ones on your 14:55
6 complaint, were taken first, she appointed
7 Superintendent Leahy to commence a weighing of the
8 criminal one?

9 A. I understand that, but I -- had Chief Superintendent
10 Dillane asked -- or not, Kehoe asked me to consent to 14:55
11 having those matters dealt with after the criminal
12 investigation, I would have gladly consented, because I
13 believe the criminal allegation should have been
14 investigated first.

15 423 Q. I am not criticising you for offering that view at all 14:55
16 but just in terms of the sequence of events, you were,
17 as was necessary, your consent was required to extend
18 that period from time to time, I am not saying you were
19 giving it begrudgingly, but you didn't want to give an
20 open-ended consent because of your pay issue I think? 14:56

21 A. I refused it once and I granted it once.

22 424 Q. Sorry?

23 A. I refused A/C Nolan's extension and I consented to
24 Catherine Kehoe's extension of time.

25 425 Q. But you wouldn't have been consenting and you didn't 14:56
26 consent to an open ended one at the time?

27 A. But if I had known that the bullying investigation was
28 going to take precedence over the criminal allegation,
29 I would have gladly consented to have it in the reverse

1 order.

2 426 Q. Yes, all right.

3 A. I did write to Chief Superintendent Kehoe in relation
4 to that.

5 427 Q. Yes. In terms of what you knew then and what you know 14:56
6 now, obviously you have a much greater insight into
7 what she did, the pace she did it at and the extent to
8 which she went to conduct each of the investigations.
9 would you agree that each of them appears to be
10 thorough in terms of the issues looked at, the 14:57
11 documents sought, the witnesses interviewed?

12 A. Yeah, I was also aware that when she conducted her
13 investigation there was some phone records that she
14 couldn't ascertain because of the time lapse, that the
15 records were gone after two years, which for a criminal 14:57
16 allegation -- had she fully focused on the criminal
17 investigation from the outset, then those records would
18 have been available.

19 428 Q. Are you talking about records relating to Garda
20 members' phones? 14:57

21 A. I believe so, and there may be civilians as well. I
22 know that she did mention to me that there were some
23 records that she wasn't able to obtain because of the
24 time lapse. And I put that down to her fault.

25 429 Q. Okay. 14:57

26 A. By not giving the criminal investigation priority.

27 430 Q. Looking back now on what you did allege to the minister
28 about her responsibility and deliberately delaying and
29 herself being guilty of a perversion of the course of

1 justice, is it fair to her and the process, as you have
2 seen it now in all the papers, to characterise it as
3 that?

4 A. I believe so, and I would give credit to that in
5 relation to the GSOC findings. 14:58

6 431 Q. Well, I am not sure that we can consider the GSOC
7 findings. I think you know they have been quashed by
8 order of the High Court, isn't that correct?

9 A. I believe so, yes.

10 432 Q. I mean, you made a statement or perhaps a number of 14:58
11 statements for GSOC, isn't that correct?

12 A. They came with a prepared statement, the statement I
13 submitted to Superintendent Lordan.

14 433 Q. Yes. I think do you know that they did not take 14:59
15 statements from any other parties, they relied entirely
16 on the material that Chief Superintendent Kehoe had?

17 CHAIRMAN: Mr. McGuinness, are we not effectively
18 precluded from investigating anything to do with GSOC?

19 MR. MCGUINNESS: Indeed, but I am making a different
20 point in the question, in the sense all of the material 14:59
21 gathered by Chief Superintendent Kehoe was made
22 available to GSOC.

23 CHAIRMAN: well, I think that is a fair point, to say
24 that was made available to GSOC.

25 MR. MCGUINNESS: whatever statements they had were the 14:59
26 statements that she had gathered, without any
27 additional statements?

28 434 Q. CHAIRMAN: But do you know what they had or didn't
29 have?

1 A. GSOC?

2 435 Q. CHAIRMAN: Mr. McGuinness is asking the same, that all
3 the material that Chief Superintendent Kehoe collected
4 went to GSOC, do you know that?

5 A. Yes, I believe they got the documentation, yes. 14:59

6 CHAIRMAN: Thank you very much. Very good. Thanks.

7 436 Q. MR. MCGUINNESS: Is there anything else you'd like to
8 say about Chief Superintendent Kehoe's investigations
9 then?

10 A. I don't believe it was as thorough as the other 15:00
11 investigation conducted afterwards. That's all I can
12 say.

13 437 Q. Okay.

