

TRIBUNAL OF INQUIRY INTO PROTECTED DISCLOSURES MADE UNDER
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MATTERS FOLLOWING RESOLUTIONS PASSED BY DÁIL ÉIREANN AND
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1921, ON 17 FEBRUARY 2017, AS AMENDED ON 7 DECEMBER 2018

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

HEARING HELD IN DUBLIN CASTLE
ON WEDNESDAY, 1ST JUNE 2022 - DAY 183

183

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

GWEN MALONE STENOGRAPHY
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I N D E X

WITNESS	PAGE
SUPERINTENDENT MICHAEL COMYNS	
CROSS-EXAMINED BY MR. COSTELLOE	5
CROSS-EXAMINED BY MR. O'HIGGINS	133
CROSS-EXAMINED BY MR. CARROLL	148
QUESTIONED BY MR. HARTY.....	150
MR. GERARD DILLANE	
DIRECTLY-EXAMINED BY MR. MARRINAN	154

1 THE HEARING COMMENCED, AS FOLLOWS, ON WEDNESDAY, 1ST
2 JUNE 2022:

3
4 CHAIRMAN: Now, Mr. Costelloe, whenever you are ready.

5 MR. COSTELLOE: Good morning, Chairman. Chairman, 11:02
6 before I begin can I just thank the Tribunal legal team
7 for sourcing a document for me late yesterday
8 afternoon. I am obliged for the assistance that they
9 provided and I just wanted to say that on the record.

10 CHAIRMAN: Thanks very much. 11:02

11
12 SUPERINTENDENT MICHAEL COMYNS WAS CROSS-EXAMINED BY
13 MR. COSTELLOE, AS FOLLOWS:

14
15 Q. MR. COSTELLOE: Superintendent Comyns, I had to defer 11:02
16 questioning you yesterday because you referenced a
17 document in your direct evidence that I wasn't familiar
18 with and I hadn't been able to find it, and having read
19 it now I am in a position to proceed, but sorry for the
20 delay, if you will. I know it is not easy having these 11:03
21 things hanging over you, so I apologise that I wasn't
22 able to begin yesterday.

23 A. That's not a problem, Mr. Costelloe.

24 1 Q. You understand that I am instructed on behalf of 11:03
25 Mr. Barry and to perhaps make as benign statement as
26 possible, he disagrees with you about many of parts of
27 your evidence that you have set out to the Tribunal
28 yesterday. I don't think that could possibly come as a
29 surprise to you, it's fair to say?

1 A. That's correct.

2 2 Q. Okay. And perhaps we can agree that there doesn't
3 appear to be any controversy or it doesn't seem to be
4 something that you object to, to say that you were
5 aware that Mr. Barry had made disclosures of alleged 11:03
6 wrongdoing prior to April of 2013; that appears to be
7 common case, am I right?

8 A. That's correct.

9 3 Q. Okay.

10 A. I knew from January 2013. 11:03

11 4 Q. Indeed, because you got a phone call from Assistant
12 Commissioner Nolan I think, you said on the 4th January
13 2013, and that was followed up by a letter which seems
14 to have arrived possibly even on the same day, and that
15 included the various complaints 1-8 referred to 11:04
16 earlier, we all know what we're talking about there?

17 A. That's correct.

18 5 Q. That's the complaints set out by Mr. Barry, correct?

19 A. That's correct.

20 6 Q. Just for the record, that's at page 647 of the 11:04
21 documents disclosed and it's set out in your statement
22 at page 549. But we agree on that in any event?

23 A. Yes.

24 7 Q. And then thereafter you had contact with Chief
25 Superintendent Kehoe. She informed you that she had 11:04
26 been assigned a duty to investigate those complaints,
27 isn't that correct?

28 A. Correct.

29 8 Q. And it seems to be the case, again going from your own

1 statement as well as the documents that we have, that
2 on two occasions in February 2013, being the 18th
3 February and the 26th February, you were contacted by
4 Chief Superintendent Kehoe to do with that
5 investigation, in relation to that investigation, do we 11:05
6 agree on that?

7 A. I was contacted, I wouldn't know the dates off the top
8 of my head, but I was contacted, yes.

9 Q. Again, if I am wrong on this, I am sure Mr. Harty or
10 the Tribunal will correct me, but again, it's set out 11:05
11 at page 550 of your statement, so we have that
12 information. And then, letters were sent by Chief
13 Superintendent Kehoe, and these are set out at pages
14 654 and 658, I don't propose to open them. One of them
15 was opened yesterday, the one that was at page -- 11:05
16 sorry, one of those letters was opened yesterday and
17 the form which accompanied it, at page 656, setting out
18 that Chief Superintendent Kehoe was effectively
19 investigating the harassment allegations but also she
20 was investigating the disciplinary aspect of the 11:05
21 complaints, isn't that right?

22 A. That's correct.

23 10 Q. Now, in the letter, which is set out at page 658, and
24 this was put to you yesterday and it's at page 28 of
25 the transcript yesterday, you were asked about that 11:06
26 particular letter, because it does refer to the fact
27 that there was a potential criminal component to the
28 investigation being conducted by Chief Superintendent
29 Kehoe, do you remember that?

1 A. I do.

2 11 Q. And I am obliged to the Tribunal registrar there,
3 you're ahead of me, but it's that letter, and in that,
4 and you've already acknowledged it there, it does refer
5 to a criminal component. Now, I went back and I looked 11:06
6 at the transcript but you tell me if I misunderstood
7 this: You seemed to be suggesting to the Tribunal
8 yesterday that despite the fact that that makes a
9 reference to a potential criminal component, you at
10 that time did not refer yourself or take cognisance of 11:06
11 or whatever way you want to describe it, become aware
12 of, if you will, that there was a potential criminal
13 aspect to her inquiry?

