

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 TUESDAY, 24TH MAY - DAY 178

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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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WITNESS

PAGE

MR. PAUL BARRY

CROSS-EXAMINED BY MR. MURPHY ..... 5

.....

1 THE HEARING RESUMED, AS FOLLOWS, ON TUESDAY, 24TH MAY  
2 2022:

3  
4 CHAIRMAN: Good morning, Mr. Barry. Now, Mr. Murphy.

5 11:01

6 MR. PAUL BARRY WAS CROSS-EXAMINED BY MR. MURPHY, AS  
7 FOLLOWS:

8  
9 1 Q. MR. MURPHY: Good morning, Mr. Barry.

10 A. Morning, Mr. Murphy.

11:01

11 2 Q. So, Mr. Barry, if we could just back to the period 2010  
12 and 2012 just for a moment, I think you will agree with  
13 me that at that time the country and An Garda Síochána  
14 was dealing with the effects of the biggest recession  
15 since 1929, you do recall that, don't you?

11:01

16 A. I do.

17 3 Q. And I think you will agree with me also that at that  
18 time within the force there was a very considerable  
19 constriction on money, resources, would you agree?

20 A. That's correct.

11:02

21 4 Q. I think in addition, you were aware, as an experienced,  
22 long serving sergeant, that there were new rules  
23 introduced on a variety of issues affecting pay,  
24 conditions, rosters and the like?

25 A. Correct.

11:02

26 5 Q. And just perhaps to assist the Tribunal, it might take  
27 just a minute or two to go through a few of those  
28 documents and I wonder if it's possible to have page  
29 5425 please. Thank you very much. And I wonder if you

1 could possibly just scroll that down a little bit  
2 please. Mr. Barry, I think you will see, if I can take  
3 you to the heading "Public Service Stability Agreement  
4 2013-16 - extra hours and overtime" and do you see the  
5 third paragraph, it relates to the Haddington Road 11:03  
6 agreement and says:

7  
8 "These cost savings proposals which are applicable to  
9 Gardaí, sergeants and inspectors include three extra  
10 days duty in each of the calendar years 2013, '14 and 11:03  
11 '10.

12  
13 Garda management should utilise the additional hours to  
14 maximise the level of service being provided whilst at  
15 the same time minimising any associated costs, 11:03  
16 including the liability for the payment of unsocial  
17 hours allowances."

18  
19 And I think you are broadly familiar with the  
20 implications of that change? 11:03

21 A. Yes.

22 6 Q. Could I just draw your attention to the fourth  
23 paragraph please for a moment? And there it says:

24  
25 "These provisions apply to all members of the garda, 11:03  
26 sergeant and inspector rank irrespective of how they  
27 are employed."

28  
29 So I think you will agree with me that it was notified

1 to you as a long serving member that these were  
2 measures which applied to all gardaí?

3 A. That's correct.

4 7 Q. And if I could ask you then to go forward please to  
5 another document at number 991. Thank you. This is 11:04  
6 the management of sickness absence document issued from  
7 Garda Headquarters on 1/12/2010. We will see in a  
8 minute that later on, at page 995, it's signed by  
9 Assistant Commissioner Fintan Fanning. But again this  
10 is a directive which was brought to the attention of 11:04  
11 all members of An Garda Síochána, do you recall that  
12 being introduced at that time?

13 A. I can't say that I do recall it, but I accept that it  
14 was.

15 8 Q. Yes. And just if I could ask you to turn forward, 11:05  
16 please, to page 995 for a moment. And just at the end  
17 of the page please. Mr. Barry, I think you will note  
18 there it says:  
19  
20 "Please bring to the notice of all sworn members of An 11:05  
21 Garda Síochána."  
22  
23 Can we take it from that, that this was something that  
24 was notified broadly to all of the members of the  
25 force, yourself included? 11:05

26 A. Yes, that would have been the case.

27 9 Q. Thank you. And just going back please to page 991. I  
28 think, Mr. Barry, if I could just draw your attention  
29 to the third paragraph under the heading "the role of

1 the Chief Medical Officer", and I think there it says,  
2 and I quote:

3  
4 "The Chief Medical Officer (CMO) advises the Garda  
5 Commissioner on member's medical fitness for policing 11:06  
6 duties. In forming the medical opinion, the CMO takes  
7 into account all medical information available at the  
8 time. When the CMO advises that a member is fit for  
9 full or light or restricted police duties, the member  
10 will resume duty immediately on being notified of same 11:06  
11 by the member's district officer/superintendent."  
12

13 So again, I think you will agree with me, that's  
14 something that was known to you in 2010, '11 and '12?

15 A. That's correct. 11:06

16 10 Q. And I think this was a change from previous procedures  
17 and it involved, did it not, the input from HRM, much  
18 more than had been the case in the past?

19 A. I believe so, yes.

20 11 Q. Yes. And in terms of the next page, please, at page 11:06  
21 992, if I just draw your attention down to the last  
22 paragraph under the heading "Reporting Sickness Absence  
23 to Human Resource Management", I think there it  
24 indicates and I quote:

25  
26 "Continuous sickness absence of 28 calendar days or  
27 more will result in intervention by the Garda  
28 Occupational Health Service. This intervention may be  
29 by way of advice based on reports submitted or 11:07



1 referrals of the CMO and report will be forwarded and  
2 supported by D 5 of the relevant medical certificates  
3 were sickness absence exceeds 28 continuous calendar  
4 days or there is an aggregate of 60 days sickness  
5 absence in any period of 90 calendar days and reports 11:07  
6 will be forwarded --"  
7

8 Just over the next page please, 993. And it goes on to  
9 say:

10 "Reports will be forwarded to the divisional officer,  
11 to the assistant commissioner of HRM. 11:07  
12

13  
14 All injuries on duty (resulting in sickness absence or  
15 not) will also be reported via the normal 11:08  
16 communications channels to assistant commissioner HRM  
17 at the time of the incident or as soon as practical  
18 thereafter. This will be reported by the member  
19 concerned or the first line supervisor."

20  
21 So again, I think you will agree with me that that was  
22 a measure which involved HRM, involved Garda  
23 headquarters, involved medical assessment from outside  
24 the local area where the member, any member, might be  
25 serving? 11:08

26 A. That's correct.

27 12 Q. Thank you. Could I ask you then to look down at page  
28 993, to the middle of the page? You will see that  
29 there's a heading "injury on duty classification" and

1 that says:

2

3 "Where there is any doubt that an injury on duty  
4 occurred, the divisional officers should refer to the  
5 matter to the assistant commissioner HRM, who will seek 11:08  
6 the advices of the CMO. The CMO will take into account  
7 all relevant information in arriving at his/her  
8 advices.

9

10 A decision regarding injury on duty will be based on: 11:08  
11 A complete investigation into the incident; management  
12 views and recommendations; and the assessment and the  
13 opinion of the CMO. "

14

15 So just pausing there for a moment, Mr. Barry. Would 11:09  
16 you agree with me that that indicated that the  
17 assessment of injury on duty required a number of  
18 different things to happen. It wasn't just a question  
19 of the doctor who was the CMO having a view, it was  
20 also required that he would take into account these 11:09  
21 points which are referred to in the bullet points on  
22 page 993, isn't that correct?

23 A. That's correct.

24 13 Q. And then in terms of the next paragraph, it indicates:

25

26 "Ordinary illness/injury on duty: Where there is a  
27 doubt as to whether the member's sickness absence is  
28 due to ordinary illness or an injury on duty, the  
29 member's absence will be treated as ordinary illness

11:09

1 pending a decision on the classification of the injury  
2 and in particular the CMO's advice. If it is  
3 determined that the absence does relate to an injury on  
4 duty, the member's pay will be retrospectively adjusted  
5 as soon as practicable and a marginal note should be 11:10  
6 made of Code 11.37."

7  
8 So again, I think this was clearly part of the  
9 structure for assessment of injuries or injury on duty  
10 classifications or ordinary illness and you'll see 11:10  
11 there reference to Code 11.37. So again would you  
12 agree with me that that was something that you were  
13 aware of in 2010, '11 and '12?

14 A. That's correct.

15 14 Q. I think in relation to this particular document which 11:10  
16 appears at page 993, I wonder could we go back to 964  
17 please. If we scroll down to the end. Again you will  
18 just see there that's a letter from Superintendent  
19 Patrick Lordan of 6th December 2012, having met with  
20 you. And he indicates in the final paragraph: 11:10

21  
22 "A copy of Sergeant Barry's statement is attached.  
23 Sergeant Barry also provided copies of correspondence  
24 and other documents to me."

25 11:11  
26 So that in fact is one of the documents you supplied to  
27 Superintendent Lordan. The document we just went  
28 through, the management of sickness absence, which  
29 appears at page 991. I wonder if we could have page

1 991, please. I think that's the beginning of the  
2 document that we've just gone through, dated 1/12/2010.  
3 That's a part of a bundle of documents which I think  
4 you gave to him at the time, isn't that right?

5 A. That's correct 11:11

6 15 Q. We might come back to that bundle later on. Then  
7 please, very briefly just on one other point, if one  
8 comes forward to page 5339, please. This is a document  
9 in relation to critical incident reporting that was  
10 referred to in your evidence the other day I think, 11:12  
11 concerning the roles and rules at that time. Insofar  
12 as that's concerned, can I ask you just to -- sorry,  
13 can you scroll up to the top of the page. Sorry, is it  
14 possible to go to page 5340, please? So again, just  
15 pausing for a moment. I am very sorry, can I ask you 11:12  
16 to scroll back down again just a little bit, please.  
17 Further down, please. Just pausing please there,  
18 thanks. And just can I draw your attention to the  
19 second paragraph? And that indicates that, quote:

20 11:13  
21 "In compliance with the directions of deputy  
22 Commissioner, operation of all critical incidents will  
23 be reported to the office of Deputy Commissioner,  
24 operations by the regional offices within 30 minutes of  
25 the incident occurring. Such a report to be made as 11:13  
26 follows.

27  
28 During normal hours 7.30am to 6.30pm Monday to Friday,  
29 critical incidents will be notified to phone to

1 Superintendent Fergus Dwyer.  
2  
3 Outside office hours a brief summary of such incidents  
4 will be text to Superintendent Dwyer.

5  
6 Following the initial notification, a full report of  
7 the incident signed by the relevant district officer,  
8 acting district officer or superintendent on call will  
9 be forwarded to the relevant regional office to  
10 operations by e-mail before 8.30am on the following  
11 day. " 11:13  
12

13 So again, I think you will agree with me, Mr. Barry,  
14 that this was a document that was of wide application  
15 to all departments, all districts and all divisions of 11:14  
16 An Garda Síochána at that time?

17 A. That's correct.

18 16 Q. Thank you. Just in terms of the implications at that  
19 time for the force of all of these changes and updates  
20 and provisions and economic focus, in addition, there 11:14  
21 was a greater degree of supervision, would you agree,  
22 began to set in around that time with the development  
23 of Pulse, with the new mechanisation of the logging of  
24 records, and there was an increased emphasis on all  
25 fronts of accountability for money and accountability 11:14  
26 to higher authority, and that matters needed to be  
27 recorded in greater detail than before?

28 A. That would appear so, yes.

29 17 Q. I wonder if we could have page 3654, please. And just

1 in the middle of the page, I think this is from the  
2 Garda Code, and it's contained at volume 12 of the  
3 papers before the Tribunal, but the role of the  
4 sergeant is given a very clear definition at this point  
5 and it says, and I quote: 11:15

6  
7 "The sergeant is the first line supervisor and the  
8 operational team leader. The sergeant shall take  
9 charge of assigned personnel and operational duties and  
10 challenges. He/she shall ensure that all front line 11:15  
11 garda services are delivered and the tasks are carried  
12 out in a timely, efficient and effective manner."

13  
14 And again, I think you would agree with me, that is a  
15 fair definition of the significant operational duties 11:15  
16 and responsibilities of a sergeant, such as yourself,  
17 at that time?

18 A. That's correct.

19 18 Q. I think there will be no disagreement between us either  
20 that it is clear from the Code that insofar as the Code 11:16  
21 is concerned it also goes into details in relation to  
22 roles of all of the other officers. I think it is not  
23 necessary for us to go through those, but you can see  
24 if one scrolls down to the next level, number 2, just  
25 looking at the role of the sergeant, if we just scroll 11:16  
26 up again, thank you, and in those circumstances you  
27 will see that under the heading "Supervisory and  
28 Leadership Responsibility" there's a definition of a  
29 lot of duties which are imposed on sergeants, that are

1 required of them. And just look please, if you would  
2 for a moment, at subsection A, that indicates that the  
3 sergeant has to take charge of his/her portfolio and  
4 provide decisive and effective guidance and direction  
5 for the team and the staff, isn't that right? 11:16

6 A. That's correct.

7 19 Q. Then in (b) "The sergeant has to ensure that all  
8 relevant provisions of Garda policy and procedure are  
9 implemented and adhered to", isn't that correct?

10 A. That's correct. 11:17

11 20 Q. And (c) says that "The sergeant has to support the  
12 superintendent in the implementation of local policing  
13 plans and operations", do you see that?

14 A. That's correct.

15 21 Q. And would you agree with me that each of those elements 11:17  
16 are very important in any division and in any area  
17 because there's an interlinking series of duties and  
18 obligations between superiors, sergeants,  
19 superintendents and ordinary gardaí that have to work  
20 together? 11:17

21 A. That's correct.

22 22 Q. Then in terms of the -- if we could look down at (f)  
23 there is a reference there to "apply resources and  
24 effort towards the achievement of local policing  
25 priorities, as identified in the local policing plan 11:17  
26 and the superintendent's directions (e.g. crime  
27 prevention, detection, public order, road safety,  
28 vandalism, victim support et cetera). "  
29

1 So, would you agree with me, that indicates that the  
2 local officer has also a duty at superintendent level  
3 to develop local policing priorities, to have a local  
4 policing plan and the superintendent has to give  
5 directions to all the members in the local area? 11:18  
6 That's envisaged by the Code.

7 A. That would correct, as long as they are lawful  
8 directions.

9 23 Q. So in terms of this particular issue, I think on the  
10 ground at that time the evidence I think will indicate 11:18  
11 that there were changes brought about by Superintendent  
12 Comyns, some of which you indicated in your statement  
13 you disagreed with or you felt were unnecessary, like,  
14 for example, the requirement for members from  
15 Mitchelstown to parade at Fermoy, is it fair to say you 11:18  
16 disagree with that policy?

17 A. I disagreed with the -- I agreed that members should be  
18 paraded but I disagreed that all stations should be  
19 emptied of their members for approximately one hour in  
20 the morning and at night. 11:19

21 24 Q. And again with respect to your disagreement, would you  
22 accept that in fact the Code indicates that that  
23 decision, that local policing priority and policy, is a  
24 matter for your superior, not for you?

25 A. But I also have a duty to the community I serve, if I 11:19  
26 believe a direction is unlawful then I have a right to  
27 question it.

28 25 Q. Okay. Just perhaps just tease that out for a moment,  
29 Mr. Barry. Are you say therefore in your view a



1 direction to attend at Fermoy from Mitchelstown was  
2 unlawful, is that your evidence?

3 A. No, but to leave Cork north without any police in my  
4 belief is reckless.

5 26 Q. Insofar as you're concerned then, was it the case that 11:19  
6 at that time you believed that you could derogate  
7 yourself from an order given by your superior?

8 A. No, I did not believe that. I believed that I should  
9 raise my concern about having no members working in the  
10 outside stations while everybody was in Fermoy being 11:19  
11 paraded, when they could be paraded at Mitchelstown.

12 27 Q. whatever about voicing your concerns, did it also, in  
13 your mind, give you the freedom to act differently to  
14 all of your own colleagues by not actually implementing  
15 the requirement to attend Fermoy? 11:20

16 A. I did attend the briefings, initially. It was only  
17 when I went sick. It was because of the incident in  
18 2012 that affected my attending these briefings.

19 28 Q. We will return to that later on, if we might. And just  
20 in terms of the local issues, I think would you agree 11:20  
21 with me that all of these elements of economic pressure  
22 found expression in terms of the units on the ground  
23 having to effectively watch their expenses, be more  
24 vigilant about cost, and account in relation to  
25 costings? 11:20

26 A. That'd be correct.

27 29 Q. So I wonder if we could have page 580, please. Just by  
28 way of example, this is a note from I think  
29 Superintendent Comyns's papers in relation to a

1 sergeants meeting in July 2010. Just if we could  
2 scroll down, you see the references to different units,  
3 and then there's reference to garda annual leave.  
4 Scrolling down again please. One step further, please.  
5 And just where you see the word "budget", I think you 11:21  
6 will agree at that time, one of the items listed there  
7 is budgets:  
8  
9 "Claims - each entry initialed as A 85 T 0 I L recorded  
10 correctly. Overtime only with prior sanction. 11:21  
11 Court-certificate of attendance with times."  
12  
13 Just pausing there for a moment, was a change on the  
14 situation that existed prior to that time?  
15 A. No, because overtime would have to be applied for and 11:22  
16 sanctioned prior to that.  
17 30 Q. Sure. But I think you will agree with me that that  
18 indicates that at that time you were aware that each  
19 entry had to be recorded correctly and that overtime  
20 could only be obtained with prior sanction? 11:22  
21 A. Sorry, are you saying --  
22 31 Q. Pardon me. Could I draw your attention to the middle  
23 of the page, page 580, just on the screen. Would you  
24 agree with me that you were aware at the time that it  
25 was a direction that overtime could only be claimed 11:22  
26 with prior sanction?  
27 A. Absolutely.  
28 32 Q. And could I ask you please to turn to page 673. If we  
29 could scroll down. This is a document from 2011 and

1 it's addressed to each sergeant in the Fermoy district.  
2 It's from Superintendent Comyns. And do you see here  
3 what it says in the middle, that it's in relation to  
4 finance. Quote:

5  
6 "As a result of the ongoing financial difficulties  
7 being experienced in An Garda Síochána, budgets  
8 nationwide have been cut. The Fermoy district budgets  
9 which were already minimal have been reduced by 25% for  
10 the remaining rosters in 2011."

11  
12 And then in bold type:

13  
14 "All overtime and travelling and subsistence claims  
15 will no longer be paid unless prior sanction has been  
16 obtained in writing from the district officer or the  
17 acting district officer."

18  
19 Just pausing there for a moment. Can we take it from  
20 that, Mr. Barry, that that was a change on the previous  
21 practice and procedure within the district?

22 A. It was. It wasn't so much as that if you were at the  
23 scene of an accident and you had to incur overtime, it  
24 would be impossible for you to apply in writing to have  
25 it sanctioned, that can be done verbally on direction.

26 33 Q. Well, looking again at this change of circumstance,  
27 would you agree with me that in the letter it's clear  
28 that the superintendent is referring to finance, cut  
29 budgets, nationwide issues, restrictions on cost. If

1 we could just scroll down a paragraph, please, for a  
2 moment. And it says:

3  
4 "Each member must certify at the end of each roster  
5 that all travelling and subsistence claims have been 11:24  
6 submitted. Any historical travelling and subsistence  
7 claims received will not be paid until there is money  
8 in the budget to pay them.

9  
10 This direction should be brought to the attention of 11:24  
11 every member in the district immediately.

12  
13 This direction in relation to prior sanction in writing  
14 will be strictly adhered to."

15 11:24  
16 Again, do we understand that this document was sent to  
17 you and all the sergeants and all the sergeants were  
18 directed by Superintendent Comyns to bring it to the  
19 attention of all of the members under your control?

20 A. That's correct. 11:24

21 34 Q. And I think you will agree with me, it's a pretty clear  
22 direction?

23 A. It is.

24 35 Q. And it emphasises certain points, particularly the  
25 points in bold type and which are underlined? 11:25

26 A. It is, but it is not practical. As I said to you, if a  
27 member was at a scene where he was required to perform  
28 extra duty, it would not be possible for him to get  
29 prior sanction in writing from the district officer.

1 36 Q. And insofar as that issue is concerned, again you may  
2 disagree with Superintendent Comyns, but you do agree  
3 it was his duty to implement the local policy and to  
4 supervise the budget?  
5 A. As best as it could be implemented, yes. 11:25  
6 37 Q. Yes. I think we agreed a few moments ago that the  
7 budget had become tightened and was more limited than  
8 in the past, regrettably?  
9 A. Everyone was aware of that.  
10 38 Q. And so, in that situation can I suggest to you that 11:25  
11 this put everybody under pressure, from Superintendent  
12 Comyns downwards, to watch carefully how money was  
13 spent? would you agree that that limitation applied to  
14 all of you?  
15 A. Yes. 11:25  
16 39 Q. So, moving forward, if I can then, into the  
17 documentation that related to -- Mr. McGuinness asked  
18 you from 2012. Can I ask you please to move forward to  
19 page 964? This is the letter we looked at a few  
20 moments ago, Mr. Barry, which is the letter from 11:26  
21 Superintendent Patrick Lordan and I think we have gone  
22 through this in detail, so I don't propose to read  
23 every material out of it. But accordingly he is  
24 reporting that he met with you at Mitchelstown Garda  
25 Station on 21st November 2012. 11:26  
26 A. That's correct.  
27 40 Q. I think we have drawn attention to the fact that in the  
28 past paragraph he refers to documents that you had sent  
29 him. And just very quickly, if we can, I think that

1           you made a statement and that's at page 966. That  
2           statement sets out the eight matters that you've  
3           referred to in your evidence and again we will come  
4           back to those later on if needs be. But can I ask you  
5           to move forward please to 976. Just by way of example, 11:27  
6           I think this is a letter of 14th December 2010, and  
7           that's to do with expenses. That's one of the  
8           documents that you'd obviously kept and stored and was  
9           in a position to give to Superintendent Lordan in 2012.  
10          A.    That's correct. 11:27  
11    41    Q.    Yes. And just again at page 977. Again, this is a  
12           document from 2011 and again that's in relation to  
13           leave. Again, is that a document that you had retained  
14           and kept on file since 2011?  
15          A.    That's correct. 11:28  
16    42    Q.    Then if we turn to page 978, there's a letter of  
17           13/8/2011, and that again relates to some of the issues  
18           which you've referred to in the course of your  
19           discussions with Superintendent Comyns. And page 979,  
20           relates to a 2011 document concerning extra duty. And 11:28  
21           just pausing there for a moment, I think there you say:  
22  
23           "Wi th reference to the above and attached, I have taken  
24           the advice of the superintendent Fermoy I have  
25           fami li arised mysel f wi th Code F... " 11:28  
26  
27           I think that's finance, is that right?  
28  
29           "... 10.1 and I find that Code F 10.1 subsection (1) and

1 (4) apply to this claim."

2  
3 You go on to indicate your views in relation to that.  
4 So can we take it from that that you were familiarising  
5 yourself in 2010 can the finances code, the general 11:29  
6 code and all of these revised codes that were being  
7 implemented from Garda headquarters at that time?

8 A. When I had to, yes, I referred to the code.

9 43 Q. Just over the next page then, at page 980. In fact, I  
10 think you attached also for Superintendent Lordan an 11:29  
11 extract of overtime, night duty, weekend and public  
12 allowances chapter F 10. That's the code I think that  
13 you referred to in the previous letter, is that right?

14 A. That's correct.

15 44 Q. And then if I could ask you to turn forward to page 11:29  
16 991, this is the 2010 document that we've seen  
17 previously, about management of sickness absence and  
18 that's a document you were able to give to  
19 Superintendent Lordan as well?

20 A. That's correct. 11:29

21 45 Q. And just finally by way of example, page 989, please.  
22 This is from May of 2012 and it's a letter of complaint  
23 from you to Superintendent Comyns in relation to the  
24 number of hours that you were being asked to work and  
25 you say: 11:30

26  
27 "This is causing me an element of hardship due to the  
28 excessive number of hours, different shifts, continuous  
29 ten day roster. I believe there is a health and safety

1 issue to answer in relation to these working  
2 conditions, especially when one considers the age of  
3 the applicant and I am requesting that I be granted a  
4 rest day before I have to work two more nights.

11:30

5  
6 I spoke with Superintendent Comyns on today's date, he  
7 didn't consider working ten days to be hardship."

8  
9 And goes on to say, at the end you say:

11:30

10  
11 "I wouldn't consider this to be hardship but my sleep  
12 pattern is affected by these ridiculous hours which are  
13 heaped upon me."

14  
15 So, is it fair to say that at that stage you were  
16 raising issues about the length of time you were having  
17 to work and you were complaining about the implication  
18 of the rosters implementation?

11:30

19 A. No, I had no problem with the new rosters. I actually  
20 welcomed them because it meant we were working longer  
21 hours and had more time off. What I objected to was  
22 the fact that I had already been working nights when  
23 this roster came in, so therefore I had worked an  
24 inordinate amount of night duty within that short  
25 period and it's not continuous night duty, shifts  
26 change over and back, and that's where fatigue sets in.  
27 I almost crashed my car going home because of it.

11:31

11:31

28 46 Q. What age were you at that time, please?

29 A. Pardon?



1 47 Q. Can you just tell us how old you were at that time, in  
2 2012?

3 A. Must have been 49, 50, having worked night shifts all  
4 my service.

5 48 Q. So insofar as it's concerned, and we have this bundle 11:31  
6 of documents that you gave to Superintendent Lordan, at  
7 the time you gave them to him you were out sick?

8 A. Pardon?

9 49 Q. At the time that you gave those documents to him, I  
10 think you were out, in November 2012? 11:31

11 A. Oh yes, I was off sick, yes, that's correct.

12 50 Q. Sure. So putting those documents together, had you  
13 maintained a file or dossier of documents at home?

14 A. No, all that documentation was in the station. I met  
15 Superintendent Lordan in the garda station at 11:32  
16 Mitchelstown at his request.

17 51 Q. And did you compile that material at the station in  
18 those terms?

19 A. I believe so. I may have had it -- I would have had a  
20 drawer, my own drawer at the station, all my 11:32  
21 documentation would be there.

22 52 Q. If we can just go back please to page 86, I think this  
23 is the statement in which you've set out the various  
24 issues that Mr. McGuinness took you through in the  
25 course of your evidence the other day? 11:32

26 A. That's correct.

27 53 Q. And just moving swiftly through them, I think issue  
28 number 1 is about expenses in 2010, is that right?  
29 Just the subject?