14 CHAIRMAN: Okay.

15 438 Q. MR. MCGUINNESS: I think you got the CMO's letter about 15:00
16 the injury on duty and I think Ms. Carr did correspond
17 with you about that in August of 2016, after you had
18 retired?

19 A. That's correct.

20 439 Q. And perhaps we'd just look at letters at 524, 525 and 15:00
21 526. So this is copying the correspondence to Chief
22 Superintendent Dillane and the CMO. If we go to 525,
23 this is sent to you then:

24

25 "I refer to your enquiry to the HR directorate 15:01
26 regarding classification of sickness absence availed by
27 you from 6th August 2012 to 29th March 2013 while you
28 served as a member of An Garda Síochána.
29

1 I understand that while serving as a member of An Garda
2 Síochána a formal complaint was submitted by you under
3 the provisions of the organisation's bullying and
4 harassment policy. Your assertion in relation to a
5 period of sickness absence specified above is the 15:01
6 actions alleged in your complaint are the cause of your
7 illness and absence from work and sick leave for this
8 period. I am to advise you that it is my understanding
9 that your complained under the organisation's bullying
10 and harassment policy were investigated and were not 15:02
11 upheld.

12
13 I am further aware that following on from the findings
14 of your complaint under the organisation's bullying and
15 harassment policy that the complaints were not upheld. 15:02
16 A file was submitted to the Director of Public
17 Prosecutions in respect of a tandem investigation being
18 undertaken by the investigating officer. I understand
19 that the Director of Public Prosecutions subsequently
20 directed no prosecution against another named member of 15:02
21 An Garda Síochána and consequently findings are not in
22 breach, result in respect all allegations relating to
23 another member of An Garda Síochána.

24
25 Accordingly, please be advised that your absence on 15:02
26 sick leave from 6th August 2012 to 29th March 2013
27 while you served as a member of An Garda Síochána
28 remains appropriately recorded as ordinary illness. "
29

1 which is what it had originally been classified as,
2 isn't that correct?

3 A. That's what they classified it as, yes.

4 440 Q. CHAIRMAN: Say again, Mr. Barry.

5 A. That's what they classified it as, yes, flu/viral. 15:02

6 441 Q. CHAIRMAN: And the letter says, "I trust this clarifies
7 the matter for you", which is a bit of a hope, but
8 anyway, that's what they said and that was the
9 situation that remained?

10 A. Yes. 15:03

11 442 Q. MR. McGUINESS: I think you didn't get your
12 certificate of service in 2016?

13 A. No.

14 443 Q. And throughout 2017?

15 A. No. 15:03

16 444 Q. I think you wrote on a number of occasions, you
17 provided the copy letters to us, in October, November,
18 December, including letters to Chief Superintendent
19 Dillane of the 1st December, the 2nd January 2018. And
20 I am not sure you got any reply from him? 15:03

21 A. No.

22 445 Q. But you got some replies from HR at the time, I think?

23 A. Yes, via e-mail, I was corresponding with a person in
24 the HR department in Navan.

25 446 Q. Yes. We've circulated a letter that Chief 15:03
26 Superintendent Dillane sent to Ms. Monica Carr I think
27 on the 5th January. It's in the latest volume of
28 documents that were circulated this week. I am not
29 sure of the page number. Perhaps Ms. McGrath --

1 CHAIRMAN: Is this the one where he says he changed his
2 mind?
3 MR. MCGUINNESS: No, it is before that. It should be
4 on volume 19.
5 CHAIRMAN: Tell us what it says, Mr. McGuinness, before 15:04
6 we look it up.
7 MR. MCGUINNESS: Yes.
8 CHAIRMAN: Because I am sure that Mr. Barry is probably
9 familiar with it.
10 447 Q. MR. MCGUINNESS: You may have seen it in the last 15:04
11 couple of days?
12 A. Yes.
13 CHAIRMAN: Just tell us what it says.
14 MR. MCGUINNESS: I don't have a copy of it myself, a
15 paper copy. 15:04
16 CHAIRMAN: Do we know what it said? I am just keen to
17 do this, ultimately, ultimately, after a good deal of
18 correspondence, a certain amount of correspondence,
19 Chief Superintendent Dillane changed his mind and said,
20 oh all right, I'll give him a certificate of 15:05
21 exemplary --
22 MR. COSTELLOE: 5675, Chairman, I think.
23 MR. MCGUINNESS: Thank you, Mr. Costelloe. Thank you.
24 448 Q. And he's referring to previous correspondence:
25 15:05
26 "Also attach correspondence of Mr. Paul Barry OF this
27 office on this date in connection with same.
28
29 Sergeant Barry's personal file has not been submitted,

1 the file is required at this office due to a number of
2 outstanding matters. "

3
4 And I think Chief Superintendent Dillane outlines in
5 his statement that there was obviously legal
6 proceedings and a request to keep the file at
7 divisional headquarters during this period, were you
8 aware of any of that or did anyone say that to you at
9 the time?