14 A. Yeah, that's my memory. The eight complaints were on
15 this letter and in my head there was nothing criminal 11:07
16 in any of those eight complaints.

17 12 Q. Yes. To be fair to you -- sorry?
18 A. Whether I was right or wrong.

19 13 Q. I beg your pardon, superintendent, I didn't mean to cut
20 across you. 11:07
21 A. It's okay.

22 14 Q. Finish your answer, if you will?
23 A. No, I finished it there. Whether I was right or wrong
24 in my head, there was nothing criminal in any of the
25 eight complaints on this letter. 11:07

26 15 Q. Understood. And to be fair to you, what appears to
27 have happened is that you were given complaint 1-8 by
28 A/C Nolan, number 9 is the potential criminal
29 complaint, we need to be careful not to go into the

1 substance of that allegation, but that's the ninth in
2 the litany of allegations made by Mr. Barry and you
3 weren't immediately, as in back in January of 2013,
4 told about that particular complaint, isn't that right?

5 A. No, that's not strictly correct. 11:07

6 16 Q. Okay.

7 A. Because Mr. Barry's original letter with the nine
8 complaints on it was sent to me at that time by A/C
9 Nolan. So it was on that letter that the assistant
10 commissioner sent to me in January. 11:08

11 17 Q. Okay. So thank you for clarifying that, I wasn't
12 clear. But it does appear to be the case, so, that
13 you're certain that although the references are 1-8,
14 there is in fact a ninth complaint included in that
15 document? 11:08

16 A. Yes.

17 18 Q. And had you sight of that particular complaint as far
18 as back as the 4th -- in or about the 4th January 2013?

19 A. Correct. Correct.

20 19 Q. And thereafter we know about Chief Superintendent Kehoe 11:08
21 being assigned the duty of investigating the discipline
22 and the harassment complaints, and we know that in her
23 letter that I've just referred to she makes reference
24 to the fact that there's also a potential criminal
25 investigation? 11:08

26 A. Correct.

27 20 Q. And to be fair to you, I don't want to put words in
28 your mouth, what you are telling the Tribunal is that
29 despite the fact that that's in that letter, you hadn't

1 really referred yourself to the potential of a criminal
2 investigation, as far as you were concerned you were
3 focusing on the discipline/harassment investigations?
4 A. At that time.
5 21 Q. At that time. would you agree with me that the ninth 11:09
6 allegation, the one that deals with the alleged
7 criminal act, is by far the most serious of the nine,
8 as you look at them?
9 A. Yes.
10 22 Q. Again, I think this was in your evidence yesterday, 11:09
11 page 30 of the transcript, if it's in doubt, but you
12 said that as far as you were concerned you were going
13 to go back -- sorry, excuse me, let me restart to give
14 you context. You, on receipt of the letter from Chief
15 Superintendent Kehoe, took the view that you had the 11:09
16 documentation to show that those allegations were, for
17 want of a better expression, nonsense, they were
18 untrue, incorrect, however one wishes to describe them,
19 you could prove by the documentation in your possession
20 that they weren't correct? 11:09
21 A. Yes.
22 23 Q. And that's something that you said in your evidence
23 yesterday, it's page 30 of yesterday's transcript. But
24 again, to be fair to you, this is something that you
25 very clearly set out in your own statement from the get 11:10
26 go; that as far as you were concerned you had the
27 documentation to disprove those allegations, isn't that
28 correct?
29 A. Yes.

1 24 Q. How comprehensive would you have considered your
2 documentation in those circumstances? Do you know what
3 I mean? That may be a poorly phrased question. What I
4 am asking you is: where you are making that statement
5 in your own statement to the Tribunal and where you are 11:10
6 repeating it in your evidence, I am asking you to
7 describe, if you will, how comprehensive that
8 documentation was?

9 A. As I said yesterday, when the original letter came to
10 me from Assistant Commissioner Nolan, I obviously had 11:10
11 to go looking for documentation for each of the
12 allegations.

13 25 Q. Yes.

14 A. And I found documentation which in my opinion was
15 favourable to me. 11:11

16 26 Q. Yes.

17 A. So in my opinion I had enough documentation that was
18 favourable to me.

19 27 Q. It may or may not come as a relief to you to hear this,
20 I am certain it will come as a relief to all the 11:11
21 lawyers in the room, I don't propose to bring you
22 through each and every piece of those documents, okay,
23 that's not going to happen. But what I was really
24 trying to get was, if you will, a pen picture or a
25 précis of your understanding of the extent to which you 11:11
26 held that documentation to establish your point of
27 view, your position, and that's your answer to that
28 question?

29 A. Yes.

1 28 Q. That you thought you had what you needed in the
2 documents you had?

3 A. Yes.

4 29 Q. Okay. Again, I wish to be very careful in how I deal
5 with this because we're not going into the substance of 11:11
6 the allegation in any shape or form, but the criminal
7 allegation, that's number 9, pertained in the most
8 general way, if I can put it this way, to the movement
9 of faxes or a fax which was said to encompass a
10 statement that had been taken, isn't that -- in general 11:12
11 terms, isn't that what we are talking about?

12 A. It was one of the issues, yes.

13 30 Q. Fair enough, that's fine. We'll accept that. I am
14 very cautious not to try and --

15 A. Yeah. 11:12

16 31 Q. -- transgress into that. So we have, that being the
17 part, at least, of the criminal allegation. Isn't it
18 correct that you told Chief Superintendent Comyns that
19 that particular document -- sorry, Chief Superintendent
20 Kehoe, I beg your pardon, I said Comyns. Chief 11:12
21 Superintendent Kehoe, that you told her that in
22 relation to that particular document, this being the
23 fax, that you couldn't locate it?