1 A. Yes, that's correct.

2 54 Q. Issue 2 is about annual leave in March 2011?

3 A. That's correct.

4 55 Q. Issue 3 is about three hours overtime, which I think  
5 was in fact paid at €21.86 on 19/1/2012, is that number 11:33  
6 3?

7 A. That's correct.

8 56 Q. Number 5 I think is the rest day request that we looked  
9 at a moment ago, is that correct, the one where you  
10 refer to your age and the difficulty of working for ten 11:33  
11 hours. Then number 6, that deals with certification of  
12 terminated duty. Number 7 I think deals with a  
13 subsistence claim in relation to a 45-minute break and  
14 another 15 minute break, coming to a total of €31.99.  
15 That also I think related to 2012? 11:34

16 A. That's correct, yes.

17 57 Q. So, I think you will agree with me therefore that the  
18 bulk of the complaints that you are making in that  
19 statement relate to financial matters, expenses --

20 A. And health and safety. 11:34

21 58 Q. Well, in terms of the annual leave or the lunchtime  
22 break of 45 minutes, I think you will agree with me  
23 that's hardly a health and safety issue?

24 A. Well if somebody is entitled to a lunch break, then  
25 that should be provided for them. 11:34

26 59 Q. So at that time then was it fair to say that you were  
27 very much focused on the minutiae of individual claims,  
28 individual expenses?

29 A. I was focused on what I was entitled to under the Code.

1 60 Q. And again I think, coming back to the document we  
2 started with, it's clear, is it not, that certification  
3 was required for all these things as a result of the  
4 documents which you had been issued by Superintendent  
5 Comyns, that we looked at a few moments ago? 11:35

6 A. As I said, in some circumstances prior sanction in  
7 writing cannot be availed of from the district officer,  
8 and in those situations overtime is granted by the  
9 sergeant in charge or the inspector.

10 61 Q. Just in overall terms then, just at this time, would 11:35  
11 you agree with me that all the documents we've looked  
12 at just up to this moment have focused on the need for  
13 accountability for expense and accountability to one's  
14 superior for charges and expenses?

15 A. Not all of them, no. 11:35

16 62 Q. Most of them do?

17 A. Most, yes.

18 63 Q. Yes. So in terms of the issues themselves, you have  
19 given evidence to Mr. McGuinness and to the Chairman in  
20 relation to the way in which these issues unfolded and 11:36  
21 that you have made a statement to Superintendent Lordan  
22 that we've just outlined, but can I just move forward  
23 then to your first meeting with Chief Superintendent  
24 Dillane. I think that insofar as that meeting was  
25 concerned, you've heard, or sorry, you've seen in the 11:36  
26 course of the documents shown to you that it's his  
27 evidence that there was an initial meeting on 13th  
28 September of 2012, do you recall that?

29 A. That's his recollection, yes. That's what he said in

1 his statement.

2 64 Q. And just in terms of recollection, because this may be  
3 important to the Chairman, did I understand your  
4 evidence on the last occasion to change several times,  
5 so that your final position was that you didn't believe 11:36  
6 there had been a meeting face-to-face on the 13th  
7 September?

8 A. There was no meeting on the 13th September.

9 65 Q. Are you clear about that?

10 A. I am very clear about that. 11:36

11 66 Q. I wonder could we have page 333, please. Sorry, I beg  
12 your pardon, page 370, sorry. So just you will see  
13 that this is a report from Chief Superintendent  
14 Dillane. Can I ask you to scroll down please, just to  
15 the top. It's date stamped 17th September 2012. And 11:37  
16 it reads:  
17  
18 "Sickness absence - sergeant Paul Barry."  
19

20 It says: 11:37  
21

22 "I refer to the above and to previous correspondence  
23 from this office dated 11th September in connection  
24 with the matter. I wish to report that on Thursday,  
25 13th September 2012 I met with Sergeant Paul Barry at 11:38  
26 Watergrasshill to discuss his current absence from  
27 duty."  
28

29 So just pausing there for a moment. Chief

1 Superintendent Dillane will say he issued this and  
2 wrote this on the 17th September and he will say that  
3 he is crystal clear that he did meet with you in person  
4 and that meeting was at Watergrasshill.

5 A. I am crystal clear that he did not meet with me on that 11:38  
6 date. The first meeting I had with him was in October  
7 in Grandon's of Glanmire. That was the one and only  
8 meeting I had physically with him. That was a phone  
9 call, he's referring to. And he also mentioned that in  
10 the report afterwards, that the first meeting he had 11:38  
11 with me was on the 13th October. He didn't mention the  
12 13th November.

13 67 Q. Do you see in terms of this document, I have to suggest  
14 to you this document is generated, and his evidence  
15 will be that it was generated on 17th September 2012? 11:38

16 A. That's what he says in it.

17 68 Q. Yes.

18 A. But he says afterwards that he did not meet me on the  
19 13th, that he only met me in October.

20 69 Q. You see, Mr. Barry, he will say, as he says here in the 11:39  
21 note, that you left him in no uncertain terms that you  
22 wouldn't discuss the matter with him and reiterated  
23 that you wished to have an officer from outside Cork  
24 north division to deal with the matter, do you remember  
25 saying that? 11:39

26 A. That was via phone conversation.

27 70 Q. In terms of the next part it says:  
28  
29 "Inspector O'Sullivan Fermoy was appointed to

1 investigate Sergeant Barry's current absence with  
2 work-related stress in accordance with HQ Directive  
3 139/10 but the member also declined to discuss the  
4 matter with him."

11:39

6 So do you agree that was correct?

7 A. No, Inspector O'Sullivan reported the interaction he  
8 had with me, Inspector O'Sullivan didn't say that I  
9 didn't want to discuss the matter with him. He said  
10 that I wanted a person from outside the division to  
11 investigate the matter, that's why I wasn't willing to  
12 discuss the complaint I was about to make.

11:39

13 71 Q. You see, I have to suggest to you, Mr. Barry, that this  
14 is an important meeting and that your recollection is  
15 entirely incorrect, that you did in fact meet with  
16 Chief Superintendent Dillane?

11:40

17 A. I categorically state I did not meet with him on the  
18 13th September. I met with him in October in Grandon's  
19 of Glanmire. That was my one and only meeting with him  
20 while I was out sick.

11:40

21 72 Q. I have to suggest to you there is no reason why the  
22 chief superintendent would have made a note of this and  
23 sent it internally if the event itself had not  
24 happened. This is an important feature, because you're  
25 telling the Tribunal you don't remember an event which  
26 Chief Superintendent Dillane says actually happened?

11:40

27 A. But I do remember, I remember it was a phone call.

28 73 Q. Well, do you?

29 A. Well --

1 74 Q. Because in the course of your evidence in the last two  
2 days, there has been quite a loss of things you didn't  
3 remember. I am just giving you a chance to focus on  
4 this point. Is it possible that you are incorrect?  
5 A. No it's not. 11:40

6 75 Q. That there was in fact a meeting at that time at  
7 Watergrasshill.  
8 A. No, there was one meeting with Chief Superintendent  
9 Dillane, that was in Grandon's on the 13th October.

10 76 Q. Do you see, again coming back to your evidence the 11:40  
11 other day, particularly on the second day of your  
12 testimony and on the first day of your testimony, where  
13 you appeared to merge the details of those two  
14 interactions?  
15 A. That's because I was confused. When Mr. McGuinness put 11:41  
16 the date of the 13th of September, I thought he was  
17 referring to the meeting in Grandon's, and I thought I  
18 clarified that afterwards.

19 77 Q. And again, were you on medication at the time?  
20 A. I was. 11:41

21 78 Q. And again, can I just ask what kind of medication?  
22 A. Pardon?

23 79 Q. Pardon me?  
24 A. Pardon?

25 80 Q. Would you mind just indicating to the Chairman what 11:41  
26 type of medication were you on?  
27 A. Type of medication?

28 81 Q. Yes?  
29 A. There was Cipramil and Diazepam.

1 82 Q. Again, is it possible that that affected your state of  
2 mind or your memory of the events of that time?  
3 A. I don't believe so, no.

4 83 Q. Can you give any reason as to why you say that Chief  
5 Superintendent Dillane would write this note if the 11:41  
6 event had never happened?  
7 A. Well, it wouldn't be the first time he wrote something  
8 that never happened. He also referred to me looking to  
9 have the superintendent transferred, which never  
10 happened. 11:42

11 84 Q. We will come back to that, but we will say that did  
12 happen. But insofar as this document is concerned, he  
13 will say that on that occasion at that meeting, that  
14 there was no mention of any station transfer at that  
15 meeting? 11:42

16 A. In November?  
17 85 Q. In September?  
18 A. Or September, sorry. No, it was at the meeting in  
19 Grandon's that he mentioned.

20 86 Q. So you do agree with that? 11:42  
21 A. Pardon?

22 87 Q. You do agree that he didn't mention a transfer to any  
23 particular station?  
24 A. No, I don't agree. He could have mentioned it on that  
25 date, but I don't recall it. 11:42

26 88 Q. He will also say that he was trying to encourage you to  
27 come back to work and that you had an agreement to meet  
28 on 21st September 2012?  
29 A. No, I don't believe he ever encouraged me to come back



1 to work because he in fact told me, if you refer to my  
2 station diaries, on two occasions he told me I wasn't  
3 to return to work. He didn't want me to return to  
4 work.

5 89 Q. Again, I have to suggest to you that that is incorrect, 11:42  
6 that he was anxious to assist you at that time and he  
7 will say that ultimately it was agreed, was it not,  
8 that you would meet on the 21st September, because he  
9 wanted to reflect on matters?

10 A. That was the -- the initial meeting on the 13th was to 11:43  
11 arrange a physical meeting on the 21st, which I  
12 cancelled.

13 90 Q. Again, I have to suggest to you that this meeting was a  
14 physical meeting and that in terms of the location it  
15 was Watergrasshill? 11:43

16 A. Pardon?

17 91 Q. I have to suggest to you that this was a physical  
18 meeting and it was at Watergrasshill?

19 A. Which meeting? The 13th?

20 92 Q. The first, yes? 11:43

21 A. No, that wasn't. That was a phone call to arrange a  
22 meeting on the 21st and on advice I cancelled the  
23 meeting on the 21st and I subsequently met him after I  
24 had made my complaint in October.

25 93 Q. Insofar as the October meeting is concerned, that 11:43  
26 meeting took place in a car park in Glanmire?

27 A. That's correct.

28 94 Q. Just as the previous meeting had taken place in a car  
29 park in Watergrasshill?

1 A. No, it didn't take place anywhere in Watergrasshill.

2 95 Q. And insofar as that location is concerned, it took  
3 place in each of those locations because you  
4 understandably didn't wish to meet at your home, you  
5 would prefer to meet at a neutral location? 11:44

6 A. We agreed to meet in Grandon's of Glanmire because I  
7 didn't want him to meet me at my home.

8 96 Q. Yes.

9 A. We did not meet in Watergrasshill.

10 97 Q. Just coming now to the second meeting, the one in 11:44  
11 Glanmire, at that particular point in time, in  
12 Grandon's Garage. Now, at that time, can I suggest to  
13 you again, that your recollection of that meeting is  
14 incorrect?

15 A. What recollection? That it occurred or that...? 11:44

16 98 Q. Well, first of all, in your evidence on a previous date  
17 did you not indicate that at that meeting that there is  
18 with an a reference to an offer of a transfer to  
19 Carrigtwohill?

20 A. Yes, he asked me to go to Carrigtwohill or Glanmire. 11:44

21 99 Q. Yes.

22 A. And I declined both, and gave him the reasons for state  
23 your name.

24 100 Q. And again I have to suggest to you that Chief  
25 Superintendent Dillane's evidence will be that he never 11:45  
26 offered you at any stage a transfer to Carrigtwohill  
27 and that that is completely incorrect?

28 A. He did offer me a transfer to Carrigtwohill and I  
29 pointed out to him there was already a sergeant in

1 Carrigtwohill and he said he would make room for two.

2 101 Q. He will say that that conversation never took place  
3 because Carrigtwohill was a very small district and  
4 therefore it was not simply practical to even consider  
5 sending a second sergeant to an area that was so small? 11:45

6 A. And that is why it stood out to me, because it was such  
7 a ridiculous offer.

8 102 Q. Well it was an offer he says he never made?

9 A. Well that's his evidence.

10 103 Q. And insofar as that's concerned, can you explain then 11:45  
11 why, when the reference was made to Glanmire, that at  
12 that stage you would have understood that  
13 Superintendent Lehane was in Glanmire?

14 A. No, he was in Cobh.

15 104 Q. And was that in supervising the district around 11:46  
16 Glanmire?

17 A. That's correct.

18 105 Q. So that was Superintendent Lehane's territory, isn't  
19 that right, at that time?

20 A. I don't think it was Superintendent Lehane, I think 11:46  
21 there was a superintendent prior to that, a different  
22 superintendent.

23 106 Q. Perhaps we will come back to that point?

24 A. Yes.

25 107 Q. Insofar as that is concerned, again I have to suggest 11:46  
26 to you that your recollection of that meeting is  
27 incorrect and that Mallow, for example, was never  
28 mentioned at that meeting?

29 A. Mallow was mentioned and my recollection of the

1           Glanmire transfer is correct.

2 108 Q.    You see, again I have to suggest to you that it appears  
3           there is a risk here that you may be conflating details  
4           from different meetings and putting them together in an  
5           incorrect order? 11:46

6           A.    No. The medication didn't do that for me.

7 109 Q.    The possibility is, I am suggesting to you, that you  
8           are confused or that your recollection is faultily?

9           A.    No, my recollections are clear and accurate.

10 110 Q.    And then if that's an option that you seek to reject, 11:46  
11           then I have to suggest to you that in fact what you are  
12           indicating here is not true?

13           A.    It's the truth.

14 111 Q.    And more importantly, it's misleading because it's  
15           tending to suggest that something happened that didn't 11:47  
16           happen at all?

17           A.    My recollection is the truth and my statement is the  
18           truth.

19 112 Q.    Can you indicate why at that time, when you had advice, 11:47  
20           there appears to be nothing to indicate in  
21           correspondence from Séan Costello or from your AGSI  
22           representative any suggestion that you were considering  
23           an offer of Carrigtwohill transfer or Mallow transfer  
24           at that time?

25           A.    I never considered applying for a transfer to any 11:47  
26           station.

27 113 Q.    In terms of even recording the fact that this has been  
28           suggested, can you indicate to the Chairman why none of  
29           this is recorded at the time by you?

1 A. I gave it in evidence that I would not commit a station  
2 to paper because they would see it as a reason to  
3 transfer me to that station.

4 114 Q. But you were legally advised at the time?  
5 A. Pardon? 11:48

6 115 Q. You were legally advised at the time?  
7 A. I was.

8 116 Q. You had access to your representative body at the time,  
9 did you not?  
10 A. That's correct. 11:48

11 117 Q. would it not in those circumstances, if it had  
12 happened, be logical for you to discuss that factor  
13 with your advisers or to get them to indicate that you  
14 weren't prepared to accept these offers?  
15 A. My advisers knew, I had spoken with my advisers and I 11:48  
16 had told them that I did not wish to leave Mitchelstown  
17 Garda Station and that I was not going to apply for any  
18 garda station offered to me.

19 118 Q. I have to suggest to you that in overall terms, and  
20 this is materially important as well, these points that 11:48  
21 I am putting to you actually do matter because  
22 ultimately it's important that the Tribunal can be  
23 satisfied that you are telling the truth and that you  
24 are a reliable narrator. Can I ask you be shown page  
25 290, please? Perhaps if we can have 286 to begin with, 11:48  
26 I am sorry. So these are Replies to Particulars in  
27 your civil proceedings, which are a response to a  
28 Notice for Particulars in August 2015, do you see that?  
29 A. Yes.

1 119 Q. Do you remember giving instructions in relation to that  
2 point? Can I ask you to turn forward then please to  
3 page 290? And could I just draw your attention to (v)  
4 just at the very top of the page:

5  
6 "The plaintiff" I think that's you "was contacted by  
7 the AGSI president, who enquired about the complaint,  
8 particularly as it related to Superintendent Comyns and  
9 sought a meeting, which was declined.

10  
11 (vi) the first contact the plaintiff had with Fermoy  
12 Garda Station was a meeting with Inspector O'Sullivan  
13 on 6th September 2012. There had been a missed call  
14 from Superintendent Comyns on 3rd September 2012.

15  
16 (vii) Chief Superintendent Dillane requested a meeting  
17 on the 13th September 2012 and the plaintiff met him in  
18 his car at Grandon's Garage in Glanmire. He offered  
19 the plaintiff a transfer to either Glanmire or  
20 Carrigtwohill garda stations. When the plaintiff  
21 responded he had done nothing wrong and would not  
22 accept a transfer, the chief superintendent became  
23 irritated and told the plaintiff to get out of his  
24 car."

25  
26 So just pausing for a moment, you will agree with me  
27 that that indicates that you told your lawyers, who  
28 then wrote down the information, that you had in fact  
29 met on the 13th September?

1 A. No I told -- the meeting on the 13th September, as you  
2 refer, says the meeting was in Watergrasshill, this  
3 meeting clearly refers to a meeting in Grandon's Garage  
4 of Glanmire. The fact that my solicitors made an error  
5 in the month, that should have read October, not 11:51  
6 September, but it clearly indicates the meeting, refers  
7 to the meeting in Grandon's in Glanmire.

8 120 Q. Can you see that there is a difference in terms of the  
9 details coming out from what you said on the first date  
10 here and what you said today and what is contained in 11:51  
11 that document?

12 A. No, I clarified the confusion on the first date and I  
13 stated that the meeting on the 13th October was in  
14 Grandon's Glanmire and that's where the stationed were  
15 mentioned. 11:51

16 121 Q. Again I have to suggest to you that this is a further  
17 indication of unreliability in your narrative. I  
18 wonder could we please have page 334. So this is a  
19 statement I think you read as part of the papers and  
20 it's from Chief Superintendent Dillane. Can I just 11:52  
21 draw your attention to the middle of the page, where it  
22 indicates a sentence beginning "On 13th October 2012".  
23 And you see there he's referring to the meeting in the  
24 car park in Glanmire by appointment. He will say that  
25 he expressed his concerns about your absence from work 11:53  
26 and didn't speak about your complaint or any of the  
27 details of your complaint, do you agree with that?

28 A. Sorry, the 13th of...?

29 122 Q. Of October?

1 A. The 13th October, he did not look to know what  
2 complaint I had made.

3 123 Q. Yes.

4 A. That's correct.

5 124 Q. He said he offered to facilitate you with a station 11:53  
6 closer to your home with different management while the  
7 investigation was pending?

8 A. Yes, he offered Carrigtwohill and Glanmire.

9 125 Q. This, he will say, was done with a view to trying to 11:53  
10 get you back to work while the complaint that you had  
11 made to the assistant commissioner HRM was being  
12 investigated?

13 A. That's his statement. I cannot comment on what he's --

14 126 Q. And will he say also that you refused that offer, the 11:53  
15 offer to Glanmire, and said that if anyone was to move  
16 it would be the superintendent?

17 A. That's what he says, yes. That was not said though.

18 127 Q. And is that what you said?

19 A. That was not said by me.

20 128 Q. He will indicate that he told you that he couldn't 11:54  
21 facilitate that scenario as you knew full well that  
22 only the Garda Commissioner could transfer  
23 superintendents?

24 A. Yeah.

25 129 Q. He indicated to you that Glanmire was the station he 11:54  
26 was thinking of trying to make available to you if that  
27 was possible because it was in the Cobh district and  
28 would make your working travelling time much shorter?

29 A. Chief Superintendent Dillane would have been aware that



1 I could not transfer to Glanmire at that time because  
2 of my relatives. I could not obtain a Code exemption,  
3 or he couldn't. So Glanmire was not an option.

4 130 Q. Well insofar as it's concerned, insofar as you  
5 understood the condition -- 11:54

6 A. Unless I applied for it.

7 131 Q. Sorry, pardon me. As I understand the position, your  
8 evidence is that you just didn't want to move from  
9 Mitchelstown at all?

10 A. I didn't want to move from Mitchelstown but I did make 11:54  
11 it clear that I would accept a move to Mallow at public  
12 expense, I would not apply for it.

13 132 Q. And again I have to suggest to you, that was never said  
14 by you either, because in fact there was never any  
15 discussion about moving to Mallow at all? 11:55

16 A. Mallow had been discussed and it had been referenced  
17 afterwards as well, Mallow was an option.

18 133 Q. Not at this time?

19 A. Yes, it was at this time, and so was Carrigtwohill.

20 134 Q. And in addition, not only was it not mentioned, neither 11:55  
21 was Carrigtwohill but also there was no reference to  
22 movement at public expense by you or him ever?

23 A. It was referenced by me because that was the reason I  
24 would not apply for a transfer.

25 135 Q. And again, just to come back to this point at a later 11:55  
26 stage, is it your evidence to the Chairman that  
27 actually you were willing to travel to Mallow but you  
28 required the State to pay for that travel?

29 A. No, the State wouldn't be paying for my travel to

1 Mallow, I would be travelling to Mallow, they would be  
2 paying for my transfer cost, that's what they would be  
3 paying for.

4 136 Q. And that the only impediment therefore to your transfer  
5 to Mallow was the issue of costs and expense? 11:55

6 A. No, the reason I would have accepted going to Mallow  
7 was that the superintendent who was in Mallow at the  
8 time was the same superintendent who encouraged me to  
9 move to Cork north from Dublin and I would have felt  
10 safe and supported in his station. That's why I wanted 11:56  
11 to go to Mallow, but I was not going to apply for it.

12 137 Q. You see, Mr. Barry, I have to suggest to you none of  
13 this was mentioned in the course of this discussion at  
14 all?

15 A. I didn't mention the superintendent in Mallow to him. 11:56  
16 I never said I did.

17 138 Q. No.

18 A. I said that I would accept going to Mallow but I would  
19 not apply for it.

20 139 Q. And again, in the course of the discussion he will say 11:56  
21 that you asked him to issue to you an injury on duty  
22 certificate?

23 A. No. I asked him to have illness classified as what it  
24 should be. I wouldn't have mentioned issuing me a  
25 certificate. As I stated earlier, I wouldn't have been 11:56  
26 familiar with the term Code 139/10 at that time.

27 140 Q. Perhaps you might give that last answer again?

28 A. Pardon.

29 141 Q. You would not have been familiar with that?

1 A. I don't believe I would have able to quote the code, he  
2 said I looked for a certificate to issue of 139/10, I  
3 think is what he said.

4 142 Q. But hadn't you sent --

5 A. Pardon? 11:57

6 143 Q. Weren't you in a position to give to Superintendent  
7 Lordan, when you had met him in November, documents in  
8 relation to the sickness and absence policy?

9 A. That is a document that has it on it, but I didn't have  
10 it retained within my head to refer. 11:57

11 144 Q. But it is a document, as we saw earlier on this  
12 morning, that did refer to certificates?

13 A. I sent a document, yes. And it could be contained in a  
14 document, but that doesn't say I recalled it.

15 145 Q. Is it your evidence to the Chairman that as a senior 11:57  
16 and experienced sergeant at that time you didn't know  
17 about the existence of injury on duty certificates?

18 A. I never had to deal with a 139/10 in relation to my  
19 injury on duty.

20 146 Q. You see, I have to suggest to you that you did raise 11:58  
21 this issue and that's why he will say in his evidence  
22 that he indicated to you that he couldn't issue a  
23 certificate because he had no knowledge of the alleged  
24 injury that you claimed to be suffering from and that  
25 it was only the CMO who could sign off on such a 11:58  
26 certificate. Do you recall a discussion about the CMO  
27 at that meeting?

28 A. No.

29 147 Q. And I think he will also say that he told you that this

1 matter could be discussed with the CMO on 11th October  
2 2012 when you were due to attend him at Garda  
3 headquarters?

4 A. That would have been two days previous.

5 148 Q. And had you attended him two previously? 11:58

6 A. Pardon?

7 149 Q. Had you attended him two days previously?

8 A. I presume I would have, yes.

9 150 Q. So just to be clear then, on this date it would seem  
10 that you had met the CMO, you understood what the 11:58  
11 system was and you understood the CMO had to evaluate  
12 you because that was the only way in which you were  
13 going to get a certificate in relation to injury on  
14 duty?

15 A. I never referred to a certificate to the CMO or Chief 11:59  
16 Superintendent Dillane. I asked that my injury be  
17 classified as what it should have been, that is an  
18 injury on duty. I didn't mention certificate.

19 151 Q. Pardon me, what did you ask it to be classified as?

20 A. As work related. 11:59

21 152 Q. An injury on duty?

22 A. I wanted my illness classified as being an injury on  
23 duty, that it was work related, yes.

24 153 Q. So you did ask him to issue you with --

25 A. No, I didn't ask him to issue a cert, I asked him to 11:59  
26 classify illness as to what it should have been  
27 classified as.

28 154 Q. How would he classify it?

