

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, 31ST MAY 2022 - DAY 182

182

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

GWEN MALONE STENOGRAPHY  
SERVICES

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FORMER PRESIDENT OF THE COURT OF  
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I N D E X

W I T N E S S

P A G E

SUPERINTENDENT MICHAEL COMYNS

DIRECTLY-EXAMINED BY MR. MARRINAN ..... 5

1 THE HEARING RESUMED, AS FOLLOWS, ON TUESDAY, 31ST MAY  
2 2022:

3  
4 MR. MARRINAN: Good morning, Chairman. The first  
5 witness today is Superintendent Michael Comyns, please. 11:00

6  
7 SUPERINTENDENT MICHAEL COMYNS, HAVING BEEN SWORN, WAS  
8 DIRECTLY-EXAMINED BY MR. MARRINAN, AS FOLLOWS:

9  
10 Q. MR. MARRINAN: Thank you, superintendent. Your 11:01  
11 statement is to be found in volume 2 of the materials,  
12 at page 542, and you exhibited a great number of  
13 documents thereafter, stretching into almost the  
14 entirety of volume 3. I will come back to that in a  
15 moment. You also then answered a questionnaire that 11:01  
16 had been sent out by the Tribunal, where you answered a  
17 number of questions, and that's to be found in volume  
18 18, at page 5389 of the material.

19  
20 As I indicated, you provided and exhibited a great 11:01  
21 number of documents. I don't intend to open them all  
22 or to deal with all the issues that you raised during  
23 the course of your statement or in that documentation,  
24 and I intend to focus primarily on the issues that have  
25 arisen out of the evidence that was given by Mr. Barry, 11:02  
26 all right?

27 A. That's fine.

28 1 Q. But if you feel there are documents that I am either  
29 glossing over or moving on from that you think are

1 important, just say so and I will certainly open them.

2 A. Thanks, Mr. Marrinan.

3 2 Q. Now I that you're still a serving member of An Garda  
4 Síochána with the rank of superintendent, isn't that  
5 right? 11:02

6 A. That's correct.

7 3 Q. And I think that you -- when did you arrive in Fermoy  
8 Garda Station?

9 A. It was 2010, August 2010, if I my memory is correct.

10 4 Q. And what district did you come from? 11:02

11 A. Kilrush district in County Clare.

12 5 Q. And prior to your arrival in Fermoy district, had you  
13 ever met Mr. Barry?

14 A. No, I had never met Mr. Barry previously.

15 6 Q. Now, you very helpfully set out in your statement to 11:03  
16 the Tribunal, if we just might have page 542 up on the  
17 screen, Mr. Murphy. If we just scroll down to the end  
18 of the page, you point out that the Fermoy district is  
19 in the Cork north division and you also point out that  
20 THE Cork North division includes the Mallow district, 11:03  
21 the Midleton district, when you originally took up your  
22 tenure, is that right?

23 A. That's correct. And Cobh district originally.

24 7 Q. Yes. You then point out that the Fermoy district  
25 comprises of a number of garda stations, first of all 11:04  
26 Mitchelstown, and you indicate there that there are  
27 three sergeants attached to Mitchelstown and 20 gardaí,  
28 is that right?

29 A. That's correct.

1 8 Q. Do the 20 gardaí include the two detectives who were  
2 attached to Mitchelstown at that time?  
3 A. Correct. That's correct, yes.

4 9 Q. And then Kilworth, two gardaí, is that a 24-hour  
5 station? 11:04  
6 A. No, no.

7 10 Q. No?  
8 A. The only 24-hour station is Fermoy.

9 11 Q. Is Fermoy?  
10 A. Yes, all the rest are closed. 11:04

11 12 Q. And then Kildorrery, one garda, Castletownroche, two  
12 gardaí; watergrasshill, two gardaí; and Rathcormac, two  
13 gardaí; and then if we go over the page we will see  
14 Ballynoe, one garda?  
15 A. That's correct. 11:05

16 13 Q. I think you point out that after Fermoy Mitchelstown is  
17 the second most popular area in the district and when  
18 you started there were four units there, is that right?  
19 A. That's correct.

20 14 Q. I think new rosters were introduced in April of 2012 11:05  
21 and then it became five units?  
22 A. Correct.

23 15 Q. You also point out that there was a detective branch  
24 unit that was located there at the time with Detective  
25 Garda Jim Fitzpatrick and Garda Denis Fitzgerald. Now, 11:05  
26 Fermoy Garda Station I think had 65 members attached to  
27 it, isn't that trite?  
28 A. That's correct.

29 16 Q. Of which obviously there was yourself and then there

1 was one inspector and that was Inspector O'Sullivan at  
2 the time, is that right?

3 A. That's correct, yeah. Originally, when I went to  
4 Fermoy first, but later on a second inspector came.

5 17 Q. Yes. 11:06

6 A. Inspector O'Connor.

7 18 Q. I think, can you just tell us how many sergeants were  
8 attached to Fermoy?

9 A. I'm not sure at the time. There was one each of the  
10 four units, there was one in detective branch and there 11:06  
11 was two in the traffic corps and there was one sergeant  
12 in charge and there was a prime prevention officer.

13 19 Q. Right. And I think that Fermoy Garda Station was also  
14 the divisional headquarters, is that right?

15 A. That's correct. 11:06

16 20 Q. At that time, Chief Superintendent Dillane was the  
17 divisional officer, is that right?

18 A. No. When I came first in 2010, I would say Chief  
19 Superintendent McGann was the divisional officer.  
20 Chief Superintendent Dillane came in early 2012, I'd 11:06  
21 say, around that.

22 21 Q. I think it was 2011, but in any event --

23 A. '11.

24 22 Q. -- that's right?

25 A. Chief Superintendent McGann retired in November 2011, I 11:07  
26 do remember that.

27 23 Q. Can you tell us, obviously that would be where the  
28 divisional officer would be based, but how many of his  
29 staff would also be based in Fermoy?



1 A. At the time he had three staff in his office, the  
2 divisional office.

3 24 Q. Now, if you can then just deal with what are called  
4 routine performance accountability framework meetings,  
5 otherwise known as PAF meetings, what are those 11:07  
6 meetings?

7 A. Those were performance accountability framework  
8 meetings, which were brought in to An Garda Síochána  
9 2005/2006, around then, where each morning the district  
10 office or the superintendent would have a meeting with 11:08  
11 relevant staff to go through what happened in the last  
12 24 hours and what was planned for the next 24 hours and  
13 various issues in the district. That was the daily  
14 meeting, and you'd have a weekly meeting then once a  
15 week, where you would bring in all the supervisory 11:08  
16 staff who would be working, again it go over what had  
17 happened in the previous week, what's coming up for the  
18 week, and review ongoing files and investigations for  
19 the unit that would be working on the particular day.

20 25 Q. Who would normally attend the weekly PAF meetings? 11:08

21 A. It would be chaired by myself when I was working, or  
22 the inspector. You would have the IC in Fermoy  
23 district at that time, the sergeant in charge in Fermoy  
24 and the sergeant in charge in Mitchelstown, again if  
25 they were working. You would the working unit, you 11:09  
26 would have the sergeant in detective branch, sergeant  
27 from the traffic corps, if he was working. And if any  
28 of the sergeants then weren't working, the system we  
29 had was that a senior member of the unit would

1 represent them at the meeting.

2 26 Q. I think that units in Fermoy and Mitchelstown mirrored  
3 each other, isn't that right?

4 A. Yeah. Nationally units mirrored each other. If unit A  
5 was working anywhere in the country, it'd be working 11:09  
6 nationally.

7 27 Q. Yes.

8 A. Yeah.

9 28 Q. So in other words, if unit A was working in Fermoy,  
10 unit A would also be working in Mitchelstown? 11:09

11 A. Correct.

12 29 Q. What was the consequence of that in terms of attendance  
13 at these weekly PAF meetings? How often would a  
14 sergeant in charge of a particular unit attend the  
15 weekly PAF meetings? 11:10

16 A. Originally when there were four units they worked on a  
17 28-day cycle. So, they'd attend the PAF meeting once a  
18 month, when they'd be on an early tour on the Monday.  
19 When the roster changed then it became more mixed up  
20 with the five units, there was a totally different 11:10  
21 roster. So, you could have one unit attending two  
22 weeks in a row and then you wouldn't see them for maybe  
23 five weeks. The roster was just totally different when  
24 it changed in April 2012.

25 30 Q. Right. Okay. Well, I think just in the circumstances 11:10  
26 I will refer to Mr. Barry as Sergeant Barry because  
27 that is the rank that he held at the time and it might  
28 be easier for all concerned.

29 A. Okay.

1 31 Q. But as far as Sergeant Barry was concerned, prior to  
2 these events obviously, when there was a change in  
3 circumstances.

4 A. Yes.

5 32 Q. How often would you have had the expectation that he 11:11  
6 would attend the weekly PAF meetings?

7 A. Once a month up to April 2012.

8 33 Q. And thereafter?

9 A. And thereafter when his unit was working either an  
10 early shift or a late shift on the day the weekly PAF 11:11  
11 took place, which it wasn't -- it was -- with the old  
12 roster you had definite shifts of once a month, but the  
13 way the new roster worked, you had -- all the shifts  
14 were mixed up, shall we say, so that you mightn't see  
15 his unit for, I think it was five weeks and then the 11:11  
16 unit could be on two weeks in a row. So...

17 34 Q. Can you just tell us about your own management style at  
18 that time? How did you approach your supervising  
19 members?

20 A. I suppose my job as the district officer was to get the 11:12  
21 best out of the people working in the district, provide  
22 the best policing service for the people living in the  
23 district. The main way that I did this was through the  
24 PAF meetings on a daily and weekly basis, but on a  
25 daily basis then if there was anything else happening, 11:12  
26 I would be in contact with -- and predominantly with  
27 sergeants. I talked to the sergeants to get the  
28 messages out to the gardaí.

29 35 Q. Now, I think that you point out that on 13th July of

1           2010 you held a meeting with all operational sergeants  
2           in the Fermoy district and you refer to your note of  
3           that meeting. We don't need to have it on the screen,  
4           but for the benefit of the parties it's at page 580.  
5           But this refers to overtime only by sanction, isn't           11:13  
6           that right?

7           A.    That's correct, yeah.

8    36    Q.    And that is prior sanction with you, is that right?

9           A.    Either myself or Inspector O'Sullivan at the time.

10   37    Q.    And I think that subsequent to that meeting, on 29th           11:13  
11           July of 2011, you sent a circular to each sergeant in  
12           charge in Fermoy district, isn't that right?

13           A.    That's correct, yeah.

14   38    Q.    And it reiterates that. Again that's at page 581, I  
15           don't think there is anything contentious contained in           11:13  
16           it.

17           A.    No.

18   39    Q.    But it sets out your direction in relation to overtime.  
19           In terms of Mitchelstown Garda Station, can you tell us  
20           how often would you have visited Mitchelstown Garda           11:14  
21           Station?

22           A.    Depending really on what was happening, I would  
23           certainly have been there once a month, once every  
24           three weeks. I would go there to do audits, I would go  
25           there if there was anything happening in the area that           11:14  
26           we'd have to have a meeting about, a conference.  
27           Certain times of the year, well, particularly during  
28           the summer, there was one big festival in Mitchelstown  
29           that attracted huge numbers, and coming up to that

1 festival I could be there a number of days every week  
2 in preparation for the festival.

3 40 Q. Is it the Independence Festival?  
4 A. Yeah, Independence Festival.

5 41 Q. So you think maybe once every three weeks or four 11:15  
6 weeks?  
7 A. Yeah, once every three or four weeks.

8 42 Q. I am just trying to get a picture here of how often you  
9 would have come into contact with Sergeant Barry.  
10 You'd have had an expectation that he'd have been 11:15  
11 attending at least once a month for the PAF meetings?  
12 A. Correct.

13 43 Q. And that'd he have attended Fermoy for that purpose.  
14 And then you may or may not have met him when you were  
15 visiting Mitchelstown Garda Station every three weeks? 11:15  
16 A. Yes.

17 44 Q. Depending whether he was working or not?  
18 A. Yeah.

19 45 Q. Outside those obvious times that you would have come  
20 into contact with him, what other occasions would you 11:15  
21 have an expectation that he would have been attending  
22 meetings or that you would have come into contact with  
23 him?  
24 A. Outside of those, I wouldn't really. Maybe in court,  
25 if he was involved in court. 11:16

26 46 Q. Right.  
27 A. I presented cases in court obviously in the district.  
28 Face-to-face not outside of those occasions really.

29 47 Q. All right?

1 A. But if anything happened or if I needed to talk to him  
2 about something on his unit, I'd ring him.

3 48 Q. So it's fairly limited contact that you would have had  
4 with him on a one-to-one basis?

5 A. Yes. 11:16

6 49 Q. Would that be fair to say?

7 A. Yes.

8 50 Q. And in terms of inspecting an a garda station, what  
9 does that involve? We've heard reference to this,  
10 inspections of garda stations by either an inspector or 11:16  
11 a superintendent?

12 A. Well, a number of times a year, once a quarter I would  
13 be obliged to -- it was an inspection once upon a time,  
14 it's known as an audit now, even at that time it was  
15 known as an audit, and I would pick some particular 11:16  
16 thing in the station that I would audit, maybe  
17 warrants, maybe summonses, and I'd go over there maybe  
18 for half a day just to go through the books to make  
19 sure everything was in order.

20 51 Q. Would you announce to the garda station in advance that 11:17  
21 you were coming to contact the audit?

22 A. I would, yeah, because the books would have to be ready  
23 for me. I would talk to the sergeant in charge, Aidan  
24 Dunne.

25 52 Q. Now, if we could then just move on to April 2012, I 11:17  
26 think the new rosters were introduced, isn't that  
27 right?

28 A. That's correct.

29 53 Q. You decided that this was an opportunity where you

1 might integrate Mitchelstown more into Fermoy, is that  
2 right?

3 A. That's correct.

4 54 Q. would you just explain what you were hoping to achieve  
5 and what was involved?

11:18

6 A. From when I came to the district, it was like two  
7 separate districts, the people in Mitchelstown looked  
8 after the northern side of the district, shall we say,  
9 and the people in Fermoy looked after the southern side  
10 of the district, and there wasn't a whole lot of

11:18

11 integration between the two sides. The change in  
12 rosters, the new rosters was a completely different  
13 system that had been worked, across the country  
14 nationally, and it was a huge change for An Garda  
15 Síochána. It required different work practices, shall  
16 we say, and to try and bring more integration into the  
17 team, I decided that it would be good for everyone  
18 across the board if everyone met, everyone working on a  
19 particular day met and were briefed and detailed by the  
20 sergeants working at half seven in the morning, the  
21 tour of duty started at seven, so to give everyone time  
22 to get to Fermoy I said half seven, and again on the  
23 night shift, the night shift started at nine o'clock  
24 and to give people time to get to Fermoy, I said half  
25 nine. And that the unit, everyone working on a  
26 particular shift at those times would meet.

11:18

11:19

11:19

27 55 Q. And the sergeant in charge would give the briefing, is  
28 that right?

29 A. The sergeant in charge of the unit.

1 56 Q. Of the unit?  
2 A. Yes.

3 57 Q. Now what I am not clear about from reading your  
4 statement is: The parading for duty, as it were, at  
5 7.30 and 9.30, was that just the unit in Mitchelstown 11:20  
6 that they were parading in Fermoy or were the  
7 Mitchelstown unit parading with their colleagues in  
8 Fermoy?  
9 A. Yes, it was everyone in the district.

10 58 Q. Everyone in the district? 11:20  
11 A. The gardaí in the outside stations, who we've gone  
12 through earlier, they were also attached to a unit,  
13 whichever unit, and they would also come in for the  
14 half seven and half nine briefing. So everyone working  
15 in the district would get together at half seven in the 11:20  
16 morning or half nine at night, to be briefed.

17 59 Q. And the briefing of that greater number of gardaí, the  
18 briefing, would that be given by the unit sergeant in  
19 Mitchelstown or the unit sergeant in Fermoy or both?  
20 A. Either, either or both. 11:20

21 60 Q. Either or both?  
22 A. Yes.

23 61 Q. The briefing document --  
24 A. Yes.

25 62 Q. -- can you just tell us about that? 11:21  
26 A. The briefing document was a template that we made out  
27 with just details to be filled in by the sergeant on  
28 nights before he finished, with details of what had  
29 happened in the previous 24 hours in the district.