24 A. I couldn't locate -- yes.

25 32 Q. Do you remember, during the course of the investigation 11:12
26 by Chief Superintendent Kehoe, she asked you about that
27 document?

28 A. Yes.

29 33 Q. And your answer was that no doubt it will turn up in a

1 folder at some stage when all of this is over and
2 behind you, but as things currently stood you couldn't
3 find it?

4 A. Correct.

5 34 Q. And again, if there's any doubt about that or if my 11:13
6 friends wish to put it to you or deal with it, that's
7 at page 593 of the documents. You're asked the
8 question straight out by Chief Superintendent Kehoe and
9 your answer is:

10 11:13
11 "I never gave it to anybody. It's in a folder
12 somewhere with my notes on the conference and other
13 documents I picked up during this investigation. I've
14 searched for it but I'll find it some day probably when
15 this is over in a folder." 11:13

16
17 That was the answer you gave, isn't that right?

18 A. Yes.

19 35 Q. Could I suggest to you and invite you to comment on the 11:13
20 suggestion that it's extraordinary that what appears to
21 be a primary document in relation to the most serious
22 of the allegations is one of the documents that you
23 aren't able to locate?

24 MR. HARTY: Sorry, Chairman, I am going to have to
25 enquire as to where we are going with all of this. 11:13
26 Mr. Barry has suggested that he has not -- has now
27 withdrawn any complaints in relation to that
28 investigation, save for the question of delay. And in
29 relation to the matters which are set out in

1 Mr. Barry's letter, they are not matters for
2 investigation by this Tribunal; they are allegedly the
3 protected disclosure, and this Tribunal is
4 investigating alleged penalisation following the making
5 of that disclosure. And we have carefully not dealt 11:14
6 with those issues and, indeed, Sergeant Barry himself
7 didn't deal with those issues and quite properly so.
8 The assertion, or the attempts by Mr. Costelloe now to
9 dig into the question of whether or not a piece of
10 evidence was available to either (a) the investigation 11:14
11 or (b) in substance in relation to those complaints,
12 which are not the subject of this Tribunal.

13 CHAIRMAN: Mr. Costelloe?

14 MR. COSTELLOE: I mean, I think it's quite obvious that
15 that's not what I am doing. I must have repeated it a 11:15
16 number of times, that I didn't wish to get into the
17 substance of the allegation and this has got nothing
18 whatsoever to do with Chief Superintendent Kehoe's
19 investigation. This is to do with the extent to which
20 the superintendent retained various documents that he 11:15
21 says he's now relying upon or was relying upon when he
22 was making his statement to the Tribunal and before.

23 CHAIRMAN: I have to confess, Mr. Costelloe, that I
24 have been waiting for an objection as I listened to
25 your questions. It seems to me that you -- I am not at 11:15
26 all, I am not at all criticising you, but it did seem
27 to me that you were trespassing into an area which is
28 excluded from the Tribunal's concerns. So, if
29 Mr. Harty hadn't intervened, I would have intervened

1 very soon. So I think this is an area that you should
2 not be exploring.

3 MR. COSTELLOE: If it pleases you, Chairman.

4 36 Q. By the 11th March you had responded to the allegations
5 set out 1-8 in that letter that you received in January 11:16
6 of 2013, isn't that right?

7 A. Again, I wouldn't know the date off the top of my head,
8 but I responded, yeah, as soon as I could.

9 37 Q. So it's my fault, not yours, it's my fault, I am deaf
10 as a post, if you don't speak into that microphone I 11:16
11 won't be able to hear you, I'm sorry superintendent?

12 A. Sorry.

13 38 Q. You're telling us basically that you agree with the
14 assertion but you can't remember the date?

15 A. The exact date off the top of my head, but I did as 11:16
16 soon as I could.

17 39 Q. And that included providing any information that you
18 had at your disposal to support your position, which
19 was that there was no substance to any of those
20 allegations, 1-8? 11:17

21 A. Yes, and I think I should add, when you said I retained
22 documents, I didn't actually have documents retained, I
23 had to source the documents in the district office, I
24 didn't have them in my personal possession.

25 40 Q. Yes. 11:17

26 A. They would have been kept on files in the district
27 office.

28 41 Q. Can I move on to, I suppose on one way of looking at
29 it, the beginning, the Regulation 10 form, the service

1 of the Regulation 10 notice --

2 A. Yes.

3 42 Q. -- on my client. There was an occasion on the 1st
4 August when he was late for work, he was in the company
5 of a guard by the name of JJ Wall and they turned up, I 11:17
6 think, on your record, on your memory, at 20 past 12
7 and they should have been there 20 minutes earlier, is
8 that correct?

9 A. That's correct.

10 43 Q. Okay. There were other gardaí who were late, there was 11:18
11 one guard who wasn't correctly attired, but in general,
12 you having gotten there to the station in Mitchelstown
13 saw that my client and this other guard got there 20
14 minutes late, isn't that right?

15 A. Yes. 11:18

16 44 Q. You were asked about this yesterday and you were asked
17 whether or not you spoke with Mr. Barry and/or Mr. Wall
18 and your memory was that you had spoken with him and
19 you had been told that Garda Wall had dropped his car
20 in for a service, have I got that right? 11:18

21 A. Yes.

22 45 Q. The following day was the day upon which you served or
23 gave them -- I don't want this to elevate this to a
24 status that maybe you wouldn't agree with, but in any
25 event day, they went back and they got the form 10, the 11:18
26 Regulation 10 notice?