15:05

10 A. The HR person I spoke to, he said that wasn't any
11 reason for them not to receive the papers back.

15:06

12 449 Q. Yes. He says:

13
14 "With regard to the member's category of service under
15 Garda Code 12.12, I wish to state as per a minute from
16 this office dated 23rd March 2016, I categorised
17 Sergeant Barry's service in An Garda Síochána as very
18 good. Copy also attached.

15:06

19
20 The reason for not awarding Sergeant Barry an exemplary
21 classification is that in my limited dealings with the
22 member I found him to be very difficult and
23 discourteous. "

15:06

24
25 would you like to make any comment on that?

15:06

26 A. Well, as I said to the HR person, that would be
27 indicative of his nasty attitude to me in general. And
28 I was never difficult or discourteous with him. I was
29 difficult in that I wouldn't submit a station to go to,

1 that may be difficult for him to accept. But I had my
2 own reasons for that.

3 450 Q. In fairness to him, and as you know, he reconsidered
4 the matter and obviously gave it another consideration
5 in the fullness of time, looking back at your career. 15:07
6 And he wrote I think, if we look at page 262 -- sorry,
7 that's the amended certificate. But he's asked at page
8 -- if we go to page 534. Sorry, Mr. Murphy.

9 CHAIRMAN: Yes.

10 451 Q. MR. MCGUINNESS: He says: 15:07

11

12 "My reasons for awarding Sergeant Barry a very good
13 rating as opposed to an exemplary rating is based on my
14 dealings with the member since my appoint to Fermoy as
15 a divisional officer in 2012." 15:07

16

17 I suppose you would agree that that covers, you know, a
18 four-year period rather than your service as a whole?

19 A. That's correct.

20 452 Q. So I suppose you could regard it as a concession, he 15:08
21 didn't look at your entire service. But he says:

22

23 "However, having consulted with a number of members
24 previous district and divisional officers, I now accept
25 that his rating during his overall service in An Garda 15:08
26 Síochána merits an exemplary rating."

27

28 He seems to have consulted with others and presumably
29 you would have no objection to him having done that?

1 A. No.

2 453 Q. And to get other people's opinions of you as well?

3 A. No, because my Certificate of Service should be for my

4 own service and not just for his dealings with me.

5 454 Q. Yes. I think that must be -- 15:08

6 A. I believe he should have done that from the outset.

7 455 Q. And he says:

8

9 "Retired Sergeant Barry's history paper is also

10 attached as requested. 15:08

11

12 Forwarded for your information."

13

14 I mean, I am not criticising Navan, but they didn't

15 issue a Certificate of Service based upon the original 15:08

16 one, that was never given to you, as very good?

17 A. No, because the person in HR rang me to say that he had

18 received it and I told him I was appealing that

19 decision straight off. So he never forwarded it out to

20 me. 15:09

21 456 Q. I think if we look at page 262, this is the letter I

22 think from the Office of the Commissioner to you,

23 enclosing I think two copies of the Certificate of

24 Service and extending to you the appreciation for your

25 service in An Garda Síochána. And if we just go over 15:09

26 the page then. That is the only certificate that was

27 ever issued in fact, isn't that right?

28 A. That's correct.

29 CHAIRMAN: Okay.

1 457 Q. MR. MCGUINNESS: If we look at page 4749, it would
2 appear that these files are dealt with regularly by the
3 commissioner on the basis of a number of them going to
4 the commissioner to be signed and yours was one of a
5 batch of 31 submitted to the office. I know you 15:10
6 complained about the delay in getting it. There's a
7 number of other members there from 2016 who had retired
8 six months earlier and they hadn't got theirs either.
9 So there may have been some inevitable delay, even
10 considering other matters? 15:10

11 458 Q. CHAIRMAN: The real complaint is that you weren't given
12 a certificate of exemplary service. If it took a few
13 months for it actually to come out, I take it that's
14 not something you're going to make a big complaint
15 about. 15:10

16 A. No.

17 459 Q. CHAIRMAN: The big one is very good instead of
18 exemplary, which you say should have been the case all
19 along?