1 63 Q. Yes.  
2 A. Incidents that happened, incidents that people should  
3 know about. If anyone had reported sick, it was  
4 included on it. Just what would need to be known by  
5 the on coming unit and that was left for the briefing 11:21  
6 by the sergeant on nights.

7 64 Q. Okay, that's very helpful, thank you. You then go on  
8 in your statement to deal with a number of incidents,  
9 which effectively cover issues 1 to 8 that were raised  
10 by Sergeant Barry in his bullying and harassment 11:22  
11 complaint --

12 A. Yes.

13 65 Q. -- that he made to HRM. And I don't intend to open any  
14 of those, okay?

15 A. Okay. 11:22

16 66 Q. And we're going to move through them. But I think that  
17 perhaps of note, you note that in January/February 2012  
18 there was an alleged sexual assault of a juvenile,  
19 isn't that right?

20 A. That's correct. 11:22

21 67 Q. That was a matter that was investigated by Sergeant  
22 Barry and his team, but ultimately that gave rise to a  
23 situation that brings us to Wednesday, 1st August of  
24 2012. Now, do you remember travelling at that time to  
25 Mitchelstown Garda Station? 11:23

26 A. I do, yes.

27 68 Q. I think you arrived there at 12.05pm, is that right?

28 A. That's correct.

29 69 Q. And you found Garda Denis Golden, who was in the public

1 office and you noted at the at the time and you note it  
2 in your diary, or in your journal, that he was wearing  
3 a civilian jacket --

4 A. That's correct.

5 70 Q. -- over his uniform, is that right? Then you also note 11:23  
6 that at 12.10 Garda Rosemary O'Connell arrived at the  
7 garda station and you considered that had she arrived  
8 late, is that correct?

9 A. That's correct.

10 71 Q. And you also noted that at 12.12pm Garda Denise 11:23  
11 Fitzgerald arrived late to the station, is that right?

12 A. That's correct.

13 72 Q. And I think at 12.20pm Sergeant Barry and Garda JJ Wall  
14 arrived at the situation?

15 A. That's correct. 11:24

16 73 Q. Now, did you have a discussion with Sergeant Barry as  
17 to why he was late on that occasion?

18 A. I did, yes.

19 74 Q. would you just tell us about that?

20 A. I asked Sergeant Barry, and to the best of my 11:24  
21 recollection JJ Wall was there as well, why they were  
22 both late, because they had been late on a previous  
23 occasion when I was there. And I was told they were  
24 late because Garda wall's car was going in for a  
25 service and they were waiting to be picked up by the 11:24  
26 Mitchelstown patrol car.

27 75 Q. Did you regard that as an adequate execution at the  
28 time?

29 A. No, I didn't regard it as an adequate excuse, because

1           when the word service was said to me, I said, look, you  
2           book a car in for a service, you don't just decide on a  
3           morning that a car is going in for a service.

4    76   Q.    Now, I think that you refer in your statement to an  
5           earlier incident that occurred on 11th June of 2012,           11:25  
6           when you held a conference in relation to the rape  
7           allegation, isn't that right?

8           A.    That's correct.

9    77   Q.    And you noted that on that occasion that you arrived at  
10          12 midday in Mitchelstown Garda Station and that           11:25  
11          Sergeant Barry and Garda wall arrived at ten past 12,  
12          isn't that right?

13          A.    That's correct.

14   78   Q.    I think you decided that you were going to issue a  
15          Regulation 10 in relation to Garda wall and Sergeant           11:25  
16          Barry, is that right?

17          A.    That's correct.

18   79   Q.    And you did that on 2nd August 2012, when you prepared  
19          form 1 A1 for being late on duty for both Sergeant  
20          Barry and Garda wall?   11:26

21          A.    That's correct.

22   80   Q.    That's at page 642, we don't need it on the screen,  
23          we've already seen it and Sergeant Barry has looked at  
24          it. But a Regulation 10 is the lowest form of caution  
25          or reprimand or whatever you want to call it, isn't           11:26  
26          that right?

27          A.    It is, yeah. It's a warning or a caution really, it's  
28          just, you know, you have done something out of line,  
29          that's...

1 81 Q. Does that go on your personnel file?  
2 A. No, no, it doesn't go on your -- it's kept separately.  
3 82 Q. And as far as you were concerned, did Sergeant Barry  
4 sign that?  
5 A. That's correct. 11:26  
6 83 Q. And did he appear to you to accept this caution that  
7 you were giving him?  
8 A. I thought so, yes.  
9 84 Q. And also with Garda Wall?  
10 A. Similarly. 11:26  
11 85 Q. Did you deal with both of them at the same time or  
12 separately, do you recall?  
13 A. I think I dealt with both of them separately. I think  
14 I dealt with Sergeant Barry first and then I asked  
15 Garda Wall to come in. 11:27  
16 86 Q. Now, you've heard Sergeant Barry's evidence in relation  
17 to this?  
18 A. Yes.  
19 87 Q. And I think it is fair to say that the suggestion is  
20 that this was unjustified and that it was done for an 11:27  
21 ulterior motive --  
22 A. Yes.  
23 88 Q. -- namely that he hadn't complied with a direction from  
24 you to make a certain recommendation in a report that  
25 was being sent to the DPP? 11:27  
26 A. That's correct.  
27 89 Q. What do you say in relation to that?  
28 A. This had absolutely nothing got to do with anything  
29 else. This was an occasion where I was in the station,

1 a unit was due to commence duty at 12 o'clock, all the  
2 people due to work, except maybe one, were late for  
3 duty and then the sergeant was even later. So I felt  
4 it was my duty to issue the warning to Sergeant Barry  
5 and Garda Wall, because it was the second time that I 11:28  
6 had found both of them late for work. And I did  
7 consider at the time perhaps recommending a more  
8 serious discipline investigation, the Regulation 14,  
9 but I felt that maybe issuing the Regulation 10 would  
10 be enough of a warning to Sergeant Barry and obviously 11:28  
11 to Garda Wall, that they had to be there, and  
12 particularly Sergeant Barry as the sergeant in charge  
13 of the unit.

14 90 Q. Now, I think on the 6th August you were advised that  
15 Sergeant Barry had reported sick and unfit for duty? 11:29  
16 A. That's correct.

17 91 Q. Is that right?  
18 A. That's correct, yeah.

19 92 Q. And on the 9th August you were further informed that  
20 Sergeant Barry was certified as suffering from 11:29  
21 work-related stress by his GP, is that right?  
22 A. Yes, that's correct.

23 93 Q. And I think you appointed inspector --  
24 A. Sorry, Mr. Marrinan, I don't think that's correct. I  
25 think it wasn't the GP, it was from the form filled out 11:29  
26 by the guard that Sergeant Barry reported sick.

27 94 Q. Yes.  
28 A. In Mitchelstown.

29 95 Q. You're right in that regard, yes.

1 A. I don't think the GP had said work-related stress.

2 96 Q. At that point in time the certificate referred to  
3 illness, you're quite right. I think you appointed  
4 Inspector O'Sullivan to investigate Sergeant Barry's  
5 work-related stress in accordance with HQ Directive 11:30  
6 139/2010?

7 A. That's correct.

8 97 Q. Which requires a full investigation in relation to the  
9 cause of the work-related stress, isn't that right?

10 A. That's correct. 11:30

11 98 Q. You yourself made a phone call to Sergeant Barry at  
12 midday on 3rd September 2012, in line with the sickness  
13 absence policy, but the call wasn't answered and you  
14 were put through to voicemail, is that right?

15 A. That's correct. 11:31

16 99 Q. And did you leave a message?

17 A. I did, yeah.

18 100 Q. Do you recall what the message was that you left at  
19 that time?

20 A. I can't say exactly what the message was, but it would 11:31  
21 be something like, I am just ringing to check on how  
22 you are and enquire about your welfare. Some words to  
23 that effect, as I would have done with any member who  
24 had gone sick and was sick for a period of time.

25 101 Q. Now again, I think that you filled out a sickness 11:31  
26 absence contact visit document, it's at page 644 of the  
27 material. If we could perhaps have that up on the  
28 screen, Mr. Murphy. When we scroll down, we see it is  
29 stated the 6th. The period of absence is from the 6th

1 August 2012 and you note there at the bottom "3/9/1212  
2 midday, no answer mobile phone - left message"?  
3 A. That's correct.  
4 102 Q. Now, I think that on the 4th September you had a  
5 conversation with Inspector Tony O'Sullivan and he 11:32  
6 advised you that he had met with Sergeant Barry, isn't  
7 that right?  
8 A. That's correct.  
9 103 Q. What did he say to you?  
10 A. Again words to the effect that Sergeant Barry didn't 11:32  
11 wish Inspector O'Sullivan to investigate the  
12 work-related stress, he wanted someone from outside the  
13 district, I think was said, and that he had an issue  
14 with me and because of that he wanted someone from  
15 outside the district to investigate. 11:33  
16 104 Q. Had you any idea at that time of what that issue might  
17 be?  
18 A. I thought it was the service of the IA1, the Regulation  
19 10 form.  
20 105 Q. I am just wondering, did you think perhaps there was 11:33  
21 any other grievance that he may have had against you at  
22 that time?  
23 A. No.  
24 106 Q. Or was that something that you focused on; namely, the  
25 Regulation 10? 11:33  
26 A. Well, it's the only thing that I could think of at that  
27 time and I actually put it in my report at the time,  
28 that I had served a Regulation 10 notice on him.  
29 107 Q. Well again, you will heard the evidence from Mr. Barry

1 and his statement that he made to the Tribunal, where  
2 he suggests that Inspector O'Sullivan had been sent out  
3 to him by you to find out what complaint had been made  
4 against you and you weren't really concerned about the  
5 cause of his illness at all. what do you say about 11:34  
6 that?

7 A. I think the documentation shows that I appointed  
8 Inspector O'Sullivan under headquarters directive  
9 139/10 to investigate the work-related stress. So  
10 that's why Inspector O'Sullivan went out. And my 11:34  
11 report on to the divisional officer on Inspector  
12 O'Sullivan's visit indicates that I felt at the time  
13 that it was because of the service of the Regulation 10  
14 notice that Sergeant Barry had an issue with me.

15 108 Q. Now then, I think if we can just move on to the next 11:35  
16 event that you've noted in your statement, which in  
17 fact is three months later, on Friday, 4th January of  
18 2013, where you note that you received a call from  
19 Assistant Commissioner Jack Nolan?

20 A. That's correct. 11:35

21 109 Q. That was to inform that a bullying case had been made  
22 against you by Sergeant Barry, and you noted that in  
23 your journal?

24 A. Yes.

25 110 Q. That's at page 645, we don't need that on the screen, 11:35  
26 but was that the first time you heard that he had made  
27 a complaint against you?

28 A. It was.

29 111 Q. Now, I am not talking about being formally informed,



1 just hearing of a complaint. So you didn't hear that  
2 he had made a complaint, first of all in writing on the  
3 21st September that went in early October to HRM, and  
4 then subsequently a statement that was made on 21st  
5 November of 2012 to Superintendent Pat Lordan, you had 11:36  
6 heard nothing of any of that, is that right?

7 A. Nothing, nothing.

8 112 Q. Now, I think Assistant Commissioner Nolan informed you  
9 that he had been appointed to investigate the matter  
10 and that he forwarded on then correspondence to you, 11:36  
11 isn't that right?

12 A. That's correct.

13 113 Q. If we could just have page 647 up on the screen,  
14 please. We see there the letter that was sent on 4th  
15 January 2013 by Assistant Commissioner Nolan. And if 11:37  
16 we look at the second paragraph there, he says:

17  
18 "I attach a copy of Sergeant Barry's complaint for your  
19 information."

20 11:37  
21 And then if we scroll over to the next page, you will  
22 see at page 648 of the material a letter that was  
23 signed by Sergeant Barry. And then thereafter, from  
24 page 649 onwards, where all the complaints are itemised  
25 1 to 8. And then if we go to page 649 of the material, 11:37  
26 please, you will see there, scroll down please  
27 Mr. Murphy, you will see the eighth incident, then you  
28 will see the ninth incident, referring to the most  
29 serious incident, refers to an alleged sexual abuse of

1 of a child and an allegation that you had manipulated  
2 the nature of the investigation and Sergeant Barry's  
3 ability to perform it. He then sets out his reasons.  
4 Was that the document that was included by Assistant  
5 Commissioner Nolan? 11:38

6 A. Yes, I received that with the letter.

7 114 Q. Were you also given a copy of the statement that had  
8 been given to Superintendent Patrick Lordan on 21st  
9 November 2012? Were you given that?

10 A. No. It was a long time afterwards before I received 11:39  
11 that statement.

12 115 Q. Now, obviously at that point in time Sergeant Barry was  
13 -- you were aware of the fact that Sergeant Barry was  
14 making a complaint of bullying and harassment against  
15 you? 11:39

16 A. Yes.

17 116 Q. And the ninth allegation contains also an allegation of  
18 having been bullied and harassed, isn't that right?

19 A. Yes.

20 117 Q. And it was in that context that you had received the 11:39  
21 document, is that right?

22 A. Correct.

23 118 Q. And then if we just move on then to 18th February of  
24 2012, I think you received a phone call, again from  
25 Assistant Commissioner Nolan, to inform you that he had 11:39  
26 appointed Chief Superintendent Catherine Kehoe to carry  
27 out the bullying investigation, isn't that right?

28 A. That's correct.

29 119 Q. And again you noted that in your diary, that's at page

1 653, we don't need it on the screen. And then you  
2 receive correspondence on 21st February of 2013. If we  
3 could have this, page 654, up on the screen, please.  
4 This is correspondence from Chief Superintendent Kehoe,  
5 it's dated 21st February of 2013. And then you will 11:40  
6 see in the first paragraph she says:

7  
8 "I wish to inform you that I have been appointed as  
9 deciding officer in this matter by Assistant  
10 Commissioner Nolan in accordance with the disciplinary 11:40  
11 regulations."

12  
13 Isn't that right?

14 A. That's correct.

15 120 Q. And then if we look down, we will see there in 11:41  
16 paragraph four:

17  
18 "I am to invite you to provide me with a full detailed  
19 report of the manner in which you became aware and  
20 dealt with the matter which is the subject of the 11:41  
21 alleged breach of discipline."

22  
23 That alleged breach of discipline is set out in  
24 accompanying form 1AL11, it's at page 656 of the  
25 material. It's "Appointment of deciding officer under 11:41  
26 Regulation 14."

27  
28 Then if we scroll down, we will see at the end there,  
29 scroll down further, Mr. Murphy:

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29

"Brief details of the acts or conduct alleged. "

And then:

11:42

"Superintendent Comyns interfered with the investigation into alleged sexual abuse which was reported at Mitchelstown Garda Station on 2nd February 2012. "

11:42

So, you were then aware, obviously, of that allegation being made against you. And as far as you were concerned then, you were the subject-matter of effectively three investigations, isn't that right?

A. No, at this stage I was aware I was being investigated under bullying and harassment and now under discipline, but criminal hadn't been mentioned at all to me at this stage.

11:42

121 Q. All right. Now then, you subsequently received correspondence from Chief Superintendent Kehoe, which is dated 26th February 2013. If we could have page 658 up on the screen. This is under the bullying and harassment policy. She then sets out in paragraphs which are numbered 1 to 8, if we scroll down there to page 660, eventually we have item number 8. These are the allegations that she is then putting to you at that time, isn't that right?

11:43

11:43

A. That's correct.

122 Q. And then if we just scroll down, you will see:

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29

"I wish to inform you that I was appointed by Assistant Commissioner Nolan, Southeastern Region, to investigate Sergeant Barry's complaint under the Garda policy and procedures of harassment and bullying and any criminal offences identified by Sergeant Barry's complaint." 11:44

Do you see that?