27 A. Yes.

28 46 Q. Now, in response to a question that was put to you
29 yesterday, you indicated that as far as you were

1 concerned the servicing of the car was something that
2 had to be booked in advance, by which I take you mean
3 that they should have, as in Mr. wall should have
4 booked it at a time when he wasn't on duty or it
5 wouldn't have impacted on his ability to be on time for 11:19
6 work, do I understand that correctly?

7 A. Yes, in my opinion the servicing, the word service was
8 used to me, the servicing of a car should not impact on
9 two people being late for work.

10 47 Q. Yes. But in that vein, I mean I know you have been 11:19
11 sitting there because I have been able to see you for
12 the last two weeks, you heard the evidence of Mr. Barry
13 and his assertion was that this was an unexpected
14 thing, that when Mr. wall was on his way to collect
15 Mr. Barry at the petrol station in order to bring him 11:19
16 to work, the check engine light came on and they had no
17 choice but to stop at the garage and drop the car in,
18 you heard all of that?

19 A. I heard that, yes.

20 48 Q. Was that not something that you made enquiries about on 11:19
21 the 1st August, the day they were late?

22 A. It wasn't said to me, the word service was said.

23 49 Q. And you're quite sure, despite the fact that there has
24 been evidence from Mr. Barry explaining this wasn't a
25 preplanned thing, that nothing was said to you at the 11:20
26 time?

27 A. I am absolutely certain, Mr. Costelloe, I wrote it into
28 my journal.

29 50 Q. When you say you wrote it into your journal, what do

1 you say you wrote into your journal about that?

2 A. The word service is there, again, without bringing up
3 my journal, I can't say the exact -- the word service
4 is there.

5 51 Q. Okay. Well, again, you understand Mr. Barry's 11:20
6 assertion --

7 A. I do, I've heard it.

8 52 Q. -- which is that this was entirely outside his control,
9 that he found himself in a situation not of his own
10 making. You heard him say that in evidence? 11:20

11 A. I did hear him say that, yes.

12 53 Q. By the 9th August, this is the 9th August 2012, you
13 were aware of the fact that Mr. Barry was absent from
14 work because he was claiming that it was due to work --
15 due to what he was claiming was work-related stress, 11:20
16 correct?

17 A. No. My understanding was, when Inspector Tony
18 O'Sullivan met him, so whatever date Inspector
19 O'Sullivan met Sergeant Barry, Sergeant Barry told him
20 that he had an issue with me. 11:21

21 54 Q. Just going back to the transcript from yesterday,
22 because again I am just giving you the opportunity to
23 correct me where I have gone wrong in this, page 21,
24 line 19, you're asked the question:

25 11:21
26 "Q. And on the 9th August you were further informed
27 that Sergeant Barry was certified as suffering from
28 work-related stress by his GP, is that right?"
29

1 You initially answered:
2
3 "A. Yes, that's correct."
4
5 Mr. Marrinan, was then proceeding to another question 11:21
6 to do with Inspector O'Sullivan but then you
7 interrupted to clarify and you said:
8
9 "A. Sorry, Mr. Marrinan, I don't think that is
10 correct. I think it wasn't the GP. It was from the 11:21
11 form filled out by the guard that Sergeant Barry
12 reported sick.
13 Q. Yes.
14 A. In Mitchelstown.
15 Q. You're right in that regard, yes. 11:22
16 A. I don't think the GP had said work-related stress.
17 Q. At that point in time the certificate referred to
18 illness."
19
20 So this is what we are talking about there? 11:22
21 A. Yes.
22 55 Q. And it was to do with that illness that you say you
23 then sent Inspector O'Sullivan to make enquiries about
24 what the illness was?
25 A. Yes. 11:22
26 56 Q. Okay. And again there is, I suspect, absolutely no
27 benefit to delving into this because I am assuming what
28 your answer is going to be, but you know that Mr. Barry
29 is asserting that Inspector O'Sullivan was sent by you

1 to find out about the nature of your complaint about
2 him, you don't accept that obviously?

3 A. No.

4 57 Q. You're saying that the entirety of what Inspector
5 O'Sullivan was there to do was to comply with the 11:22
6 regulations, which was to find out the source of the
7 illness --

8 A. Yes.

9 58 Q. -- causing him to be out sick?

10 A. Yes. 11:22

11 59 Q. So when you sent Inspector O'Sullivan, this is in
12 compliance with what you call Directive 139/10, when
13 you sent Inspector O'Sullivan to speak to Mr. Barry,
14 what information did you give him in advance of that?

15 A. I don't believe Inspector O'Sullivan would have seen 11:23
16 the same documentation as me, so I appointed Inspector
17 O'Sullivan under the policy to investigate the
18 work-related stress.

19 60 Q. Yes, we know that, superintendent, but what I am asking
20 you is -- well, let's take it back a step. You've 11:23
21 decided that you're going to send Inspector O'Sullivan
22 to comply with Directive 139/10, yes, am I right?

23 A. I decided to appoint him.

24 61 Q. Okay.

25 A. To investigate the work-related stress. 11:24

26 62 Q. Yes.