29 A. By investigating.

1 155 Q. And?  
2 A. There was no investigation. I had asked Inspector  
3 O'Sullivan that I wanted somebody from outside the  
4 division to investigate it, I wasn't contacted in  
5 relation to that by anyone from outside the division, 11:59  
6 so I presumed there was no investigation.  
7 156 Q. You see, he will say that he explained to you that only  
8 the CMO could sign off on the certificate?  
9 A. Well, that's incorrect, because from what you alluded  
10 to earlier, the CMO could not do it. 12:00  
11 157 Q. And as we have seen through the regulations, you were  
12 file aware, were you not, that there was a series of  
13 different things to be considered, it wasn't just the  
14 CMO, it was also an investigation, an assessment of the  
15 facts? 12:00  
16 A. That's correct.  
17 158 Q. All those things had to take place?  
18 A. That's correct, but you just stated that he said the  
19 CMO would have to sign off on my illness. That was  
20 incorrect. 12:00  
21 159 Q. In terms of this particular issue, he will say that you  
22 were very clear that insofar as you were concerned if  
23 anyone had to move it would be the superintendent?  
24 A. I never stated that. I did tell him that I made my  
25 complaint under the bullying and harassment policy, and 12:00  
26 that because of that neither the superintendent nor I  
27 should be transferred unless we applied for same.  
28 160 Q. Could we have document 4079, please. This is a report  
29 dated 8th February 2012 to the commissioner south from

1 Chief Superintendent Dillane. You will see there in  
2 the middle of the page:

3  
4 "On 13th October 2012 at 2pm I met with Sergeant Barry  
5 at Rushbrooke, Glanmire. When I met him I asked him 12:01  
6 about his health. I expressed my concerns about his  
7 absence from work. We didn't speak about his complaint  
8 and without any knowledge of the facts I offered to  
9 facilitate him with a station much closer to his home  
10 and with different management. Immediately he refused 12:02  
11 my offer and told me that if anyone was to move, it  
12 would be the superintendent. I told him I could not  
13 facilitate that scenario and made it very clear to him  
14 that my offer was without prejudice to the outcome of  
15 his complaint." 12:02

16  
17 So, I have to suggest to you that again it's clear that  
18 this is something which you did say at the time, it is  
19 something which was noted by Chief Superintendent  
20 Dillane and reported up the line to him. 12:02

21 A. That's incorrect. And if you scroll back up on that  
22 document please, the first paragraph there, Chief  
23 Superintendent Dillane states "I became a little  
24 concerned and decided that I would meet with Sergeant  
25 Barry in person to discuss any issues and on 13th 12:02  
26 October 2012 we met". Now, that doesn't refer to  
27 September, as you were stating earlier.

28 161 Q. No, it doesn't because ultimately what he is talking  
29 about here is the question of facilitation of a

1 transfer Glanmire and that happened on the 13th  
2 October?

3 A. No, he states that when he became aware of my illness,  
4 he became concerned and decided that he would meet with  
5 me. That was the first meeting he ever had with him 12:03  
6 and the last while I was out sick.

7 162 Q. Again I have to suggest to you that that is incorrect  
8 and that you know this to be so?

9 A. He states it there that it was.

10 163 Q. He doesn't say that? 12:03

11 A. He does.

12 164 Q. On the contrary, what he indicates is that on the 13th  
13 October, that's the time where he mentioned the  
14 question of moving you to a station much closer to your  
15 home and with different management? 12:03

16 A. No, he says --

17 165 Q. An offer which you refused. I understood you agreed  
18 that happened on the 13th October?

19 A. It says he became aware at a divisional PAF meeting  
20 sometime after I met went sick, that I was sick due to 12:03  
21 incident where

22

23 "... Superintendent Comyns had issued a Regulation 10 to  
24 Sergeant Barry. I became a little concerned and  
25 decided I that I would meet with Sergeant Barry in 12:04  
26 person to discuss any issues. On 13th October 2012, at  
27 2pm I met with Sergeant Barry at Rushbrooke, Glanmire."  
28

29 He did not meet with me in September. This was the

1 first meeting

2 166 Q. Two things there. would you agree with me, he doesn't  
3 say this is my first meeting, on the 13th October?  
4 A. No, but he does say that when he realised I was out  
5 sick because of an incident, that he became concerned 12:04  
6 and decided to meet with me. So why didn't he say he  
7 met with me in September?

8 167 Q. Because it's clear, is it not, from the letter that he  
9 is saying that the meeting at which he proposed to  
10 facilitate you with a move to a station much closer to 12:04  
11 your home took place on 13th October 2012, which it  
12 did, you accept it did?

13 A. No, that's incorrect, and what he alleges was said at  
14 that is incorrect in relation to the transfer of the  
15 superintendent. 12:04

16 168 Q. And again I have to suggest to you that this view that  
17 you have that the superintendent having to move is  
18 something that you didn't just express that day, we  
19 will see that you also express it had later on, did you  
20 not? 12:05

21 A. Negative. I did not.

22 169 Q. And it's also ultimately, from your own point of view,  
23 if one looks at that request that he be moved, would  
24 that not have suited you, given the objectives you've  
25 just outlined to the Tribunal that you wanted to stay 12:05  
26 in Mitchelstown? Is that not something you would have  
27 welcomed on your view of what would happen. If the  
28 superintendent was moved is that not something that you  
29 would have welcomed?



1 A. And I welcomed it in 2015 but I did not apply for him  
2 to be transferred.

3 170 Q. But you did want that to happen, did you not?  
4 A. I wanted it to happen?

5 171 Q. Yes? 12:05  
6 A. I can't want to have a superintendent transferred, it's  
7 not within my remit.

8 172 Q. Again, I have to suggest to you, that's a repositioning  
9 by you, having looked at all the documentation you're  
10 now seeking to adopt a position that it was not your 12:05  
11 position at that time?

12 A. If I wanted a position, I would have applied to  
13 transfer to have him transferred. Anything I had to  
14 say, I reiterated in documentation to HRM.

15 173 Q. Let's come back to that in a moment, but if we move 12:06  
16 forward to 14th February 2013. I wonder if you can be  
17 shown page 336, please. Just to the middle of that  
18 page at 336. You will see there that Chief  
19 Superintendent Dillane indicates that on the 14th  
20 February he received a sick cert report from Ms. Monica 12:06  
21 Carr at the Garda Sick Section in Navan, dated 7th  
22 February 2013, stating that you were temporarily unfit  
23 to attend regularly and effective service and that he  
24 spoke to you at 10am on the 14th February. Do you  
25 recall that conversation? 12:07

26 A. Yes, I have a note of it here in my diary.

27 174 Q. Do you accept that he enquired about your welfare?  
28 A. He may have, I won't dispute it.

29 175 Q. Would you accept that he also expressed a concern that

1           you were now reduced to half pay due to the time that  
2           you had been out on sick leave?

3           A.    He may have referenced because it was actually the  
4           first day I was on half pay.

5 176 Q.    Did he say to you that he had met with Superintendent       12:07  
6           Patrick Lehane of Cobh district on the 13th February  
7           and it had been agreed that if you were agreeable that  
8           you could be facilitated with either unit D or unit E  
9           at Glanmire Garda Station?

10          A.    Sorry, I don't believe Superintendent Pat Lehane was       12:07  
11          the actual superintendent in Cobh district at that  
12          time.

13 177 Q.    He will say he was. But can I ask you a separate  
14          question: Did he tell you that he had spoken to  
15          Superintendent Lehane?   12:08

16          A.    No, I don't recall him saying he spoke Superintendent  
17          Patrick Lehane. He did offer me a transfer out of  
18          concern that I was going on half pay.

19 178 Q.    Did he mention units D or E at Glanmire Garda Station?

20          A.    He suggested unit A or E in Glanmire until it goes into       12:08  
21          the city in June. He said the CMO says I can't work in  
22          Mitchelstown. He said he would create two positions  
23          for a sergeant in Carrigtwohill.

24 179 Q.    He will also say that he indicated that the offer was  
25          made for the wellbeing of your family and that this       12:08  
26          would facilitate you working in a station much closer  
27          to your home?

28          A.    No, because he would have known that a transfer to  
29          Glanmire at that time could not take place because of

1 my relations.

2 180 Q. And in terms of this meeting, would you agree that this  
3 meeting was an amicable, constructive meeting?

4 A. No, it was not amicable or constructive. He knew my  
5 position in relation to wanting to remain at 12:09  
6 Mitchelstown and have temporary accommodations put in  
7 place.

8 181 Q. And ultimately, did you indicate that you wanted to  
9 consider the offer and undertook to contact him in a  
10 day or two? 12:09

11 A. No, I don't believe I did.

12 182 Q. Just to be clear, are you telling the Chairman that you  
13 didn't intend to think about that offer or to seek  
14 advice about that offer?

15 A. I probably sought advice, but I wouldn't be considering 12:09  
16 going to Glanmire, I would never have considered going  
17 there, I wouldn't need to reconsider it.

18 183 Q. But did you not ask him for time to consider?

19 A. I may have, I can't recall.

20 184 Q. Did you not indicate to him that you would contact him 12:09  
21 in a day or two?

22 A. That's possible, I don't have a record of it in my  
23 diary.

24 185 Q. And that's because there was something to consider;  
25 namely his offer of transfer to Glanmire, isn't that 12:09  
26 right?

27 A. That may have been to fob him off until I got advice,  
28 but I certainly want considering going to Glanmire.

29 186 Q. So in very quick order, at five past one on the same

1 day, an e-mail correspondence, at page 382 please, was  
2 received from Séan Costello & Company solicitors on  
3 your behalf?

4 A. That's correct.

5 187 Q. I think this is a document which we have seen 12:10  
6 previously?

7 A. Sorry?

8 188 Q. So can we take it from that, that you had received an  
9 offer, you had indicated you would consider the offer  
10 and you contacted your solicitor and told him to send 12:10  
11 this letter within a very short time?

12 A. Yes, and that shows I was not considering going to  
13 Glanmire.

14 189 Q. I beg your pardon?

15 A. That would indicate I was not considering a move to 12:10  
16 Glanmire.

17 190 Q. Well, you were rejecting the offer of going to  
18 Glanmire?

19 A. Yes, I sought the advice from my solicitor.

20 191 Q. So, could we look at the text of the letter, it says: 12:10  
21  
22 "You indicated you would transfer to Glanmire. With  
23 due respect and having regard to the circumstances the  
24 matter, it would not be proper or appropriate to have  
25 our client transferred and as a compromise so that our 12:11  
26 client may return to work he would accept a return on  
27 the basis that he wouldn't come under the direct  
28 command of a party whose identity is known to you about  
29 whom such complaints had been made by him. In this

1 respect, therefore my client wishes to return to work  
2 under the direct management of Inspector O'Sullivan. I  
3 would be obliged if you would confirm that this is in  
4 order and represents a without prejudice compromise on  
5 his part. "

12:11

6  
7 First of all, would you agree with me that there is no  
8 reference in that letter to the offer of a transfer to  
9 Carrigtwohill or a preference on your part to go to  
10 Mallow?

12:11

11 A. No, there's no mention in that.

12 192 Q. And again I have to suggest to you that the reason  
13 there is no mention is because that is something that  
14 hadn't been said to you at all, what had been spoken  
15 about by Chief Superintendent Dillane was Glanmire?

12:11

16 A. Well, I have my diary entry contemporaneously made at  
17 the time, where he suggested either unit A or E in  
18 Glanmire until it goes into the city in June. He said  
19 he would create two positions for sergeant in  
20 Carrigtwohill. I rang Séan Costello solicitor to send  
21 a fax to the chief to accommodate me in Mitchelstown.

12:12

22 193 Q. If that is the case, why did Mr. Costello not refer to  
23 Carrigtwohill, if, as you say, your diary entry is  
24 correct?

25 A. Because Glanmire had been referenced before, and  
26 Carrigtwohill, there was already a sergeant in  
27 Carrigtwohill, it was not a valid offer.

12:12

28 194 Q. You see, I have to suggest to you that Carrigtwohill  
29 simply was never there?

1 A. Oh it was there.

2 195 Q. It's never expressed in the writing of Mr. Costello in  
3 this particular document, isn't that correct?

4 A. It's not there in writing, no.

5 196 Q. No. And this was an important communication because 12:12  
6 this was the first time that you were sending a  
7 solicitor's letter, as I see from the papers, in  
8 relation to this issue?

9 A. It's the first time my solicitor sent a letter, yes.

10 197 Q. Yes. So from this point of view, you considered this 12:12  
11 to be an important message, a message that you had to  
12 reflect on and it contains absolutely zero reference to  
13 Mallow or Carrigtwohill?

14 A. No. As I stated before, I would not mention Mallow or  
15 Carrigtwohill or any other station. 12:13

16 198 Q. And again I have to suggest to you that this is  
17 consistent with your real state of mind, which was, so  
18 far as you were concerned at that stage you were going  
19 nowhere?

20 A. Well, I was looking to go back to Mitchelstown, so that 12:13  
21 would have been...

22 199 Q. And again what I have to suggest to you that what this  
23 indicates is part of a consistent pattern whereby every  
24 offer that is considered or made, as we will see later  
25 on, also results in the same response, which is, in 12:13  
26 your words, I'm going nowhere?

27 A. No. My response was, I will not apply for a transfer.

28 200 Q. Is there any reference in this letter to the question  
29 of the cost of transferring or the costs of a transfer

1 being a factor that you were likely to be influenced  
2 by, that you might change your mind, or that you might  
3 prefer to go to Mallow if they would just pay your  
4 expenses?

5 A. No, I still wished to remain in Mitchelstown. Mallow 12:13  
6 was the next best option, but it wasn't the first  
7 option for me. My first option was to return to my  
8 station.

9 201 Q. And again I have to suggest to you that your version of  
10 events is incorrect in this regard but that if what you 12:14  
11 are saying is correct, one would have expected to find  
12 some expression of it in this letter and it's not  
13 there?

14 A. Also, in the previous letter you have it there again  
15 mentioned by Chief Superintendent Dillane that the 12:14  
16 first meeting was in October.

17 202 Q. And again, I suggest to you that in that regard you're  
18 also effectively putting into circumstances events  
19 which are not correct?

20 A. Well, he stated it on two occasions, that the first 12:14  
21 meeting he had with me was in October.

22 203 Q. Is there any reference in this letter, for example, to  
23 a complaint that in the previous meeting in October  
24 that you were told to get out of the car or treated  
25 with discourtesy by Chief Superintendent Dillane? 12:14

26 A. I didn't make a complaint.

27 204 Q. And again, the reason I suggest you didn't make a  
28 complaint is because that never happened either?

29 A. Oh it happened.

1 205 Q. And I have to suggest to you that in the frame of mind  
2 that you were in October and from October onwards, when  
3 you were making complaints about how you were being  
4 treated as you allege by persons in authority, that's  
5 something that if it happened you would have mentioned 12:15  
6 to your advisers?

7 A. That's why I recorded it in my diary.

8 206 Q. Did you tell Mr. Costello, I was told to get out of the  
9 car in October 2012 by my superior?

10 A. I may have, I don't recall. 12:15

11 207 Q. You see, I have to suggest to you that you didn't and  
12 certainly there's no expression of that in the course  
13 of this correspondence at all?

14 A. Well, I wasn't making a complaint, I had no complaint  
15 in relation to it. 12:15

16 208 Q. So just to be clear, this important letter, this letter  
17 that you gave instructions about, relates only to the  
18 proposal to transfer to Glanmire and to nothing else?

19 A. That's what Mr. Costello referenced, yes.

20 209 Q. If one looks at the letter again, would you agree with 12:15  
21 me that the core message of the letter is in that third  
22 paragraph, where it says -- presumably this was  
23 sanctioned with your approval:  
24

25 "It would not be proper or appropriate to have our 12:16  
26 client transferred."  
27

28 Is it fair to say that that is and was your bottom line  
29 at that stage?



1 A. Because of the persons concerned within the complaint  
2 that I had made, that's --

3 210 Q. I think you agree with me it doesn't say it would be  
4 appropriate if his costs were covered?

5 A. No. 12:16

6 211 Q. Or it would be appropriate if it was to Mallow, is not  
7 contained there either?

8 A. No, and it never would be.

9 212 Q. Because in fact the principle that you were putting  
10 forward was at that stage, that you would not be 12:16  
11 transferred at all?

12 A. No, I was looking to go back to the station that I  
13 worked in.

14 213 Q. If you just move forward then to 9th April 2013. Can I  
15 ask you be shown page 339, please. Again, 12:16  
16 Mr. McGuinness has asked you questions about this, I  
17 don't propose to deal with each and every item of it,  
18 but you do recall this meeting and you do accept that  
19 this was a meeting in person?

20 A. Yes. 12:17

21 214 Q. And you also do accept that there was another person  
22 present apart from Chief Superintendent Dillane in the  
23 form of Inspector O'Sullivan?

24 A. That's correct.

25 215 Q. And again, in terms of that discussion, insofar as 12:17  
26 that's concerned, you've seen the statements made by  
27 both Inspector O'Sullivan and Chief Superintendent  
28 Dillane?

29 A. That's correct.

1 216 Q. By this stage Inspector O'Sullivan was a person who  
2 your solicitor had indicated you will be happy to work  
3 with?  
4 A. Happy to take direction from, yes.  
5 217 Q. And to be under his superintendents? 12:18  
6 A. Under Inspector O'Sullivan, yes.  
7 218 Q. It was explained to you why that wasn't practical or  
8 possible, because Chief Superintendent Dillane  
9 indicated that simply wouldn't and couldn't work, but  
10 he was somebody, it would appear from the letter of the 12:18  
11 14th that we looked at a few moments ago, was somebody  
12 who you did trust?  
13 A. Yes, I would have trusted him.  
14 219 Q. And you had nothing against him?  
15 A. Nothing against him, no, I worked with him for seven 12:18  
16 years.  
17 220 Q. I wonder if we could have page 5317, please. Perhaps  
18 if I can ask you to scroll down further. Just you see  
19 there, line 200, this is in his interview with the  
20 Tribunal investigators. He said: 12:18  
21  
22 "I have been asked from the best of my recollection to  
23 describe the interaction between Sergeant Paul Barry  
24 and Chief Superintendent Dillane on the 9th April at  
25 Mitchelstown Garda Station and to comment, if possible, 12:19  
26 on the veracity of what Sergeant Paul Barry has alleged  
27 in the above extract."  
28  
29 And just scrolling down a little bit, please. You see

1 the first point I would like to put to you, he says at  
2 line 205:

3  
4 "I am almost hundred percent concern Chief  
5 Superintendent Dillane was not a full uniform. I think 12:19  
6 he was wearing a grey blue jacket but to the best of my  
7 recollection he wasn't in full uniform or had a Sam  
8 Browne belt on."

9  
10 Now, just pausing for a moment, that's Inspector 12:19  
11 O'Sullivan is saying that your version of events in  
12 relation to what you claim Chief Superintendent Dillane  
13 was wearing was wrong?

14 A. No, my version, I can remember one hundred percent,  
15 Inspector O'Sullivan is not a hundred percent sure, but 12:19  
16 I am a hundred percent sure he was in full uniform with  
17 a Sam Browne belt and his cap under his arm.

18 221 Q. You see, he's almost a hundred percent sure there was  
19 no full uniform, but his recollection was that there  
20 was no full uniform and no Sam Browne belt? 12:20

21 A. And my recollection is that there was.

22 222 Q. Can you explain, therefore, why somebody who you say  
23 you trusted and in whose judgment you had confidence  
24 would give a version of events that is entirely  
25 supportive Chief Superintendent Dillane on this issue? 12:20

26 A. That would be something for Inspector O'Sullivan, I  
27 can't understand why he would say what he has said. He  
28 will have to account for his own version.

29 223 Q. Yes. Can I suggest to you that the reason he is saying

1 it is because what he is saying is true and what you  
2 are saying is incorrect?

3 A. what he is saying is not true.

4 224 Q. could we ask you please to scroll down please,  
5 registrar. Just pausing there. You will see he said 12:20  
6 that the interaction between Sergeant Barry and Chief  
7 Superintendent Dillane was that he was offering him  
8 another station to transfer to and he said that he  
9 couldn't work in Mitchelstown as he was refusing to  
10 work with the superintendent and: 12:21  
11

12 "To my recollection Sergeant Barry said 'I'm going  
13 nowhere, the super will have to go'."

14

15 So again I have to suggest to you that that is what you 12:21  
16 said to him and to Chief Superintendent Dillane and  
17 it's not the first time that you said that?

18 A. That was not said. Chief Superintendent Dillane  
19 alleged that this was said in Grandon's.

20 225 Q. Yes. 12:21

21 A. In the minutes recorded by Chief Superintendent Dillane  
22 of this particular meeting there is no mention of "I'm  
23 going nowhere, the super will have to go". Inspector  
24 O'Sullivan made his statement to the Tribunal recently,  
25 I believe, so he has remarkable recollection for almost 12:21  
26 ten years ago.

27 226 Q. well, he is very clear about that. "I'm going nowhere,  
28 the superintendent will have to go."

29 A. well, he's going to have to account for that himself, I

1 can't understand why he said that.

2 227 Q. So again I have to suggest to you that in terms of what  
3 he has said, that you have created an embellishment or  
4 a colourful description of the meeting, as you did in  
5 your references to being told to get out of the car in 12:22  
6 October 2012, that's inaccurate, it didn't happen?

7 A. That didn't happen?

8 228 Q. And ultimately I have got to suggest to you that in  
9 this situation it becomes more serious again, because  
10 it's not just Chief Superintendent Dillane's word 12:22  
11 against yours, it's now also that of Inspector  
12 O'Sullivan?

13 A. That is what he has alleged and that is not correct.  
14 But it would facilitate a transfer of me at the time if  
15 he were to report that up the line. 12:22

16 229 Q. Ultimately in this meeting, it'll be Chief  
17 Superintendent Dillane's evidence, that there was a  
18 reference to Mallow. Do you recall that?

19 A. Pardon?

20 230 Q. It will be his evidence that there was a reference at 12:23  
21 this meeting to Mallow?

22 A. There could have been.

23 231 Q. For the first time?

24 A. Yes. For the second time.

25 232 Q. And it was for the first time because he was saying 12:23  
26 there were vacancies in Mallow at that time, do you  
27 recall that?

28 A. That could be possible, I can't say.

29 233 Q. And he will say that there was also reference to

1 transfer possibly to Glanmire and also transfer  
2 possibly to Cobh. So there are three references in  
3 that meeting: Mallow, Glanmire, Cobh. And your  
4 response was, I'm going nowhere. Because, in fact, you  
5 had been offered a range, for the first time, a range 12:23  
6 of different stations to be considered?

7 A. This is the second time I have been offered and I  
8 reiterated that I will not apply for a transfer.

9 234 Q. Would you agree with me that you did not say in the  
10 presence of Inspector O'Sullivan and Chief 12:23  
11 Superintendent Dillane that of those choices you were  
12 willing to go to Mallow but you wouldn't apply for a  
13 transfer to Mallow?

14 A. No, I wouldn't say -- I didn't mention Mallow at all to  
15 Inspector O'Sullivan, I said I will not apply for a 12:24  
16 transfer.

17 235 Q. And did you mention that you would consider  
18 transferring if your expenses were covered?

19 A. No.

20 236 Q. You see, I suggest to you -- sorry? 12:24

21 A. And that is why that meeting was so short, was because  
22 I had no one with me to give my account of events.

23 237 Q. I have to suggest to you that the meeting was not as  
24 short as you are suggesting?

25 A. Well Inspector O'Sullivan says it was ten minutes or 12:24  
26 so.

27 238 Q. Around 15 minutes, I think would be Inspector  
28 O'Sullivan's --

29 A. Ten minutes, he said. Ten minutes to 15.

1 239 Q. Ten to 15?  
2 A. Yes.  
3 240 Q. Yes.  
4 A. It was a very brief meeting.  
5 241 Q. Well, 15 minutes is quite a long time for the person 12:24  
6 who is delivering very straightforward and simple  
7 proposals, and then turned down very swiftly?  
8 A. Well, he read out a detailed document from the CMO.  
9 242 Q. Yes. And ultimately your response was as they  
10 described, I'm going nowhere, the superintendent must 12:25  
11 go?  
12 A. My response was, I am not going to apply for a  
13 transfer.  
14 243 Q. I'm going nowhere. Now, at that time in terms of  
15 Glanmire, again it will be the evidence that 12:25  
16 Superintendent Lehane was the officer responsible for  
17 that particular district, do you agree with that or  
18 disagree with that?  
19 A. To the best of my knowledge, he may have been, I  
20 thought it was a different superintendent was still 12:25  
21 there, the previous superintendent was still there at  
22 that time. I don't know when Superintendent Lehane was  
23 appointed to Cobh district, but it was my belief that  
24 there was a different superintendent serving there at  
25 that time. 12:25  
26 244 Q. But in terms of amalgamation of districts, which is  
27 something I think you referred to in your evidence the  
28 other day, that amalgamation didn't take place I think  
29 until 11th November 2013; is that right?

1 A. No, but Chief Superintendent Dillane had indicated to  
2 me that that amalgamation was going to take place in  
3 June, I believe, of 2013.

4 245 Q. You see, I have to suggest to you that in fact the  
5 references to amalgamation, which I think in some 12:26  
6 instances go back to your evidence in 2012, relate to  
7 something that didn't happen until November 2013. In  
8 other words, it was not until November 2013, would you  
9 agree, that Carrigtwohill was moved from Cobh to  
10 Midleton? 12:26

11 A. That's when it happened, yes.

12 246 Q. In November 2013. It wasn't until November '13, I  
13 think you agree with me, that Glanmire was transferred  
14 into the Mayfield district?

15 A. That's when it happened, yes, but I was told it would 12:26  
16 happen in June.

17 247 Q. And I think there was effectively answer extinguishment  
18 of Cobh as a separate district in November 2013?

19 A. That's correct.

20 248 Q. Yes. So again just in terms of times and dates and 12:26  
21 memories, is there a risk ordaining here that you're  
22 conflating two different periods of time?

23 A. No, because I have a reference in my diary to Chief  
24 Superintendent Dillane telling me that Glanmire would  
25 be going into the city in June I believe. 12:27

26 249 Q. Again, I have to suggest to you that the description of  
27 events that would be given by each of those witnesses  
28 is true and accurate and that yours is not a reliable  
29 account and is not accurate as to what took place?



1 A. No, my recollection is accurate.

2 250 Q. If we just pause for a moment in terms of  
3 communications. Around this time you were also engaged  
4 in writing and in correspondence with different  
5 persons, isn't that right? Just to be clear, at this 12:27  
6 particular point in time I think the position is that  
7 by the end of -- 9th April 2013, you're aware of the  
8 fact that there are now options being proposed, you  
9 agree?

10 A. Options in relation to...? 12:28

11 251 Q. Yes. Potential options for transfer have been proposed  
12 to you?

13 A. Yes, I was given a number of stations that I could  
14 apply to be transferred to.

15 252 Q. And you're agreed that you rejected those out of hand? 12:28

16 A. I agree that I would not apply for a transfer, yes.

17 253 Q. I think you've agreed, from your evidence on the last  
18 occasion, that the rationale you're putting forward to  
19 the Chairman was that you still had in your heard this  
20 willingness to transfer to Mallow, that you never put 12:28  
21 in writing but which could have been dealt with and  
22 effectively assuaged by the payment of expenses of that  
23 transfer?