A. Yes.

123 Q. So certainly you're being advised that it may be an even wider investigation, isn't that right? 11:44

A. I was advised at this stage, but when I read the document I didn't actually see the criminal part of it, when I read that document. It was after this before I realised that there also could be a criminal investigation. 11:44

124 Q. Okay. I'll just refer you to your own statement. We don't need it on the screen, you're familiar with it?

A. Yes.

125 Q. But "The correspondence set out details of eight complaints being made against me by Sergeant Barry." 11:45

And then that she requested, Chief Superintendent Kehoe requested documentation. And you say:

"At this stage I was the subject of a criminal investigation, a disciplinary investigation and a complaint under the Garda Dignity at Work policy." 11:45

A. Yes.

1 126 Q. You think it was later that you thought that you were  
2 under a criminal investigation as well, is that right?  
3 A. When I read this, the criminal, it gave the eight  
4 allegations, not the ninth.  
5 127 Q. Right. 11:45  
6 A. And it said "These eight are being investigated under  
7 the bullying and harassment and any criminal offences  
8 within those".  
9 128 Q. Okay.  
10 A. So that's the way I read it. 11:45  
11 129 Q. So if I could just -- before we move on to your  
12 response to those allegations that came your way, but  
13 at this stage can you just tell us how you thought at  
14 that point in time that you were going to be able to  
15 interact with Sergeant Barry? 11:46  
16 A. I suppose firstly these nine allegations came out of  
17 the blue to me, I had to check back on my own  
18 documentation to try and find out, you know, what  
19 exactly went on at the time. Sergeant Barry was out  
20 sick, so there was no interaction at this time, and I 11:46  
21 didn't know. In my head, up until when I got the phone  
22 call from Assistant Commissioner Nolan, it was  
23 something got to do with the service of the Regulation  
24 10 notices, was the reason Sergeant Barry was out sick  
25 and he an issue with me. It was only in January '13 11:47  
26 that I realised, January and February when I got the  
27 various documentation, that he had this number of  
28 issues with me.  
29 130 Q. Well, I suppose you would have made the assumption that

1 Sergeant Barry was going to return to work at some  
2 point in time, is that right?

3 A. Yes.

4 131 Q. Did you apply your mind to how it was that you were  
5 going to interact with him because effectively he had 11:47  
6 made serious allegations of bullying against you and it  
7 was being investigated as a disciplinary matter  
8 certainly and you were very shortly thereafter to  
9 become aware of the fact that it was going to be  
10 investigated as a criminal matter as well? 11:48

11 A. Yes.

12 132 Q. So therefore, he'd effectively become a complainant in  
13 a criminal case. I mean, how did you think that you  
14 were going to be able to react to him, leave aside how  
15 he was going to react to you, how were you going to be 11:48  
16 able to react to him in the circumstances?

17 A. Well, if Sergeant Barry had come back at that very  
18 time, I'd just have to do my job, I would continue to  
19 react to him the same way as I had. As in, he's the  
20 sergeant in charge of a unit, I'm the superintendent in 11:48  
21 charge of the district, we have to work together. We  
22 can't provide a policing service if we don't work  
23 together.

24 133 Q. Perhaps that's not ideal in the circumstances?

25 A. I genuinely didn't think that we couldn't work 11:48  
26 together. Of course it wouldn't be ideal, but I, when  
27 I saw these various allegations, knew that I had  
28 documentation to prove that in my opinion I wasn't  
29 guilty of any of these breaches and I just felt, you

1 know, if Sergeant Barry comes back, sure he's in charge  
2 of the unit, I have to deal with him and he has to deal  
3 with me, we don't have a choice.

4 134 Q. Did you consult with Chief Superintendent Dillane at  
5 all at that time about this issue? 11:49

6 A. I know I would have said it to him.

7 135 Q. Well, I assume --

8 A. You know, and --

9 136 Q. I assume you would have advised him --

10 A. Yes. 11:49

11 137 Q. -- about the bullying and harassment case. Did you  
12 advise him of the disciplinary matter?

13 A. Yes, yes.

14 138 Q. And did you advise him of the criminal matter --

15 A. Yes. 11:50

16 139 Q. -- as it arose?

17 A. Yes. But it would be to advise him, you know, to let  
18 him know that these things were going on, because the  
19 paperwork was coming direct to me rather than through  
20 him, obviously. 11:50

21 140 Q. Okay. So if we then just move on, I think that on 11th  
22 March of 2013, you replied to Chief Superintendent  
23 Kehoe's correspondence and you set out in a report your  
24 reply to Sergeant Barry's allegations, which were being  
25 investigated as a breach of discipline, isn't in a 11:50  
26 right?

27 A. That's correct.

28 141 Q. You had earlier, on 26th February 2013 -- no, on the  
29 5th March, I beg your pardon, 2013, responded to the



1 eight allegations that had been made by Sergeant Barry  
2 in the bullying and harassment allegations, isn't that  
3 right?

4 A. That's correct.

5 142 Q. You entered into various correspondence, I don't intend 11:51  
6 to open any of this, unless you wish me to do so.

7 A. No.

8 143 Q. But you received correspondence on the 12th March from  
9 Chief Superintendent Kehoe seeking clarification in  
10 relation to two of the bullying allegations and you 11:51  
11 sent a report on the 12th March to her, covering those  
12 issues.

13 A. That's correct.

14 144 Q. Then, on 13th March 2013, you received a call from  
15 Chief Superintendent Kehoe requesting a copy of the 11:52  
16 file that was sent to the Director of Public  
17 Prosecutions in relation to the sexual assault of the  
18 young person, isn't that right?

19 A. That's correct.

20 145 Q. I think on 14th March 2013 you were contacted by 11:52  
21 Detective Inspector Leahy to organise the collection of  
22 the DPP file and you made a note of that in your  
23 journal. And on 22nd March of 2013, you attended  
24 Thurles Garda Station, where you were interviewed in  
25 relation to Sergeant Barry's eight allegations under 11:52  
26 the policy, isn't that right?

27 A. That's correct.

28 146 Q. I think you were interviewed by Chief Superintendent  
29 Kehoe and Detective Inspector Leahy?

1 A. That's correct.

2 147 Q. Now, on the 28th March you received another call from  
3 Chief Superintendent Kehoe and you received a welfare  
4 call on the same day from Assistant Commissioner  
5 Anthony Quilter, isn't that right? 11:53

6 A. That's correct.

7 148 Q. And I think that was purely a welfare call enquiring  
8 after your welfare, which would be normal practice,  
9 isn't that right?

10 A. Yeah, when you're under investigation that would be 11:53  
11 normal practice.

12 149 Q. All these events are recorded in your official journal,  
13 is that right?

14 A. That's correct.

15 150 Q. Now, I think on Saturday, 30th March of 2013, you were 11:53  
16 contacted by Inspector Tony O'Sullivan, who was  
17 updating you in relation to a hijacking investigation.  
18 But during the course of the conversation he told you  
19 that Sergeant Barry had resumed duty the night before,  
20 isn't that right? 11:54

21 A. That's correct.

22 151 Q. Now, you then rang Chief Superintendent Dillane, is  
23 that right?

24 A. That's correct, yeah.

25 152 Q. Would you just tell us about the conversation that you 11:54  
26 had at that time with Chief Superintendent Dillane?

27 A. I was aware at the time that Sergeant Barry had a  
28 medical cert saying that he was unfit for duty up to  
29 the 1st April, I believe, and also that the CMO had

1 said he was unfit for duty. And I felt there was a  
2 risk if Sergeant Barry was on duty with those two  
3 medical certs still standing, so I rang Chief  
4 Superintendent Dillane and said, Sergeant Barry has  
5 returned to work, we have the two medical certs, how 11:55  
6 are we fixed or are we okay to let him work. You know,  
7 I was looking for his opinion really, I think.

8 153 Q. And I think that he indicated that he'd make enquiries  
9 and seek advice from HRM, is that right?

10 A. That's correct. 11:55

11 154 Q. And I think that he rang you back half an hour later  
12 and informed you that he had received advice from  
13 Assistant Commissioner Fanning?

14 A. Correct.

15 155 Q. That it was in order to allow Sergeant Barry to return 11:55  
16 to work and the matter would be followed up with  
17 paperwork on Tuesday, 2nd April. I think it was  
18 Easter.

19 A. Bank holiday weekend, yeah.

20 156 Q. The Easter break, at that time. At this point in time 11:56  
21 there was obviously interaction between Inspector  
22 O'Sullivan and Sergeant Barry and you're aware of the  
23 allegation that's made by Mr. Barry in his evidence,  
24 but also you're aware that when you made your statement  
25 that he had made a statement to this effect; that you 11:56  
26 or Chief Superintendent Dillane had caused Inspector  
27 O'Sullivan to attend at Mitchelstown Garda Station at  
28 9pm at night in full uniform to inspect Sergeant Barry?

29 A. Yeah.

1 157 Q. what do you say in relation to that allegation?  
2 A. I didn't tell direct, ask Inspector O'Sullivan to  
3 inspect Sergeant Barry. My recollection is that  
4 communications came through the channels that a  
5 doctor's cert would be required were Sergeant Barry 11:57  
6 saying that he was fit to return to work. And I am not  
7 sure did I forward it to Inspector O'Sullivan or did I  
8 say it to Inspector O'Sullivan, but it certainly would  
9 have been passed to Inspector O'Sullivan. Probably not  
10 through me. But I was definitely aware that Sergeant 11:57  
11 Barry was to be asked for a certificate. Obviously  
12 coming from the phone call that I had made on the  
13 Saturday evening.

14 158 Q. I suppose the suggestion is that Inspector O'Sullivan  
15 was told to go there in full uniform and conduct an 11:58  
16 inspection in some way that was designed to intimidate  
17 Sergeant Barry?

18 A. No, that never happened.

19 159 Q. Now, you note in your statement that on Thursday, 4th  
20 April, at quarter past four, you spoke with Chief 11:58  
21 Superintendent Dillane about the medical certificate  
22 that had been received from Sergeant Barry, is that  
23 right?

24 A. That's correct.

25 160 Q. And you also, at twenty to six or thereabouts, you 11:58  
26 spoke with Inspector Tony O'Sullivan regarding the  
27 medical certificate, isn't that right?

28 A. Yes.

29 161 Q. And if we just have that certificate up on the screen,

1           it's at page 388 of the material. scroll down. This  
2           is the certificate:  
3  
4           "Mr. Paul Barry is fit to return to work under certain  
5           circumstances. Mr. Barry should not work or attend at 11:59  
6           Fermoy Garda Station and he should not come into  
7           contact with Superintendent Michael Comyns."  
8  
9           Now, did that cause you concern at the time?  
10          A.    Yes, it did. 11:59  
11 162    Q.    And on the 5th April, Friday, the 5th April, I think  
12           that you had a conversation with Inspector O'Sullivan  
13           regarding Fermoy district court, but you also discussed  
14           the medical certificate with him, is that right?  
15          A.    Yes. 11:59  
16 163    Q.    And you again at 10.47am spoke with Chief  
17           Superintendent Dillane regarding the medical  
18           certificate. So there's a great deal of discussion  
19           about the medical certificate, is that right?  
20          A.    There was a lot of discussion, yes. 12:00  
21 164    Q.    In what context was it discussed in terms of, was the  
22           authenticity of the certificate being called into  
23           question?  
24          A.    From my point of view, how was this going to work, is  
25           the question I was asking. How can this -- how can I 12:00  
26           do my job or how can Sergeant Barry do his job with  
27           this medical certificate.  
28 165    Q.    Is that all you were concerned about at the time?  
29          A.    That was my concern.

1 166 Q. I mean, you weren't concerned that this in some way was  
2 a forgery or otherwise?  
3 A. No.  
4 167 Q. Or that had been penned by Sergeant Barry?  
5 A. No. 12:01  
6 168 Q. So you were concerned about the declaration in it and  
7 the statement in it that had been made by the doctor?  
8 A. Very much so.  
9 169 Q. And that this was going to cause problems?  
10 A. Well, just, I could foresee that I couldn't run a 12:01  
11 district if there was a sergeant who could not come  
12 into contact with me, or the sergeant couldn't do his  
13 job if he can't into the divisional headquarters, which  
14 is also the district headquarters, and where I had  
15 directed all sergeants to be twice a day. 12:01  
16 170 Q. In your conversations at the time with Inspector  
17 O'Sullivan and Chief Superintendent Dillane about the  
18 medical certificate, did either of them question the  
19 authenticity of the document to you or express any  
20 concerns about its authenticity? 12:02  
21 A. I don't believe so, no. Our conversations were, how is  
22 this going to work or how can this work?  
23 171 Q. Now, we know that in Inspector O'Sullivan called to see  
24 Dr. Kiely about the medical certificate, you're aware  
25 of that? 12:02  
26 A. I am.  
27 172 Q. The suggestion that you might have caused him to go  
28 there to question the medical certificate, did you have  
29 any role in relation to that?

1 A. No. No, I did not.

2 173 Q. I think if we move forward then to the 8th April, which  
3 was a Monday, I think that you spoke with Chief  
4 Superintendent Dillane and he informed you about a case  
5 conference on Sergeant Barry with the CMO? 12:03

6 A. That's correct.

7 174 Q. Can you just tell us about that, if you wouldn't mind,  
8 that conversation that you had with Chief  
9 Superintendent Dillane?

10 A. Again the exact words, I don't know, but it was a 12:03  
11 conference, a CMO conference had been organised to  
12 discuss Sergeant Barry's return to work and the medical  
13 cert.

14 175 Q. We know that on Tuesday, the 9th April that  
15 superintendent -- 12:04

16 A. Sorry, Mr. Marrinan, can I go back on the last question  
17 as well?

18 176 Q. Yes.

19 A. Normally with a case conference the district officer  
20 and divisional officer are requested to go to a case 12:04  
21 conference.

22 177 Q. Yes.

23 A. So that was discussed as well and we decided it was  
24 better if I did not attend any case conferences,  
25 because of the medical cert. 12:04

26 178 Q. So you didn't attend that one or any subsequent case  
27 conferences?

28 A. Any case conferences, no.

29 179 Q. Now, we know that on Tuesday, the 9th April, at 9pm,

1 Chief Superintendent Dillane and Inspector O'Sullivan  
2 met with Sergeant Barry at 9pm outside Mitchelstown  
3 Garda Station and went in and had a meeting in the  
4 sergeant's office. Were you aware that that meeting  
5 was taking place? 12:04

6 A. I believe I was. I think I was, yeah.

7 180 Q. What were you told about it?

8 A. I knew that Chief Superintendent Dillane had been at  
9 the case conference, so he was just updating him on --  
10 updating Sergeant Barry on the details from the case 12:05  
11 conference.

12 181 Q. Well, did Chief Superintendent Dillane tell you prior  
13 to the meeting that he was going to meet with Sergeant  
14 Barry?

15 A. He must have, because I was aware they were going to 12:05  
16 meet with him, but I didn't know -- I don't think I  
17 knew it was nine o'clock in Mitchelstown or whatever,  
18 but I knew he was going to meet with Sergeant Barry  
19 after the case conference.

20 182 Q. Would it normally be your function to meet with a 12:05  
21 member in those circumstances?

22 A. Yes, it would. Yeah, it would. You see, it was so  
23 awkward, I hadn't been at the case conference and I  
24 should have been at the case conference.

25 183 Q. Right. 12:05

26 A. So normally I would be, as the district officer, the  
27 person going to the person who is out sick in relation  
28 to what happened at the case conference.

29 184 Q. Yes. And so, was it decided that you wouldn't attend



1 the case conference and that Chief Superintendent  
2 Dillane would go but that he would go with Inspector  
3 O'Sullivan?

4 A. It was decided that I wouldn't attend the case  
5 conference and obviously I couldn't go to Sergeant 12:06  
6 Barry, so it had to be Chief Superintendent Dillane.  
7 He was the person at the case conference.

8 185 Q. Okay. Did you discuss at that time with Chief  
9 Superintendent Dillane how he was going to approach  
10 Sergeant Barry and the dilemma that -- 12:06

11 A. No.

12 186 Q. -- you all found yourself in?

13 A. No.

14 187 Q. Was there any discussion between you and Chief  
15 Superintendent Dillane about the possibility that 12:07  
16 perhaps the best thing that should be done in the  
17 circumstances was to offer Sergeant Barry a transfer  
18 out of the district?

19 A. No, not at that time.

20 188 Q. Was that not mentioned at all? 12:07

21 A. I don't believe so.

22 189 Q. At that time?

23 A. I don't believe it was.

24 190 Q. Right. Did you see that as being an option that should  
25 be explored? 12:07

26 A. I know I did afterwards, at that time I'm not sure. At  
27 that time my mind was, how is this going to work, how  
28 are we going to run the district? How am I going to  
29 run the district if this medical cert is standing?

1 191 Q. Well, we know that shortly after or around about the  
2 same time as that meeting there was a fatal fire that  
3 took place in the district?  
4 A. Correct.

5 192 Q. And I think that at 10.42pm Inspector Tony O'Sullivan 12:08  
6 contacted you to inform you about the fatal fire, is  
7 that right?  
8 A. That's correct.

9 193 Q. I think at 7.39am the next morning, Wednesday, 10th  
10 April, Sergeant Liam Kelleher updated you in relation 12:08  
11 to the investigation into the cause of the fire, as did  
12 Inspector O'Sullivan in a call that he made with you at  
13 7.49am, isn't that right?  
14 A. That's correct.