27 A. That was up to Inspector O'Sullivan how he did that.

28 63 Q. Sure. So there's a directive that requires you to get
29 information, I don't want to elevate this again to a

1 level that it doesn't deserve, but there is a directive
2 that mandates that garda must give information when a
3 guard is out sick, correct? That is Directive 139/10?
4 A. Yes.
5 64 Q. And the person you've decided that is going to get that 11:24
6 information, we won't call it investigation, we will
7 just say information, is Inspector O'Sullivan, correct?
8 A. Okay.
9 65 Q. Did you meet with him physically, that is did you meet
10 with Inspector O'Sullivan physically in order to tell 11:24
11 him he now had this job?
12 A. I can't say.
13 66 Q. Okay.
14 A. I could have, but I could also have rang him on the
15 phone and I appointed him on paper. 11:24
16 67 Q. Yes.
17 A. I sent a report to him.
18 68 Q. Sure. So again, I think, you know, we're talking about
19 nearly ten years ago, you don't know if you met him in
20 person or if you just spoke to him on the phone, but 11:25
21 you do communicate to him that Paul Barry is out sick,
22 we have a job to get information, you're the man who is
23 going to go and get the information, I am paraphrasing
24 obviously --
25 A. Yes. 11:25
26 69 Q. -- because we don't know what conversation entailed,
27 but that's the effect of it, correct?
28 A. I am appointing you under 139/10 to investigate the
29 work-related stress.

1 70 Q. Okay.

2 A. That would have been what I said.

3 71 Q. And did you give him any other information at that
4 time?

5 A. I don't think so. 11:25

6 72 Q. Okay. So you didn't tell him, as far as you can
7 recall, that you had served the Regulation 10 on Paul
8 Barry just over a week prior?

9 A. I would say he would have known that in the week. I
10 would have told him within the week that I did that. 11:25

11 73 Q. So the best you can answer is to say that you think he
12 had that knowledge already?

13 A. I have no doubt, Mr. Costelloe, that he did have that.
14 I don't think he did have, I have no doubt he had that
15 knowledge. 11:26

16 74 Q. Then in that conversation where you're telling
17 Inspector O'Sullivan to comply with Directive 139/10,
18 did you not reference that disciplinary incident, the
19 service of the form 10, the Regulation 10 form?

20 A. Again, I can't say what I said to him but he would 11:26
21 certainly have known it within the week.

22 75 Q. But again, wouldn't it have been extraordinary if you
23 didn't bring that up in that conversation?

24 A. Not if we discussed it already, and I would say we had
25 discussed it already. 11:26

26 76 Q. There's a situation where Sergeant Barry isn't coming
27 into work because of sickness, you have a job to do to
28 get information about that and you're saying that it
29 wouldn't have been -- it wasn't unusual that when you

1 were talking to the person you assigned to get that
2 information you didn't discuss the earlier disciplinary
3 incident?

4 A. We would have discussed it already, as I said. It
5 would have been discussed in that week. When Sergeant 11:27
6 Barry went sick, I have no doubt I said to Inspector
7 O'Sullivan, well, I served him with Regulation 10
8 discipline forms. I have no doubt.

9 77 Q. As best as you can say now, given that you're saying
10 you have no doubt, one way or the other Inspector 11:27
11 O'Sullivan would have gone to speak to Mr. Barry in the
12 knowledge that that Regulation 10 form had been served
13 on Mr. Barry a week previous?

14 A. Certainly.

15 78 Q. Okay. wouldn't it make sense then that Inspector 11:27
16 O'Sullivan would bring up that issue, the service of
17 the Regulation 10 with him, when asking him why he was
18 out sick?

19 A. That's a matter for Inspector O'Sullivan.

20 79 Q. I am only putting it to you because again Mr. Barry 11:27
21 says that on that occasion when Inspector O'Sullivan
22 spoke to him, what he wanted to know, that is what
23 Inspector O'Sullivan wanted to know, was what was his
24 complaint about you, not why was he out sick?

25 A. Again, that's for Inspector O'Sullivan. 11:28

26 80 Q. In relation to the issue about temporary workplace
27 accommodations, and we're using that phraseology
28 because it comes up in a few of the documents?

29 A. Yeah.

1 81 Q. And it seems to have been accepted as the correct way
2 of describing what we're talking about. Much of what I
3 was going to ask you about this I don't need to,
4 because it seems to me that you were very open to
5 Mr. Marrinan in response to his questions yesterday, 11:28
6 which was that as far as you were concerned there was
7 nothing that could work other than Mr. Barry being
8 transferred away from your district, is that fair to
9 say?

10 A. The only other thing that could work was Mr. Barry to 11:28
11 have some face-to-face contact with me. That was the
12 only other thing that could work.

13 82 Q. And again, I am not getting into the rights or wrongs
14 of it, but you're aware of the fact that that was
15 something that was precluded by his medical 11:29
16 certificate, he wasn't to have any contact with you as
17 far as the medical certificate was stating it, isn't
18 that right?

19 A. That's right, that's what the medical certificate said.

20 83 Q. So therefore, that not being an option, we fall back on 11:29
21 the answer that you gave Mr. Marrinan yesterday, which
22 was that as far as you were concerned the only way this
23 could work would be to get him out of your district.
24 Sorry, let me rephrase that, because that might sound
25 like I am speaking pejoratively. I don't mean to be. 11:29
26 But your answer is, as I understand it at least, the
27 only thing that could work here, because of the
28 situation you were both in, was for him to be
29 transferred out of a district where you were in charge?

1 A. That was my opinion.

2 84 Q. And you had, of course, seen the medical certificate, I
3 am talking about the one from April, you had seen it on
4 the 4th April 2013, isn't that right?

5 A. Yes. 11:29

6 85 Q. And you had seen what was said in it and you had seen
7 that he couldn't work or attend at Fermoy Garda Station
8 or come into contact with you?

9 A. Yes.

10 86 Q. And it's in that context that your previous answers 11:30
11 pertain; you're saying this is unworkable, how can I be
12 in charge of a district where one of my sergeants can't
13 come to my station for PAF meetings or whatever or meet
14 me in person, yes?