20 A. Yes. 15:10

21 460 Q. MR. MCGUINNESS: In terms of pursuing the issue of
22 injury on duty, I think you did invoke an appeal
23 process up to and involving the executive director of
24 HRPD at the time and you sought to exhaust your avenues
25 of appeal - 15:11

26 A. Yes.

27 461 Q. - in that regard, up until August of 2019. I don't
28 think we need to open the papers, but you did that?

29 A. I did, yes.

1 462 Q. Unsuccessfully, as it turned out?

2 A. Yes. I also forwarded on correspondence from the
3 Department of Social Protection to indicate that my
4 illness was classified as a work related injury for
5 insurance purposes.

15:11

6 463 Q. And you forwarded that to the Tribunal and that is
7 included in the papers obviously as well?

8 A. Yes.

9 464 Q. MR. MCGUINNESS: Chairman, that's the extent of my
10 examination of Mr. Barry, but I would like to ask him
11 just at this stage, is there anything else you would
12 like to add at the moment? What I intend to do is ask
13 the Chairman, having heard you, to adjourn the hearing
14 until Tuesday morning. I intend to consult with my
15 colleagues, both my own colleagues and, indeed, your
16 own counsel.

15:12

15:12

17 CHAIRMAN: Well, may I suggest, we can make this
18 easier, Mr. McGuinness. If you are satisfied that you
19 have asked all the questions that you need to ask,
20 we'll stop there.

15:12

21 MR. MCGUINNESS: Yes.

22 CHAIRMAN: And then anything arising can be asked in
23 re-examination.

24 MR. MCGUINNESS: Indeed, Chairman. Indeed.

25 CHAIRMAN: All right. I don't want to leave it over
26 that we have November go on Tuesday morning, I want to
27 leave it now which the Tribunal questions, which
28 frankly I think have covered all the ground. I don't
29 know if there is anything Mr. Barry wants to offer,

15:12

1 wants to add at this point. But believe me, you'll
2 have plenty of opportunity of answering questions.
3 Okay.

4
5 So, we will leave it at that then, Mr. McGuinness. 15:13

6 465 Q. MR. MCGUINNESS: I do want to ask Mr. Barry and he
7 hasn't responded, that is not a complaint. Is there
8 anything else you would like to add at this stage
9 before we adjourn today?

10 A. No, I am happy. 15:13

11 CHAIRMAN: Thank you very much. And it's a long
12 session that you have spent, so thank you very much for
13 your assistance.

14 THE WITNESS: Thank you, Chairman.

15 CHAIRMAN: Let me check now. I am not expecting people 15:13
16 to start cross-examining you now or that you should
17 have cross-examination, unless people are bursting to
18 do it and use the half hour. But what I would much
19 prefer to do is simply agree on an order. Now, it
20 strikes me or us that the natural order is that 15:13
21 Mr. Murphy for An Garda Síochána should go first, I
22 will say this and then people can suggest -- I think
23 Mr. Murphy should go first and I Mr. Costelloe, who is
24 counsel for Mr. Barry, should go last. Don't look so
25 surprised, I just want to get the two ends, 15:14
26 Mr. Costelloe. So, Mr. Murphy goes first. Now,
27 Mr. Harty you're for Superintendent Comyns, and I was
28 assuming you'd probably go after Mr. Murphy, if you're
29 happy with that.

1 MR. HARTY: Very happy with it.

2 CHAIRMAN: Unless anybody else has an objection.

3 MR. HARTY: I think that makes sense in terms of
4 chronological matters being dealt with.

5 CHAIRMAN: Yes, that's what it looks like. Now, after 15:14
6 that, Mr. Carroll, I see you there, and Mr. McGarry,
7 and I hope I am not forgetting anybody else, but if you
8 are happy to work it out among yourselves, I won't have
9 any difficulty with that. So you will go after
10 Mr. Harty and we will then return to Mr. Costelloe. 15:14
11 Following that, if the Tribunal wishes to follow up on
12 any issue that has been raised and that counsel think
13 has not been fully ventilated, then we can have another
14 round, if you like, of questions. Is that satisfactory
15 to everybody? 15:15

16 MR. MURPHY: Yes, Chairman.

17 MR. MCGARRY: I will discuss the matter with
18 Mr. Carroll and we work it out.

19 CHAIRMAN: Thanks very much. Now, could I just ask,
20 and this will help everybody and it will also help 15:15
21 Mr. Barry: Are you happy that you don't start this
22 afternoon, Mr. Murphy?

23 MR. MURPHY: Chairman, yes, I would be very happy to
24 start on Tuesday, please.

25 CHAIRMAN: Very good. I think that makes sense. 15:15
26 Mr. Barry, if you want sit down, you don't have to
27 stand there like an exhibit, if you want to, you can
28 sit down in your own place while we chat about these
29 things, if you feel like it, and thank you very much,

1 as I say.