24 A. The option of Mallow was if I could not be facilitated  
25 at Mitchelstown but Mallow was never my preference nor 12:29  
26 was the financial gain by being transferred at public  
27 expense. I pointed out that I would not transfer from  
28 my station unless it was at public expense, that I  
29 would not apply for a transfer.

1 254 Q. In terms of the issue of transfer, would you not agree  
2 that from what you were told at that time, that any  
3 questions of transfer were being put forward or  
4 considered by HRM as temporary, not permanent?  
5 A. Yes. And I believed that Chief Superintendent Dillane 12:29  
6 would have told HRM in relation to Mallow and I  
7 actually told Dr. Dennehy that I expected to be  
8 transferred and I was looking forward to it.  
9 255 Q. You see, again I have to suggest to you that in terms  
10 of everything you've said at the time was completely 12:29  
11 different to that, because what you were indicating was  
12 a refusal to transfer under any circumstances?  
13 A. A refusal to apply for a transfer. There's a  
14 difference.  
15 256 Q. So, just to be clear, is it your evidence to the 12:30  
16 Chairman that the critical issue for you was the  
17 refusal to apply to transfer?  
18 A. Yes, I would not apply for a transfer.  
19 257 Q. Let's just look at that for a moment, please. Can I 12:30  
20 ask you to be shown document 4107, please? So, this is  
21 a letter written to your solicitor dated 21st March  
22 2013, and it's written by Assistant Commissioner Fintan  
23 Fanning from Garda HRM. It refers back to the letter  
24 from Séan Costello & Company, which we saw, from the  
25 14th February. You will see there that he indicates in 12:30  
26 the first paragraph that he has been forwarded a copy  
27 by Chief Superintendent Dillane of the 14th February  
28 letter. He then says:  
29

1 "I am to advise that Sergeant Barry was offered a  
2 transfer to Glanmire Garda Station and declined same.  
3 As you are aware an investigation is being conducted  
4 did I Chief Superintendent Catherine Kehoe in relation  
5 to complaints made by your client. 12:31

6  
7 The Garda policy on bullying and harassment provides  
8 that Sergeant Barry can apply for a transfer to any  
9 garda station to help him during the period of the  
10 investigation if he so wishes. Should Sergeant Barry 12:31  
11 apply for a transfer, I will give the matter very  
12 serious consideration and then at the final outcome of  
13 the process I can transfer your client back.

14  
15 I am to confirm also that your client was reviewed by 12:31  
16 the Chief Medical Officer on the 25th January, who  
17 advised that the member was 'temporarily unfit to  
18 attend duty regularly and render effective service'."

19  
20 So, first point, would you agree with me that Assistant 12:31  
21 Commissioner Fanning was telling you that the Garda  
22 policy on bullying and harassment effectively allowed  
23 you to apply for a transfer?

24 A. Yes, he is using the part of the policy that suits  
25 Garda management. He didn't refer to the policy 12:32  
26 stating that in the event of a bullying and harassment  
27 complaint not being upheld, neither the  
28 superintendent -- or neither the person complained of  
29 nor the complainant shall be transferred unless either

1 applies for same.

2 258 Q. Precisely. And that is a feature that you latched on  
3 you, did you not?

4 A. That was the advice I got from my AGSI rep and my  
5 solicitor at the time. 12:32

6 259 Q. You told us that at a previous stage. Can I suggest to  
7 you that what you are doing here is you are ultimately  
8 using this to create a Catch 22. You're being told by  
9 HRM what the rules are, you already know what the rules  
10 are from your advisers and you considered -- 12:32

11 A. -- options.

12 260 Q. But ultimately though in this situation you consider  
13 that you have a veto and you're going to exercise that  
14 veto at every stage and that's what happens here?

15 A. I didn't have a veto, I was on sick leave. 12:32

16 261 Q. In terms of whether you were on sick leave or not, can  
17 I suggest to you, you're well capable of giving very  
18 clear answers about your views on these things and they  
19 were all negative, isn't that correct?

20 A. No, they were positive. The outlook from Séan Costello 12:33  
21 was that Inspector O'Sullivan could have taken  
22 supervision over me.

23 262 Q. Mr. Barry, we're talking now about the question of  
24 transfers and in relation to transfers would you agree  
25 with me that every response you made, whether verbally 12:33  
26 or in writing, was negative?

27 A. I was consistent in my replies, as in, I will not apply  
28 for a transfer.

29 263 Q. And you knew therefore, because you knew the rules,

1 because you were an experienced officer, because you  
2 had advice, representative and legal, and you were even  
3 being advised by the assistant commissioner, you knew  
4 that all you had to do was decline to apply for a  
5 transfer and the transfer couldn't take place during 12:33  
6 the currency of the bullying and harassment  
7 investigation, isn't that right?

8 A. Pardon? That was the advice I had at the time, yes.

9 264 Q. And not only was it advice that you got it, I have to  
10 suggest to you, it suited you to do that because it 12:33  
11 meant that you could stay where you wanted, because you  
12 were going nowhere?

13 A. I was at home.

14 265 Q. But ultimately it meant that you could not be  
15 transferred to a different station because wild horses 12:34  
16 wouldn't have you transferred to any other station,  
17 that was your preferred view?

18 A. That was the bullying and harassment policy document.  
19 I did not compose that document, that document stated  
20 that those were the regulations in relation to being 12:34  
21 transferred while an investigation was going on.

22 266 Q. Could I ask you please to be shown the next document,  
23 page 3832, please. So here we have, as it were, a  
24 follow on from the previous letter, this is Assistant  
25 Commissioner Fanning writing to Chief Superintendent 12:34  
26 Dillane. He refers to a minute of the 14th February.  
27 He says:  
28  
29 "I don't accept that the garda station in Mitchelstown

1 is an unsafe working environment, nor can I conclude in  
2 the absence of the investigation review that there is  
3 any finding of bullying and harassment.

4  
5 However, the policy does set out that Sergeant Barry 12:35  
6 can apply for a transfer if he so wishes. Can you  
7 establish if he would wish to be considered for a  
8 transfer to any garda station to help him during the  
9 period of the investigation? I can give the matter  
10 very serious consideration and then at the final 12:35  
11 outcome of the process, I can transfer the member back.

12  
13 Please be advised that the Chief Medical Officer has  
14 indicated that the member is unfit to work, whilst I  
15 note that you state that he is fit. Perhaps you can 12:35  
16 advise me on what grounds this finding is based on in  
17 light of the committee's direction."

18  
19 So, in that situation, I have to suggest to you that  
20 Assistant Commissioner Fanning is clearly writing this 12:35  
21 letter in relation to the possibility of applying for a  
22 transfer as something that would be in ease of you,  
23 that effectively could be temporary, that could be  
24 reversed at the conclusion of the investigation?

25 A. Could be, but I don't believe it would be. 12:35

26 267 Q. And you see, I have to suggest to you is that again  
27 that is totally inconsistent with any targeting or  
28 discrediting of you. Here we have the system we  
29 described earlier this morning, from headquarters down,

1 seeking to provide a solution on a temporary basis that  
2 would enable you to work and will enable you to carry  
3 on with your duties pending the outcome of the  
4 investigation?

5 A. And this is the same assistant commissioner who 12:36  
6 suggested I should be disciplined without an  
7 investigation.

8 268 Q. And in terms of that position, I think that again is a  
9 deflection from what you've just put to you, which is  
10 that what's taking place here is the offer of 12:36  
11 constructive solution, that if adopted by you could  
12 have put you in a position where you didn't have to see  
13 Superintendent Comyns, where you didn't have to have  
14 any of the stresses that you spoke of and where you  
15 could have been able to work fully, free from the 12:36  
16 constraints which you claim to exist by virtue of being  
17 required to work in the Fermoy district?

18 A. If the offer of Séan Costello was accepted and  
19 implemented, then that would have had the same effect.

20 269 Q. And again, as has been suggested to you before, I have 12:36  
21 to put it to you that that is simply an offer that  
22 wasn't practical on the ground because of all of the  
23 practical consequences of operating in a hierarchical  
24 organisation in a particular geographical area, and you  
25 were told that? 12:37

26 A. But Chief Superintendent Grogan stated that he would  
27 have considered that matter, but he didn't have any  
28 input into the decision making at the time.

29 270 Q. I have to suggest to you that at this stage in the

1 process what is happening is that you are using the  
2 policy as a veto, and then secondly, you're putting  
3 forward on the 14th February a proposal you know to be  
4 impractical?

5 A. You make it sound as if I designed this policy. This 12:37  
6 is a policy document that I had no control over, this  
7 is what I was advised to make my complaint under.

8 271 Q. But you see, you did have control over one thing and  
9 you relished that control, can I suggest to you,  
10 because the control you had was to refuse to apply for 12:37  
11 a transfer?

12 A. I was perfectly within my rights not to apply for a  
13 transfer.

14 272 Q. At that time, can you explain to the Tribunal, why you  
15 didn't get your solicitor to write another letter after 12:38  
16 the 14th February, offering to transfer or to apply for  
17 a transfer as long as it was done at public expense?

18 A. Because my ultimate goal at the time was to return to  
19 the station that I worked in for the past 13 years. I  
20 did not want to go to Mallow. I did not want to go to 12:38  
21 any other station and I was not going to apply for  
22 them. My preference was to return to work in  
23 Mitchelstown under temporary workplace accommodations  
24 as recommended by the CMO and Dr. Tobin.

25 273 Q. Can I suggest to you that in fact the truth is that you 12:38  
26 were determined never to transfer but to stay in  
27 Mitchelstown?

28 A. I indicated to Chief Superintendent Dillane that I was  
29 willing to be transferred to Mallow at public expense



1 but I would not apply for it.  
2 274 Q. We will have to disagree with that, Mr. Barry. Can I  
3 just put it to you that that is incorrect on my  
4 instructions. Can I ask you to be shown document 3981,  
5 please? So, this is a letter of 5th May 2013, and it's 12:39  
6 a letter written by you?

7 A. That's correct.

8 275 Q. You're writing to the assistant commissioner in HRM.  
9 And you'll see in the first paragraph you make  
10 reference to the meeting on the 9th April with your 12:39  
11 word "inspected" on the second line. And again, I have  
12 to suggest to you that again that description is a  
13 colourful description and one that is not reflective of  
14 what actually happened. But do you see there's a  
15 reference to -- in the middle of the page, you say: 12:39

16  
17 "I don't believe that Chief Superintendent William  
18 Dillane is willing to offer any anything other than a  
19 transfer and this is not acceptable to me for the  
20 following reasons." 12:40

21  
22 And then you say

23  
24 "The Garda policy on bullying and harassment provides  
25 that I can apply for a transfer to help me during the 12:40  
26 period of the investigation. That would be fine if we  
27 were just talking about bullying, but I have made an  
28 allegation that the district officer attempted to  
29 coerce me into perverting the course of justice in

1 relation to the rape and sexual assault of a child, it  
2 is because of this behaviour I made this allegation.  
3 It is my duty within the law of the land to serve the  
4 whole community and protect the people who I have  
5 proudly served for the past 13 years from all unlawful 12:40  
6 and harmful facts from whatever source."

7  
8 Just turning over the page:

9  
10 "I made my complaint as I believe that I have an 12:40  
11 obligation to be faithful to the principles of integrity  
12 and honour in the exercise of my duty. This obligation  
13 supersedes any perverted or misplaced loyalty in  
14 support or protection of any member of the force who I  
15 may believe to be guilty of unethical or criminal 12:41  
16 behaviour. I can only protect this community I have  
17 proudly protected for the past 13 years by remaining in  
18 Mitchelstown. It is incumbent upon me to see that the  
19 law of the land is upheld and that no member regardless  
20 of their rank steps outside the limit of his or her 12:41  
21 authority."

22  
23 I have to suggest to you, that there it is in black and  
24 white:

25 12:41  
26 "I can only protect this community that I have proudly  
27 served for 13 years by remaining in Mitchelstown. I am  
28 going nowhere."

1 This letter is entirely consistent with what Inspector  
2 O'Sullivan and Chief Superintendent Dillane witnessed  
3 on the 9th April and I have to suggest to you that this  
4 is your view and was your view at that time?

5 A. At no stage in that letter did I say I am going 12:41  
6 nowhere. I said that I believed I am best positioned  
7 to remain in Mitchelstown to protect the community I  
8 serve from the perversion of the course of justice in  
9 relation to the sexual assault of a child which I  
10 believed Superintendent Comyns had committed. 12:42

11 276 Q. You see, that's not what it says. What it really says  
12 here is that you have a duty to stay in Mitchelstown  
13 and ultimately that's the only thing you can do?

14 A. No, if you go back further, you can see clearly I refer 12:42  
15 to the criminal allegation. And my fear was that  
16 something like this could happen again if I wasn't  
17 there to report it because nobody else was going to.

18 277 Q. You see, again I have to suggest to you that that again  
19 is an embellishment because this is a letter which  
20 clearly was written by you to headquarters to indicate 12:42  
21 the depths of your refusal to contemplate any  
22 constructive solution they put forward?

23 A. That was my position in regards to the community that I  
24 had served for 13 years. I was not going to have  
25 criminal behaviour inflicted on any member of the 12:42  
26 community that I was serving. And that was my belief  
27 at the time.

28 278 Q. You told us a few moments ago that actually this was a  
29 situation where you were willing to transfer to Mallow

1 if public selves could be diverted to support those  
2 expenses. Would you agree with me that what you said a  
3 few minutes ago is completely different to this?

4 A. No, that is totally incorrect. I said Mallow was my  
5 second option. If I was not to be accommodated in 12:43  
6 Mitchelstown then Mallow would have been the most  
7 acceptable station for me to go to.

8 279 Q. What about the people of Mitchelstown, there's a duty,  
9 you have to protect them and all of the colourful  
10 material -- 12:43

11 A. Because I had reported that a child who was a resident  
12 in Mitchelstown had been sexually abused and that that  
13 abuse was covered up by Superintendent Comyns. And I  
14 did not want that to happen to some other child in my  
15 community. 12:43

16 280 Q. I have to suggest to you that really what you didn't  
17 want to happen was, you didn't want a transfer under  
18 any circumstances?

19 A. No. If you read that closely, you will see I did not  
20 want any person, no matter what their rank or 12:43  
21 authority, to commit criminal behaviour as I saw it.

22 281 Q. And your suggestion in this Tribunal that you were  
23 willing to consider Mallow but you didn't put it in  
24 writing, is also, I have to suggest, an embellishment,  
25 because in fact you weren't willing to consider a 12:43  
26 transfer at all?

27 A. I was not going to apply for a transfer, I keep  
28 repeating it unless the cows come home, I was not going  
29 to apply for a transfer. That's full stop.

1 282 Q. And by doing that, as we also previously discussed,  
2 that meant nothing was going to happen?

3 A. You can infer whatever you like.

4 283 Q. Well, it's not a question.

5 A. If HRM had been told by Chief Superintendent Dillane, 12:44  
6 send him to Mallow and you won't have any appeals, then  
7 they could have done so.

8 284 Q. But the repositioning, Mr. Barry, is that here in the  
9 Tribunal you have tried to suggest that you were open  
10 to another option and I am putting to you that you 12:44  
11 weren't. That very clearly at the time in everything  
12 you said, in everything that you wrote, in everything  
13 that your solicitors wrote, your answer was, no, I'm  
14 going nowhere?

15 A. I was open, and I gave you the reasons why Mallow would 12:44  
16 have suited me.

17 285 Q. But those are not reasons that you seem to articulate  
18 to anybody at the time?

19 A. And I would not. As I have told you, I would not  
20 commit it to paper, because had I done so then that 12:44  
21 would have been an excuse to transfer me, to say, oh,  
22 he's looking to go to Mallow.

23 286 Q. Do you see the illogicality of that statement,  
24 Mr. Barry?

25 A. Pardon? 12:45

26 287 Q. Do you see that there is no logic to the statement?  
27 Here we have the assistant commissioner HRM offering  
28 you the possibility of a transfer in ease of your  
29 position and you're refusing to exercise your capacity

1 to operate with that?

2 A. And that's the same assistant commissioner who wanted  
3 me disciplined without an investigation.

4 288 Q. Again, in terms of that issue, we will return to that  
5 in due course. Putting that to one side for a moment. 12:45  
6 In terms of this issue, I have to suggest to you that  
7 in fact what you were saying up here was a roadblock,  
8 an immovable roadblock to any transfer from  
9 Mitchelstown?

10 A. Like I said to you, I have no control over the bullying 12:45  
11 and harassment policy document or any transfer, that's  
12 all -- Garda management decide how people are  
13 transferred, not I. I didn't write the Code.

14 289 Q. Pausing there for a moment then, by this stage in May  
15 of 2013, I have to suggest to you that it's now clear 12:45  
16 from the series of meetings that have taken place that  
17 you have a very definite view and you've communicated  
18 that to Chief Superintendent Dillane and to Inspector  
19 O'Sullivan and to Assistant Commissioner Fanning and,  
20 it would seem, to your solicitor, that you were going 12:46  
21 nowhere?

22 A. No. That I was not going to apply for a transfer.  
23 They offered me the probability of applying. That's  
24 was in Assistant Commissioner Fanning's statement, that  
25 I could apply for a transfer. They wanted me to apply 12:46  
26 for a transfer. I would not apply for a transfer.

27 290 Q. Just an interesting phrase that you used there,  
28 Mr. Barry. Just pausing on the transcript. They  
29 offered me the probability of a transfer. To what do

1           you refer there, please?

2           A.    Pardon?

3 291 Q.    You said, they offered me the probability of a  
4           transfer, can I ask you, to what do you refer there?

5           A.    The assistant commissioner mentioned under the bullying 12:46  
6           policy document that I had a right to apply for a  
7           transfer. That is what I was referring to, the  
8           probability that I may apply, but I was not going to  
9           apply.

10 292 Q.    But you knew from the correspondence and from the 12:47  
11           meetings that a transfer was there for the taking if  
12           you applied?

13           A.    It was there if I applied for it.

14 293 Q.    Yes. Raising certainty?

15           A.    Pardon. 12:47

16 294 Q.    It was certain that a transfer to one of these  
17           locations could be --

18           A.    If I applied for it, it was a certainty that I would be  
19           sent wherever suited me but not to Mallow.

20 295 Q.    And in terms of the approach, I have to suggest to you 12:47  
21           that everything that you said at the time covered all  
22           of the options, including Mallow. You shut the door on  
23           all of the options?

24           A.    I did not.

25 296 Q.    I have suggest to you that in those circumstances, by 12:47  
26           May of 2013 the bullying and harassment investigation  
27           is ongoing and effectively a transfer is now  
28           impossible, pending the finalisation of that  
29           investigation because you won't give any consideration

1 to an application to transfer, isn't that correct?

2 A. No, it has nothing to do with me, it has to do with the

3 bullying policy document.

4 297 Q. It will be a matter for the Chairman to assess in terms

5 of the correspondence and the narrative of the other 12:48

6 witnesses what to make of that issue. But in terms of

7 the overall approach, can I just go back then to deal

8 with an issue which Mr. McGuinness has addressed with

9 you. I will try and move this relatively speedily if I

10 can. That is to say the interaction between yourself 12:48

11 and Dr. Oghuvbu, and also Chief Superintendent Dillane

12 in relation to HRM. I think in terms of the medical

13 background to each of these issues, you're aware of the

14 fact that the CMO became engaged in the process. Can

15 you recall when you saw the CMO first? 12:49

16 A. I can't give the specific date but it would have been

17 2012. I think it was before the meeting in Grandon's.

18 298 Q. Yes. Let's come back to that in a moment, but could I

19 ask you to be shown page 5622, please? So in this

20 situation we have a reference to a case conference on 12:49

21 22nd January 2013 at Garda headquarters about you. Do

22 you see that?

23 A. Yes, I see that.

24 299 Q. And do you see in the middle of the page, this is the

25 response from Chief Superintendent Dillane to the 12:50

26 Tribunal, he says that he spoke with Dr. Oghuvbu about

27 your absence from work and he informed the meeting that

28 he was able to facilitate you in a transfer to Glanmire

29 Garda Station, which was closer to your home, a very



1 similar size station to Mitchelstown, and that when he  
2 mentioned this to Dr. Oghuvbu, that Dr. Oghuvbu felt  
3 that that would be reasonable but he would need time to  
4 discuss it with you and that he was due to meet you  
5 within a few days. Did you meet with Dr. Oghuvbu at 12:50  
6 any stage after that?

7 A. I met him in 2013, I don't know what date you're  
8 referring to there.

9 300 Q. The date I am referring to is before this meeting, the  
10 22nd January? 12:50

11 A. Yes, I believe the last meeting I had with him was in  
12 March '13.

13 301 Q. You see the last entry there, he will say in his  
14 evidence that Dr. Oghuvbu also mentioned that the 11.37  
15 injury on duty certificate that Mr. Barry was looking 12:51  
16 for could not be decided until the outcome of the  
17 ongoing investigation was known.

18  
19 So, can I just ask you, had you by that stage asked  
20 Dr. Oghuvbu to effectively give you an 11.37 injury on 12:51  
21 duty certificate?

22 A. No, that is what he was told by Chief Superintendent  
23 Dillane.

24 302 Q. Can I ask you then to move forward please to page 5609.  
25 These are notes of the case conference, which I think 12:51  
26 Mr. McGuinness referred to, I won't spend any lengthy  
27 time on this document. But can I just ask you to see  
28 the central paragraph, it says:  
29

1 "To see the CMO on 25/1/2013 - may need independent  
2 medical advise are assessment."  
3  
4 Does that help to jog your memory? Were you due to see  
5 him on the 25th? 12:52

6 A. I may have been. And you can also see there on the  
7 left-hand column "member seeking medical retirement as  
8 well". Now, where would that have come from?

9 303 Q. Do you see on the left-hand side, Mr. Barry?  
10 A. Yes. 12:52

11 304 Q. In the middle it says "member" that's you "seeking IOD  
12 (injury on duty) classification for absence. Member  
13 seeking medical retirement as well. Member has claimed  
14 he will institute legal proceedings for any financial  
15 loss he suffers as a result of ongoing circumstances." 12:52

16  
17 A. That's all correct bar for the member is seeking  
18 medical retirement as well.

19 305 Q. Okay. So just to be clear then, the Chairman can take  
20 it that as of that date that was all correct. But this 12:52  
21 again comes back to the part of the evidence that you  
22 gave on Day 176, and I'm not sure, Chairman, if it's  
23 possible to bring the transcript on the screen? If not  
24 I can refer to -- Chairman, perhaps I can proceed and  
25 if the witness has a difficulty? 12:53

26 CHAIRMAN: Yes, absolutely. You say what you recall of  
27 what you suggest is the case and we all know because we  
28 have access to the hard copies of the transcripts, we  
29 actually have the electronic ones but it may take us a

1 few minutes to get there. You want to refer to an  
2 answer that Mr. Barry on the first day, isn't that  
3 right?  
4 MR. MURPHY: No, Chairman, it would be on the 19th May,  
5 Day 176. Mr. Barry, you may recall that when you were 12:53  
6 giving evidence on that date, at page 123 of the  
7 transcript, again I'm not sure if there is a clearer  
8 copy available, it may be easier to show it to the  
9 witness in that way.

10 306 Q. CHAIRMAN: well, tell him what you say he was asked 12:53  
11 about, and then we can check it. Do you understand,  
12 Mr. Barry?  
13 A. Yes, Mr. Chairman.

14 307 Q. MR. MURPHY: Do you recall Mr. McGuinness asked you a  
15 question about options. He asked you a series of 12:53  
16 questions about what were the options for Garda  
17 Commissioner at that time, and you said at line 15, at  
18 page 123, quote:  
19  
20 "Well, there was an option supplied by my solicitor in 12:54  
21 relation to Inspector O' Sullivan taking charge of my  
22 directions."  
23  
24 CHAIRMAN: Just give us a second now because we have it  
25 up on green, Mr. Murphy. 12:54  
26 MR. MURPHY: Thank you. Page 123, please.  
27 CHAIRMAN: But it will take a time to scroll down to  
28 page 123. There we are. Which questions.  
29 MR. MURPHY: Yes, please. The question is at 515.

1 CHAIRMAN: 515. Do you see that, Mr. Barry.

2 THE WITNESS: Yes.

3 CHAIRMAN: Can you read that in front of you?

4 THE WITNESS: I can, yes.

5 308 Q. MR. MURPHY: The question was asked about the options  
6 at line 515 you say:

7

8 "A. Well, there was an option supplied by my solicitor  
9 in relation to Inspector O'Sullivan taking charge for  
10 my directions. There was also the option of  
11 classifying my sick leave as what it should be, in  
12 which case I would never have been back at work.

13 Q. Classifying your sick leave as...?

14 A. As what it should have been classified as, work  
15 related, in which event I would never have returned to  
16 work.

17 Q. In the sense that if it had been certified as  
18 injury on duty at some earlier stage, you simply just  
19 wouldn't have gone back to work?

20 A. No.

21 Q. You would have considered yourself based upon such  
22 certification as being permanently injured?

23 A. I would have been able to support my family without  
24 having to return to work. I wouldn't have been forced  
25 into returning."

26

27 CHAIRMAN: wouldn't have been forced.

28 MR. MURPHY: wouldn't have been forced into returning.

29 309 Q. Just pausing there for a moment. When counsel for the

1 Tribunal asked you what the options were, this was the  
2 view you expressed. So is it the case that as far as  
3 you were concerned in 2013, that the only options that  
4 you were going to leave open for the State was to  
5 comply with your request through Mr. Costello's letter 12:56  
6 to allow you to be supervised by Inspector O'Sullivan  
7 or classifying your injury as effectively a form of  
8 permanent injury, which would allow you to retire?

9 A. No, it wasn't my intention to retire. Never was. I  
10 wanted my sick leave classified as work related so that 12:56  
11 I wouldn't be docked pay while I was on sick leave.