15 194 Q. I think at 8.06am you rang Chief Superintendent Dillane 12:08  
16 and you updated him on the fatal fire and the criminal  
17 investigation that was taking place, is that right?  
18 A. That's correct.

19 195 Q. I think you received another call to update you from  
20 Inspector O'Sullivan at 12.44pm on the 10th April, is 12:09  
21 that right?  
22 A. That's correct, yeah.

23 196 Q. I think you made notes in relation to all those events  
24 in your diary, is that right?  
25 A. I did. My journal. 12:09

26 197 Q. So if we could just have page 733 up on the screen.  
27 This was a letter that was sent to you by Chief  
28 Superintendent Dillane and it is date stamped 11th  
29 April 2013. And it's re: The fatal fire. Then it

1 sets out the address. In the second paragraph it says:

2

3 "Communication from this office dated 3rd August 2012  
4 (copy attached) clearly states that a report on all  
5 critical incidents should be reported to the regional 12:10  
6 office within 30 minutes of the incident occurring,  
7 with a follow up report submitted to the regional  
8 office by 8.15am the following morning.

9

10 This was not adhered to in this case and I require a 12:10  
11 full explanation as to why this direction was not  
12 compiled with in respect of this incident." So this is  
13 addressed to you, asking for a full explanation why the  
14 direction wasn't adhered to, isn't that right?

15 A. Correct. 12:10

16 198 Q. Then if we just look at the direction, 734 up on the  
17 screen, Mr. Murphy, please. If we look at the top  
18 there, we will see it is addressed to each  
19 superintendent and inspector. It says:

20

21 "The directions of assistant commissioner, southern  
22 region, are set out here under in relation to the  
23 reporting of critical incidents is forwarded for your  
24 information and attention."

25

26 And that was sent on 3rd August of 2012, isn't that  
27 right?

28 A. That's correct.

29 199 Q. We will see that it is addressed to Fermoy, Mallow

1 district office, Midleton, was this the date on which  
2 the direction was given?

3 A. That's the date it was sent out from the assistant  
4 commissioner's office.

5 200 Q. Pardon? 12:11

6 A. Oh sorry, that's the date it was sent out by the  
7 divisional office.

8 201 Q. All right?

9 A. Yes, to the various districts.

10 202 Q. So the direction was given at that time. And then, if 12:12  
11 we scroll down, we will see the actual direction to  
12 each divisional officer. If we look at the second  
13 paragraph there:

14

15 "In compliance with the directions of the deputy 12:12  
16 commissioner, operations, all critical incidents will  
17 be reported to the office of the deputy commissioner,  
18 operations by regional offices within 30 minutes of the  
19 incident occurring. Such reports will be made as  
20 follows. . . " 12:12

21

22 And then it sets out -- now, I don't think that was an  
23 issue here, is that right?

24 A. No, that wasn't an issue, it was reported.

25 203 Q. Then, if we scroll down, we will see: 12:12

26

27 "Following the initial notification, a full report on  
28 the incident signed by the relevant district  
29 officer --" which would be you in this case, isn't

1           that right?

2           A.    Yes.

3 204    Q.    "-- acting district officer or superintendent on call,  
4           will be forwarded to the regional office via e-mail  
5           to -- " and the address is out "-- before 8.15am the    12:13  
6           following day. "

7

8           So it was your obligation in the circumstances to --

9           A.    Correct.

10 205    Q.    "-- sign a report that was sent to the divisional    12:13  
11           office, is that right?

12           A.    That's correct.

13 206    Q.    And that wasn't complied with in this case?

14           A.    Correct.

15 207    Q.    This wasn't something that you yourself had spotted and    12:13  
16           hadn't caused you any concern at that juncture?

17           A.    No.

18 208    Q.    And it was only when you received this, that you  
19           realised that this direction hadn't been complied with  
20           by you, isn't that right?    12:13

21           A.    Correct.

22 209    Q.    But then a query arose in relation to Sergeant Barry  
23           and his role in relation to this?

24           A.    Yes.

25 210    Q.    will you just explain how that came about?    12:14

26           A.    Okay. The direction here from the assistant  
27           commissioner of August '12 is not a new direction. As  
28           long as I am in An Garda Síochána, if an incident  
29           happens, once upon a time called a significant

1 incident, now called a critical incident, the members  
2 at the scene would be expected to complete a report for  
3 the district officer. And depending on the incident  
4 then, the district officer would forward that report,  
5 if he felt it was significant enough, for the 12:14  
6 information of the divisional officer, regional officer  
7 and right up the line in An Garda Síochána. This  
8 reporting is in the Garda Code, Garda Code 33.10, and  
9 again, as I say, has been a direction within An Garda  
10 Síochána for as long as I can remember. The whole 12:15  
11 purpose of the direction is that if something very  
12 serious happens, that people on the senior leadership  
13 team in An Garda Síochána would be aware of the  
14 incident prior to media coverage or anything like that,  
15 that they'd know what happened and exactly what 12:15  
16 happened. It is the responsibility of the sergeant on  
17 duty at the particular time to ensure the report is  
18 submitted, and always has been.

19 211 Q. Well, is it not that the report has to be submitted to  
20 you? 12:16

21 A. To me, yes.

22 212 Q. Yes. For your signature?

23 A. For my signature or whoever is acting for me if I'm not  
24 there, yeah.

25 213 Q. Just say in instance, for your approval and your 12:16  
26 signature?

27 A. Correct.

28 214 Q. And then that is forwarded. That didn't occur in this  
29 case?

1 A. That didn't occur here.

2 215 Q. And you didn't notice that it didn't occur?

3 A. No.

4 216 Q. So you weren't in compliance with it?

5 A. I wasn't. 12:16

6 217 Q. And strictly speaking, you should have spotted it and  
7 contacted whoever it was who was investigating --

8 A. Correct.

9 218 Q. -- the matter to send in a full report to you?

10 A. Correct. 12:16

11 219 Q. But you immediately sent a letter then out, if we have  
12 737 up on the screen, this was a letter sent out by you  
13 to the sergeant in charge, if you scroll down,  
14 Mr. Murphy, referring to the attached correspondence  
15 from Chief Superintendent Dillane. And in the second 12:16  
16 paragraph you say:

17

18 "I have not received a report on this fatal fire as of  
19 today's date.

20 12:17

21 An immediate and full explanation is required as to why  
22 a report was not completed and forwarded. I have had  
23 to rely on the Pulse incident and the form C71 when  
24 details relating to this fatal fire were requested. "  
25 12:17

26 So, we know then that a report was sent in by Garda  
27 ward.

28 A. Yes.

29 220 Q. And that's at page 739 of the materials, and he says:

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"In relation to the attached, a report was not completed by me as I did not have the opportunity to create a report on the matter, I was working --"

12:18

And then sets out the period of time he was working. He says:

"I would gladly have taken a call in relation to a matter of such a serious nature. As are you aware, I had regular contact with Inspector O'Sullivan on the night in question and also on the morning and afternoon of the postmortem."

12:18

That appears to be correct, isn't that right?

12:18

A. That's correct.

221 Q. Then if we have page 738 on the screen, this is Sergeant Aidan Dunne:

"Report of Garda Ward forwarded for your information please."

12:18

And then you note, I think that's your handwriting there.

A. It is.

12:18

222 Q. "A sergeant and five gardaí attended the scene. I require a full explanation as to why a report on the incident was not completed and forwarded before the end of the tour of duty."



1  
2 So the matter is, as it were, becoming escalated at  
3 that time in terms of what you were requiring. And the  
4 focus appears to have been on Sergeant Barry and a  
5 report from Sergeant Barry as to why he hadn't sent you 12:19  
6 a report, isn't that right?

7 A. Correct. Can I say, Mr. Murrinan, it's not that  
8 Sergeant Barry has to send a report; Sergeant Barry  
9 should have ensured that a report was sent. The author  
10 of the report really doesn't matter once the details 12:19  
11 are in the report. But it would be Sergeant Barry's  
12 responsibility to ensure that a report was sent.

13 223 Q. Okay. We have page 742 up on the screen. And that's  
14 the hand written report from Sergeant Barry. If we  
15 scroll down. We have seen this before. 12:20

16 A. Yes.

17 224 Q. And he says he requested that Garda Ward complete a  
18 detailed report on form C71 and told him he was to  
19 leave a copy for the district officer at Fermoy. So  
20 the C71 is a document that goes to the coroner and also 12:20  
21 to the district officer, isn't that right?

22 A. Yeah. To the district office, just as a copy of what  
23 has been sent to the coroner.

24 225 Q. Yes. And was that done in this case, do you know?

25 A. It was. 12:20

26 226 Q. It was. So the complaint was that you had the Pulse  
27 entry --

28 A. Correct.

29 227 Q. -- in relation to the matter, you had the C71 but you

1 didn't have a report from the investigating member and  
2 you queried as to why you didn't have that report and  
3 Sergeant Barry as a supervisor should have ensured that  
4 the report be sent to you, isn't that right?

5 A. And also the details on the C71 and the Pulse incident 12:21  
6 would not be detailed enough to send a report to the  
7 regional office.

8 228 Q. Yes. Well, we know that Mr. Barry, when he was giving  
9 his evidence, quarrelled with that, and you know,  
10 there's an issue as to whether or not there's 12:21  
11 sufficient detail in the C71, and Mr. Murphy in  
12 cross-examination went through that and what was  
13 required and what wasn't required and what wasn't on  
14 the C71. But is there any point that you wish to make  
15 in relation to it in particular? 12:22

16 A. Yes. If we could look at Garda Ward's report of the  
17 16th April, which is on page 740, I believe.

18 229 Q. Yes.  
19 A. 740 and 741.

20 230 Q. Yes, 740. 12:22  
21 A. Yes.

22 231 Q. It's 16th April 2013. If we scroll down, Mr. Murphy.  
23 A. This is the report that should have been submitted on  
24 the night and this is the type of detail that is  
25 required. Almost all the detail that's in this report 12:22  
26 was available on the night, except the matters  
27 pertaining to the postmortem. So, you can see on this  
28 details in relation to the fire brigade, details in  
29 relation to, I think it is a bother of the deceased and

1 the glass in the stove being broken. That's the type  
2 of detail that is required in a report that we would be  
3 forwarding to the regional office. That's not on the  
4 C71 and that's not on the Pulse incident.

5 232 Q. So then, if we move on then, I think that you forwarded 12:23  
6 Sergeant Barry's report to Chief Superintendent Dillane  
7 on 8th May of 2013?

8 A. Yes.

9 233 Q. And if we have page 743 up on the screen, please. Can 12:23  
10 we scroll down. You see:

11  
12 "Sergeant Barry was working and attended at this fatal  
13 fire. His report in relation to your query of 11th  
14 April 2013 is attached.

15 12:24  
16 Due to the ongoing investigation, I will not make any  
17 comment/recommendation in relation to this matter."

18  
19 Did you believe that this might have been a matter on  
20 which Sergeant Barry could have been disciplined? 12:24

21 A. No, I didn't really. You know, it's --

22 234 Q. What sort of comment or recommendation would you have  
23 anticipated that you might have made had you not been  
24 the accused, as it were?

25 A. Really, what I was saying here was to the 12:24  
26 superintendent was: This is what I was talking  
27 about -- this is what I was talking about when I was  
28 saying, how can this work in the district when the  
29 medical cert is valid.

1 235 Q. Okay. So here we are at the very outset, as it were,  
2 of Sergeant Barry's return to work and a problem has  
3 been identified --

4 A. Yes.

5 236 Q. -- almost immediately in this investigation, is that 12:25  
6 right?

7 A. In the normal circumstances I would have rang the  
8 sergeant and said, will you get someone to get a report  
9 into me straightaway.

10 237 Q. Well, I suppose in the circumstances here you could 12:25  
11 simply have phoned one of the investigating members and  
12 asked them to get a report in?

13 A. Yeah, I could have.

14 238 Q. Or you could have spoken to Inspector O'Sullivan and  
15 told him to arrange to get a report in? 12:25

16 A. Yes.

17 239 Q. But in any event, the matter was considered by Chief  
18 Superintendent Dillane and his response is at page 744  
19 of the material. And he says in the second paragraph  
20 there, this is date stamped 10th May 2013: 12:26  
21

22 "I have noted Sergeant Barry's report. In future for  
23 any critical incident that occurs in your district, I  
24 expect a comprehensive report to be submitted by the  
25 working sergeant in line with Assistant Commissioner 12:26  
26 Quilter's minute dated 3rd August 2013. "

27

28 That is not actually the direction that's in Assistant  
29 Commissioner Quilter's direction, is it?

1 A. No.

2 240 Q. It's not, is it?

3 A. It's not, no.

4 241 Q. I mean, the obligation was on the superintendent to  
5 sign a report and send it on the divisional 12:26  
6 headquarters?

7 A. Correct.

8 242 Q. This is laying an additional emphasis now on the role  
9 of a working sergeant that isn't reflected anywhere in  
10 the previous directions that had been given by 12:27  
11 Assistant Commissioner Quilter, is that not right?

12 A. I'll go back to what I said earlier in relation to the  
13 reporting of these incidents. It was a long built up  
14 practice that the working sergeant would ensure a  
15 report was submitted, for years and years, and it was 12:27  
16 accepted within An Garda Síochána that a report would  
17 be forwarded when an incident happened.

18 243 Q. We note there on that document, if we scroll down,  
19 Mr. Murphy, that that was then forwarded on to the  
20 sergeant in charge. And you just note there: 12:27  
21

22 "For your information and that of Sergeant Barry, who  
23 should note --"

24

25 Is that? 12:28

26 A. "Note and return".

27 244 Q. Yes, okay. So that was the end of the matter?

28 A. Correct.

29 245 Q. I mean, there wasn't any discipline issues that arose

1 or reprimands?

2 A. No.

3 246 Q. And then, if we look at page 745, just for completeness  
4 on that issue, we see that Sergeant Barry has noted and  
5 returned and then you see the sergeant in charge. So, 12:28  
6 you're aware of the fact that this is one of the issues  
7 that Mr. Barry has identified in his evidence and also  
8 in his statement to the Tribunal, that this was  
9 evidence of targeting of him?

10 A. Correct. 12:29

11 247 Q. And, as it were, implied an unfair criticism of his  
12 work in circumstances where he had just returned to  
13 work. What do you say in answer to that allegation?

14 A. It was Sergeant Barry's responsibility on the night to  
15 ensure a report, a written report, not a verbal report, 12:29  
16 was submitted before the end of the tour of duty. And  
17 that did not happen.

18 248 Q. Okay.

19 A. And from my point of view, all I was saying to Sergeant  
20 Barry in the correspondences were, if an incident 12:29  
21 happens again, just ensure that a report is submitted.

22 249 Q. Now, if we just move on then to deal with the issue  
23 concerning the force majeure leave. I think on 19th  
24 April of 2013, you forwarded a report of Chief  
25 Superintendent Dillane, setting out details that had 12:30  
26 been taken -- of force majeure leave that had been  
27 taken by Sergeant Barry on the 15th, the 16th and the  
28 17th of April, isn't that right?

29 A. That's correct.

1 250 Q. If we just in the first instance, when we come to look  
2 at this, if we look at page 747. This is a letter from  
3 Inspector O'Sullivan to Sergeant Barry dated 12th April  
4 2013. He deals with the applications for various  
5 dates, some of which he granted, some of which he 12:31  
6 didn't. In the normal course of events would this be a  
7 matter that would be dealt with by you or by Inspector  
8 O'Sullivan?

9 A. At this time I believe whoever was working on a  
10 particular day. If I wasn't working, Inspector 12:31  
11 O'Sullivan dealt with all the district office  
12 correspondence; if I was working, I dealt with it.

13 251 Q. Okay. So it's just pure chance that Inspector  
14 O'Sullivan came to deal with the application?