2 THE WITNESS: Yes.

3 CHAIRMAN: Could I get some idea, Mr. Murphy? Have you
4 any idea? I know it is difficult for counsel to say
5 how long they are likely to be, but we have been over 15:16
6 some of this ground in analogous situations, have you
7 any idea that you can give us as to how long you're
8 likely to require.

9 MR. MURPHY: Chairman, I indicated to Mr. McGuinness,
10 that if I am not held to it absolutely, I would hope to 15:16
11 finish within the same timeframe that he has deployed
12 and perhaps less, but that will all depend I think on
13 the first day.

14 CHAIRMAN: That is about two days, is that right.

15 MR. MURPHY: Yes. 15:16

16 CHAIRMAN: Give or take.

17 MR. MURPHY: I would hope so.

18 CHAIRMAN: Mr. Harty, have you got a view in your mind?
19 Again, there's nothing absolute about this and we will
20 see how it arises. 15:16

21 MR. HARTY: In view of the manner in which
22 Mr. McGuinness has gone into a considerable amount of
23 detail and what I would anticipate being dealt with by
24 Mr. Murphy, I would anticipate that I would be two
25 hours or less. 15:16

26 CHAIRMAN: Very good, thank you very much. So that's
27 about two and a half days we're talking about then. So
28 that would bring us to -- and I am assuming that about
29 half a day for everybody else.

1 MR. CARROLL: Yes, I think I will be short enough, it's
2 really one issue that involves my client.

3 CHAIRMAN: Thank you very much, Mr. Carroll. That
4 would give us three days, and I know this is an
5 impossible question, Mr. Costelloe, because you don't 15:17
6 really know what you are going to need to raise, but am
7 I thinking maybe half a day.

8 MR. COSTELLOE: I think that is accurate, Chairman,
9 yes.

10 CHAIRMAN: Something like that. 15:17

11 MR. COSTELLOE: Yes. Unless something extraordinary
12 happens next week, and I don't anticipate that, I would
13 agree with you, Chairman.

14 CHAIRMAN: And nothing is absolute.

15 MR. COSTELLOE: Yes. 15:17

16 CHAIRMAN: You know nothing is -- but I am just
17 wondering about where that leaves us with witnesses, so
18 if we have witnesses for next week, it sounds to me
19 like we are going to be occupied for most of next week
20 in cross-examination. What do you think, Ms. McGrath, 15:17
21 that doesn't sound like we should be lining up
22 witnesses? I don't want to have people, if possible,
23 hanging around wondering or showing up. What do you
24 think, Ms. McGrath?

25 MS. McGRATH: Well, I think that Superintendent Comyns 15:18
26 was originally listed for Thursday and Friday, but I
27 don't think that sounds realistic now.

28 CHAIRMAN: Correct.

29 MS. McGRATH: So in the circumstances, I think he would

1 move to the following week.

2 CHAIRMAN: what do you think, Mr. McGuinness?

3 MR. MCGUINNESS: I have no objection obviously at all.

4 CHAIRMAN: very good.

5 MR. MCGUINNESS: He's not my client, but I would 15:18
6 anticipate that if the others were as quick as they
7 might be, he might have started his evidence on Friday,
8 maybe.

9 CHAIRMAN: Maybe he might. Mr. Harty, I'm not inclined
10 to keep Superintendent Comyns kind of on schedule, on 15:18
11 red alert, so to speak, so I am inclined to say we
12 won't take them next week and we will anticipate
13 starting with him on the following Tuesday.

14 MR. HARTY: well, I think he certainly intends to be
15 here in any event. 15:18

16 CHAIRMAN: Of course.

17 MR. HARTY: we remain at the disposal of the Tribunal,
18 I think is the best way to put it, albeit I note the
19 Tribunal's attitude.

20 CHAIRMAN: well, I think before we start, we will see 15:19
21 how we are going and it may be obvious then, depending
22 on how things are going, we may have to make some
23 adjustments, but in general that seems like a
24 reasonable way of doing it, yes. So that from
25 Mr. Barry's point of view, he can take it that we will 15:19
26 be finished with his evidence next week. I think
27 that's a fair -- now nothing is -- never say always and
28 never say -- but anyway, that's what it looks like,
29 okay.

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Thank you very much.

THE HEARING THEN ADJOURNED TO TUESDAY, 24TH MAY 2022,
AT 11AM

15:20

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