12 310 Q. Again just think about that, Mr. Barry, in the light of  
13 other evidence you have given on the same day. Think  
14 about what you said to the Chairman on the same day.  
15 Could we please have on that date, page 155. Just at 12:56  
16 the top of the page, Mr. McGuinness, said to you:

17  
18 "Q. I am not going to suggest that you were happy with  
19 this, but you were anxious to get back to work --

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

22 Q. Yes.

23 A. I hated going back to work. I am not going to  
24 suggest you were happy with this but you were anxious  
25 to get back to work. " 12:57

26  
27 So again, I suggest to you that in fact reflects your  
28 state of behind as of the beginning of 2013 and the end  
29 of 2012?

1 A. That was while Superintendent Comyns was the district  
2 officer in Fermoy. It's not stated there, but that was  
3 what I meant at the time. When there was no  
4 accommodations being offered, no nothing happening, I  
5 would not have returned to work. 12:57

6 311 Q. Mr. Barry, taking these two pieces of evidence, I have  
7 to suggest to you what it demonstrates is your  
8 objective at that time was to get a certificate that  
9 you had an injury on work which would allow to retire  
10 because you hated your work and you never wanted to go 12:57  
11 back?

12 A. I did not mention my certificate, I mentioned to have  
13 my illness classified as what it should be.

14 312 Q. To be classified there has to be some evidence of  
15 classification, would you agree with me, that you are 12:57  
16 fully aware of the fact that the classification --

17 A. Yes, but I never mentioned certificate.

18 313 Q. We're talking about the same thing?

19 A. Yes.

20 314 Q. I want to put to you, that it is clear at that stage 12:58  
21 that your motive, insofar as that may be a matter for  
22 the Chairman to consider later on, your motive is  
23 crystal clear from your own evidence?

24 A. At that time.

25 315 Q. At that time? 12:58

26 A. At that time.

27 316 Q. And therefore, at that time you were also aware of the  
28 fact that Dr. Oghuvbu and Chief Superintendent Dillane  
29 had to follow the process that was set out in the

1 regulations in relation to SAMS?

2 A. That's right.

3 317 Q. Piece-by-piece, step-by-piece, as they would with any  
4 other guard?

5 A. I knew how long the investigation could take and I did 12:58  
6 not want to return to work until that was completed.

7 318 Q. But in fact you didn't want to return to work at all?

8 A. Not until that was completed.

9 319 Q. And if you look back at the -- sorry?

10 A. While the conditions that were in situ were still there 12:58  
11 I did not want to return to work. I was happy in my  
12 work when Superintendent Comyns was transferred.

13 320 Q. So, when you wrote then that letter in May that we saw,  
14 where you said it was your duty to remain in  
15 Mitchelstown to uphold the law, that wasn't correct 12:58  
16 either because in fact you hated going to work in  
17 Mitchelstown too?

18 A. Pardon?

19 321 Q. That wasn't correct when you wrote on the 5th May that  
20 you had to stay in Mitchelstown, it was all about 12:59  
21 working and preserving the duty and the peace of the  
22 citizenry, because in fact, as you indicated here in  
23 this Tribunal, you hated the idea of going back to  
24 work?

25 A. The first day I went back to work I went to the toilet 12:59  
26 cubicle and I puked my guts out with stress. I was not  
27 fit to return to work at that time. That is what I am  
28 referring to. At that time with those situations in  
29 place, I was not willing to return to work.

1 322 Q. But ultimately in this situation and I will come back  
2 to the question of medical classification later on,  
3 what I am putting to you is that your objective at that  
4 time was to try and secure a certificate that indicated  
5 that you were injured on work, clear and simple? 12:59

6 A. Are you trying to -- I was trying to get my illness as  
7 work related and not looking for a medical pension. I  
8 never looked for a medical pension from anyone, neither  
9 Dr. Oghuvbu, my own doctor, HRM or anyone else. I  
10 never communicated that to anyone. But I was told by 13:00  
11 the AGSI, then AGSI president that I should contact my  
12 solicitor in relation to looking for medical pension  
13 and that was the day before Chief Superintendent  
14 Dillane attended that meeting with Superintendent  
15 Comyns. 13:00

16 323 Q. You see, I have to suggest to you that it is clear from  
17 all your communications at that time, if we go back to  
18 page 5609, I will finish, Chairman, before lunch on  
19 this point, at page 5609, that as of that date in  
20 January 2013, it was clear from your communications 13:00  
21 with all of the relevant personnel on the State side,  
22 that you were seeking injury on duty classification,  
23 you were seeking medical retirement and you were  
24 threatening that you were going to institute legal  
25 proceedings for financial loss. That's in January 13:00  
26 2013, isn't that correct?

27 A. That is incorrect. That's a lie. I never looked for a  
28 medical pension.

29 MR. MURPHY: Chairman, that's an appropriate point.



1 CHAIRMAN: Thanks very much. Very good. Okay two  
2 o'clock. Thank you.

3

4 THE HEARING THEN ADJOURNED FOR LUNCH AND RESUMED, AS  
5 FOLLOWS:

13:01

6

7 CHAIRMAN: Now, Mr. Murphy, thanks very much.

8 Mr. Barry, I said it before but let me say it again,  
9 it's quite a stretch to be answering questions all the  
10 time, so if you need a little break, just let me know.

14:01

11 THE WITNESS: Thank you, Chairman.

12 324 Q. MR. MURPHY: Chairman, just before lunch we had been  
13 dealing with the case conference note, and I wonder  
14 could I ask the registrar to turn to page 4078, please.

15 So, Mr. Barry, before lunch you raised the question as  
16 to the dates of your meeting with Dr. Oghuvbu. In

14:02

17 fairness to you, can I just confirm for the record and  
18 we will come back to them, but Dr. Oghuvbu will say

19 that he met you on three occasions, the first was on  
20 11th October 2012, the second was on 25th January 2013,

14:02

21 the third was on the 11th March. So I will come back  
22 to that when I deal with the statement and I will show

23 you where he says that as well. But can I just ask you  
24 to look at this document, please, for a moment because

25 this is an e-mail sent by you to the commissioner or  
26 assistant commissioner at HRM on the 4/2/2013. You

14:02

27 will see that you refer to the meeting on the 25th  
28 January with the CMO. You will note that there you  
29 indicate that Dr. Oghuvbu said that the reason he

1 wanted to see you, the only reason he wanted to see you  
2 was to discuss a medical report submitted by Dr. Kiely  
3 and Dr. Dennehy. He records that in your view the CMO  
4 was upset because both Dr. Kiely and Dr. Dennehy  
5 expressed the opinion that your medical condition was 14:03  
6 work related, that he didn't believe they could do so  
7 without first conducting an investigation. So, I think  
8 that was your impression of the meeting with him at  
9 that time.

10 A. That's correct. 14:03

11 325 Q. I will come back to the detail in a second. You then  
12 raise certain questions in the middle of the e-mail.  
13 You say:

14  
15 "Dr. Oghuvbu did mention a safe working environment and 14:03  
16 to this end I want to ask the following questions:  
17 1. Does HRM find it acceptable that I should have to  
18 work with a person against whom I have made an  
19 allegation of bullying and criminal behaviour?  
20 2. What steps have HRM taken to provide me with a safe 14:03  
21 working environment?"

22  
23 And you indicate that you had spoken to Chief  
24 Superintendent John Grogan on the 29th January and  
25 outlined your concerns. Then you go on to say this: 14:03

26  
27 "I also expressed my view that a transfer was not an  
28 option for me because of the nature of my complaint and  
29 the persons mentioned therein. Chief Superintendent

1 Grogan said he would pass my concerns on to Assistant  
2 Commi ssi oner Jack Nol an. I haven' t heard anything  
3 since and I Would like an answer to the above and I  
4 believe that the actions of HRM are prolonging and  
5 contributi ng to my illness." 14:04

6  
7 So, if you just pause for a moment on that level.  
8 First of all, just in terms of your meeting with  
9 Dr. Oghuvbu on the 25th January, I think that that was  
10 a meeting that took place in Dublin, was it? 14:04

11 A. That's correct, Garda headquarters.

12 326 Q. And again just in fairness to you, if I could ask you  
13 to be shown page 1482, please. Just if you could  
14 scroll please down to the last paragraph. So,  
15 Dr. Oghuvbu will say in his evidence that he can't 14:05  
16 recall the specific details of the consultation apart  
17 from what he recorded in his notes of the consultation.  
18 Do you see there he says:

19  
20 "I would have a reservation about the member' s -- 14:05  
21 that's your assertion "that the opinion of his doctors  
22 about the basis of his absence caused him to be'  
23 upset' ."

24  
25 And his notes don't record any reference to being 14:05  
26 upset. But then to put this in context, if you turn  
27 over the page please, to page 1483, he does say at  
28 paragraph 18 that:  
29

1 "It would appear that my attempts to explain the  
2 position and approach may have been construed by  
3 you..." Mr. Barry, "as him being upset at not being  
4 able to express an opinion until HRM gave the opinion  
5 to me." So a small point, but just in terms of 14:05  
6 impression, your impression of the e-mail was that he  
7 was upset, he is saying he doesn't have any  
8 recollection of being upset, but what he does say, I  
9 would like to point out to you, it may be relevant, is  
10 that he did discuss with you, did he not, the fact that 14:06  
11 there had to be an investigation of matters? It wasn't  
12 just a question of his personal view.

13 A. That's correct. But when I say he was upset, I said he  
14 was upset in relation to Dr. Dennehy and Dr. Kiely  
15 saying that my medical condition was work related. 14:06

16 327 Q. Yes.

17 A. Not that he was upset per se.

18 328 Q. Again, this may be an issue of perspective but can I  
19 take you through this briefly and see if we can agree  
20 or his agree on this. But remember this morning we 14:06  
21 dealt with a whole system that's in place within An  
22 Garda Síochána?

23 A. Yes.

24 329 Q. I think we clarified, and there was no dispute I think,  
25 that the system requires a CMO view but that view has 14:06  
26 to take into account an investigation on the ground.  
27 There's several different moving parts that have to  
28 come together before a final decision is made, do you  
29 agree?

1 A. Yes.

2 330 Q. And insofar as this is concerned, Dr. Oghuvbu will  
3 indicate that what he was seeking to explain to you was  
4 that all had to happen before a medical view would  
5 effectively dictate the pace of every other action, do 14:07  
6 you follow? So he's not seeking to question your  
7 doctor's professional capacity or anything else, but  
8 what he is seeking to explain is that the process  
9 required certain steps to be taken and information that  
10 your doctors would not have and he did not have as yet, 14:07  
11 had yet to be collated. Do you follow?

12 A. Yes.

13 331 Q. The reason I want to suggest is that is that he says --  
14 if I can just suggest page 1483, please, at the very  
15 top of the page. And again, he's not seeking to have 14:07  
16 any conflict with you on this issue but he's just  
17 trying to explain the practice, the system that he is  
18 to operate within, he says:

19

20 "It is my position and practice that I am unable to 14:07  
21 objectively advise on work-related stress as being  
22 present or otherwise and a cause of defined medical  
23 condition and ill health without first having the  
24 circumstances of an employee's assertions examined or  
25 investigated." 14:08

26

27 So, can I just suggest to you that at that stage what  
28 Dr. Oghuvbu is seeking to explain to you is that the  
29 system that he has to operate requires an investigation

1 and its fruits to be made known to him before he can  
2 get to that further stage. Did he seek to explain that  
3 to you in the course of the meeting?

4 A. He did explain that, yes.

5 332 Q. So insofar as your e-mail is saying that ultimately 14:08  
6 Dr. Oghuvbu said he couldn't give an opinion until this  
7 investigation but Dr. Kiely and Dr. Dennehy do, what he  
8 is simply seeking to explain is that he has a role and  
9 function that's defined by the process and he cannot  
10 effectively act unilaterally, he has to wait for these 14:08  
11 other moving parts to be put in place?

12 A. He indicated that.

13 333 Q. Insofar as that's concerned, just looking again at his  
14 statement, you will see that at paragraph 19, further  
15 down the page, please, again just to reflect how the 14:09  
16 system is operating, he is indicating in the middle of  
17 that paragraph, he says that:

18

19 "he gave an opinion that the member continues to  
20 present with features of disrupted health and a sense 14:09  
21 of wellbeing for which he is in receipt of treatment  
22 and follow up by an appropriate specialist."

23

24 But then he says the letter records THAT Sergeant Barry  
25 expressed his grievance at the slow pace of the 14:09  
26 investigation and that he, Dr. Oghuvbu, outlined it was  
27 a matter for Garda management to progress such  
28 processes in a timely and appropriate manner, to  
29 diminish the negative impact and wellbeing. And in

1 those circumstances he again just emphasised the system  
2 and it's approach towards that issue. But goes on on  
3 the next page to make reference to the next meeting,  
4 and that's a meeting of the 11th March.

14:10

5  
6 Do you see at paragraph 21, he will say that he wrote a  
7 referral letter to Dr. John Tobin, consultant  
8 psychiatrist, dated the 8th March, seeking a specialist  
9 assessment? And if you turn over the page, please, to  
10 page 1484. Do you see it there, please, at paragraph  
11 23. Would you agree with me that he, Dr. Oghuvbu, then  
12 explained to you the basis and the purpose of the  
13 referral to Dr. Tobin?

14:10

14 A. Yes.

15 334 Q. He also says from his own notes, that his notes  
16 recorded you expressed no concerns and that you were  
17 agreeable to the referral and the assessment which was  
18 being sought?

14:10

19 A. That's correct.

20 335 Q. Just turning back then to page 4080. Can I just draw  
21 your attention to an e-mail towards the bottom of the  
22 page from John Grogan, that's Chief Superintendent John  
23 Grogan and I think at that time he was connected to the  
24 HRM function, is that right?

14:11

25 A. That's correct.

14:11

26 336 Q. And he said that he spoke to you the previous week,  
27 that's prior to 7th February 2013, and offered him a  
28 transfer and you declined, do you agree that took  
29 place?

1 A. Yes.

2 337 Q. And then can I ask you, please, to move forward and be  
3 shown page 5593. Again, I think we have seen this  
4 letter, so I don't propose to read it into the record  
5 but in terms of the sequence it shows a letter from 14:12  
6 Chief Superintendent Dillane to the assistant  
7 commissioner of human resource reporting back about  
8 developments on your case since September. And you'll  
9 see, for example, at page 5593, he refers to the  
10 meeting of the 13th September, the 13th October, at the 14:12  
11 bottom of the page, the case conference on the 23rd  
12 January and your conversation on the 14th February.  
13 Now, just towards the end you see that Chief  
14 Superintendent Dillane says:

15

16 "I believe that Sergeant Barry is fit to work and carry  
17 out his duties. However, I feel it would be  
18 inappropriate to have him stationed in Mitchelstown  
19 pending the outcome of the investigation which is  
20 currently being carried out by Assistant Commissioner 14:13  
21 Jack Nolan. I consider that the offer made by Sergeant  
22 Barry through Séan Costello & Company Solicitors is not  
23 practicable at this time."

24

25 He sent the letter from Messrs. Costello & Company 14:13  
26 solicitors and the sick report in relation to your own  
27 condition to Garda headquarters. Again, would you  
28 agree with me that that demonstrates that the system is  
29 operating, that the communication with the different



1 moving parts is being made, and Garda Headquarters is  
2 being made of developments and your solicitor's letter  
3 is being sent to Garda Headquarters? would you agree  
4 that that is all reflected in that correspondence?

5 A. Yes.

14:13

6 338 Q. So by this stage we have Assistant Commissioner  
7 Fanning, Chief Superintendent Grogan, Chief  
8 Superintendent Dillane, Dr. Oghuvbu and all of these  
9 different roles and processes taking place throughout  
10 that period. Can I ask you then please to be shown  
11 page 4074. This I think is an e-mail from you to Chief  
12 Superintendent Grogan of 12th March of 2013. I think  
13 it's identical to one that you've sent perhaps a month  
14 ago to assistant commissioner HRM. Just to confirm for  
15 the record and the sequence for the Chairman, will you  
16 confirm that in the middle of that paragraph you say  
17 again "it's my view that a transfer is not an option  
18 for me because of the nature of my complaint and the  
19 persons mentioned therein and the fact that I have  
20 relations in the Glanmire sub-district"? And then  
21 there's a complaint, the same complaint that you made  
22 before about delay and inaction by HRM in addressing  
23 your complaint?

14:14

14:14

14:14

24 A. That's correct. And in between the date of this letter  
25 and previous one, I was told by Chief Superintendent  
26 Dillane that I was not to return to work on the  
27 instructions of the CMO. I contacted the CMO's office  
28 to find out if this was true and they have a record of  
29 it. And I also notified Chief Superintendent Catherine

14:15

1 Kehoe that I received this instruction.

2 339 Q. But in effect at that stage you had not been certified  
3 by your own doctor as fit to return to work, isn't that  
4 so?

5 A. That's correct. 14:15

6 340 Q. Yes. We will come back to that when we get to the  
7 April situation, but overall can I just ask you to be  
8 shown document 4101. By this stage we're on 15th March  
9 2013 and Assistant Commissioner Fanning is in  
10 communication with Chief Superintendent John Grogan. 14:16  
11 You can see the dialogue that's taking place, where  
12 Assistant Commissioner Fanning says:  
13  
14 "It is a pity to see this man in the position he is,  
15 especially since he has given so much of his life to An 14:16  
16 Garda Síochána. I am glad he has utilised an agreed  
17 policy. At this remove a few issues arise."  
18  
19 First he says that he doesn't accept that Mitchelstown  
20 is an unsafe working environment, nor can he conclude 14:16  
21 in the absence of the investigation review that there's  
22 any findings of bullying or harassment. He says:  
23  
24 "The policy does set out that Sergeant Barry can apply  
25 for a transfer if he wishes to. Can you establish if 14:16  
26 he would be willing to be considered for any transfer  
27 to any garda station to help him during the process of  
28 the investigation? I can give the matter very serious  
29 consideration and then at the final outcome of the

1 process I can transfer the member back. On the  
2 investigation of the file, is it close to being  
3 concluded? Please let me know if there is anything  
4 else I can do."

14:17

5  
6 You will see that in terms of the communications trail,  
7 he's already been advised I think earlier by Chief  
8 Superintendent Grogan, at the bottom of the page:

9  
10 "Sergeant Barry was offered a transfer to Glanmire by  
11 local management, he rejected this offer."

14:17

12  
13 And chief Grogan says:

14  
15 "I am at a loss to identify a solution in the light of  
16 the member's refusal. Forwarded for your information."

14:17

17  
18 So, can I suggest to you that by that stage there had  
19 been repeated efforts by HRM to consider a practical  
20 solution by way of transfer and you had refused all of  
21 them up to that date?

14:17

22 A. Sorry, could you repeat that?

23 341 Q. Sure. There had been practical steps addressed by HRM  
24 to try and find a temporary practical solution by way  
25 of transfer but you had rejected those requests?

14:17

26 A. That is the only step being offered to me by  
27 management.

28 342 Q. And you can see here in the internal communication,  
29 Chief Superintendent Grogan is making the case that

1 he's at a loss to identify a solution in the light of  
2 the member's refusal"?

3 A. Well, even the offer of a transfer to Glanmire could  
4 not have happened at the time because of my relations.  
5 So that was a ridiculous place to offer to transfer me 14:18  
6 to. That was in contravention of the Code, the only  
7 option put forward there.

8 343 Q. Again, I have to suggest to you that it wasn't. But  
9 what I am putting to you is that the correspondence we  
10 are going through demonstrates that there is an attempt 14:18  
11 being made to try and find a temporary solution, to  
12 ease your position, but the reason the solution is not  
13 being found is because you are rejecting every solution  
14 offered?

15 A. I am not rejecting everything, I am just not applying 14:18  
16 for a transfer. I was asked to apply on numerous  
17 occasions for a transfer and that is what I refused to  
18 do, as was my right under the bullying and harassment  
19 policy act.

20 344 Q. Moving to page 4107, a document that we looked at 14:19  
21 before lunch. So this is the letter written by  
22 Assistant Commissioner Fanning to Séan Costello,  
23 solicitor. Now, from what we can see and looking into  
24 the records, there doesn't seem to be any reply by  
25 Mr. Costello to this letter. Did you instruct 14:19  
26 Mr. Costello not to reply to the letter?

27 A. No.

28 345 Q. Did Mr. Costello bring this letter to your attention?  
29 A. I don't recall.

1 346 Q. But I think we can take it as read after that there  
2 were no further letters written from the 14th February  
3 onwards from Mr. Costello about this issue of the  
4 transfer?

5 A. No. 14:19

6 347 Q. No. And again, can I suggest to you that if there was  
7 a solution that you felt would work, it would have been  
8 logical and prudent and open to you to have asked  
9 Mr. Costello to reply, for example, to this letter, to  
10 say, actually, there is a solution that would work? 14:20

11 A. The solution that was proposed by Mr. Costello was  
12 rejected, it wasn't even entertained.

13 348 Q. And now there's an opportunity to put forward a further  
14 solution on your part but you're not doing that. So,  
15 if we take this letter, we know that subsequently, on 14:20  
16 the 9th April, which we discussed before lunch, that  
17 offers were made on the 9th April. Did you not  
18 consider asking Mr. Costello after that meeting to  
19 write back and say, actually, Mallow would work for me  
20 if it's paid for by the State? 14:20

21 A. No. I was still on sick leave at this stage and I  
22 wanted a return to Mitchelstown.

23 349 Q. On the 9th April, you weren't on sick leave at that  
24 stage?

25 A. Sorry, yeah, I thought you were referring to -- 14:20

26 350 Q. No, I appreciate that, but I am saying that on the 9th  
27 April, just moving forward.

28 A. Yes.

29 351 Q. There was an opportunity, can I suggest to you, to

1 reply to the assistant commissioner through  
2 Mr. Costello, but that never happened?

3 A. No.

4 352 Q. Can I ask you then to forward please into April. Could  
5 you please be shown document 3844 please. And please, 14:21  
6 could you scroll down to the bottom of the page. So,  
7 here we're moving forward to 4th April 2013, you may  
8 recall Mr. McGuinness took you through the  
9 correspondence and I am not going to travel all through  
10 that again, but in terms of internal response, you will 14:22  
11 see that this e-mail which is sent indicates that:

12  
13 "The medical certificate has been received at 4pm on  
14 the date of 4th April from Dr. Margaret Kiely,  
15 Glanmire, in respect of Sergeant Barry in Mitchelstown. 14:22  
16 The certificate confirms that Sergeant Barry is fit to  
17 work but states he shouldn't work or attend at Fermoy  
18 Garda Station and shouldn't come into contact with  
19 Superintendent Michael Comyns."

20  
21 So again, that's said and fed into the system also. So  
22 again, can I just ask you to note that at the top of  
23 that you have got reference there to Donal Collins,  
24 he's I think the CMO, and commissioner south also.

25  
26 Then moving forward, please, to page 3842. This is an  
27 e-mail from someone we haven't heard from much so far,  
28 but this is Monica Carr, who is the civilian head of  
29 the HR directorate in Navan. It's Friday, the 9th

1 April at 8.59 and Ms. Carr is indicating the background  
2 to the case, but she identifies a problem. You see  
3 four lines down, she says:

4  
5 "The problem is, both the member's doctor and our CMO 14:23  
6 have advised he is unfit for duty. I spoke to  
7 [inaudible] this morning and he has confirmed that in  
8 his opinion the member can't resume duty without being  
9 certified fit for duty.

10  
11 On the phone I advised the chief that the member should 14:24  
12 be requested to produce the medical certificate from  
13 his GP advising of his fitness for duty WEF (with  
14 effect from) 29/3/2013 and the chief has requested a  
15 letter from HRM to that effect. 14:24

16  
17 I am proposing to send this memo to the chief in  
18 Fermoy. The purpose of the minute is that the chief  
19 will give it to the member for his immediate  
20 attention." 14:24

21  
22 Again, just pausing for a moment to assist the Tribunal  
23 in that regard. Would you agree with me that the  
24 e-mail indicates that this is advice coming from the HR  
25 directorate in Navan? 14:24

26 A. Yes, it's coming from there.

27 353 Q. Would you agree it's coming from a civilian operative  
28 there?

29 A. Yes.

1 354 Q. It's indicating a basic requirement, that you have to  
2 be certified as fit to work?

3 A. I was certified at that stage.

4 355 Q. And there's a problem, the problem has been identified,  
5 that in terms of the documentation that the certificate 14:24  
6 has to indicate that you're fit for duty from a  
7 particular date. Do you see the second last paragraph?

8 A. This document is dated the 9th April.

9 356 Q. Yes.

10 A. My cert was submitted on the 4th April. 14:25

11 357 Q. But the certificate that was submitted on the 4th  
12 April, the first one, was not the ultimate one that was  
13 filed, isn't that right?

14 A. The second one was submitted the following day, the 5th  
15 April, following a visit by Inspector O'Sullivan to my 14:25  
16 doctor's surgery.

17 358 Q. But the problem that has been identified is the need to  
18 have the certificate expressing on its face the date  
19 from which you are effectively in a position to go back  
20 on duty? 14:25

21 A. And I understood she indicated that on the 5th April.

22 359 Q. And insofar as that is concerned, again this indicates  
23 a degree of review and scrutiny by people who are not  
24 in your divisional area, who are involved in the HR  
25 department? 14:25

26 A. Yes, but they don't seem to be up-to-date.

27 360 Q. Just in terms of the documentation, can I ask you to be  
28 shown document number 5590. I think you will agree  
29 that's the revised document?



1 A. Yes, and it clearly states there.

2 361 Q. And it indicates that it's to take effect from the  
3 28/3/2013?

4 A. That's correct, and that's dated the 4th April.

5 362 Q. Just in terms of general practice, can I suggest to you 14:26  
6 that it was necessary in accordance with the standard  
7 practice that the certification should indicate the  
8 date from which you were fit to return to work?

9 A. And it did. That was clarified.

10 363 Q. Yes, but in the original document that wasn't the case? 14:26

11 A. It was written in handwriting on the original document,  
12 the date.

13 364 Q. The date was in fact written on the top of the  
14 document, wasn't it?

15 A. Pardon? 14:26

16 365 Q. The date of the previous document, the 4th April, was  
17 crossed out and there was handwriting of the 28th?