15 A. Correct. 11:30

16 87 Q. How did you feel then about that document, that medical
17 certificate? What was your attitude towards it?

18 A. As I said yesterday, Mr. Costelloe, my attitude was:
19 How was this going to work? How... I just couldn't
20 get my head around how a person couldn't come in to 11:30
21 Fermoy Garda Station in the middle of the night when
22 there's no chance I'd be there, or how I could do my
23 job. If I knew Sergeant Barry was in Mitchelstown, did
24 that mean I couldn't go into Mitchelstown? I just
25 couldn't get my head around it. I couldn't see how it 11:31
26 would work.

27 88 Q. Did it make you annoyed?

28 A. No.

29 89 Q. When you are discussing, in a letter, that medical

1 certificate, this is page 780-781, it was opened
2 yesterday, so we don't need to open it now, when you're
3 discussing that certificate, amongst other things, with
4 Chief Superintendent Dillane, you put the words
5 'medical certificate' in quotation marks, do you 11:31
6 remember doing that?

7 A. Yes.

8 90 Q. why?

9 A. Because that was the elephant in the room; the medical
10 certificate. 11:31

11 91 Q. Sorry, I don't understand that answer?

12 A. This was the cause of the issues.

13 92 Q. Perhaps we should actually go to that document, please,
14 page 781, it's the second page of the letter. Right
15 there we have it. This again is a letter from you to 11:32
16 Chief Superintendent Dillane. The second, the
17 penultimate paragraph there, the second on the page
18 ends with the sentence:

19

20 "As district officer has been undermined by this 11:32
21 'medical certificate' and in my opinion by the Garda
22 organisation by failing to test the validity of
23 'medical certificate'."

24 A. Yeah.

25 93 Q. what I am asking you is, why did you put the words 11:32
26 medical certificate in quotations there?

27 MR. HARTY: I am sorry to interrupt again, but I think
28 it when the witness is being asked about a letter, I
29 think it is important that the date of the letter at

1 the very least -- so that the context can be clear for
2 the witness.

3 MR. COSTELLOE: It's April 2014, but let's go up a
4 page, please.

5 MR. HARTY: It's March 2014. 11:32

6 MR. COSTELLOE: Just to make sure that I am not being
7 unfair in any way. Thank you, Mr. Harty. Just go up
8 one page, please. Could you scroll up a tiny bit more,
9 I'm sorry.

10 CHAIRMAN: Keep going up and you will find the date. 11:33

11 MR. COSTELLOE: Yes.

12 CHAIRMAN: 19th March.

13 94 Q. MR. COSTELLOE: I thought yesterday we had agreed it
14 was actually dated the 19th March but it was April
15 2014. But I apologise if I have that wrong. In any 11:33
16 event, this is the 19th March 2014, is the date of the
17 letter. To be absolutely clear, and I am not trying to
18 trick you.

19 A. No, no.

20 95 Q. I want to be absolutely upfront about this, this is 11:33
21 something you are sending to Chief Superintendent
22 Dillane. You dictated that letter?

23 A. Yes.

24 96 Q. And in that letter -- did you type it yourself or did
25 you get your staff -- 11:33

26 A. No, my staff typed it.

27 97 Q. So in that letter you dictated, so as to put the words
28 'medical certificate' into quotation marks?

29 A. Yes.

1 98 Q. And my question is: why?
2 A. I think my previous answer, Mr. Costelloe, explains
3 that. I just -- I couldn't see how a medical
4 certificate would stop someone coming into Fermoy Garda
5 Station in the middle of the night when there was no 11:34
6 chance that I'd be there. I just -- it just made no
7 sense to me.

8 99 Q. Could I suggest to you that you didn't regard the
9 document as a medical certificate at all, you just
10 regarded it as an encumbrance, something that was in 11:34
11 your way of the effective management of your district?
12 A. No. It was issued by a medical doctor.

13 100 Q. And I suggest to you that by putting it in quotation
14 marks like that, you're effectively showing, let's not
15 mince about, you're showing contempt for the document. 11:34
16 You don't regard it as a medical certificate, you just
17 think it's something that has been generated by a
18 doctor at the behest of Mr. Barry, which is now
19 unreasonably encumbering your ability to run your
20 district? 11:34
21 A. No, I don't agree with that, Mr. Costelloe.

22 101 Q. We know that you started as superintendent in Fermoy on
23 the 1st July 2010, have I got that date right?
24 A. Yes.

25 102 Q. Okay. And that meant that you're stationed in Fermoy, 11:35
26 it being the district headquarters, correct?
27 A. Yes.

28 103 Q. Okay. You were obviously, therefore, still there in
29 2014, before you moved back into the city?

1 A. Yes.

2 104 Q. Yeah?

3 A. Yeah.

4 105 Q. Okay. Again, forgive me, I'm really just stating by
5 way of a question, I am putting a question almost 11:35
6 insulting obviousness to you, but I am doing it for the
7 purpose of the record if nothing else. Had Mr. Barry
8 been moved to Fermoy in 2014, he would have been under
9 your direct supervision because you were actually
10 working at that station, isn't that right? 11:35

11 A. Mr. Barry was always under my direct supervision.

12 106 Q. Forgive me, you would have been working in the same
13 building?

14 A. Correct.

15 107 Q. And obviously this is at a time when that document, 11:35
16 which I am calling the medical certificate, which you
17 have placed in parenthesis, was still in being?