15 A. I think so. 12:32

16 252 Q. Yes. And you'll see there in the third paragraph down:  
17  
18 "I have sanctioned all other dates with the exception  
19 of the 15th and 16th April 2013 due to sergeant in  
20 charge at Mitchelstown being already on annual leave." 12:32  
21  
22 And then a direction to resubmit the application for  
23 the 17th of April. And then if we just scroll over to  
24 the next page, 748, we see the actual application,  
25 where it says: 12:33  
26  
27 "I have availed of force majeure leave as provided by  
28 section 13 of the Act for the following reasons..."  
29

1           And then it says:  
2  
3           "Owing to an illness and injury, my immediate presence  
4           was required in the family home to look after my wife  
5           and family, and as such, I was indispensable." 12:33  
6  
7           Then the dates that it was taken, the 15th, the 16th  
8           and the 17th April. And that is dated 18th April 2013,  
9           and was submitted on that date by Sergeant Barry.  
10 12:33  
11           So, did that give rise to a cause of concern for you at  
12           that juncture?  
13           A.    The submission of the FM1?  
14 253 Q.    Yes. The taking of leave in those circumstances.  
15           A.    Well, it explained why were Sergeant Barry had been for 12:34  
16           the three days. I don't believe I was aware of his  
17           application prior to this, his application for leave.  
18           It was only when I asked Inspector O'Sullivan, when he  
19           wasn't on duty, what is the story with Sergeant Barry?  
20 254 Q.    Right. If we have page 746 up on the screen. This is 12:34  
21           the letter that you wrote to Chief Superintendent  
22           Dillane on this matter?  
23           A.    Yes.  
24 255 Q.    It's dated 19th April of 2013. And if we scroll down,  
25           you set out the background of it? 12:35  
26           A.    Yeah.  
27 256 Q.    And it just simply reflects the report that you had  
28           received --  
29           A.    Mm-hmm.



1 257 Q. -- from Inspector O'Sullivan. And then you note in the  
2 second last paragraph:  
3  
4 "On the 15th, 16th and 17th April, Sergeant Barry did  
5 not report for duty. Neither Inspector O'Sullivan or I 12:35  
6 were contacted nor had any idea why Sergeant Barry was  
7 not at work. Again due to the ongoing investigation I  
8 could not perform my duty as district officer in  
9 relation to a member who at that time, as far as I was  
10 concerned, was absent without leave." 12:35  
11  
12 The reference there to "again due to ongoing  
13 investigation" is that a reference back to the issue  
14 concerning the fatal fire?  
15 A. Fire, yes. 12:35  
16 258 Q. Yes.  
17 A. Which, I believe, both reports were on the same day, if  
18 I am not mistaken.  
19 259 Q. Yes.  
20 A. I think they were both on the 19th April. 12:36  
21 260 Q. No, the report in relation to that was --  
22 CHAIRMAN: That was the investigation involving  
23 allegations against Superintendent Comyns, isn't that  
24 right?  
25 261 Q. MR. MARRINAN: That refers to the 8th May, that letter 12:36  
26 was sent. But in any event, you then in the second  
27 last -- yes, you note:  
28  
29 "Sergeant Barry's notice of force majeure leave now

1 explains his absence for the three dates in question  
2 but in my opinion contact should have been made with  
3 Inspector O'Sullivan on the 14th/15th April to explain  
4 his absence."

12:37

6 And again, that's sent forward but it is sent forward  
7 without any recommendation, isn't that right?

8 A. I just reported the matter to the chief superintendent,  
9 yeah.

10 262 Q. Yes. Did you consider making a recommendation that  
11 maybe this should be looked at from a disciplinary  
12 point of view?

12:37

13 A. No. No, I didn't consider that, no.

14 263 Q. And you had no part in the subsequent disciplinary  
15 investigation that was ordered and conducted, is that  
16 right?

12:37

17 A. My only part was making a statement to Superintendent  
18 Lehane when he requested a statement.

19 264 Q. Now, if we can then just move to page 749 of the  
20 material, please. This was a letter that you did send  
21 to Chief Superintendent Dillane on the same day as the  
22 last one. And we might just consider this. You say:

12:38

23  
24 "I refer to the above and the attached medical  
25 certificate. It is over two weeks now since this  
26 medical certificate was received and I am requesting  
27 advice and direction on how I am to perform my duties  
28 as district officer, taking into account the conditions  
29 set out in the medical certificate.

12:38

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29

In my opinion Sergeant Barry cannot perform the duties which I as district officer require him to perform, whilst these conditions are accepted as part of his medical fitness to return to work. Neither can I perform my duty as district officer by having a medical doctor certify that I cannot come in contact with a sergeant over whom I have supervisory and managerial responsibility.

12:38

12:39

This certificate, if it is taken at face value, means that I cannot call to Mitchelstown Garda Station at any time while Sergeant Barry is on duty. It also means that Sergeant Barry cannot work or attend at Fermoy Garda Station even in the middle of the night when he is on duty."

12:39

Then you say:

"A number of issues have arisen since Sergeant Barry's return to work and I have not been able to deal with them because of the medical certificate.

12:39

I would be obliged to receive advice and direction on how I am to perform my duty in the above circumstances."

12:39

So, I mean, it is something you obviously felt quite strongly about at that time and you're looking for

1 directions from your Chief Superintendent, isn't that  
2 right?

3 A. Yes, yeah.

4 265 Q. And I suppose it was ultimately with a view to perhaps  
5 having the matter considered by HRM?

12:40

6 A. Again, I suppose I would probably say I was putting  
7 pressure on the chief superintendent saying, how can I  
8 do my job or how can Sergeant Barry do his job? It's  
9 going right back to my very first thoughts when I saw  
10 the medical cert. It was just unworkable in my  
11 opinion.

12:40

12 266 Q. In your statement you refer to this letter and the  
13 second last paragraph, where you say:

14

15 "A number of issues have arisen since Sergeant Barry's  
16 return to work..."

12:40

17

18 You highlight those again at page 557 of your  
19 statement. If we just look at that. You say -- scroll  
20 down, Mr. Murphy --:

12:41

21

22 "The issues which had arisen were:

23

1. Reporting on the house fire;

24

2. The force majeure leave;

25

3. Lack of attendance at PAF meeting."

12:41

26

27 Had he in fact not attend a PAF meeting that he was  
28 scheduled to attend at that stage?

29 A. I am not certain but he must have had because that was

1 my thought, or perhaps there was a PAF meeting coming  
2 up, I'm not certain.

3 267 Q. "Lack of oversight of unit B - which meant no line of  
4 sight over four garda members in Mitchelstown and two  
5 other gardaí in other garda stations." 12:41

6  
7 what's that a reference to?

8 A. Those are the people that Sergeant Barry would be  
9 supervising. So he is their supervisor, so I had no --

10 268 Q. You had no oversight through him of them? 12:41

11 A. Of that unit, yes.

12 269 Q. Well, had that caused any particular problem or was it  
13 something that you were guarding against?

14 A. Guarding against, rather than any particular problem at  
15 this stage. 12:42

16 270 Q. And then number 5:

17  
18 "Lack of oversight of the investigations undertaken by  
19 unit B." 12:42

20  
21 How would that arise? 12:42

22 A. That would be referring to the PAF meeting again. At  
23 the PAF meeting we would have a list of ongoing  
24 investigations for each of the units, which would be  
25 carried forward to each PAF meeting until a file was 12:42  
26 submitted. So, when Sergeant Barry wasn't attending  
27 the PAF meetings, I could not question what was  
28 happening in those investigations or where we were at  
29 in the investigations or what had to be done in the

1 investigations.

2 271 Q. If I could just ask you this, superintendent: These  
3 were fairly unique circumstances, would it be fair to  
4 say?

5 A. Very. 12:43

6 272 Q. And were obviously taxing you and Chief Superintendent  
7 Dillane, but were also taxing Sergeant Barry as well?

8 A. Of course.

9 273 Q. And one can readily understand it would be difficult  
10 for all those concerned to have interactions on a 12:43  
11 day-to-day basis that could be cordial in what must  
12 have been fairly stressful circumstances, would you  
13 agree with that?

14 A. I would.

15 274 Q. We know that a compromise was suggested by Séan 12:43  
16 Costello & Company on behalf of Sergeant Barry. We  
17 might just have a look at that, it's at page 382 of the  
18 materials. If we scroll down. This is dated 14th  
19 February of 2013. And we scroll down there further.  
20 If we just look seven lines up from the bottom: 12:44

21  
22 "As a compromise and so that our client may return to  
23 work, he would accept such return on the basis that he  
24 would not come under the district command of the party  
25 (whose identity is known to you) about whom such 12:44  
26 complaints have been made by him. In this respect,  
27 therefore, my client wishes to return to work under the  
28 direct management of Inspector O'Sullivan. I would be  
29 obliged if you would confirm that this is in order and

1 represents a without prejudice compromise on his part."  
2  
3 That was addressed to Chief Superintendent Dillane.  
4 Did Chief Superintendent Dillane discuss that with you,  
5 the possibility that that might be a compromise in the 12:45  
6 circumstances at the time?  
7 A. I don't believe so, no.  
8 275 Q. Would it be something that you'd have given  
9 consideration to at the time?  
10 A. It couldn't work, Mr. Marrinan. There can only be one 12:45  
11 superintendent in the district and that superintendent  
12 has responsibility for everything that happens in the  
13 district. It's just not possible for a sergeant not to  
14 be reporting to the superintendent, the whole system --  
15 276 Q. Well, I suppose first of all, in the normal course of 12:45  
16 events you'd report in writing, isn't that right?  
17 A. Yes.  
18 277 Q. Yes. And there'd be no prohibition on Sergeant Barry  
19 reporting to you or Inspector O'Sullivan in writing?  
20 A. Yes. 12:46  
21 278 Q. I anticipate that what this is directed at is  
22 preventing a one-to-one interaction?  
23 A. Yes, face-to-face, yes.  
24 279 Q. In other words, that he would come into contact with  
25 you. It would appear that the only circumstances in 12:46  
26 which he would have come in direct contact with you  
27 would have been perhaps once a month or once every  
28 three weeks --  
29 A. Yes.

1 280 Q. -- at a PAF meeting, and the occasional time that you  
2 would visit Mitchelstown Garda Station, perhaps once  
3 every three weeks, and only if he happened to be on  
4 duty at the time, they were the only personal  
5 interactions that you had with him? 12:46

6 A. No, if a serious incident happened or an incident that  
7 required oversight on my behalf in Mitchelstown, I  
8 would hold a meeting, a case conference, to make sure  
9 the investigation was proceeding along the correct  
10 lines, and if that concerned Sergeant Barry's unit, 12:47  
11 Sergeant Barry would have to attend, he would be the  
12 supervising sergeant of the investigation.

13 281 Q. We know from your statement that in April 2014, the  
14 following year, that you did in fact depute Inspector  
15 O'Sullivan to deal with issues concerning Sergeant 12:47  
16 Barry?

17 A. To deal with -- in that discussion with Inspector  
18 O'Sullivan, I asked him to deal with every  
19 correspondence from Sergeant Barry, everything.

20 282 Q. Yes. 12:47

21 A. Correspondence rather than anything else.

22 283 Q. Well, you were deputing him to deal with him?

23 A. To deal with, yes.

24 284 Q. Right. But anyway, in any event, you weren't advised  
25 of this offer that had been made? 12:48

26 A. I don't believe so, no.

27 285 Q. And that in any event, had you been advised of the  
28 offer you didn't think it was workable in the  
29 circumstances?



1 A. No. And it would create a very serious precedent as  
2 well in An Garda Síochána, where you would have a  
3 sergeant in a district not reporting to the  
4 superintendent in charge of the district.

5 286 Q. We have a statement from Chief Superintendent Grogan 12:48  
6 that have you probably seen in the materials?

7 A. I did.

8 287 Q. Where he expresses the view that perhaps greater  
9 consideration should have been given at the time to the  
10 suggestion, but you don't agree, you think that this 12:48  
11 was a matter that wasn't worthy of being explored in  
12 the circumstances?

13 A. I just couldn't see how it would work. I genuinely  
14 couldn't see how that could work in a district.

15 288 Q. So in reality the situation is, and this is the 12:49  
16 reality, that Sergeant Barry would have to be  
17 transferred for him to perform his duty in accordance  
18 with his obligations and for you to be able to carry  
19 out your obligations as district officer?

20 A. I couldn't see how we could work together once that 12:49  
21 medical cert was valid.

22 289 Q. Yes.

23 A. But if a direction had come from Chief Superintendent  
24 Grogan, he was the chief superintendent in HRM, if that  
25 direction had come, well, I would have had to comply 12:49  
26 with the direction obviously.

27 290 Q. But the only option in the circumstances was that  
28 Sergeant Barry would have to be transferred?

29 A. I couldn't see any other option.

1 291 Q. There doesn't appear to be --  
2 A. No.  
3 292 Q. -- any other option available to him.  
4 A. And that wasn't a matter for me, Mr. Marrinan.  
5 293 Q. Yes. 12:50  
6 A. I don't have, you know... I cannot transfer. I can  
7 seek to transfer people within my own district, but I  
8 cannot transfer anyone outside of my district.  
9 294 Q. Yes, indeed. Okay then, if we just move on then -- is  
10 there anything more that you'd like to say -- 12:50  
11 A. No.  
12 295 Q. -- in relation to that? And perhaps, you know, this is  
13 again one of the matters that Mr. Barry raised in his  
14 evidence, that he was pressurised to take a transfer,  
15 his primary focus of attention in that regard appears 12:50  
16 to be Chief Superintendent Dillane but you're also in  
17 the equation as far as that is concerned, but you say  
18 you had no role or function in relation to that?  
19 A. No, and obviously I never spoke to Mr. Barry or  
20 mentioned a transfer to Sergeant Barry. 12:51  
21 296 Q. Now, if we could then just move on and deal then with  
22 the application for annual leave of Sergeant Barry.  
23 This was a matter that you were concerned about. I  
24 don't intend to go through all the documents that are  
25 there in relation to this and the various reports that 12:51  
26 were put in by Sergeant Barry and, you know,  
27 identifying sergeants who may be able to cover for him  
28 at various times. But in a general way, if you're  
29 applying for leave for annual holidays, what

1 expectation would you have on a member as regards cover  
2 and whether or not they would be eligible to take leave  
3 for a protracted period of time?

4 A. Firstly, and this applies to every member obviously --  
5 well, members of sergeant rank up towards, who will 12:52  
6 cover your responsibilities while you're on leave. And  
7 once that is covered there is no problem with leave in  
8 An Garda Síochána. In this particular case, Sergeant  
9 Barry's responsibilities would be on unit B with  
10 Sergeant Andy Geary, who was in Fermoy, there was two 12:53  
11 sergeants on the unit, and he would have also  
12 responsibilities as acting sergeant in charge  
13 Mitchelstown if Sergeant Dunne was not working and he  
14 was working. So, once those issues were covered, there  
15 would be no problem with Sergeant Barry getting leave. 12:53  
16 And his first port of call should have been Sergeant  
17 Geary, to ask Sergeant Geary, when are you taking your  
18 leave this summer? which is a normal thing in An Garda  
19 Síochána, if two men are on the same unit.

20 297 Q. So in any event, you refused his annual leave, isn't 12:53  
21 that right?

22 A. I refused it but gave him the option that it would be  
23 granted once he could tell me the name of the sergeant  
24 who would supervise his unit on each of the dates  
25 applied for. 12:54

26 298 Q. And as far as you're concerned with the reports that  
27 went back and forth, you weren't happy that he had  
28 sided a sergeant who was covering for him on a number  
29 of the dates, is that right?

1 A. Correct. When I checked, even some of the sergeants he  
2 put down on certain dates weren't working when I  
3 checked. So, what I was saying to Sergeant Barry in my  
4 replies was, get a sergeant to cover your unit and you  
5 will get your leave.

12:55

6 299 Q. If we look at page 764 of the materials. This is a  
7 letter that's addressed to you, dated, I think it's the  
8 26th June, is the stamp on it, from Sergeant Aidan  
9 Dunne:

10

12:55

11 "With reference to the above, please find attached  
12 report of Sergeant Barry and wishing to appeal the  
13 refusal of his annual leave. Please have same  
14 forwarded to Chief Superintendent Dillane."

15

12:55

16 And then you will see your note at the bottom, if we  
17 scroll down there, this is your note to Chief  
18 Superintendent Dillane, isn't that right?

19 A. Yes.

20 300 Q. And then "appeal" if you just read it, you can read  
21 your own writing there?

12:55

22 A. Yeah. Read it out, Mr. Marrinan, is it?

23 301 Q. Yes, if you wouldn't mind?

24 A. "Appeal of refusal of annual leave for Sergeant Paul  
25 Barry is forwarded. As with all members in Fermoy  
26 district, if Sergeant Barry can arrange some cover for  
27 his absence this leave will be granted."

12:56

28 302 Q. Okay. So you are setting out your position there, as  
29 you have just stated to the Chairman and which is

1 reflected in the documentation that's available. The  
2 sole issue appears to be whether or not Sergeant Barry  
3 had identified a sergeant who would cover for his unit  
4 on particular dates, is that right?