18 A. The handwriting referred to the date I resumed or the  
19 date --

20 366 Q. The correction is making it clear that the 14:27  
21 certification was from Thursday, 28/13?

22 A. Yes, which is the date on the original cert.

23 367 Q. But not expressed in those terms?

24 A. Not in those terms, no.

25 368 Q. Again can I suggest to you that it is very important in 14:27  
26 a big organisation that there is a clarity in  
27 certification on all fronts and this helped to clarify  
28 and remove any uncertainty in relation to what the  
29 first document meant?

1 A. Yes.

2 369 Q. Yes. So in terms of the next phase, can I ask you to  
3 be shown page 1484. Sorry, I beg your pardon, before  
4 we go there, can I just double back to one other  
5 document? Sorry, registrar. Page 3865, please. Just 14:27  
6 at the bottom. This is a report from Inspector  
7 O'Sullivan dated the 5th April to Chief Superintendent  
8 Dillane. This addresses the issue you dealt with  
9 Mr. McGuinness of his visit to Dr. Kiely. Again, I  
10 won't go over all of the evidence that you have given 14:28  
11 on that so far but can I just ask you to look at the  
12 documentation there in the middle paragraph and it  
13 says:  
14  
15 "I informed Dr. Kiely I wasn't there to discuss any 14:28  
16 matters of patient confidentiality but just to discuss  
17 the validity of the medical certificate. Dr. Kiely  
18 informed me that it was a valid certificate issued by  
19 herself on 4/4/2013, albeit it was dated 28/3/2013."  
20 14:28  
21 And he says that he queried the work related conditions  
22 attached to the certificate. Dr. Kiely declined to  
23 discuss them. So just two points. The first is that  
24 insofar as the inspector is concerned, I have to  
25 suggest to you that he took great care not to discuss 14:29  
26 matters affecting patient confidentiality and I think  
27 your doctor accepted that?  
28 A. Yes, she agreed, yes.

29 370 Q. Yes. I think that he also raised a query about the

1 appearance of the date on the letter, because this had  
2 raised a question as to exactly how that had taken  
3 place and wasn't normal?

4 A. I don't know what he said to the doctor, I just know  
5 she thought he was asking was the cert forged. 14:29

6 371 Q. what we do know is that as a result of that  
7 documentation the doctor produced the final certificate  
8 that we've seen?

9 A. That's correct.

10 372 Q. which was in a different form and was absolutely 14:29  
11 crystal clear about the dates?

12 A. Yes.

13 373 Q. In terms of the approach, can I just suggest to you  
14 that insofar as Inspector O'Sullivan is concerned, this  
15 is the inspector with whom you have had a good rapport, 14:30  
16 that insofar as he was calling to the doctor to make  
17 that enquiry, I have to suggest to you that that was a  
18 reasonable enquiry which resulted in an amendment of  
19 the certificate to a satisfactory date stamp?

20 A. The original instruction that came from Assistant 14:30  
21 Commissioner Fanning was to question the non-medical  
22 issues contained in the cert. It was not to query the  
23 date or the doctor's handwriting, as they alluded to  
24 later. They were questioning the conditions that my  
25 doctor put on my certificate and that's what I had 14:30  
26 issue with.

27 374 Q. The concern was a concern expressed, if you go back to  
28 page 337 please. So this is Chief Superintendent  
29 Dillane, at the end of that page. So just to be clear,

1 he is pressing the concerns as they were at the time  
2 first, seven lines from the end he says:

3  
4 "That the original date of 4th April 2013 had been  
5 crossed out, the date 28th March was inserted in 14:31  
6 handwriting."

7  
8 As a result of that, an e-mail was sent from his office  
9 to HRM and to Dr. Oghuvbu in relation to the  
10 conditions, indicating that they were unacceptable and 14:31  
11 it was unfeasible for you to return to work under those  
12 conditions. He also asked Dr. Oghuvbu to contact  
13 Dr. Kiely to clarify this matter of urgency doctor to  
14 doctor. He also copied this to HRM.

15 14:31  
16 So, the first thing I want to put to you is that Chief  
17 Superintendent Dillane will say he had never seen a  
18 certificate in that form before, nor had he seen a  
19 statement indicating long range that it was unsuitable  
20 for somebody to work in a garda station without further 14:32  
21 investigation of any other kind. So can I suggest to  
22 you that it was reasonable for him to enquire and seek  
23 clarification about what the letter actually meant?

24 A. About the conditions that the doctor put --

25 375 Q. Both the date and the conditions? 14:32

26 A. He was asked by Assistant Commissioner Fanning to  
27 question the non-medical issues contained in the  
28 certificate, which I understood to be my not attending  
29 for my work with Superintendent Comyns.

1 376 Q. Can I put it to you this way, can you see that there  
2 was a dilemma for management, they were confronted with  
3 a medical report which had that statement in it from  
4 Dr. Kiely, plus the date --

5 A. I had made a criminal allegation against Superintendent 14:32  
6 Comyns.

7 377 Q. I am very sorry, I missed your answer?

8 A. I had made a criminal allegation against Superintendent  
9 Comyns.

10 378 Q. Yes. 14:32

11 A. And that medical cert was to protect me and my mental  
12 health following that allegation.

13 379 Q. That isn't really the question I am asking you. The  
14 question I'm asking you is: was it not reasonable for  
15 Garda management to try to clarify what the doctor 14:33  
16 meant?

17 A. It's clear what the doctor meant, there was no  
18 misunderstanding, the doctor has said it.

19 380 Q. But as to how it could be put forward as a medical view  
20 in the absence of an investigation on the ground? 14:33

21 A. Well, if Superintendent Comyns was a stressor, well  
22 that is a medical matter.

23 381 Q. In terms of the overall situation, on that particular  
24 date, we are aware from the facts and the information  
25 that on the 8th April there was a case conference in 14:33  
26 Garda Headquarters. I wonder if you could be shown  
27 document 390 please. So, this is Monday, the 8th  
28 April. You will see in the left-hand column there is a  
29 reference to the recommendations of your GP and the

1 fact that these were considered unreasonable and  
2 impracticable by local management. Do you see that?

3 A. By local management, yes.

4 382 Q. And then also on the left-hand column, there a  
5 reference to "no medical issue to preclude him from 14:34  
6 work once mutually agreed safe supporting working  
7 environment provided as recommended by an independent  
8 specialist. Member has declined offer of a work  
9 location by the divisional chief that would preclude  
10 him from working with the superintendent in question". 14:34  
11

12 So, looking at that scenario, Dr. Oghuvbu will say -  
13 can I just put this to you for your comment - that the  
14 outcome of the case conference from a garda  
15 occupational health perspective was that there was no 14:35  
16 compelling medical issue to preclude you from going to  
17 work once a mutually agreed safe, supportive working  
18 environment had been provided as had been recommended  
19 by Dr. Tobin. Again perhaps in fairness to you, could  
20 I show you document 1485, please? Just drawing your 14:35  
21 attention to paragraph 28. Dr. Griffin will say,  
22 what's contained at paragraph 28, that the outcome was  
23 that there was no compelling medical issue to preclude  
24 the member from work once a mutually agreed safe  
25 supporting working environment was provided as had been 14:35  
26 recommended by Dr. Tobin. Were you informed of that?

27 A. I was aware of Dr. Tobin's recommendation in relation  
28 to temporary workplace accommodations that were issued  
29 on the 8th April.

1 383 Q. Could we go back then, please, to page 390? Thank you.  
2 I am going to ask you please, registrar, to scroll up.  
3 And perhaps scroll down again. I beg your pardon,  
4 could you scroll down, please?

5 CHAIRMAN: Scroll up, Mr. Murphy.

14:36

6 384 Q. MR. MURPHY: So just pausing there for a moment. As of  
7 that date, would you agree with me that your doctor was  
8 indicating that there wasn't a medical reason why you  
9 couldn't go back to work as long as in her view you  
10 didn't go to a particular location?

14:37

11 A. That's what my doctor recommended, yes.

12 385 Q. So apart from that issue of management practicability,  
13 you were fit to work as she saw it?

14 A. Yes.

15 386 Q. And insofar as management actions are concerned, can I  
16 draw your attention to the second column. First, you  
17 can see there, I have to suggest to you that the  
18 management's assessment of that was that your GP's  
19 recommendations couldn't be met on the basis of  
20 reasonability and practicability. So, can I suggest to  
21 you that from what Dr. Kiely had suggested, that from a  
22 practical point of view Garda management was saying  
23 that there is a reasonable, practicable difficulty with  
24 doing this, having a person like you in a district  
25 where you're actually not under the control of your  
26 supervising officer who has been appointed by the  
27 commissioner. Can you see that that was a difficulty  
28 for Garda management?

14:37

14:37

14:37

29 A. It was at the time but on 3rd April '14 there was no

1 difficulty with, it. Inspector O'Sullivan was  
2 appointed charge of all my dealings.

3 387 Q. Do you see, I have to suggest to you that in practical  
4 terms there were real, genuine concerns about how this  
5 could possibly operate in the field? 14:38

6 A. But it was implemented by local management in 2014.

7 388 Q. You see, again I have to suggest to you that it wasn't  
8 because even there you were making complaints later on,  
9 as we will come to in due course, about even having to  
10 carry out a traffic duty or to attend a conference with 14:38  
11 over a hundred other officers in the Fota episode, all  
12 of those practical limitations were real, weren't they?

13 A. And I believe that's why Inspector O'Sullivan was  
14 appointed to take charge of all my dealings in April  
15 2014, so that I wouldn't have to be in attendance with 14:38  
16 Superintendent Comyns at Fota or at a case conference.

17 389 Q. Would you agree with me though that there were  
18 practical problems if your proposal was to go into  
19 effect? For example, was it not the case that at that  
20 time prisoners were not usually held overnight in 14:39  
21 Mitchelstown?

22 A. I often escorted prisoners to Fermoy Garda Station at  
23 night.

24 390 Q. So in terms of case conferences for serious offences  
25 which were held in Fermoy, would you agree that it was 14:39  
26 desirable that you as an experienced unit sergeant  
27 should be present at those meetings?

28 A. Not when management were aware that contact with  
29 Superintendent Comyns would be injurious to my health.



1 391 Q. And again I am putting it to you that that clearly  
2 indicates a practical problem which reasonably assessed  
3 was an issue, a real problem?  
4 A. There was no problem with Inspector O'Sullivan chairing  
5 that case conference. 14:39

6 392 Q. And again, can I suggest to you that in terms of just  
7 the ordinary operation of law enforcement in the area,  
8 to have somebody in the district who wasn't actually  
9 answerable directly to the superior was a practical  
10 problem? 14:40

11 A. I was answerable by communication, as I have often  
12 communicated. I communicated in relation to force  
13 majeure, Haddington Road, et cetera. I just didn't  
14 want to meet the person face-to-face.

15 393 Q. Can I suggest to you that a reasonable and the best 14:40  
16 reasonable solution to that problem was to arrange for  
17 your temporary transfer with your cooperation to a  
18 different district, that that problem would disappear?

19 A. If I applied for a transfer, yes.

20 394 Q. Yes. 14:40

21 A. But I had already explained, I was not willing to apply  
22 for a transfer.

23 395 Q. I wonder if the screen could be scrolled up just a  
24 little bit, please. Just in the middle column,  
25 Mr. Barry, do you see it says "If the member rejects 14:40  
26 the officers made - follow organisational management  
27 proceed ours to manage the situation. Check transfer  
28 rules - can member be transferred without applying for  
29 same? HRM awaiting report from OHP - action

1           i ncompl ete. "

2

3           So, just pausing there for a moment. Can I suggest to  
4           you that it's clear that as of that date serious  
5           consideration again was being given to the possibility 14:41  
6           of trying to find a transfer mechanism that would  
7           address your concerns in terms of what you indicated  
8           was a problem for you vis-à-vis local management but at  
9           the same time recognising that there was an issue about  
10          the need to get to you apply for it? 14:41

11          A.    That was never explained to me.

12   396   Q.    You see, I think it's clearly indicated this morning  
13           you understood that pending the outcome of the bullying  
14           and harassment investigation, under the policy you  
15           couldn't be transferred without your own application? 14:41

16          A.    Not that I couldn't be; that I shouldn't be.

17   397   Q.    No, but you couldn't be?

18          A.    That I shouldn't be.

19   398   Q.    Ultimately, I thought you agreed with me this morning,  
20           that you had the capacity assent if you wished to, but 14:41  
21           you didn't wish to?

22          A.    I had the capacity to apply for a transfer, but I was  
23           not going to apply for a transfer.

24   399   Q.    Exactly.

25          A.    And I also the option under the bullying document not 14:42  
26           to be transferred following the investigation.

27   400   Q.    Leaving all those aside for the moment, the solution,  
28           can I suggest to you, was in your own hands at that  
29           time, but you chose, as was your right, you chose not

1 to avail of it?

2 A. It was in the hands of Garda management, they could  
3 have imposed temporary workplace accommodations or they  
4 could have transferred me to a station where I would  
5 have been happy to go to. 14:42

6 401 Q. Can I ask you to go back, please, to page 1485. Could  
7 I just draw your attention to paragraph 29 of  
8 Dr. Oghuvbu's statement. Just to confirm, he will say  
9 that following conference he wrote to Assistant  
10 Commissioner Fanning and provided his opinion that 14:43  
11 there was no compelling medical impairments to prevent  
12 you from returning to policing duties, to recommend  
13 that you would be facilitated with appropriate,  
14 reasonable and practicable temporary workplace  
15 accommodations and that if there should be any clinical 14:43  
16 consideration undisclosed or new clinical developments,  
17 that they should be brought to his attention.

18  
19 Can I just point to the paragraph below, because he  
20 will say this also in evidence, that from his 14:43  
21 perspective:

22  
23 "My involvement in the matter from a medical assessment  
24 perspective ended on 9th April 2013. In my e-mail to  
25 Chief Superintendent Dillane on 15th April 2013 I 14:43  
26 stated 'I am not in a position to offer further medical  
27 advice in this case as the medical issues have been  
28 adequately addressed in previous correspondence'."

29

1 So, his view was that from a medical perspective he had  
2 expressed what he had to say, you are now indicating  
3 that you are fit to work. So what is now confronting  
4 everybody is a practical problem; how to address the  
5 management of your position in a way that will 14:44  
6 effectively seek to allow matters to progress  
7 peacefully, pending the outcome of the bullying and  
8 harassment investigation, practical matters?  
9 A. He refers to temporary workplace accommodations.  
10 402 Q. Those would appear to be, I think you'd agree, not 14:44  
11 medical matters, but practical management matters?  
12 A. That's correct.  
13 403 Q. Yes.  
14 A. But those matters weren't put in place.  
15 404 Q. Sure. So, insofar as that's concerned, we've dealt 14:44  
16 with the 9th April, I don't propose to go back over  
17 those details in any great measure, but in terms of the  
18 overall position as one moves through that period, I  
19 wonder if you could be shown page 5591, please. Just  
20 for the sake of completeness, that's the letter which 14:45  
21 Dr. Oghuvbu wrote at the time reflecting what I've just  
22 said a few moments ago. Can I draw your attention  
23 there to paragraph number 1, scrolling down, please.  
24 So, as I think we agreed a moment ago, that's the  
25 position that he identified? 14:45  
26  
27 "No compelling medical impairments to debar the member  
28 returning to work and policing duties at that time."  
29

1 And look please down at number 4, it says:

2  
3 "The member is recommended medically fit for normal  
4 policing duties facilitated with temporary workplace  
5 accommodations as per point 3 above." 14:46

6  
7 And then in 3 above it says:

8  
9 "The member shall be facilitated with appropriate  
10 reasonable and practical temporary workplace 14:46  
11 accommodations in relation to his place of work."  
12

13 So, once again I think you do accept that relates to  
14 practical matters?

15 A. Temporary workplace accommodations, yes. 14:46

16 405 Q. Temporary. Could you please be shown page 3877? So  
17 again we have Assistant Commissioner Fanning writing on  
18 the 9th April, I think it is, to indicate the  
19 recommendation of the CMO and the context of providing  
20 an agreeable supportive workplace to foster your 14:47  
21 wellbeing and effectiveness. That you should be  
22 facilitated with appropriate reasonable and practical  
23 temporary workplace accommodations in relation to the  
24 work. And then it says:

25 14:47  
26 "Please inform the member accordingly and ensure that  
27 they are notified of confidential supports, peer  
28 support, employee assistance available to Garda members  
29 and to avail of the same if required."

1  
2  
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28  
29

Then at the end of the paragraph it says:

"Please also bring to the attention of the member HQ Directive 139/10 under the heading of the Role of the Chief Medical Officer."

14:47

And to make sure that is brought to your attention. So was this communicated to you by any other officer below the rank of assistant commissioner at that time?

14:48

A. I don't recall that it was.

406 Q. Okay. But you were aware of the outcome of the conference on that date?

A. No.

407 Q. You were aware of Dr. Oghuvbu's views?

14:48

A. Yes.

408 Q. You were aware of the practical nature of matters that had to be addressed thereafter?

A. Temporary workplace accommodations, yes.

409 Q. And your position on the question of transfer remained unchanged?

14:48

A. Yes, that I would not apply for same.

410 Q. And then can I ask you please to move forward in the documents, if you can be shown page 3901. So here we have an e-mail from Chief Superintendent Dillane on the 24th May. By this stage, in the light of all that's happened, Chief Superintendent Dillane will say that he sought clarification from the CMO regarding the effect of any direction from him to you to attend at Fermoy

14:49

1           Garda Station and deal with Superintendent Michael  
2           Comyns would have on his health. He says this:

3  
4           "The CMO has advised me that further relevant processes  
5           available to Garda management should be deployed to           14:49  
6           resolve the matter in a timely and constructive manner  
7           that both preserves the member's wellbeing and garda  
8           operational integrity. I wish to be advised what  
9           further processes are available to me to resolve this  
10          matter. The present situation cannot be allowed to           14:49  
11          continue. Sergeant Barry is not willing to compromise.  
12          Is there an independent arbitration forum available to  
13          me to try to rectify the situation? I am due to meet  
14          with Sergeant Barry and a representative from AGSI  
15          national executive early next week to try and move the           14:50  
16          matter on."

17  
18          So, would you agree with me at that stage Chief  
19          Superintendent Dillane was enquiring responsibly about  
20          what possible steps he could take or whether there was           14:50  
21          an independent arbitration forum that could be availed  
22          of to assist with this blockage?

23          A.    Appears to be, yes.

24    411    Q.    And ultimately you were aware of the fact from your  
25           AGSI representative, I presume, that there was even a           14:50  
26           consideration of the possibility of mediation? Did  
27           that arise? Did that arise?

28          A.    That is dated 24th May 2013, a month prior to that he  
29          was telling me I wasn't to return or that -- sorry, on

1 the 10th March. The date on that one is the 24th May.

2 412 Q. Yes.

3 A. Sorry, 2014.

4 413 Q. Take your time. So this is May?

5 A. This is May, yes. 14:51

6 414 Q. There has been a bit of skipping around, I accept?

7 A. That's okay.

8 415 Q. I'm sorry about that. But in terms of this, this is in

9 May?

10 A. Yes. 14:51

11 416 Q. And so, we've now gone through the different stages of

12 development, assessment by the doctors, assessment by

13 HR, assessment by Ms. Carr, assessment by Assistant

14 Commissioner Fanning, but there's a desire to find a

15 solution and can I suggest to you that this e-mail 14:51

16 indicates that Chief Superintendent Dillane was looking

17 for a practical solution to the deadlock which had

18 arisen in this case, would you agree with that?

19 A. I would agree that he is looking for some advices from

20 Garda management in relation to it. 14:52

21 417 Q. Do you see the reference there to the AGSI

22 representative?

23 A. Yes.

24 418 Q. Was that Inspector Gallagher?

25 A. Yes. 14:52

26 419 Q. Right. And just again to assist the Chairman, was

27 Inspector Gallagher available to you through the whole

28 period?

29 A. If he wasn't available, Inspector Golden stepped in on



1 a couple of occasions.

2 420 Q. So in terms of a practical resolution, did you discuss,  
3 I don't want to go into the details of it, but in  
4 general terms, were you aware of your interaction with  
5 him this there was some possibility of mediation or the 14:52  
6 LRC could be considered?

7 A. Yeah, that was put forward at a later stage.

8 421 Q. So could you please be shown page 5611? So this is  
9 another case conference, this time of 17th April 2014,  
10 again all part of the system that I have mentioned - 14:53  
11 the involvement of doctors, the involvement of  
12 management, the involvement of HR, the involvement of  
13 local management - but it's a case conference of 17th  
14 April 2014. And just if you would please look at the  
15 left-hand column. So there there's a reference to: 14:53

16  
17 "Bullying and harassment claims against the  
18 superintendent investigated, none upheld. Member  
19 submitted GP certificate saying he cannot work with the  
20 superintendent. Member to be transferred. Appeal 14:53  
21 against transfer currently being reviewed by A/C HRM.  
22 Member has declined transfer offers. Superintendent  
23 reports that member is undermining him. Member will  
24 not engage with the superintendent at all, will not  
25 attend meetings, will not report to him. 14:54  
26 Organisational risk."

27  
28 And the views expressed:

29

1 "Member having a detrimental effect on the station and  
2 colleagues. "  
3  
4 Breaking that down into different elements. would you  
5 agree that at that time you weren't engaging with 14:54  
6 Superintendent Comyns?  
7 A. No.  
8 422 Q. would you agree at that time you weren't reporting to  
9 him directly?  
10 A. No. 14:54  
11 423 Q. No, sorry, I beg your pardon --  
12 A. No, I was communicating through correspondence with the  
13 superintendent at the time.  
14 424 Q. I think you've agreed readily that you had declined  
15 transfer officers prior to that date? 14:54  
16 A. No, I appealed the transfer to Glanmire, that was under  
17 appeal at the time.  
18 425 Q. Yes. So as matters have moved on, now there's an  
19 option to consider a transfer and I think we're agreed  
20 that if you are transferred by the authorities, that's 14:55  
21 a transfer at public expense, isn't that right?  
22 A. Pardon?  
23 426 Q. If you're transferred by the authorities as opposed to  
24 applying for a transfer, that is a matter that is dealt  
25 with at public expense? 14:55  
26 A. Yes.  
27 427 Q. Could I ask you to turn to the second paragraph, under  
28 the heading "Management Actions" and there it is  
29 recorded that the chief superintendent was to meet with

1           you to discuss again transfers with the options of  
2           Midleton, Mallow, Glanmire. Can you recall did such a  
3           discussion ever take place after that date?  
4           A. I don't recall meeting him in person, there may have  
5           been a phone call in relation to it, but when those           14:55  
6           three would be put to me, the only one I would agree to  
7           would be Mallow. I would not have -- at the same  
8           position, I would not apply for it.  
9   428   Q. And then looking further down the column, it is  
10           recorded that the superintendent was willing to work           14:56  
11           with you but that you had difficulty in working with  
12           him and that this is explained through your doctor's  
13           report and then it has "options" and the first option  
14           is:  
15             
16           "Superintendent can't be moved. There's no basis to  
17           transfer. No complaints have been upheld against him."  
18             
19           And in terms of the transfer, would you agree with me  
20           that the capacity to move a superintendent would have           14:56  
21           been a decision for the commissioner?  
22           A. Sorry?  
23   429   Q. That any decision to move the superintendent would be  
24           one for the commissioner?  
25           A. Of course.           14:56  
26   430   Q. And then in terms of mediation, reference is made there  
27           to the LRC providing a service for free but both  
28           members must agree?  
29           A. And I agreed.

1 431 Q. Then it goes on to say "The member can say yes or no  
2 but if the member decides to remain in the current role  
3 he must comply with organisational procedures and deal  
4 with the superintendent as any sergeant is obliged to  
5 deal with their superintendent". 14:57  
6  
7 Can I ask you just put it to you that from Chief  
8 Superintendent Dillane's point of view and the local  
9 management, if you were going to stay in the area, from  
10 a practical point of view, the rules of the 14:57  
11 organisation of An Garda Síochána required you to be  
12 effectively under the supervision of Superintendent  
13 Comyns?  
14 A. And like I said, under normal circumstances, yes, but  
15 these were not normal. 14:57  
16 432 Q. And I have to suggest to you that that applies under  
17 all circumstances, whether normal or otherwise,  
18 because --  
19 A. Not if it contravenes a member's health, I wouldn't  
20 agree. 14:57  
21 433 Q. But again, even at this stage, so we're now into April,  
22 and as we have seen the position in May, you remained  
23 absolutely resolute that you would not move --  
24 A. Sorry, that I would not accept a transfer.  
25 434 Q. Yes. 14:57  
26 A. That I would not apply for one.  
27 435 Q. And when the first application to transfer you emerged,  
28 where you hadn't applied, you appealed it?  
29 A. To Glanmire, to where my relations were.

1 436 Q. I think you agree with me that in relation to every  
2 subsequent issue of transfer, if you could, you did  
3 appeal?  
4 A. Because none of them were what I had indicated that I  
5 would accept without an appeal, especially not into 14:58  
6 Fermoy.  
7 437 Q. Again, we might come back to that perhaps later on, but  
8 in terms of the ultimate transfer to, proposed transfer  
9 to Anglesea Street, I think you appealed that right up  
10 to the very end, a month before your retirement? 14:58  
11 A. No, I appealed it in, I'd say, January of - and that  
12 would have been appealed 2015 I believe and it went to  
13 the review board into 2016, a month before I retired.  
14 438 Q. Just finally on this point, can I ask you to be shown 14:58  
15 page 3914? I think Mr. McGuinness again showed you  
16 this document, which indicated that as of 16th May of  
17 2014, the mediation suggestion had failed?  
18 A. It's not that, it didn't fail, it was never entertained  
19 by Superintendent Comyns.  
20 439 Q. In the second line it says: 14:59  
21  
22 "As you are aware, the mediation process which I tried  
23 to invoke is not acceptable to one of the parties and  
24 cannot proceed."  
25  
26 So, in that situation I think you continued to work out 14:59  
27 of Mitchelstown Garda Station, isn't that correct?  
28 A. That's correct.  
29 440 Q. And Chief Superintendent Dillane says in the e-mail

1 that you're under the scroll of Superintendent Comyns  
2 and to carry out your duties you have to have  
3 interaction with Fermoy Garda Station. Aren't both of  
4 those statements correct?