18 A. Yes.

19 108 Q. The document that said he should not come into contact
20 with you or work in Fermoy Garda station, correct? 11:36

21 A. Correct.

22 109 Q. You, in some detail yesterday, I'd suggest to you,
23 explained that by November of 2013 you were in need of
24 another sergeant at Fermoy Garda Station, have I got
25 that right? 11:36

26 A. Yes.

27 110 Q. Okay. And there was something that you said that I
28 hadn't understood, it may very well be that it is the
29 implication of what you are saying in your statement,

1 it's my failing, but just to go back over it again, you
2 pointed out that the position that needed to be filled
3 was the sergeant from, was it unit D, D for delta?

4 A. Yes.

5 111 Q. So we know that there's a unit D out of Fermoy, and we 11:36
6 know that there's a unit D out of Mitchelstown Garda
7 Station, back in November of 2013, right?

8 A. Yes.

9 112 Q. Were there any other unit Ds at that time in your
10 district? 11:37

11 A. Well, unit D is a national unit, so there would --
12 yeah.

13 113 Q. Forgive me?

14 A. Unit D, when unit D was working at that time, it was
15 working throughout Ireland. 11:37

16 114 Q. Yes. And I think that's very clear from your evidence
17 yesterday to the Chairman. But what I am asking you
18 is: There's unit D working in Fermoy at any given
19 time --

20 A. Yes. 11:37

21 115 Q. -- and there should be unit D working in Mitchelstown
22 at any given time --

23 A. Yes.

24 116 Q. -- would there have been unit D working in any of the
25 other stations within your district at that time? 11:37

26 A. Yes.

27 117 Q. Okay. So of the unit D, you have how many sergeants in
28 Fermoy in November of 2013?

29 A. That was the issue, there was no sergeant.

1 118 Q. Exactly. And then in relation to Mitchelstown you have
2 a unit D sergeant, a man by the name of Gerry Quinn?
3 A. Yes.

4 119 Q. Were there other unit D sergeants within your district
5 who would have been working out of other stations? 11:38
6 A. No.

7 120 Q. So that we're absolutely clear before I move on then,
8 you need a unit D sergeant and you don't have one in
9 Fermoy, there is a unit D sergeant in Mitchelstown, a
10 man by the name of Gerry Quinn, and as I understand 11:38
11 your evidence, when you go looking for a sergeant to be
12 transferred to Fermoy, your preference was that it
13 would be the unit D sergeant in Mitchelstown, Mr. Gerry
14 Quinn?
15 A. Yes. 11:38

16 121 Q. All of that is correct so far?
17 A. Yes.

18 122 Q. Okay. And, indeed, you very fairly said yesterday, if
19 I can put it to you, if I may suggest, you very fairly
20 said in your evidence yesterday, page 74 of the 11:38
21 transcript, if there's any question about this, that
22 you did address your mind to the fact that Sergeant
23 Barry was one of the sergeants in Mitchelstown but it
24 was clear your preference was for Gerry Quinn, isn't
25 that correct? 11:39
26 A. Yes. And really, what I was saying to the chief
27 superintendent: I need a sergeant in Fermoy. The only
28 option is one of the two sergeants in Mitchelstown,
29 unless the chief superintendent wants to go out into

1 the division, if there's someone else who wants to
2 move.

3 123 Q. Absolutely. But there's two parts to this really,
4 could I suggest to you. The first is that Gerry Quinn
5 is a unit D sergeant, so it appears to make sense that 11:39
6 he would be the sergeant who would move, correct?

7 A. Yes.

8 124 Q. And then, there's the simple reality to all of this, I
9 mean I am sure you are not going to object, you're not
10 going to disagree with me, you don't want Paul Barry, 11:39
11 for whatever -- not to put spin on it, but you don't
12 want Paul Barry because of what's been going on, it
13 makes much more sense to have Gerry Quinn?

14 A. I wouldn't agree with you, Mr. Costelloe.

15 125 Q. Okay. You don't agree that even though there is a 11:39
16 medical certificate in being at the time precluding him
17 from going to Fermoy --

18 A. What you said is, I don't want Sergeant Barry. I
19 wouldn't say that. If Sergeant Barry was transferred
20 to Fermoy, I would have been worked with Sergeant 11:40
21 Barry.

22 126 Q. Okay, if we accept that absolutely, right, if you are
23 told to do something you are going to make it work as
24 best you can. I am not challenging you on that,
25 superintendent. 11:40

26 A. Okay.

27 127 Q. And in a way this has really got nothing to do with
28 sergeant of An Garda Síochána, in a way I'd suggest to
29 you this is just simple ordinary human interaction.

1 There's a man out there who's making allegations about
2 you, he has a medical certificate which says that he
3 shouldn't be in contact with you and he shouldn't work
4 at the same building as you, isn't it absolutely common
5 sense, that that's not the man that you would want to 11:40
6 be transferred to your station, on your evidence?
7 A. Again I'll say, if he was transferred I would have
8 worked with him. You know, I wouldn't say the way you
9 put it, I didn't want Paul Barry.
10 128 Q. Okay. I won't labour the point. I will move on. Can 11:41
11 we agree at least that your preference is for Sergeant
12 Gerry Quinn?
13 A. That's what was in my head, yeah, when I wrote to the
14 chief superintendent.
15 129 Q. Because in fact, as you said yesterday, you actually 11:41
16 discussed with Chief Superintendent Dillane and you
17 discussed the fact that it was Gerry Quinn you wanted.
18 That's page 76, line 9 of your transcript, of the
19 transcript of your evidence yesterday, if you are in
20 doubt? 11:41
21 A. I would have said my preference was for Gerry Quinn,
22 yes.
23 130 Q. Yes.
24 A. Yeah.
25 131 Q. And again, I'm not going to go back over the ground 11:41
26 we've just traversed --
27 A. No.
28 132 Q. -- I am just leaving it out there, but saying to you,
29 we can establish, because you've agreed with me, that

1 you're looking for a sergeant and you've told the chief
2 super that the sergeant that you would have a
3 preference for is Gerry Quinn, correct?