5 A. Yes, it would have to be a number of different 12:56  
6 sergeants, because obviously sergeants would be on rest  
7 days in between and et cetera, et cetera. But what I  
8 was looking for is, one sergeant for every tour of  
9 duty, or even if there was one or two tours of duty  
10 where the unit wasn't fully covered, I could accept 12:57  
11 that, but this was 12 tours of duty over a two-week  
12 period.

13 303 Q. And then if we have page 765 up on the screen, please.  
14 This is the response from Chief Superintendent Dillane  
15 addressed to you, it's dated the 3rd July, he says: 12:57

16  
17 "Having considered the attached application, I approve  
18 Sergeant Barry's annual leave on the condition that  
19 adequate cover is arranged for the period of his  
20 absence. 12:57

21  
22 Please update records at your office accordingly."

23  
24 So he's allowing the appeal but not allowing the  
25 appeal, as it were. I mean, it is the same condition 12:57  
26 as you had applied, is that right?

27 A. It's really rephrasing what I had said but...

28 304 Q. That would appear to be the situation. Then you have a  
29 handwritten note there on the bottom to the sergeant in

1 charge, Sergeant Dunne in Mitchelstown:

2  
3 "For your information and that of Sergeant Barry,  
4 please provide details of the adequate cover arranged  
5 during Sergeant Barry's period of absence." 12:58

6  
7 I think that you didn't receive that, is that right?

8 A. No, I never received it.

9 305 Q. And Sergeant Barry took his leave in the circumstances.  
10 I suppose one of the issues is that you didn't let go 12:58  
11 of that and you pursued this, and you asked for how his  
12 unit had been covered during his period of absence,  
13 isn't that right?

14 A. That's correct.

15 306 Q. And why was it a matter that you pursued after he had 12:58  
16 taken his leave?

17 A. As the superintendent in charge of the district, I had  
18 a unit across the district now, not just the six  
19 members that Sergeant Barry was supervising, but all  
20 the members in the Fermoy and other stations south of 12:59  
21 the river on unit B, who were working with no sergeant  
22 on their unit, no one detailing them, and if anything  
23 should happen when those members were working, a  
24 serious incident that wasn't dealt with properly or,  
25 God forbid, somebody happening to one of the members, 12:59  
26 it's me who would be questioned about giving two  
27 sergeants leave and having no sergeant supervising the  
28 unit. That was going to come back on me and that was a  
29 risk that I saw.

1 307 Q. Again, this is an allegation that is made against you,  
2 that this amounted to deliberate targeting of Sergeant  
3 Barry because he had made a disclosure of alleged  
4 wrongdoing, what do you say in answer to that?  
5 A. That's not correct. All I was asking was for the name 13:00  
6 of the sergeant who would cover while Sergeant Barry  
7 was on leave. I had a district to run and to manage  
8 and that's what I was endeavouring to do in this case.  
9 308 Q. I suppose from this point of view, were you not very  
10 alert to the fact that there was a possibility that 13:01  
11 given the lack of relationship between you and Sergeant  
12 Barry at the time, that actions, such as being overly  
13 critical of him or paying close attention to him, might  
14 be perceived by him to be targeting of him and  
15 penalisation of him, did that occur to you at the time? 13:01  
16 A. No, Mr. Murrinan, it didn't. I was -- listen, this was  
17 the running of the district, this was providing a  
18 police service, and you can't have a full unit across  
19 the district -- I forget what the numbers were like  
20 now, but it would be in some places ten plus gardaí 13:02  
21 working without supervision.  
22 MR. MARRINAN: I don't know if that is an appropriate  
23 time.  
24 CHAIRMAN: Yes, that is a good time, thank you very  
25 much. All right two o'clock or thereabouts. Thank 13:02  
26 you.  
27  
28  
29

1 THE HEARING THEN ADJOURNED FOR LUNCH AND RESUMED, AS  
2 FOLLOWS:

3  
4 309 Q. MR. MARRINAN: Superintendent, just going back to the  
5 17th June for one moment. I think that you were 13:59  
6 notified by Assistant Commissioner Nolan that Chief  
7 Superintendent Kehoe had completed her investigation in  
8 relation to the eight allegations contained in Sergeant  
9 Barry's complaint?

10 A. That's correct. 13:59

11 310 Q. None of them were upheld, isn't that right?

12 A. That's correct.

13 MR. COSTELLOE: Excuse me, Mr. Marrinan, I don't think  
14 your microphone is on.

15 MR. MARRINAN: I am sorry. 13:59

16 MR. COSTELLOE: I couldn't hear you, I beg your pardon.  
17 Sorry, Chairman.

18 CHAIRMAN: No problem.

19 311 Q. MR. MARRINAN: I will just go back, this is a letter  
20 that you got on 17th June 2013, and you were notified 13:59  
21 by Assistant Commissioner Nolan that Chief  
22 Superintendent Kehoe had concluded her investigation  
23 and that all eight allegations contained in Sergeant  
24 Barry's complaint were not upheld, isn't that right?

25 A. That's correct. 14:00

26 312 Q. That letter is at page 756, we don't need it up on the  
27 screen, Mr. Kavanagh, but just for ease of reference  
28 for the parties, that is set out there. You  
29 subsequently received correspondence on 12th August



1 2013 from Assistant Commissioner John Twomey, advising  
2 you that he had been requested by assistant  
3 commissioner HRM to review the investigations, the  
4 investigation carried out by Chief Superintendent  
5 Kehoe, on the basis of grounds put forward by Sergeant 14:00  
6 Barry, isn't that right?

7 A. That's correct.

8 313 Q. I think in correspondence dated the 31st October,  
9 Assistant Commissioner Twomey informed you that each of  
10 the allegations -- he agreed with the findings and the 14:01  
11 complaint was not upheld?

12 A. That's correct.

13 314 Q. And that notification is at page 772 of the material,  
14 and again, Mr. Kavanagh, we don't require that on the  
15 screen. If we could just come to a matter, it's not 14:01  
16 dealt with in your statement, but this is a letter that  
17 you sent to Chief Superintendent Dillane. If we could  
18 have page 429 up on the screen, please. This was sent  
19 on 7th November of 2013. If we scroll down,  
20 Mr. Kavanagh, you will see "Supervi si on Fermoy 14:01  
21 district". You start off by saying that:

22  
23 "On Sunday, 10th November 2013, the enlarged  
24 Watergrasshill sub-di strict is amal gamating wi th Fermoy  
25 di strict. Thi s en lar gement of the di strict wi ll bri ng 14:02  
26 new chal lenges for members stati oned wi thi n the  
27 di strict, parti cular ly as the per sonnel strength wi ll  
28 only be i ncreasi ng by one garda."  
29

1 You then go on to say:

2

3 "In order to police the district, as the communities  
4 living in the district request and require, it is my  
5 opinion that each unit in Fermoy should have a  
6 supervisory sergeant. At the moment there are four  
7 unit sergeants in Fermoy and unit D is supervised by  
8 one of the two unit sergeants in Mitchelstown.

14:02

9

10 The overall policing of the new enlarged district will  
11 benefit from five unit sergeants based in Fermoy, which  
12 is at the centre of the district."

14:02

13

14 You say:

15

16 "It will make no common sense to have a unit sergeant  
17 based in the most northerly sub-district in the  
18 district while we are gaining a vast area to the most  
19 southerly part of the district."

14:03

20

21 Then you go on to say:

22

23 "I request that a sergeant is transferred from  
24 Mitchelstown sub-district to Fermoy sub-district to  
25 supervise one of the five units."

14:03

26 A. That's correct.

27 315 Q. Had you applied your mind to the fact that Sergeant  
28 Barry was just one of the three sergeants that were  
29 then stationed in Mitchelstown?

14:03

1 A. Correct.

2 316 Q. And the other was Sergeant Aidan Dunne, who was the  
3 sergeant in charge of Mitchelstown?

4 A. Correct.

5 317 Q. He wouldn't have been a person considered for transfer 14:03  
6 to fill that post, would he?

7 A. Not really, no. No, he wouldn't.

8 318 Q. And who was the other sergeant?

9 A. Sergeant Gerry Quinn.

10 319 Q. Gerry Quinn. I mean, you weren't promoting the idea 14:04  
11 that Sergeant Barry be transferred to Mitchelstown,  
12 were you?

13 A. Not particularly. It was Sergeant Quinn, because  
14 Sergeant Quinn was unit D, it was his unit that was  
15 down a sergeant in Fermoy. 14:04

16 320 Q. Why didn't you put down a suggestion that Sergeant  
17 Quinn be transferred from the Mitchelstown sub-district  
18 to Fermoy?

19 A. I can't say. I don't know why I didn't put it in.

20 321 Q. Well, I mean, the letter that had been sent by the GP 14:04  
21 was still in existence?

22 A. Yes.

23 322 Q. You were very acutely aware of the difficulties that  
24 would arise out of this transfer, if it was to be --

25 A. Sergeant Barry. 14:04

26 323 Q. -- Sergeant Barry, isn't that right?

27 A. Yeah.

28 324 Q. But this is the recommendation that you are making to  
29 the chief superintendent, it's a recommendation that he

1 acted on insofar as transferring a sergeant, but he  
2 chose Sergeant Paul Barry because he said he considered  
3 him to be the best man for the job?

4 A. Yes.

5 325 Q. Did you discuss this with Chief Superintendent Dillane 14:05  
6 outside the correspondence that we have?

7 A. I believe -- we did discuss it at around the time,  
8 maybe just before or directly after I sent that report.  
9 And again, I would have suggested Sergeant Quinn  
10 because he was the sergeant on unit D. 14:05

11 326 Q. And presumably you would have said, and certainly not  
12 Sergeant Barry in the circumstances?

13 A. I don't recall saying that, to be honest.

14 327 Q. Well, would you accept, I suppose, Mr. Barry's  
15 contention that this was aggravating his circumstance 14:06  
16 by being advised that he was to transfer to Fermoy,  
17 which is the district where he has a certificate saying  
18 that he should not come into contact with the station  
19 or with you?

20 A. I do believe at this time that Chief Superintendent 14:06  
21 Dillane had said to me at some stage, I can't give a  
22 date now, but 2013 at some stage, that he had been told  
23 on numerous occasions by the CMO that this was a  
24 management issue and not a medical issue.

25 328 Q. There wasn't any sense in your discussions with Chief 14:06  
26 Superintendent Dillane on this, that it was in some way  
27 sort of trying to force the issue with Sergeant  
28 Barry --

29 A. No.

1 329 Q. -- in terms of bringing this to a head?  
2 A. Definitely not, no.

3 330 Q. We know that Chief Superintendent Dillane made this  
4 recommendation to HRM, that Sergeant Barry be  
5 transferred to Fermoy. Did you raise any objection at 14:07  
6 that time in relation to the transfer of Sergeant  
7 Barry?  
8 A. No. No, I did not.

9 331 Q. Now, I think then on 17th December 2013 you received  
10 correspondence from chief superintendent, Internal 14:08  
11 Affairs, advising you of the investigation that was  
12 conducted by Superintendent Lehane in relation to the  
13 taking of force majeure by Sergeant Barry, and I think  
14 that he determined that no breach of discipline was  
15 found to have occurred in circumstances which he 14:08  
16 outlined in his report. But, of course, you didn't in  
17 fact initiate those, that matter --  
18 A. No.

19 332 Q. -- isn't that right? Now, I think on Sunday, 9th  
20 February, at 8.41pm you sent a number of, sent a text 14:08  
21 to all sergeants working in the Fermoy district the  
22 following Monday, 10th February 2014. And the text was  
23 sent to all sergeants due to attend the weekly PAF  
24 meeting on the following day, that would have been the  
25 Tuesday, the 11th, and this would have included 14:09  
26 Sergeant Barry. I think that you sent it in a group  
27 text, isn't that right?  
28 A. Correct. As I did every week.

29 333 Q. And I think on Monday morning, 10th February 2014, you

1 became aware that two of the three sergeants based in  
2 Mitchelstown were on sick leave, and that this left  
3 Sergeant Barry as the only sergeant on duty. And he  
4 failed to attend the PAF meeting at 2pm that day, is  
5 that right?

14:09

6 A. That's correct.

7 334 Q. I think you rang his phone at 2.03, and the phone  
8 wasn't answered and you left a message and then you  
9 phoned Mitchelstown Garda Station and you spoke to  
10 Garda wall, is that right?

14:10

11 A. That's correct.

12 335 Q. I think that you asked Garda wall to get Sergeant Barry  
13 to ring you and he informed you that Sergeant Barry was  
14 out in the detective branch car. Garda wall called  
15 Sergeant Barry over the radio and asked him to contact  
16 you and Sergeant Barry made no contact, isn't that  
17 right?

14:10

18 A. Correct.

19 336 Q. I think that was followed up with a letter on 20th  
20 February of 2014, when you wrote to the sergeant in  
21 charge, isn't that right?

14:10

22 A. That's right.

23 337 Q. If we just have that up on the screen, it's page 777 of  
24 the material. And scroll down, we will see it there in  
25 the last paragraph, it's a reference to his  
26 non-attendance at the PAF meeting. And you say:

14:11

27

28 "Sergeant Barry did not attend the meeting. I require  
29 an explanation from Sergeant Barry for his

1 non-attendance."

2

3 Now, I think you got a reply to that, isn't that right?

4 A. I did, yes.

5 338 Q. And that's at page 778 of the material, please, 14:11

6 Mr. Kavanagh. We see in the first paragraph Sergeant  
7 Barry -- sorry, I am just looking to see, it doesn't  
8 appear to have a date on it, but it's shortly after the  
9 letter --

10 A. 3rd March is on the screen. 14:11

11 339 Q. "I refer to the above. Sergeant Paul Barry has made a  
12 disciplinary criminal allegations against

13 Superintendent Michael Comyns. This investigation is  
14 still ongoing and relates to Superintendent Comyns'  
15 alleged inappropriate behaviour during the 14:12

16 investigation of the rape/sexual assault of a child.

17 My phone was used as part of Superintendent Comyns'  
18 inappropriate behaviour and accordingly I do not wish  
19 to have any contact either by text or phone call from  
20 Superintendent Comyns to my private phone. 14:12

21

22 As regards Superintendent Comyns' allegation that he  
23 notified me by text on Sunday, the 9th February at  
24 8.41pm, I wish to say that I was not notified and  
25 whether I was or not, I will abide by my doctor's 14:12  
26 certificate, which is on file at Fermoy Garda Station."

27

28 so that's fairly clear, he's setting out what his  
29 position is in relation to it, and there doesn't appear

1 to be an issue as to whether or not he received a text  
2 or not. In reality, he's indicating there that  
3 regardless he was not going to attend a PAF meeting?  
4 A. That's what he's indicating, yes.  
5 340 Q. And in the year previous had he attended any PAF 14:13  
6 meetings?  
7 A. Up to August 2012 he had.  
8 341 Q. But from 2012, thereafter he didn't attend any?  
9 A. No. No.  
10 342 Q. How did you manage in those circumstances? How did you 14:13  
11 get over that problem?  
12 A. Sergeant Dunne on a lot of occasions could answer the  
13 necessary questions in relation to Sergeant Barry's  
14 unit and if a question wasn't answered, I would contact  
15 the guard directly or get Inspector O'Sullivan to 14:14  
16 contact the guard directly, in relation to an  
17 investigation, say, or something like that, after the  
18 meeting, if we didn't get an update on an  
19 investigation.  
20 343 Q. Okay. If we move forward then to the 7th March, I 14:14  
21 think you received correspondence from Chief  
22 Superintendent Kehoe, asking you for your consent in  
23 relation to access to certain telephone records, isn't  
24 that right?  
25 A. That's correct. 14:14  
26 344 Q. And you replied, giving that. Then on the 19th March,  
27 I think that you wrote to the chief superintendent. We  
28 will just have a look at this letter because it perhaps  
29 fairly summarises the position that had you found



1 yourself in at that time. It's at page 780 of the  
2 material. This is dated the 19th March and it is  
3 headed "Non-attendance of Sergeant Barry at the  
4 district performance meeting". And you set out the  
5 background that you've explained to the Chairman. The 14:15  
6 meeting took place, third paragraph you say, you say  
7 you rang his phone. And then you, in the fourth  
8 paragraph, point out that he didn't contact you on the  
9 10th February since then. And if we scroll over then  
10 to the next page, you say: 14:15

11  
12 "As a result of Sergeant Barry's medical certificate,  
13 he cannot perform his duties as a sergeant and I cannot  
14 perform my duties as a superintendent. For the past 12  
15 months my authority as district officer has been 14:16  
16 undermined by his medical certificate and in my opinion  
17 by the organisation for failing to contest the validity  
18 of this medical certificate.