5 A. No.

14:59

6 441 Q. Are you saying that you were no longer under the  
7 authority of Superintendent Comyns?

8 A. Well, according to Superintendent Comyns himself in his  
9 statement, I was under the control of Inspector  
10 O'Sullivan in April 2014. So I can't see how I'd be  
11 under his control then.

15:00

12 442 Q. But in terms of his position in the district, you do  
13 accept that he was the superintendent for that area?

14 A. Absolutely he was, but I believe my interactions were  
15 to be with Inspector O'Sullivan.

15:00

16 443 Q. But at all times from the point of view of  
17 organisational structure, Superintendent Comyns was  
18 your superior?

19 A. Yes, he was.

20 444 Q. And Chief Superintendent Dillane then goes on to say  
21 that -- he said that having contact with Superintendent  
22 Comyns will affect your health, is what you had  
23 maintained, and that you have a doctor's certificate.  
24 So at this point Chief Superintendent Dillane will  
25 indicate that he had become aware of the fact from  
26 talking to Dr. Oghuvbu that a health and safety issue  
27 for the organisation might arise. You will see there  
28 in the middle of the paragraph he says "I wasn't aware  
29 of this when I made the application to transfer

15:00

15:00

1 Sergeant Barry to Fermoy Garda Station. Sergeant Barry  
2 has invoked the appeal process with regard to the  
3 transfer to Fermoy, which is under consideration by  
4 your office at present. I believe in the light of the  
5 health and safety issue highlighted by Dr. Oghuvbu and 15:01  
6 Sergeant Barry's doctor, I shall withdraw my  
7 application to transfer Sergeant Barry to Fermoy.  
8 Furthermore, I suggest that Sergeant Barry be  
9 transferred immediately to Glanmire station, where he  
10 will not have to come in contact with Superintendent 15:01  
11 Comyns or Fermoy Garda Station. Glanmire station is  
12 much closer to Sergeant Barry's home and as it is now  
13 in the Cork City division, Sergeant Barry would be  
14 exempt under the terms of Code 8.3. I have discussed  
15 the matter with Chief Superintendent Michael Finn and 15:01  
16 with your approval he will be willing to accept  
17 Sergeant Barry. Forwarded for your consideration  
18 please."

19  
20 Just to break it down. Can I put it to you that at 15:02  
21 that time Chief Superintendent Dillane was canvassing  
22 possible accommodations in terms of transfers and had  
23 spoken to Chief Superintendent Michael Finn?

24 A. He indicated to Inspector Eddie Golden on 10th March  
25 2014 that he intended to transfer me to Glanmire -- 15:02  
26 sorry, on 14th March 2014, and that he was having a  
27 meeting with B branch to arrange same. This is while  
28 my transfer to Fermoy was under appeal.

29 445 Q. But insofar as that is concerned, can I suggest to you

1 that it would have been reasonable and prudent for him  
2 to have made contact with Superintendent Finn to see  
3 was there a vacancy. Would you agree?

4 A. No.

5 446 Q. Can I suggest to you that what he's proposing here is a 15:02  
6 solution that would address your concerns in relation  
7 to Superintendent Comyns, would bring you closer to  
8 your home, would be more practical, and would be  
9 happily accepted by Superintendent Finn?

10 A. Instead of contacting Superintendent Finn, he should 15:03  
11 have contacted Superintendent McCarthy of Mallow to see  
12 if there was a vacancy there for me. That would have  
13 been agreeable to all. Well, to me.

14 447 Q. You see, isn't this the difficulty, Sergeant Barry, 15:03  
15 that when it comes to the call to Mallow option, the  
16 Mallow option is invisible.

17 A. It is not --

18 448 Q. If you say it ever existed, because you have never 15:03  
19 expressed it, you have never written it down, you've  
20 never suggested to anybody in authority, and I accept  
21 that you say you suggested it to Chief Superintendent  
22 Dillane, which he denies, but here is an opportunity  
23 for you to say, what about Mallow, and you don't take  
24 it?

25 A. There was three options given earlier, Mallow, 15:03  
26 Middleton or Glanmire.

27 449 Q. Yes.

28 A. And the one chosen for me was Glanmire and Fermoy.

29 450 Q. Again, I have to suggest to you, if you were genuinely



1 interested in Mallow, you had many opportunities in  
2 2013 and 2014 to suggest that option, but you did not?

3 A. And I explained the reasons why I never nominated it.

4 451 Q. And I have suggest to you that you didn't explain  
5 anything, because this was not an option that you 15:04  
6 wanted?

7 A. It was an option and it was an option provided by HRM,  
8 the CMO's office.

9 452 Q. And unfortunately an option which you never canvassed  
10 in terms of its desirability because your position was 15:04  
11 that you weren't transferring anywhere?

12 A. No, I was willing to apply -- the three options put  
13 forward by HRM in that conference with the CMO were to  
14 be put to me by Chief Superintendent Dillane, but he  
15 never offered those, he offered -- he told Inspector 15:04  
16 Golden that he was going to transfer me to Glanmire.  
17 So those three options weren't put to me at that time  
18 by him.

19 453 Q. I have to suggest to you, Sergeant Barry, that if you  
20 stand back from this and look ago the period from 2012, 15:04  
21 into 2013 and now into 2014, that there is one  
22 consistent thing, which is that every single option is  
23 rejected by you?

24 A. There's one consistent thing is that I would not apply  
25 for transfer. Everyone has asked me to apply, but 15:05  
26 nobody has directed me in a transfer that I wanted,  
27 that would be acceptable to me?

28 454 Q. And again I have to suggest to you, during that time,  
29 that what the Tribunal is looking at here in terms of

1 documents, actions and statements, is reasonable and  
2 prudent action by your managers in conjunction with HRM  
3 and in conjunction with the medical advisers, to try  
4 and find a practical solution to this problem?

5 A. Chief Superintendent Dillane was instructed following 15:05  
6 that conference to offer me Glanmire, Mallow and  
7 Midleton I believe. He did not make that offer, he  
8 told Inspector Golden that he was going to transfer me  
9 to Glanmire without making an offer of the other two.

10 455 Q. In terms of the practical issues that this presented to 15:05  
11 management, we've dealt earlier I think with a question  
12 of prisoners, but from the point of view practicality,  
13 if you remained in the Fermoy district and  
14 Superintendent Comyns had to address or attend a crime  
15 case conference in relation to serious crime, would 15:06  
16 that mean that you would never attend such a briefing?

17 A. Pardon?

18 456 Q. Would that mean that you would never attend such a  
19 briefing, if he was present?

20 A. If he was present I wouldn't. 15:06

21 457 Q. In those circumstances, if there was a very serious  
22 incident involving, let's say, a murder, and a  
23 conference was called where your input was needed as  
24 the local unit sergeant, does that mean that the  
25 superintendent could never attend any meeting that you 15:06  
26 would attend in relation to that case conference?

27 A. I would hope to brief the inspector and for him to give  
28 my comments to the superintendent at the conference.

29 458 Q. Would you agree that case conferences for serious crime

1 are a vital function in any Garda district?

2 A. Yes, they are.

3 459 Q. Yes. Would you agree that it is essential and vital  
4 that all of the members who are involved in the process  
5 can share information and can work together as a unit? 15:07

6 A. Yes, provided they are all in good health.

7 460 Q. And can you see that therefore the solution that are  
8 you advocating was something which would completely  
9 break that up and create a series of blockages and  
10 corridors, parallel lines of communication that would 15:07  
11 be completely impractical?

12 A. You are creating a scenario that didn't exist and it's  
13 all hypothetical.

14 461 Q. Well, is it hypothetical, Mr. Barry? Because, if  
15 meetings had to be arranged at short notice, for 15:08  
16 example, can I suggest to you that clearly the type of  
17 arrangements you advocated could not work?

18 A. There was a case conference in 2015, which was alleged  
19 I had knowledge of and didn't attend. At that stage  
20 Superintendent Comyns knew that contact with him for me 15:08  
21 to be injurious to my health. So, he didn't -- that  
22 was a normal case conference, he wasn't worried about  
23 my health at that time.

24 462 Q. Mr. Barry, again, I don't accept that, but can I put it  
25 to you, just take that example, isn't there another 15:08  
26 element here as well? Taking that example, isn't it  
27 the case that you were present on duty on that date?

28 A. I was on duty that day, yes.

29 463 Q. Isn't it the case that you were aware that the

1 conference was going to take place?

2 A. Before or after I started my duty?

3 464 Q. Before?

4 A. No, after. I commenced my tour of duty.

5 465 Q. Isn't it the case that Detective Garda Fitzpatrick told 15:09

6 you about the conference?

7 A. No, he did not tell me.

8 466 Q. And isn't it the case that even on your own testimony,

9 you were physically present, you saw that the

10 conference was taking place but you went out on patrol? 15:09

11 A. Yes, I would not go into the same room as

12 Superintendent Comyns.

13 467 Q. Now, you are a sergeant with a lot of experience,

14 Mr. Barry, would you agree with me that in a

15 disciplined organisation it's very important that 15:09

16 parties of different levels of rank are able to work

17 together?

18 A. Absolutely. Under normal circumstances.

19 468 Q. would you agree with me that if somebody publicly 15:09

20 effectively disregards the instruction of a senior

21 officer, that that undermines that senior officer with

22 the other ranks?

23 A. I disobeyed Superintendent Comyns' direction in 2012 in

24 relation to covering up the sexual abuse of a child.

25 469 Q. That is not the question I asked, Mr. Barry? 15:09

26 A. But that was disobeying a direction by him at the time.

27 470 Q. We're talking about the conference on that date?

28 A. I would not have attended the conference because of my

29 doctor's certificate.

1 471 Q. You see, I have to suggest to you that you must know  
2 from your own experience that taking that as an  
3 example, that in terms of that particular issue, that  
4 acting as you did would undermine the position of  
5 Superintendent Comyns and his authority within the 15:10  
6 district, in front of your colleagues?  
7 A. It protected my mental health, my welfare was number  
8 one to me.

9 472 Q. But again, will you agree with me that in terms of  
10 policing overall, there are other interests apart from 15:10  
11 yours?  
12 A. There are.

13 473 Q. Yes. So for example, taking the case conference on  
14 that date?  
15 A. My interests weren't being entertained up until that. 15:10  
16 There was no temporary accommodations put in place.

17 474 Q. Can I just suggest to you another interest, was it fair  
18 to the public interest or to the interests of the  
19 victim that the case conference was frustrated by your  
20 behaviour in that way? 15:10  
21 A. As the previous conference was frustrated by  
22 Superintendent Comyns's actions.

23 475 Q. You see, Mr. Barry, I have to suggest to you that in  
24 the circumstances of this case and that conference what  
25 you're seeking to do is to avoid the obvious, which is 15:11  
26 that your conduct was something which was impractical  
27 in a disciplined organisation, in the way in which you  
28 acted at that time?  
29 A. I had received illegal directions from Superintendent

1 Comyns in 2012 and I did not want to attend another  
2 conference with him in relation to something similar,  
3 where I may be given spurious instructions.

4 476 Q. No, again in this situation, this is a large case  
5 conference, there was a large number of officers? 15:11

6 A. Pardon?

7 477 Q. This is a case conference with a significant number of  
8 officers present, isn't that right?

9 A. Four or five.

10 478 Q. Yes. So from the point of view of process, in this 15:11  
11 particular station can I suggest to you that what you  
12 did in those circumstances was clearly undermining of  
13 the authority of the your superior?

14 A. What I did at that stage was to protect my mental  
15 health as instructed by a medical professional. 15:11

16 479 Q. And can I suggest to you that the way to have avoided  
17 that interference with the public interests would have  
18 been to be reasonable and to accept a transfer to a  
19 different location on a temporary basis to avoid the  
20 conflict which you say was causing you stress. 15:12

21 A. And I would have accepted it, if it was to a station  
22 that I felt I would be safe and secure in.

23 480 Q. You did say something a moment ago, that ultimately  
24 your own health was the number one issue for you, and I  
25 appreciate that is your concern, but would you not 15:12  
26 accept that in this situation from Garda management's  
27 point of view, it was balancing a variety of issues in  
28 terms of the organisation and management of the force.  
29 In other words, your perspective was not the only

1 perspective?

2 A. My perspective was my own mental health, that was my  
3 priority. I don't know what management had envisaged  
4 for that meeting but it certainly wasn't to aid my  
5 mental health. 15:12

6 481 Q. And you see, I have to suggest you that all of the  
7 steps that we have seen in the course of the documents  
8 that we have looked at over the last hour or so, don't  
9 represent targeting or discrediting of you, what they  
10 do represent, I want to suggest to you, is a 15:13  
11 responsible approach by management to try and solve a  
12 complicated problem that had arisen, to do so in a  
13 reasonable way, and to do so on notice to you?

14 A. Management ignored my doctor's certificate, they  
15 ignored the fact that this is injurious to my health 15:13  
16 and did not admit same until 2014. They made no  
17 attempt to impose temporary workplace accommodations,  
18 entertain the Labour Relations Commission or anything  
19 else. There was no facilities offered by management,  
20 only a transfer. And not just a transfer but apply for 15:13  
21 a transfer and when they did have the option of  
22 transferring me, they decided to transfer me to  
23 stations they knew I would not accept without  
24 appealing.

25 482 Q. You see, I have to suggest to you in fact the reverse 15:13  
26 is true, Mr. Barry, and that the facts of this case  
27 demonstrate very extensive efforts being made to try  
28 and address this issue, but the one reason that none of  
29 them succeeded was because you said no, on every

1 occasion?

2 A. No. Don't agree.

3 483 Q. And I have to suggest to you that in those  
4 circumstances what the papers disclose is very  
5 considerable frustration on occasion but determination 15:14  
6 to try and find a solution, but at each stage of that  
7 process, with the exception of the LRC, which you've  
8 indicated didn't proceed because there wasn't consent  
9 to it from Superintendent Comyns, but in every other  
10 respect I suggest to you that ultimately what's 15:14  
11 involved here is a loss of perspective by you and in  
12 fact people are offering not to target you or to  
13 discredit you but to try help you.

14 A. Well you have the last case conference that you brought  
15 up there, Chief Superintendent Dillane was instructed 15:14  
16 to offer me Glanmire, Mallow and maybe Middleton I  
17 think. He was directed by the assistant commissioner  
18 Southern Region not to offer me those stations because  
19 my appeal was ongoing. So the advices of the CMO were  
20 not given to me at the time. Then he decided he was 15:15  
21 going to transfer me to Glanmire without even speaking  
22 to me.

23 484 Q. You see, in terms of the ultimate transference from one  
24 district to another, that is a decision by HRM, isn't  
25 it? 15:15

26 A. On the instructions or the recommendations of Chief  
27 Superintendent Dillane.

28 485 Q. Yes. But it isn't actually Chief Superintendent  
29 Dillane's decision?



1 A. No.

2 486 Q. No.

3 A. But he would make the recommendations.

4 487 Q. And again, this comes back to the point I sought to 15:15  
5 make to you since this morning, that we're dealing here  
6 with a big system, a national system with rules and  
7 regulations and that all of this is not designed to  
8 target you at all, it's designed to facilitate a whole  
9 variety of issues that can arise for all of the members  
10 in the force and that in this case that responsible act 15:16  
11 of management is what was taking place?

12 A. I don't think they acted responsibly.

13 488 Q. Can I just pause for a moment in terms of the different  
14 issues. The Tribunal has identified a number of  
15 different points, I just want to address some of them 15:16  
16 in brief order and then I will return and come back to  
17 Chief Superintendent Kehoe's investigation as well.  
18 Chairman, perhaps I might just take these by way of  
19 reference for the record.

20 15:16

21 So first of all, at 3 A, the Tribunal is  
22 investigating whether --

23 489 Q. CHAIRMAN: Sorry, have you got this in front of you or  
24 would it be helpful to have this, a list of issues?  
25 Mr. Murphy is going to go through I think some of the 15:16  
26 issues, I assume he's going to say, can we get some of  
27 them out of the way, you know, either do you agree with  
28 them or do you think they're not serious or whatever,  
29 but I think it would be convenient if you actually had

1 the piece of paper with the list, isn't that sensible?  
2 MR. MURPHY: Yes, Chairman.  
3 CHAIRMAN: Or maybe we will get them up on the  
4 computer. Thanks very much, Ms. Doolan. We will  
5 proceed for the moment and Ms. Doolan will bring back a 15:17  
6 copy.  
7 MR. MURPHY: Chairman, if you wish to rise for five  
8 minutes.  
9 CHAIRMAN: Ah no, we can proceed for the moment. If  
10 you have any difficulty, not to worry, but it is just 15:17  
11 that it is convenient -- well, wait now, we can do it  
12 more simply, because I should be familiar with them.  
13 So I am going to hand over a copy. Let me just check  
14 that I haven't made any marks on it that might be  
15 compromising. No, it's pristine, Mr. Barry. [SAME 15:17  
16 HANDED] Do you see that?  
17 THE WITNESS: Yes.  
18 CHAIRMAN: Mr. Murphy, you want to go to section 3,  
19 okay.  
20 MR. MURPHY: Yes, and with your permission, Chairman, 15:18  
21 tomorrow I will come back to a number of other points.  
22 CHAIRMAN: I understand. You have said that to  
23 Mr. Barry, that will you come back to other issues.  
24 But I am assuming that you're going to try to dispose  
25 of some that you think you can deal with briefly and 15:18  
26 quickly.  
27 MR. MURPHY: Yes.  
28 CHAIRMAN: And if not, so be it, that doesn't matter.  
29 MR. MURPHY: Very good.

1 490 Q. So if we can just take number 3, please, Mr. Barry. If  
2 we take number 3 A. Do you see there the suggestion  
3 there is that by treating your sick leave as ordinary  
4 illness and not work related illness resulting in loss  
5 of pay to which you were entitled. So I am going to 15:18  
6 put some points to you if I could and invite your  
7 response. But just to indicate to you where I am  
8 coming from in relation to these points and where my  
9 witnesses will be giving evidence to address them. The  
10 first point I want to put to you is that on all the 15:18  
11 evidence in the case the issue as to whether there was  
12 work related illness was in fact examined and closely  
13 examined under the superintendence of Dr. Oghuvbu and  
14 the HRM mechanism, and that ultimately you had no  
15 entitlement to a finding that this was effectively 15:19  
16 work-related illness, either as a matter of fact or as  
17 a matter of law. So I am suggesting to you that in  
18 fact in this case what the facts show is that you  
19 weren't targeted or discredited or denied something to  
20 which you were entitled. There was an evaluation of 15:19  
21 your position and a view was arrived at with which you  
22 disagreed?

23 A. Yes.

24 491 Q. But that was based on assessment of the facts and an  
25 assessment of the -- 15:19

26 A. I would like to know who carried out the investigation  
27 into my illness under 139/10.

28 492 Q. I am going to come back to the question of the  
29 investigation but I am that ultimately it is clear from

1 all of the huge range of folders, documents, materials,  
2 witness statements, material that have you seen, that a  
3 lot of effort was made to investigate these matters.  
4 whether you agree or disagree with the outcome is one  
5 thing, but I have to suggest to you that you weren't 15:20  
6 entitled to a finding of work-related illness, that was  
7 something that had to be examined and evaluated and in  
8 the end the finding was not in your favour?

9 A. I disagree.

10 493 Q. And in terms of B, there's a suggestion there was a 15:20  
11 failure to make proper temporary workplace  
12 accommodations to which you were entitled. Again, can  
13 I suggest to you that you weren't entitled to any  
14 specific temporary workplace accommodation, it was a  
15 practical matter that Garda management tried to 15:20  
16 facilitate but was unable to do so because of your  
17 attitude?

18 A. Initially they said they couldn't and then in 2014 they  
19 did put in a temporary workplace accommodation in  
20 relation to Inspector O'Sullivan. 15:20

21 494 Q. And again, I have to suggest to you that that is not a  
22 temporary workplace accommodation of the kind that was  
23 going to solve or fix the problem in issue but that  
24 their view was that a transfer was the best way to fix  
25 the problem? 15:21

26 A. That's their view.

27 495 Q. And again I suggest to you that from the point of view  
28 of letter C, where it says "by failing to carry out an  
29 investigation into work-related stress" and I will come

1 back to that tomorrow, but can I put it to you  
2 formally, that you are fully aware of the fact that  
3 there was an investigation in relation to that issue?  
4 A. No.  
5 496 Q. By Chief Superintendent Kehoe? 15:21  
6 A. No. I don't accept that.  
7 497 Q. And in terms of D, there's a suggestion that Chief  
8 Superintendent Dillane or Superintendent Comyns  
9 pressurised you to agree to transfer to another station  
10 against your will. And again I have to suggest to you, 15:21  
11 there's no truth supporting that accusation either,  
12 because all the indications are that your will remained  
13 very firm the entire way through and there was no  
14 attempt to overcome that will, there was instead a  
15 request to you to consider an application, which you 15:22  
16 always refused?  
17 A. And they proceeded then to transfer me regardless.  
18 498 Q. And in terms of that process, you were given every  
19 right to appeal, which you did?  
20 A. Yes. 15:22  
21 499 Q. So I have to suggest to you that in fact there has been  
22 no targeting or discrediting by those means either?  
23 A. I disagree.  
24 500 Q. And in terms of the --  
25 501 Q. CHAIRMAN: Sorry, can we just, what he said, Mr. Barry, 15:22  
26 is, by pressure rising you agree to transfer to another  
27 station against your will, do you still say that they  
28 pressurised you?  
29 A. I am saying they pressurised me to make an application

1 to transfer against my will.

2 502 Q. MR. MURPHY: I suggest to you that the evidence  
3 demonstrates that you were invited to consider that  
4 option and you declined.

5 A. The amount of times I was asked to transfer by all 15:22  
6 different members of management indicates pressure to  
7 me.

8 503 Q. It certainly doesn't seem to have manifested itself in  
9 pressure, in that every single time you consistently  
10 refused? 15:23

11 504 Q. CHAIRMAN: You say by repeated requests in one shape or  
12 another, you are saying that constituted pressure  
13 rising, is that it?

14 A. That's my --

15 505 Q. CHAIRMAN: Have I got that? 15:23

16 A. Yes, Chairman.

17 CHAIRMAN: I'm sorry, Mr. Murphy. I thought that  
18 Mr. Barry want to explain that and he has explained,  
19 that's as far as it goes. Rightly or wrongly, that's  
20 what he says. 15:23

21 506 Q. MR. MURPHY: And in terms of the correspondence, would  
22 you agree with me that in 2013/2014 Mr. Costello didn't  
23 write any letter on your instructions complaining that  
24 you were being pressurised to transfer to another  
25 station against your will? 15:23

26 A. In 2013?

27 507 Q. Yes.

28 A. There were some attempts, there were verbal attempts at  
29 that stage.

1 508 Q. You see, Mr. Barry, I have to suggest to you that there  
2 isn't --

3 A. Mr. Costello was not my solicitor throughout the whole  
4 process.

5 509 Q. But in terms of the AGSI representative, is there any 15:24  
6 correspondence from AGSI saying, please, stop, you're  
7 pressure rising our member to agree to a transfer  
8 against his well?

9 A. Yes, that was from the AGSI present at the time, John  
10 Jacob. 15:24

11 510 Q. What's his name?

12 A. John Jacob.

13 511 Q. But ultimately in this situation I have suggest to you  
14 that there is no evidence to indicate any pressure at  
15 all, because you were well able to withstand the 15:24  
16 position and to decline to transfer because that was  
17 your will?

18 A. I took it as pressure.

19 512 Q. Number E, it is suggested that by causing Inspector 15:24  
20 O'Sullivan to attend Mitchelstown Garda Station in full  
21 uniform at nine o'clock on a date between the 29th  
22 March and the 9th April and to request you to provide a  
23 return to work certificate, was somehow wrongful on the  
24 part of Chief Superintendent Dillane or Superintendent  
25 Comyns. And again I have to suggest to you that that 15:25  
26 is not and could not be understood to involve  
27 targeting, nor is the fact that Inspector O'Sullivan  
28 may have been wearing a uniform, whether full or  
29 otherwise, could ever represent an act of targeting or

1           discrediting you?

2           CHAIRMAN: Mr. Murphy, sorry to intervene, but I am  
3           just wondering is there an error there? Inspector  
4           O'Sullivan was present but was it not Chief  
5           Superintendent Dillane who is described as having 15:25  
6           attended in full uniform? Am I wrong about that?

7           MR. MURPHY: He is accused of attending in full uniform  
8           but I think --

9           THE WITNESS: There's two different dates.

10          CHAIRMAN: The date was at 9pm between 9th March, you 15:25  
11          know when they assembled at 9pm, I thought --

12          A. That was Chief Superintendent Dillane in uniform.

13   513    Q. CHAIRMAN: So we have mistake?

14          A. No, prior to that Inspector O'Sullivan attended in  
15          uniform. 15:25

16          CHAIRMAN: I'm sorry. I will mind my own business.  
17          Thank you very much. I am sorry.

18   514    Q. MR. MURPHY: So just in terms of perspective, can I  
19          just to stand back from that for a moment and to think  
20          about what that is saying, is that you appear to be 15:26  
21          saying there that Inspector O'Sullivan -- sends  
22          Inspector O'Sullivan out to speak to you at nine  
23          o'clock in the evening in full uniform would be somehow  
24          a wrongful action and would amount to targeting or  
25          discrediting of you. I have to suggest to you that 15:26  
26          that indicates a loss of perspective on your part. How  
27          could that ever represent targeting or discrediting of  
28          you.

29          A. Because I believe it was an inspection of me at the



1 commencement of my tour of duty.

2 515 Q. And again, you have been -- the witness will give this  
3 evidence, there was no inspection, there was no  
4 examination of your boots or examination of your  
5 fingernails or requirements to produce documents, there 15:26  
6 was no inspection of that kind that occurred on those  
7 dates, isn't that right?