19  
20 I request that Sergeant Barry's failure to attend at a 14:16  
21 district/performance accountability framework meeting  
22 and the validity of the attached medical certificate be  
23 dealt with without delay."

24  
25 So that's quite strong again, and it's setting out your 14:16  
26 position?

27 A. That's correct.

28 345 Q. You refer to the fact that you felt that in some way  
29 that you had been let down by the organisation as well

1 in relation to this, can you just expand on that, if  
2 you want?

3 A. I suppose what I was saying is, I can't do my job as  
4 the district officer in Fermoy when a sergeant is not  
5 doing his job. And really what I was saying, this 14:17  
6 can't continue, we have to do something about this, or  
7 someone of higher rank than me has to do something  
8 about this, because I can't do anything about it.

9 346 Q. On Thursday, 3rd April 2014, Chief Superintendent  
10 Dillane contacted you and told you that he had had a 14:17  
11 meeting with the CMO in relation to Sergeant Paul  
12 Barry, is that right?

13 A. Correct.

14 347 Q. He also informed you that the medical opinion is that  
15 it could be injurious to Sergeant Barry's health to 14:18  
16 work with you or in Fermoy Garda Station, isn't that  
17 right?

18 A. That's correct.

19 348 Q. Now, you made a note of that in your journal, that's at  
20 page 783, we don't really need it on the screen, but it 14:18  
21 is a matter you highlight at the time. Now that  
22 coincides with what I referred to earlier, with you  
23 asking Inspector O'Sullivan to perform your duties  
24 relative to Sergeant Barry, isn't that right?

25 A. What I asked Inspector O'Sullivan, if he would deal 14:19  
26 with every correspondence relating to Sergeant Barry.

27 349 Q. Yes.

28 A. Everything. That if something came the day I was  
29 working, that I would put it in the post for Inspector

1 O'Sullivan and I wouldn't deal with it anymore.

2 350 Q. Now, on Thursday, 24th April 2014, I think you were  
3 contacted by Chief Superintendent Dillane and asked if  
4 would you participate in a mediation process with  
5 Sergeant Barry, isn't that right? 14:19

6 A. That's correct.

7 351 Q. I think that you took legal advice in relation to that  
8 and you decided that it wouldn't be appropriate in the  
9 circumstances, is that right?

10 A. Yeah. I acted on the legal advice, yeah. 14:19

11 352 Q. And I think that your letter in that regard is at page  
12 795, it's a letter that you sent to Chief  
13 Superintendent Dillane. It's headed "Proposed  
14 Mediation". And you point out that it would be  
15 difficult to see why you should be expected to engage 14:20  
16 in any form of mediation process. The only matters  
17 that could be addressed in the mediation process are  
18 the complaints which have already been disposed of  
19 under the investigation and appeal process which have  
20 concluded. There is also one complaint which is still 14:20  
21 under investigation.

22  
23 So you conclude by saying:

24  
25 "Therefore, it would seem that if any mediation were 14:20  
26 being proposed, it should be a matter between employer  
27 and employee as opposed to involving me. I will not be  
28 taking part in the proposed mediation."  
29

1 And that, you were fully entitled to do, because both  
2 parties have to consent to that, isn't that correct?

3 A. That's correct.

4 353 Q. If we could just move on then to deal with the issue of  
5 the Irish Golf Open at Fota Ireland? 14:21

6 A. Yes.

7 354 Q. In your statement, you say that at 2pm on Wednesday  
8 28th May of 2014 you met with Superintendent Quilter  
9 and Inspector Healy at Midleton garda station regarding  
10 preparations for the Irish Open, isn't that right? 14:21

11 A. That's correct.

12 355 Q. What role were you originally to have in relation to  
13 the Irish Open?

14 A. From the beginning I was to be in command of the  
15 policing operation. 14:22

16 356 Q. Yes. And what --

17 A. Soon after it was announced that the Irish Open would  
18 be in Fota, I knew that I was going to be in command  
19 because Superintendent Quilter and Chief Superintendent  
20 Dillane had both said to me that Superintendent Quilter 14:22  
21 already had leave booked and was I around and would I  
22 take command of the policing operation.

23 357 Q. And by all accounts, this appears to have been a large  
24 event?

25 A. Yes. 14:22

26 358 Q. And a big policing operation?

27 A. A huge event, yeah.

28 359 Q. How many districts were involved?

29 A. The event took place in Midleton district, so all the

1 members in Middleton district, people from Fermoy  
2 district were used, a number of people from Mallow  
3 district and a number of people from Cork City  
4 division. We'd to go to the next division because we  
5 didn't have enough people in Fermoy. There was also an 14:23  
6 event in Mallow the same weekend, which prevented a  
7 large number of members from Mallow being able to do  
8 duty at the event.

9 360 Q. Now, there were a number of meetings that you attended  
10 in the build up to it, I don't intend to open those, 14:23  
11 any of the other parties can do so if they wish or if  
12 you wish --

13 A. Yeah.

14 361 Q. -- or your own counsel to go into it but there were a  
15 number of meetings in the build up to it. But I 14:23  
16 suppose the real issue is: why was Sergeant Barry  
17 requested to perform any duty at the Irish Open, where  
18 there was a possibility that he might come into contact  
19 with you when he had a medical certificate saying that  
20 he shouldn't? I suppose that's the bottom line, as it 14:24  
21 were?

22 A. Yes. Firstly, in relation to Sergeant Barry being at  
23 the event, members individually were not selected to go  
24 to the event; it was unit B who were working in the  
25 whole division on the particular dates were brought to 14:24  
26 Middleton. It was a budgetary matter, which  
27 Superintendent Quilter and Inspector Healy, who did out  
28 the operational order, had brought about that it would  
29 be cheaper budgetary-wise for unit B to work at the

1 event and for some cover to be provided in their home  
2 stations on overtime, rather than bring in members on  
3 overtime to the event. So in that regard, Sergeant  
4 Barry, along with all members on unit B in Fermoy  
5 district, worked at the event. 14:25

6 362 Q. The event was from Thursday the 19th June until Sunday,  
7 22nd June 2014?

8 A. Correct.

9 363 Q. Mr. Barry has complained by giving evidence and also in  
10 his statement to the Tribunal that part of his duties, 14:25  
11 firstly, that he had to parade for duty with other  
12 members in a sports hall?

13 A. That's correct.

14 364 Q. And I think he acknowledged that there were a large  
15 number of people in attendance, but he says that his 14:25  
16 attendance was required at that assembly and that you  
17 were present there?

18 A. That's correct.

19 365 Q. And he's right in that regard?

20 A. He is. 14:26

21 366 Q. Was that something that you were conscious of at the  
22 time?

23 A. No.

24 367 Q. I mean, was it something that you had done, organised  
25 deliberately to, as it were, discommode Sergeant Barry? 14:26

26 A. I didn't organise the briefings, the briefings were  
27 organised as part of the operational order by  
28 Superintendent Quilter and Inspector Healy. And every  
29 single member that worked at the event, whether in Fota

1 Island itself, in the golf club or on the traffic  
2 management, were briefed. So, everyone that was  
3 working was briefed in the morning in a community hall  
4 in Carrigtwohill and there was a huge number of members  
5 there. I can't remember exactly how many now, but 14:27  
6 there was a large number of members. I didn't even see  
7 Sergeant Barry for the two days that he worked at the  
8 event.

9 368 Q. I think that he was involved in traffic duty at an  
10 outer cordon at the Barryscourt roundabout at 14:27  
11 Carrigtwohill village, is that right?

12 A. Correct.

13 369 Q. I think that he acknowledged that his direct line  
14 supervisor would have been Inspector Healy --

15 A. Correct. 14:27

16 370 Q. -- who he would have been reporting to. But in any  
17 event, and I think he acknowledged that he didn't come  
18 into contact with you --

19 A. Correct.

20 371 Q. -- but a source of complaint that he had is in fact 14:27  
21 what you've included in your statement to the Tribunal;  
22 namely that had an issue arisen, that you would have  
23 had to come in contact with Sergeant Barry. So that's  
24 his complaint?

25 A. Yes. 14:27

26 372 Q. And what do you say in answer to that complaint?

27 A. The chain of command at the event was me as the  
28 commander of the operation, of the policing operation,  
29 and I also took control of events inside in Fota, at

1 the golf club and surrounding there, and Inspector  
2 Healy took part, took control of the traffic  
3 management. What I was saying in my statement is that  
4 if a serious incident occurred out at that roundabout,  
5 a fatal traffic accident or some serious incident out 14:28  
6 there, obviously I would have had to go there as the  
7 person in command of the policing operation. So I  
8 would have had to. I could have communicated with  
9 Sergeant Barry through Inspector Healy, even if that  
10 did happen, but I would have had to go to that area 14:29  
11 if -- but it would have to be something very serious  
12 for me to have to go to that area.

13 373 Q. Okay. Again, this is an incident that he alleges  
14 deliberate targeting by you and, indeed, others in this  
15 instance, what do you say in relation to that? 14:29

16 A. No.

17 374 Q. Now, I think on 22nd July 2014, Chief Superintendent  
18 Kehoe wrote to you and asking you to attend for a  
19 voluntary interview at Templemore Garda Station on 1st  
20 August 2014. I think that it was postponed because you 14:30  
21 wanted your legal representative to be present, isn't  
22 that right?

23 A. That's correct.

24 375 Q. But you went and the interview was conducted.

25 A. That's correct. 14:30

26 376 Q. Now, if we could just deal with one other matter that  
27 Mr. Barry complains about, and that's in relation to  
28 the transfer of members from Mitchelstown Garda  
29 Station --



1 A. Yes.

2 377 Q. -- to Fermoy and also transfers within his unit?

3 A. Yes.

4 378 Q. In the first instance you point out in your statement  
5 that on Friday, 15th August 2014, you organised the 14:30  
6 transfers of Garda Marie McCarthy from Mitchelstown to  
7 Fermoy and that you moved Garda Séan Twomey from Fermoy  
8 to Mitchelstown and that they were both transferred on  
9 18th August 2014. Had that anything to do with  
10 Sergeant Barry? 14:31

11 A. No.

12 379 Q. And then I think on the 19th August you consulted with  
13 Inspector O'Sullivan and the sergeants in charge of  
14 proposed unit changes in the Fermoy district and you  
15 then circulated details of numerous other changes 14:31  
16 within Fermoy district, which were to take effect from  
17 the 15th September of 2014. Perhaps you have 811 up on  
18 the screen. If you scroll down there, you will see  
19 there:  
20 14:32

21 "Garda Martin Healy is transferring from Mitchelstown  
22 to Rathcormac. Garda Patrick Buckley is transferring  
23 from Fermoy to Watergrasshill."  
24

25 Isn't that right? 14:32

26 A. That's correct. They were as a result of retirements,  
27 is my recollection. The members in Rathcormac and  
28 Watergrasshill had retired, so I needed to transfer  
29 members to those stations.

1 380 Q. So that dealt with the transfer of people from one  
2 station to --

3 A. That's correct.

4 381 Q. -- another. Had that anything to do with Sergeant  
5 Barry? 14:32

6 A. No.

7 382 Q. Now there were then transfers from one unit to another,  
8 isn't that right?

9 A. That's correct.

10 383 Q. I think you transferred Garda Séan Twomey to unit B in 14:33  
11 Mitchelstown, so that he could work closely with Garda  
12 Denise Fitzgerald --

13 A. Correct.

14 384 Q. -- who worked with the detective unit and both had an  
15 interest in drug detection, isn't that right? 14:33

16 A. That's correct.

17 385 Q. And I think you also then moved Garda Wall and Garda  
18 Ward from Sergeant Barry's unit, isn't that right?

19 A. That's correct.

20 386 Q. Had that anything to do with sort of hostility or 14:33  
21 targeting of --

22 A. No.

23 387 Q. -- of Sergeant Barry? Now, I think that Sergeant Dunne  
24 had communicated with you at that time that Sergeant  
25 Barry wasn't getting on with Garda Fitzgerald, isn't 14:34  
26 that right?

27 A. That's correct.

28 388 Q. And there was an incident then at 9.50pm on Friday the  
29 19th September 2014, when you met Detective Garda Tom

1 Ryan and he referred to an incident between Sergeant  
2 Barry and Garda Fitzgerald, isn't that right?

3 A. That's correct.

4 389 Q. Now, you'll be aware that we've had evidence from  
5 Sergeant Barry in relation to this and the parties have 14:34  
6 been circulated with material --

7 A. Yes.

8 390 Q. -- indicating that this isn't an area that the Tribunal  
9 intends to go into?

10 A. Yes. 14:35

11 391 Q. What I would ask you to do is just to note that the  
12 Tribunal is aware that this incident or these incidents  
13 are alleged to have occurred and were brought to your  
14 attention at the time?

15 A. Correct. 14:35

16 392 Q. They were matters that, in any event, required you to  
17 deal with them, isn't that right?

18 A. That's correct.

19 393 Q. And you did so by speaking with Garda Fitzgerald. You  
20 didn't speak with Sergeant Barry but on the 23rd 14:35  
21 September 2014 you spoke to Sergeant Aidan Dunne at a  
22 weekly PAF meeting, isn't that right?

23 A. After the meeting, after the meeting had finished I  
24 spoke to him face-to-face, individually.

25 394 Q. I think Sergeant Dunne was aware of what are described 14:36  
26 as "the problem that had arisen" and you discussed the  
27 issue with Sergeant Dunne?

28 A. That's correct.

29 395 Q. And I think Sergeant Dunne indicated that he was

1 confident that Sergeant Barry would agree to move to  
2 another unit within the station?

3 A. That's correct.

4 396 Q. And you note that as far as you can recall it was  
5 Sergeant Dunne who proposed this? 14:36

6 A. Yes, that's correct.

7 397 Q. Now, did you get a phone call then at 3.45pm from  
8 Sergeant Dunne?

9 A. I did.

10 398 Q. And what did he tell you? 14:36

11 A. He told me that Sergeant Barry had agreed to move to  
12 unit C.

13 399 Q. Now, I think there were further moves within the unit,  
14 I think on the 28th October 2014 you consulted with  
15 Inspector O'Connor, Sergeant Gerry Quinn and Sergeant 14:37  
16 Andrew Geary, and you directed that Garda Séan Twomey  
17 and Garda Fitzgerald should be facilitated to work  
18 together as much as possible to tackle the drug problem  
19 in Mitchelstown?

20 A. That's correct. 14:37

21 400 Q. I think you note that on the 12th November 2014, that  
22 you had a discussion with Chief Superintendent Dillane  
23 regarding human resource issues in Fermoy district and  
24 that one of the issues that you discussed was the  
25 situation with Sergeant Barry? 14:38

26 A. That's correct.

27 401 Q. Might this be the occasion on which you discussed the  
28 transfer of Sergeant Barry to Fermoy?

29 A. Possibly, possibly, yeah.

1 402 Q. Just bear with me one moment. Now, you note in your  
2 statement to the Tribunal that there ongoing  
3 discussions with Chief Superintendent Dillane  
4 concerning Sergeant Paul Barry on the 13th of January  
5 2015, on the 21st January 2015 and on Friday, the 23rd 14:39  
6 January 2015, is that right?

7 A. Amongst other issues. The discussion wasn't only about  
8 Sergeant Barry.

9 403 Q. And then you refer on Friday, the 30th January 2015,  
10 there was supposed to be a conference in relation to 14:39  
11 two alleged rapes, isn't that right?

12 A. That's correct.

13 404 Q. Can you just tell the Chairman what your concern was  
14 and how it arose in that, please?

15 A. My recollection, Chairman, is that two rapes were 14:40  
16 reported in a short time after each other, the night  
17 before and the day after, say, two completely separate  
18 rape allegations, and I spoke to Detective Garda Jim  
19 Fitzpatrick in Mitchelstown to organise a conference  
20 on, I believe, the Friday afternoon, in relation to 14:40  
21 both investigations. And Detective Garda Fitzpatrick  
22 came back and told me that the investigating member in  
23 one of the allegations could not come in to the  
24 conference on Friday afternoon. So we discussed what  
25 was to be done over the weekend and I said, we'll have 14:40  
26 the conference on the Monday at 12 o'clock, when that  
27 member would be working again. So the conference was  
28 rearranged for the Monday at 12 o'clock, and Detective  
29 Garda Fitzpatrick was to notify all members.

1 405 Q. Yes. Sergeant Barry didn't attend the conference?  
2 A. That's correct.

3 406 Q. Now, he says that he wasn't notified of the conference,  
4 but regardless of that, he said that it's not a  
5 conference he would have attended because you were 14:41  
6 present?  
7 A. That's correct.

8 407 Q. I mean, did you have any real expectation that he was  
9 going to attend, bearing in mind that he had indicated  
10 to you, quite forcefully, previously, that he wasn't 14:41  
11 going to have any interaction with you and that he was  
12 relying on his medical certificate to justify that  
13 position? I mean did --  
14 A. I thought, because of the seriousness of the  
15 investigations that he may attend. 14:42

16 408 Q. Well, there were two investigations?  
17 A. Yes.

18 409 Q. And there were two different members --  
19 A. Correct.

20 410 Q. -- involved in each investigation? 14:42  
21 A. Yes.

22 411 Q. And one of those was supervised by --  
23 A. By Sergeant Barry.

24 412 Q. -- by Sergeant Barry. I mean, would it have mattered  
25 that much when you were there to be in overall 14:42  
26 supervision of the investigation that Sergeant Barry  
27 didn't attend?  
28 A. He could not supervise the investigating member if he  
29 didn't know what we discussed at the conference or what

1 I wanted done in the investigation. If he wasn't  
2 there, he couldn't oversee what we required to be done,  
3 in my opinion.

4 413 Q. Was this not a situation where perhaps Inspector  
5 O'Sullivan could have dealt with it?

14:43

6 A. I'm not sure where Inspector O'Sullivan was, if he was  
7 working or...

8 414 Q. Okay. If we just have page 835 up on the screen. This  
9 is a letter that you sent to Chief Superintendent  
10 Dillane. There doesn't appear to be a date on it but I  
11 know it to be the 3rd February from other  
12 documentation. So, it's the failure of Sergeant Paul  
13 Barry to attend conference on rape investigation. And  
14 in the letter you set out the background and how it was  
15 that Sergeant Barry failed to attend the conference.  
16 Then if scroll over, at page 836 you say:

14:43

14:44

17  
18 "The situation with Sergeant Barry has been allowed to  
19 continue for almost..." I think that should be "...two  
20 and a half years from An Garda Síochána --"

14:44

21  
22 Or is that one and a half years. It would be one and a  
23 half years.

24  
25 " -- by An Garda Síochána. I have reported previously  
26 that I cannot perform my duties as district officer  
27 because of Sergeant Barry's behaviour. Assistant  
28 Commissioner Kenny and Ó Cualáin have spoken in the  
29 last week about challenging staff who do not perform.

14:44

1 When I challenge Sergeant Barry I have been left in the  
2 situation where he has ignored me for over two years  
3 and I have got no backing by the hierarchy in An Garda  
4 Síochána. "

14:45

5  
6 So, that is another strong letter or even stronger  
7 letter that you have written, expressing your  
8 dissatisfaction, isn't that right?

9 A. I think frustration would be the word I would use.

10 415 Q. You actually transferred on the 9th March 2015 to the  
11 Mayfield district, isn't that right?

14:45

12 A. That's correct.

13 416 Q. And I think you appeared on a bulletin prior to that in  
14 late February as being transferred?

15 A. Yes.

14:45

16 417 Q. When did you first become aware of the fact that you  
17 would be transferring from Fermoy to Mayfield?

18 A. I'd say the week that bulletin came out, the normal  
19 thing in An Garda Síochána is when an officer is moving  
20 you'd get a phone call from HRM to say you will be  
21 transferred, just prior to the bulletin coming out,  
22 just in a day or two prior to the bulletin coming out.

14:45

23 418 Q. Is the system -- do you apply for a transfer?

24 A. Yes.

25 419 Q. And had you applied for a transfer here?

14:46

26 A. I had applied.

27 420 Q. And when had your application been put in?

28 A. I am trying to think of the sequence of events. When I  
29 knew that a vacancy would be coming up in Mayfield



1 district, I applied.

2 421 Q. And when do you think that was? Was it weeks before or  
3 months before?

4 A. Weeks before, I'd say.

5 422 Q. Weeks before. 14:46

6 A. There was a promotion, there was a promotion in  
7 Anglesea Street district, I think it was -- I'm not  
8 sure, and Superintendent Myers, who was in Mayfield,  
9 was moving then to Anglesea Street, which left a  
10 vacancy in Mayfield, and once I knew that was 14:47  
11 happening.

12 423 Q. So would you have thought it might have been the  
13 beginning of January when you applied?

14 A. I couldn't say for certain, I really couldn't say.

15 424 Q. But certainly weeks in advance of being informed that 14:47  
16 you were being transferred?

17 A. Yes.

18 425 Q. Yes.

19 A. Yeah.

20 426 Q. And it was at your request that you be transferred? 14:47

21 A. At my request, yeah.

22 427 Q. Had that anything to do with Sergeant Barry and the  
23 position that you found yourself in Fermoy?

24 A. No.

25 428 Q. Or was it for other reasons? 14:47

26 A. No. 90% of my service in An Garda Síochána has been  
27 Cork City division.

28 429 Q. Right.

29 A. And I live in Cork City division. So it was purely to

1 move back into Cork City and be, maybe, 25 miles closer  
2 to home.

3 430 Q. Now, subsequently you received a letter from Chief  
4 Superintendent Dillane, it's at page 842 of the  
5 material?

14:48

6 A. That's correct.

7 431 Q. And this concerned a document that had been sent by  
8 Sergeant Barry to the sergeant in charge at  
9 Mitchelstown Garda Station, referring to the proposed  
10 transfer of Garda Shane Hannafin. That document was  
11 attached for your benefit and then he notes that "On  
12 the 24th June 2015, Sergeant Paul Barry submitted a  
13 report to the superintendent, Fermoy, in relation to  
14 the proposed transfer of Garda Hannafin from unit B to  
15 unit C at Mitchelstown Garda Station. In his report  
16 Sergeant Barry has made a number of serious allegations  
17 and assertions against a member and another other  
18 members of the Mitchelstown Garda Station.

14:48

14:49

19  
20 As you were district officer in Fermoy during the  
21 period and as you are named in his report, I would  
22 appreciate a report from you on the issues raised by  
23 Sergeant Barry."

14:49

24  
25 Then, if we have 843 up on the screen, you provide a  
26 detailed report, and I don't intend to open it, but you  
27 provided it on the 6th July 2015. The report is  
28 addressed to Chief Superintendent Dillane.

14:49

29 A. That's correct.

1 432 Q. And it goes to over three pages. Then finally, if we  
2 just look at page 846, you finish off by saying:  
3  
4 "The organisation has a problem in Mitchelstown  
5 sub-district which is being ignored. I tried to tackle 14:50  
6 the problem and I got no backing outside of Garda north  
7 division."  
8  
9 Is that a reference to your problems that you had with  
10 Sergeant Barry? 14:50  
11 A. Correct.  
12 433 Q. Now, yes, I think that on the 29th September 2015 you  
13 received a letter from Chief Superintendent Kehoe  
14 advising you that the investigation file in relation to  
15 the criminal investigation had been submitted to the 14:51  
16 Director of Public Prosecutions on the 28th August  
17 2015, and asking you whether you were agreeable to  
18 placing the discipline investigation in abeyance  
19 pending receipt of the DPP directions, isn't that  
20 right? 14:51  
21 A. That's correct.  
22 434 Q. I think that you replied to that and your reply is at  
23 page 848, if we could have that on the screen. You  
24 note in the second paragraph, if we scroll down, this  
25 is the 5th October, it's addressed to Chief 14:52  
26 Superintendent Kehoe:  
27  
28 "As I have previously indicated, this investigation has  
29 had a huge effect on my personal and professional life

1 since 2012.

2

3 I wish to have all matters completed and finalised  
4 without any further delay. I would be obliged if you  
5 would continue with the disciplinary investigation in  
6 order to bring this matter to a conclusion."

14:52

7

8 I think on the 24th November of 2015, you were advised  
9 by Chief Superintendent Kehoe that she had received a  
10 direction from the Director of Public Prosecutions and  
11 that no prosecution was to be brought against you,  
12 isn't that right?

14:53

13 A. That's correct.

14 435 Q. I think that that wasn't the end of the matter because  
15 on wednesday, 27th April 2016, you attended an  
16 interview at Thurles garda station, which was conducted  
17 by Chief Superintendent Kehoe and Detective Inspector  
18 O'Driscoll in relation to three alleged breaches of  
19 discipline that had been identified, isn't that right?

14:53

20 A. That's correct.

14:53

21 436 Q. And I think on the 17th May you received a letter from  
22 Assistant Commissioner Nolan, advising you of the  
23 outcome of the disciplinary investigation and that you  
24 were found not to be in breach of discipline, isn't  
25 that so?

14:54

26 A. That's correct.

27 437 Q. Now, you have referred in some detail in relation to  
28 interactions that you had with GSOC and their  
29 investigations, but you will be aware of the fact that

1 the Tribunal isn't looking into that.

2 A. Yes.

3 438 Q. Just finally then for the moment in relation to the  
4 complaints made by Mr. Barry, there's one in relation  
5 to Haddington Road?

14:54

6 A. Yes.

7 439 Q. And the sanctioning of hours in lieu for Haddington  
8 Road. Could you tell us what your position is in  
9 relation to that, because, to be quite frank, I don't  
10 really understand a lot of it and I have read the  
11 documentation and I am really none the wiser in  
12 relation to the procedure for sanctioning Haddington  
13 Road hours. So, will you tell us first of all why you  
14 need Haddington Road hours to be sanctioned and who  
15 does?

14:55

14:55

16 A. Prior to the Haddington Road hours being introduced,  
17 any member working in the Fermoy district had to have  
18 prior approval to work extra hours. So, Haddington  
19 Road, when it was introduced, again was extra hours,  
20 this was in July 2013, it was members who were working  
21 outside of their normal tours of duty. They had to  
22 work one -- if my memory is correct now, they had to  
23 work ten one-hours, which could be worked in blocks of  
24 two hours or three hours; they had to work one ten-hour  
25 shift for free, shall we say, and they had to work  
26 another ten-hour shift where you got 15 hours time off  
27 for that ten-hour shift. So that was extra duty that  
28 members were coming in on.

14:55

14:56

29

1 So, from the introduction of Haddington Road, I applied  
2 the same practice with the extra hours that you were  
3 working under Haddington Road as I did for overtime or  
4 for toil.

5 440 Q. Which means it has to be sanctioned by either --

14:56

6 A. Myself or Inspector O'Sullivan.

7 441 Q. -- Inspector O'Sullivan or yourself?

8 A. Yes.

9 442 Q. Is that the limit of it then, it all has to be  
10 sanctioned?

14:56

11 A. Correct.

12 443 Q. And that refers to -- the point that Mr. Barry makes,  
13 he says that's all good and well, but the fact is that  
14 sergeants were certifying and approving people carrying  
15 out these duties?

14:57

16 A. No, that's not the correct. It was the exact same as  
17 overtime or toil for Haddington Road. I would be  
18 informed, I am going to come in next Monday, for  
19 instance, and I am going to a particular duty for ten  
20 hours. As the manager of the district, and again going  
21 back to my job, I wouldn't be happy to have members,  
22 any members coming on duty during their time off that I  
23 didn't know about. No, I needed to know what member --  
24 when they were working and what they were doing when  
25 they were working.

14:57

26 444 Q. CHAIRMAN: Mr. Marrinan, I may be mistaken but I  
27 thought that Mr. Barry was saying that he was  
28 discriminated against because he was treated  
29 differently from the other people.

1 A. That's correct.

2 445 Q. CHAIRMAN: That's what he said?

3 A. That's what he said.

4 446 Q. CHAIRMAN: That's what Mr. Barry is saying?

5 A. Yes. 14:58

6 447 Q. CHAIRMAN: what do you say to that?

7 A. No, I treated him the exact same. And the evidence is

8 there attached to the A 85s, they're all signed by

9 myself or Inspector O'Sullivan for everyone's

10 Haddington Road. And if on any particular occasion I 14:58

11 saw something on a form that I didn't know about, I'd

12 ask the question, what is this about or how come I

13 don't know about this, across the board.

14 MR. MARRINAN: Okay, they're the only questions that I

15 have for you for the moment? 14:59

16

17 END OF EXAMINATION

18

19 CHAIRMAN: Okay. Thanks very much. Right.

20 Mr. Costelloe. 14:59

21 MR. COSTELLOE: Yes, Chairman. Your counsel was good

22 enough to tell me yesterday that the running would be

23 different and that I would cross-examine, if you will,

24 this witness so that we would switch things from the

25 previous witness, and I had anticipated starting that 14:59

26 today and I am obliged to my friends for informing me

27 of the likely -- the eerily correct, in fact, amount of

28 time that they would take with the direct-examination,

29 almost to the minute. A couple of matters arose this

1 morning, Chairman, one of which I needed instruction on  
2 from my client, but one of which will require a letter  
3 to be sent from my solicitor to a solicitor for the  
4 Tribunal to see if a document can be obtained and I am  
5 loathe to commence a cross-examination until I have  
6 done both of those things. 14:59

7  
8 It is also the case, Chairman, that a lot of what  
9 Mr. Marrinan has put to this witness was ground that I  
10 was going to have to cover, so I anticipate that the 15:00  
11 amount of time that I will be in cross-examination has  
12 being significantly reduced. This is all by way of  
13 preamble, Chairman, to my point: I am asking to you  
14 rise early today to give me the opportunity of  
15 conferring with Mr. Barry but also to see if Ms. Cody 15:00  
16 can liaise with your legal team to see if we can get  
17 the document or not.

18 CHAIRMAN: Why don't you tell us what the document is,  
19 Mr. Costelloe? Everybody is here, why doesn't your  
20 solicitor just say, what about the letter of the 25th 15:00  
21 January 2016?

22 MR. COSTELLOE: Well, the simple answer is, I would  
23 like to see the content of the document before I put it  
24 to the witness.

25 CHAIRMAN: Absolutely. No, no, there is no problem 15:00  
26 whatsoever. But there is a document that you want us  
27 to locate, if it's possible to locate it.

28 MR. COSTELLOE: Yes.

29 CHAIRMAN: But sorry, my only point is, that you said



1           you were going to get your solicitor to write to them.  
2           MR. COSTELLOE:   Yes.  
3           CHAIRMAN:   why don't you just tell -- counsel or the  
4           solicitor tell us what the letter is and we will go and  
5           try to find it. 15:01  
6           MR. COSTELLOE:   Yes, Chairman, I don't wish to be  
7           obtuse but the point is that if I say it now, the  
8           witness will hear me say it and --  
9           CHAIRMAN:   No, not if you speak privately, you tell the  
10          solicitor. 15:01  
11          MR. COSTELLOE:   I have no difficulty whatsoever doing  
12          that.  
13          CHAIRMAN:   Absolutely. So we don't need anybody  
14          heading off to write a letter, we can simply make the  
15          enquiry, that's no problem. So, unless anybody has any 15:01  
16          objection to that, I think that's the way to deal with  
17          the matter. Does anybody have any objection? I  
18          suppose I should ask the witness: Superintendent, have  
19          you any problem with cross-examination being left over  
20          until tomorrow? 15:01  
21          THE WITNESS:   No problem, Judge.  
22          CHAIRMAN:   Okay, thank you very much. Nobody else has  
23          any objection? Very good. Okay, Mr. Costelloe, then  
24          we'll proceed in that way. And, as I say, with regard  
25          to the letter, you just speak privately. 15:01  
26          MR. COSTELLOE:   And for the avoidance of doubt,  
27          Chairman --  
28          CHAIRMAN:   Sorry?  
29          MR. COSTELLOE:   Can you hear me?

1 CHAIRMAN: Yes, go on.  
2 MR. COSTELLOE: For the avoidance of doubt, it may well  
3 be that the document is completely irrelevant but it  
4 arose for the first time today and that's why I want to  
5 see it. 15:02  
6 CHAIRMAN: Of course, Mr. Costelloe.  
7 MR. COSTELLOE: Okay.  
8 CHAIRMAN: You may decide, I have nothing to do with it  
9 but all you want to do is to see it and so on.  
10 MR. COSTELLOE: Exactly. 15:02  
11 CHAIRMAN: So, if we can, we certainly will and I am  
12 sure my team will go to work on it. Very good, we will  
13 say 11 o'clock tomorrow then. Thank you very much.  
14 MR. COSTELLOE: Thank you, Chairman.  
15 15:02  
16 THE HEARING THEN ADJOURNED UNTIL WEDNESDAY, 1ST JUNE  
17 2022 AT 11 A.M.  
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