8 A. I believe it was an inspection -- had I been delayed in  
9 my travel to my work, that would be a reason to  
10 discipline me again. 15:26

11 516 Q. That's again, Mr. Barry, is speculation on your part.  
12 Can I suggest to you two important words there, I  
13 believe. Is it the case that this accusation, by way  
14 of example, is established to your satisfaction because  
15 you believe it? 15:27

16 A. Well, there is a sequence there, you have Inspector  
17 O'Sullivan attending at 9pm on the 6th, I believe it  
18 was, and Chief Superintendent Dillane and Inspector  
19 O'Sullivan attending prior to commencing my shift again  
20 on the 9th April. 15:27

21 517 Q. I will come back to the 9th April, but can we look at  
22 this one for the moment. Can you see how this would  
23 ever be targeting or discrediting?

24 A. I believe it was targeting me because I was vulnerable  
25 at the time. I was only just back to work and I am 15:27  
26 being inspected at the commencement of my tour of duty.

27 518 Q. So can I put it to you then that he will say that he  
28 was not inspecting you, number one?

29 A. He can say whatever he likes. I took it that he was

1 inspecting me.

2 519 Q. And he will say that ultimately in those circumstances  
3 he did nothing that he was not entitled to and required  
4 to do as a member of An Garda Síochána at the time?

5 A. That's his perspective. 15:28

6 CHAIRMAN: Are you going to come back to these,  
7 Mr. Murphy, or are you trying to get these out of the  
8 way?

9 MR. MURPHY: I will come back to some of these, I am  
10 trying to move through a number of them today, 15:28  
11 Chairman.

12 520 Q. CHAIRMAN: That's all right. Can I just ask a  
13 question, what would an inspection consist of? How  
14 would I know whether it was an inspection or not an  
15 inspection? I mean, that's the debate; you say you 15:28  
16 were inspected, Mr. Murphy is suggesting that you  
17 weren't. How would I know whether it was one or the  
18 other?

19 A. It'd be my knowledge that if an inspector from Fermoy  
20 was coming over to inspect, we'll say, the property 15:28  
21 registrar that I was in charge of, he would ring and  
22 make an appointment, but when someone shows up at 9pm  
23 at night unannounced, that, to me, is an inspection.

24 521 Q. CHAIRMAN: Okay. Showing up unexpectedly equals  
25 inspection? 15:28

26 A. Yes.

27 522 Q. CHAIRMAN: Okay. And this was a case of showing up  
28 unexpectedly?

29 A. Yes.

1 CHAIRMAN: Okay, thank you. Sorry, Mr. Murphy. Thank  
2 you, Mr. Barry.

3 523 Q. MR. MURPHY: Just on that point, Mr. Barry, can I put  
4 it to you that in fact this situation what you just  
5 said makes no sense. An inspection is something which 15:29  
6 involves, as you well know, an element of disciplinary  
7 supervision or searching lockers or examining offices  
8 or requiring the production of materials, that is not  
9 what occurred herein the Inspector O'Sullivan visited.

10 A. Like I said, it was the commencement of my tour of duty 15:29  
11 so that's a supervision matter. It could be  
12 disciplinary as well.

13 524 Q. Would it not make sense to try and see you before you  
14 went out on patrol?

15 A. Before I went out on patrol? 15:29

16 525 Q. Yes. Or as you came back in from patrol?

17 A. You could meet me -- he could have rang you and said, I  
18 want to meet you in relation your cert, out of  
19 courtesy, but to show up unannounced, I took it as an  
20 inspection. 15:30

21 526 Q. And again, can we just take your words there,  
22 Mr. Barry, carefully again. You've said that because  
23 they didn't phone you, they didn't show you courtesy  
24 and you took it, your words were "I took it to be an  
25 inspection"? 15:30

26 A. Yes, I took it, yes, I did.

27 527 Q. Again, can I suggest to you that if you just try and  
28 apply a perspective of Inspector O'Sullivan to that,  
29 that that is far removed from what actually took place?

1 A. That may be his opinion, yes.

2 528 Q. I have to suggest to you that that is one example of a  
3 number of examples where you are superimposing your own  
4 subjective view on the circumstances but coming to a  
5 wrong conclusion. Ultimately, in this case also when 15:30  
6 it comes to Inspector O'Sullivan on that occasion, you  
7 have readily accepted before that he is somebody who  
8 you did work well with, is that correct?

9 A. Yes.

10 529 Q. He was part of the solution that was advocated by 15:30  
11 Mr. Costello. Can you see how unstatable it is to  
12 suggest that him turning up to see you, whether in his  
13 uniform or not, on duty in an organisation that  
14 provides a 24/7 service, 365 days a year, is something  
15 that is completely normal and did not involve targeting 15:31  
16 or discrediting?

17 A. I don't recall in my seven years working with Inspector  
18 O'Sullivan that he turned up unannounced to inspect me  
19 at the start of my shift at night. So it was unusual  
20 from that aspect. 15:31

21 530 Q. The fact that it was unusual doesn't mean that it is  
22 somehow deliberate?

23 A. It hasn't happened in all those years I knew him.

24 531 Q. But again, you're asking the Chairman to consider the  
25 position based on your subjective view, you took it to 15:31  
26 be this?

27 A. I took it to be, yes.

28 532 Q. And again I suggest to you that you are wrong?

29 A. That is your prerogative.

1 533 Q. CHAIRMAN: And there is nothing wrong except that he  
2 did it without phoning you in advance.  
3 A. Yes.  
4 CHAIRMAN: That's it. Okay, thank you.

5 534 Q. MR. MURPHY: Can we just move down for a moment please 15:32  
6 to G. It says: "By confronting Sergeant Barry in the  
7 car park at Mitchelstown Garda Station on the 9th  
8 April..." So this is the meeting where the chief  
9 superintendent and Inspector O'Sullivan are present.  
10 And again can I suggest to you that you've used a 15:32  
11 number of loaded words in the course of your evidence,  
12 one of which was ambush. And I have to suggest to you  
13 that both Inspector O'Sullivan and Chief Superintendent  
14 Dillane will say that there was no ambush whatsoever.  
15 A. Well, I believe there was. 15:32

16 535 Q. And they will also say that in terms of the meeting  
17 itself, that in the case of dress code there was  
18 nothing intimidating about how they were dressed or  
19 what they wore, and very specifically, just for the  
20 record, can I say that Chief Superintendent Dillane 15:32  
21 will indicate he was not wearing a Sam Browne belt and  
22 Inspector O'Sullivan's evidence tends to support that  
23 also?  
24 CHAIRMAN: Said he is nearly a hundred percent sure.  
25 But there is a disagreement. You say Chief 15:33  
26 Superintendent Dillane came in full canonicals with his  
27 Sam Browne and you say that would be a very unusual  
28 thing, to be parade -- sorry, I won't use a loaded  
29 word, to be attending in the car park with his Sam

1 Browne on and full uniform, you say that would be a  
2 very unusual thing.

3 A. Yes, I found that intimidating.

4 CHAIRMAN: As far as it goes, that certainly suggests  
5 it might be a little unusual, I have to say, but we 15:33  
6 will have to wait and see what the evidence is.

7 536 Q. MR. MURPHY: And again, insofar as that meeting is  
8 concerned, that's a meeting at which constructive  
9 proposals in relation to transfers were articulated to  
10 you at that time but insofar as you were concerned, 15:33  
11 your response was, I'm going nowhere.

12 A. My response was, I will not apply for a transfer.

13 537 Q. And that your response also indicated you believed the  
14 superintendent was the person who should move and not  
15 you? 15:34

16 A. Correct.

17 538 Q. In terms of the overall approach towards that meeting,  
18 I have suggest to you that it was not a confrontation,  
19 as you saw it portray it in the terms of your statement  
20 or an ambush, but in fact was an important and 15:34  
21 necessary meeting, where you were given an option, a  
22 series of options, and that at all stages Chief  
23 Superintendent Dillane and Inspector O'Sullivan behaved  
24 politely towards you and did not seek to either target  
25 or discredit you by speaking to you about these issues? 15:34

26 A. I believe appearing unannounced and in the manner in  
27 which Chief Superintendent Dillane was attired was  
28 intimidating, was to intimidate me on the night, and  
29 one accommodation was offered, temporary workplace

1 accommodation, and that was transfer.

2 539 Q. Again just going back to the words you've used,  
3 Mr. Barry, your words, again can we take it from what  
4 you've said there, that the key words are "I believe"  
5 so that apart from your belief, you've no other 15:34  
6 evidence to demonstrate that this was a sinister  
7 approach towards you or in any way intended to target  
8 you or to discredit you?

9 A. It's my opinion that it was. That's what I deduced  
10 from it. 15:35

11 540 Q. So you're inviting the Tribunal to consider this  
12 particular issue on the basis of your opinion, is that  
13 right?

14 A. I don't know what else I can do.

15 CHAIRMAN: That is a little unfair, Mr. Murphy. I mean 15:35  
16 Mr. Barry says look, I think this, I think that, and he  
17 has given his reasons why he thinks.

18 MR. MURPHY: Yes. Very good.

19 541 Q. Just in terms of the overall approach then towards the  
20 issues in number 4. If we take number 4 G, again 15:35  
21 Mr. McGuinness has taken you through that before, where  
22 it's said that by writing to you while you were on sick  
23 leave requesting a submission of the protected  
24 disclosure to be made directly to him. Again, can I  
25 put it to you that Chief Superintendent Dillane will 15:36  
26 say in evidence that that's not what he was doing, he  
27 was asking and urging you to ensure that the document  
28 was sent on to HRM, which it was, sent on by you?

29 A. Yes but my taking from his letter at the time was that

1 he was looking for me to supply that document to him.

2 542 Q. CHAIRMAN: And do you still think that?

3 A. Yes, from the format of the letter that's what I

4 believed. And I still believe.

5 543 Q. CHAIRMAN: And the question there is: what does the 15:36

6 letter mean? Does it mean it's really what the

7 Tribunal -- you know, really what I think. So, isn't

8 that right. You took that to be a meaning. But,

9 Mr. Murphy, isn't that right, it really depends. I

10 mean, we can all read the letter and you can suggest it 15:36

11 means one thing and Mr. Costello can suggest it means

12 another?

13 MR. MURPHY: Yes.

14 CHAIRMAN: And we can debate that.

15 MR. MURPHY: Yes. 15:36

16 544 Q. Looking at subsection E, there's a suggestion that

17 Chief Superintendent Dillane by directing and condoning

18 the announcements in HRM bulletins and on Pulse that

19 you had been transferred and that wasn't the case when

20 it was well known that you had refused transfers. I 15:37

21 suggest to you that there is no evidence to support

22 that suggestion at all?

23 CHAIRMAN: where are you now, Mr. Murphy?

24 MR. MURPHY: At 4 E, Chairman.

25 545 Q. CHAIRMAN: Thanks very much. Do you see that, 15:37

26 Mr. Barry, what do you say to that?

27 A. 4 E?

28 546 Q. CHAIRMAN: 4 E. We're going backwards now from G.

29 4 E.



1 A. Yes.

2 547 Q. CHAIRMAN: This is now Chief Superintendent Dillane.  
3 Do you want to take that back or do you stand over  
4 that?

5 A. I stand over that, especially after Inspector Golden 15:37  
6 had -- Inspector Golden had a conversation with Chief  
7 Superintendent Dillane on 10th March 2014 and it was  
8 pointed out that I was transferred to Fermoy on Pulse  
9 and after this conversation I was transferred back to  
10 Mitchelstown on Pulse and the following week I was back 15:38  
11 in Fermoy again.

12 548 Q. MR. MURPHY: what evidence do you have that this was,  
13 if you look at the words, "directed or condoned" by  
14 Chief Superintendent Dillane?

15 A. Because when Inspector Golden golden pointed out to him 15:38  
16 that on Pulse I was in Fermoy, having had the  
17 conversation with Chief Superintendent Dillane, I was  
18 changed back and a week later I was moved back again.

19 549 Q. Do you know who actually did the changes?

20 A. No. But -- 15:38

21 550 Q. No?

22 A. -- it was following the conversation can Chief  
23 Superintendent Dillane that I was changed, so I assume  
24 it was him.

25 551 Q. But just to be clear, you don't know who made the 15:38  
26 changes?

27 A. I don't. No, I believe it was somebody in HRM.

28 552 Q. Exactly.

29 A. In Garda Headquarters, at the behest of Chief

1 Superintendent Dillane.

2 553 Q. So you do know. That's two points there, you do know  
3 that it had to be somebody in HRM, but you have no  
4 evidence that it was done at the behest of Chief  
5 Superintendent Dillane? 15:38

6 A. It's like the transfers, Chief Superintendent Dillane  
7 recommend them, HRM direct them.

8 554 Q. You wouldn't mind just please coming back to my  
9 question. Would you agree that you have no evidence  
10 that Chief Superintendent Dillane directed or condoned 15:39  
11 somebody in Navan to change those Pulse entries?

12 A. No, no.

13 555 Q. I'm sorry?

14 A. I don't.

15 556 Q. I beg your pardon? 15:39

16 A. I don't have evidence but they're changed.

17 557 Q. Thank you. And in terms of the issues in relation to  
18 subsection (c), that's scheduling you for duty at the  
19 Irish open Golf Championship at Fota together with  
20 Superintendent Comyns in June 2014. Again, can I 15:39  
21 suggest to you that there is nothing in the evidence  
22 you've given there that demonstrates that Chief  
23 Superintendent Dillane was targeting or discrediting  
24 you by scheduling you for duty at this extremely large  
25 event and that in effect the evidence is, I think on 15:40  
26 your own testimony, that you were involved in traffic  
27 duty a long way away from the centre of events, and the  
28 only thing which you have drawn exception to is the  
29 large conference at which you were present?

1 A. And Superintendent Comyns said that should something  
2 have happened in my area of responsibility, that's the  
3 only reason he would have had to come in contact with  
4 me. So that would have placed me back in that  
5 situation. 15:40

6 558 Q. Again, I think you agreed in your own statement that  
7 this was a very major event?

8 A. It was a major event.

9 559 Q. It involved huge levels of organisation?

10 A. I'm not disputing that. 15:40

11 560 Q. And there was a very large number of colleagues  
12 involved?

13 A. Yes.

14 561 Q. And there was an area of operation that was widely  
15 dispersed, traffic management, management of the 15:40  
16 approach roads, a whole variety of strategic and  
17 tactical issues had to be managed at that time?

18 A. Yes.

19 562 Q. So in terms of this particular issue, can I suggest to  
20 you that there's nothing in the facts relating to this 15:41  
21 event which indicates targeting by Chief Superintendent  
22 Dillane of you?

23 A. At the beginning of March 2014 he was made aware that  
24 having contact with Superintendent Comyns would be  
25 injurious to my health. 15:41

26 563 Q. Well, in terms of --

27 A. This was the following month, I believe, or two months  
28 later.

29 564 Q. You see, I have to suggest to you --

1 A. He put me in a position.

2 565 Q. Sorry. I have to suggest to you that ultimately in  
3 this situation, yet again, perspective seems to be  
4 affecting your view and assessment of this --

5 A. No. 15:41

6 566 Q. -- and ultimately all of your colleagues who were  
7 present would have seen you operating with them on the  
8 day, isn't that correct? Did you work with other  
9 colleagues on the day?

10 A. There was people under my supervision, yes. 15:41

11 567 Q. And you were able to carry out your work on the day?

12 A. Pardon?

13 568 Q. You were able to carry out your work on the day?

14 A. With great difficulty, yes.

15 569 Q. I have to suggest to you that there is nothing in that 15:42  
16 which demonstrates there was a big signal saying there  
17 is Paul Barry, he's being targeted and discredited?

18 A. Superintendent Comyns has stated in his own statement  
19 that should something have happened in my area of  
20 responsibility he would have made contact with me. 15:42

21 570 Q. But he didn't?

22 A. Thanks be to God nothing happened. But that situation  
23 was left open to occur.

24 571 Q. You see, again I have to suggest to you that that is a 15:42  
25 position which is incredibly artificial on your part  
26 but isn't supported by the accusation that you are  
27 making?

28 A. It is, because they also used the excuse that those who  
29 replaced me, when I went on that duty to Fota I was

1 replaced by a sergeant on over time, the sergeant who  
2 replaced me on duty at overtime should have been the  
3 person at Fota, not me.

4 572 Q. Again, I think fundamentally in this situation there is  
5 no evidence, I suggest to you, to indicate that Chief 15:43  
6 Superintendent Dillane did this deliberately with an  
7 intent to target or discredit you?

8 A. I believe he did.

9 573 Q. And again, is it fair to say that the key words are, I  
10 believe? 15:43

11 A. He was in charge of the operational order.

12 574 Q. And again, on his behalf I certainly have to put it to  
13 you that that's incorrect. Can I just pause there for  
14 a moment and just move to a different area and I will  
15 come back to some of these points in the course of 15:43  
16 tomorrow, but one of the areas that is relevant to the  
17 assessment of the Tribunal comes down to the  
18 investigations that had taken place. I want, if I can,  
19 to move briefly, before we finish today, just to touch  
20 on some of the items in connection with that, that is 15:43  
21 to say in relation to Chief Superintendent Kehoe's  
22 investigation.

23  
24 Just in terms of the issues referred to in section 6,  
25 they relate to the investigations conducted by Chief 15:45  
26 Superintendent Catherine Kehoe. First of all, can I  
27 just ask you to confirm that you were aware from your  
28 contact with her that she did not work alone?

29 A. Yes.

1 575 Q. And in terms of the personnel who worked with her, you  
2 were aware that other experienced gardaí -- just to be  
3 precise, I think the position is that there's Chief  
4 Superintendent Pat Lordan, had you come across him  
5 before? 15:46

6 A. Superintendent Lordan, yes.

7 576 Q. And Superintendent Leahy?

8 A. Pardon?

9 577 Q. Superintendent Leahy?

10 A. I don't recall Superintendent Leahy. 15:46

11 578 Q. And Superintendent O'Driscoll?

12 A. Yes, the then inspector.

13 579 Q. And Detective Sergeant Brian Sheeran?

14 A. Yes.

15 580 Q. Inspector white? 15:46

16 A. Yes.

17 581 Q. And Inspector Susan O'Brien?

18 A. Yes.

19 582 Q. So just at the outset can we agree that this was not a  
20 one-person investigation but that there were other 15:46  
21 highly experienced, trained colleagues of Chief  
22 Superintendent Kehoe who were involved in the different  
23 areas of investigation which she conducted?

24 A. That's correct.

25 583 Q. Yes. In terms of the actual position of those 15:46  
26 officers, I think you would also accept that they were  
27 all based in a different division to yours?

28 A. Yes.

29 584 Q. And in terms of the approach adopted towards the

1 complaints you have made here, I think I am correct in  
2 saying that from the Tribunal's assessment the only  
3 person against whom you are making any complaints in  
4 relation to the investigation is Chief Superintendent  
5 Catherine Kehoe herself?

15:47

6 A. Yes, the member in charge.

7 585 Q. So we can take it then at the outset that there's no  
8 complaints being made by you about, for example, Chief  
9 Superintendent Lordan, Superintendent Leahy,  
10 Superintendent O'Driscoll, Inspector O'Brien --

15:47

11 A. I did complain about Inspector O'Driscoll's behaviour  
12 during it, but that was to Chief Superintendent Kehoe.

13 586 Q. In terms of the position concerning him, and we will  
14 come back to his situation momentarily, ultimately in  
15 this case, would you agree with me, that Chief  
16 Superintendent Kehoe made contact with you and  
17 confirmed that she had been appointed?

15:47

18 A. Yes.

19 587 Q. In terms of her approach towards the issue of the  
20 sequence of the investigations, you were aware, as I  
21 think you indicate in your evidence, that the bullying  
22 and harassment investigation was likely to proceed  
23 first?

15:48

24 A. Yes.

25 588 Q. In terms of the approach towards that issue, again  
26 there's no disagreement I think, that investigation was  
27 subject to strict time limit?

15:48

28 A. Yes.

29 589 Q. Subject to extensions of time. In terms of meeting

1 with any individuals within the investigation, I think  
2 you confirmed that you met with Superintendent Lordan  
3 on 21/11/2012. We have seen his statement earlier on.  
4 You provided him with your detailed statement and the  
5 accompanying documents?

15:48

6 A. Yes.

7 590 Q. And in terms of the individuals who are involved then  
8 in carrying out the investigation with Chief  
9 Superintendent Kehoe, in terms of the approach towards  
10 that issue, I think you were aware now, and you  
11 probably were aware at the time, that the investigation  
12 team wasn't designated solely to the investigation,  
13 they were drawn from the division in Tipperary but they  
14 also carried out other significant duties at the same  
15 time?

15:49

15:49

16 A. That's correct.

17 591 Q. Yes. In terms of the approach towards those issues, I  
18 think not only did the investigation carry on in a  
19 sequential fashion but Chief Superintendent Kehoe will  
20 indicate in the course of her evidence that she  
21 effectively wrote to interested parties, so for example  
22 she wrote to Superintendent Michael Comyns and outlined  
23 the allegations that were being made by you and invited  
24 his response. Did you see his responses?

15:49

25 A. I don't recall.

15:49

26 592 Q. Okay. In the course of the issues concerning the  
27 investigation, did you meet with her on 8/4/2013?

28 A. I believe I did, yes.

29 593 Q. And in the course of that meeting did she read all of



1 the statements that the investigation had gathered to  
2 date?

3 A. I don't think she did. I can't recall that, no.

4 594 Q. Can you recall her meeting you at all on that date?

5 A. No, I can't recall her reading over statements. If you 15:50  
6 say I met her on that date, it may well be. I'd have  
7 to check my records. But I don't have it in front of  
8 me.

9 595 Q. She will say also in the course of her evidence, I  
10 think you will have seen this from her statements, that 15:51  
11 she had meetings with her team in February, on 7th  
12 February 2013, 26th February 2013, 6th March 2013, have  
13 you seen that in the materials which you have been  
14 furnished by the Tribunal?

15 A. Yeah, I think I remember reference to it, yes. 15:51

16 596 Q. In terms of documentation, I will see if I can assist  
17 you in relation to that. Can I ask you to be shown  
18 please page 949? You will see that this document is a  
19 letter of 11th February 2013, signed by Assistant  
20 Commissioner Nolan. He indicates that he was appointed 15:52  
21 on 9/10/2012 to investigate your complaints and that he  
22 appointed Superintendent Lordan on 12/10/2012. Do you  
23 see that?

24 A. Yes.

25 597 Q. Have you seen this correspondence before? 15:52

26 A. Yes.

27 598 Q. You have. So you're aware then, just to shorten  
28 matters, that ultimately you wanted to have this issue  
29 formally investigated under the harassment and bullying

1 working together to create a positive environment  
2 programme. And he will also indicate in the course of  
3 his evidence that he sought the advices of the  
4 assistant commissioner at Human Resources as to how to  
5 proceed with the investigation?

15:53

6 A. That's correct.

7 599 Q. Were you aware of that? And he will say that on the --  
8 just turn over to page 950, that on 4th January 2013,  
9 he advised both you and Superintendent Comyns of his  
10 appointment and looked for an extension of time. I  
11 think Mr. McGuinness has dealt with some of this with  
12 you to date. In terms of the communication, I think  
13 you see at page 950 that you requested that all  
14 correspondence would be forwarded to you at an address  
15 nominated by you? Do you see that in the middle of  
16 page 950?

15:53

17 A. Sorry, I don't see that.

18 600 Q. I beg your pardon. In the middle of page 950 there's a  
19 reference to the fact that:

15:53

20  
21 "You will note from the file that Sergeant Barry has  
22 requested that all correspondence to him be forwarded  
23 to Mr. Paul Barry at an address."  
24

15:54

25 So you were in communication with him at that time?

15:54

26 A. Sorry, yes.

27 601 Q. So in overall terms then, by the start of that year  
28 you're aware of the developments, you're aware of the  
29 materials, and ultimately there's this process of

1 interaction taking place. If we move forward then to  
2 the 8th April, ultimately you were given an opportunity  
3 in May to make submissions or observations on the  
4 submissions made by Superintendent Comyns, do you  
5 remember that? 15:55

6 A. Yes.

7 602 Q. Just to summarise matters, you would agree with me that  
8 there was an investigation, you will agree with me that  
9 there were applications for extensions of time?

10 A. Yes. 15:55

11 603 Q. You will agree with me that there was communication  
12 with you in relation to each of those elements?

13 A. Yes.

14 604 Q. You agree with me also that you had that meeting on  
15 8/4/2013, where the information was relayed to you by 15:55  
16 Chief Superintendent Kehoe?

17 A. Could have been, yes.

18 605 Q. And then in addition to that, just in terms of  
19 engagement, you were given a chance to communicate back  
20 in response to the submissions made by Superintendent 15:55  
21 Comyns?

22 A. Yes.

23 606 Q. So can I just suggest to you that in terms of overall  
24 procedures, that that was a process in which you were  
25 communicated with and given an opportunity to make your 15:56  
26 comment and to state your piece to Chief Superintendent  
27 Kehoe throughout. Is it correct also that it was your  
28 decision in your initial complaint to put in issue  
29 number 9 with the other eight issues?

1 A. In my initial submission to HRM in October, that's how  
2 I sent it in.

3 607 Q. Yes.

4 A. But then Superintendent Lordan came to take a fresh  
5 statement from me on the 21st November following that  
6 and he did the same procedure. 15:56

7 608 Q. But ultimately I think, would you accept, that your  
8 decision to include them all together in one document  
9 had implications because the chief superintendents had  
10 to examine all nine? 15:56

11 A. No, I thought -- I was told by my solicitor that they  
12 would be separated, that the bullying and harassment  
13 would be separated because that statement, they would  
14 be entitled to have sight of, but not the criminal  
15 allegation. 15:57

16 609 Q. But it made it more likely that one person would be  
17 asked to investigate all of them because you put them  
18 all together?

19 A. No, I didn't think that, no.

20 MR. MURPHY: Thank you. Chairman, I wonder if this  
21 would be an appropriate moment to... 15:57

22 CHAIRMAN: Yes, certainly. Thanks very much. Thanks,  
23 Mr. Murphy. Very good. We will adjourn then until  
24 tomorrow. Thank you very much.

25

26 THE HEARING ADJOURNED TO TUESDAY, 25TH MAY 2022,

27 AT 11 A.M.

28

29

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