4 A. Correct.

5 133 Q. At what stage did you become aware of the fact that it 11:42
6 was to be Paul Barry who was to be transferred to your
7 district?

8 A. I am not sure. I can't say. Chief Superintendent
9 Dillane said it to me at some stage.

10 134 Q. Right. I don't see anywhere in your journal or in any 11:42
11 of the documentation a note acknowledging your
12 awareness of this fact. So, it might be there, I
13 haven't seen it. In the absence of it, you can't
14 assist us. Was it still in 2013? Was it into 2014?

15 A. What I would say is, whenever Chief Superintendent 11:42
16 Dillane asked HRM, it would have been that time.

17 135 Q. Okay, that was the 10th December 2013.

18 A. Okay.

19 136 Q. Chief Superintendent Dillane asked for Mr. Barry to be
20 transferred to Fermoy, this is page 430 of the 11:42
21 documents, and that was on the 10th December 2013,
22 okay?

23 A. I do accept that.

24 137 Q. It's okay, we needn't go to it. If there is a doubt
25 about it, I am sure I will be told I have it wrong. 11:42
26 But it's already come out in evidence that Chief
27 Superintendent Dillane was making that request on the
28 10th December 2013. You're saying that it was in or
29 about that time that you were informed that Mr. Barry

1 was to be the sergeant?

2 A. Yes.

3 138 Q. Did you get on to Chief Superintendent Dillane and ask
4 him what he was at?

5 A. No. 11:43

6 139 Q. Did you say to him, ah come on, are you serious --

7 A. No.

8 140 Q. -- why are you sending me that fellow, why don't you
9 give me the guy I want?

10 A. No. 11:43

11 141 Q. You never once raised with Chief Superintendent Dillane
12 the fact that he was sending to you the sergeant who
13 made allegations against you, whom both of you knew had
14 a medical certificate to say he shouldn't be in contact
15 with you? 11:43

16 A. Sergeant Barry was working at the time in the district.
17 If he was in Fermoy Garda Station our contact would
18 possibly have been a bit more than if he was stationed
19 in Mitchelstown. But on a day-to-day basis, I didn't
20 meet the sergeants in Fermoy station. They worked out 11:44
21 of the station, downstairs, I was in my office
22 upstairs.

23 142 Q. I am just going to have to go back to the question I
24 asked you, superintendent: Given everything that had
25 been going on up to this point, given the fact that 11:44
26 there was a junior officer, if you will, an NCO, a
27 suggest making such incredibly serious allegations
28 against you, with an ongoing investigation, who had
29 come back to work with a medical certificate to say he

1 shouldn't be in Fermoy Garda Station and he shouldn't
2 be in contact with you, you're telling us that you
3 didn't get onto the phone or e-mail or even have a
4 conversation with Chief Superintendent Dillane saying,
5 why in the world are you sending me him, I asked you 11:44
6 for somebody else, this is ridiculous, I don't want
7 that fellow, I want Gerry Quinn?

8 A. No.

9 143 Q. Isn't that extraordinary?

10 A. I don't think so. 11:44

11 144 Q. Do you not think that it flies directly in the face of
12 the medical certificate which you have acknowledged you
13 were aware of?

14 A. Yes, it does.

15 145 Q. And in that circumstance, where you're a senior manager 11:45
16 of any number of people within your district, one of
17 whom is Paul Barry, who has come to work with a medical
18 certificate, you're now not even raising so much as a
19 ah come here, type of moment or conversation with your
20 chief super about the fact that that man in 11:45
21 contravention of the certificate is to be sent to work
22 with you at your station?

23 A. That was the chief superintendent's decision.

24 146 Q. But you're the superintendent in charge of Fermoy,
25 you're the man referred to on the face of the medical 11:45
26 certificate?

27 A. Correct.

28 147 Q. I mean, what's going on here? why is it that you're
29 prepared to not even raise the slightest of demure with

1 Chief Superintendent Dillane?

2 A. Sergeant Barry was working in the district anyway.

3 148 Q. With all due respect, superintendent, we know that is 11:46
4 not the issue; the issue is whether or not he has to
5 come into contact with you and whether or not he has to
6 come into Fermoy Garda Station. That's what the
7 medical certificate precludes. You just agreed with me
8 a moment ago about that?

9 A. Yes.

10 149 Q. All right. I will move on. It's not even a case, 11:46
11 isn't it correct to say, that you were trying to change
12 Chief Superintendent Dillane's mind, you've told us
13 that you weren't, you've told us you didn't do anything
14 about it, but in fact you were actively trying to
15 ensure that the move happened, isn't that correct? 11:46
16 That the transfer happened?

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

18 150 Q. Okay. Can we go to page 4151, please. Thank you.
19 That's a document that's stamped the 6th March 2014.
20 It's a document which is addressed to the assistant 11:46
21 commissioner, Human Resources Management. They hadn't
22 changed their name yet, I don't think. And it's from
23 you, and it arises out of a preceding document sent by
24 the assistant commissioner, mentioning the fact or
25 bringing to your attention the fact that Paul Barry has 11:47
26 raised a Code 8.3 objection to being moved to Fermoy,
27 do you understand?

28 A. I do.

29 151 Q. Again, this has all been addressed before, but what

1 Mr. Barry said was that he couldn't move to Fermoy,
2 aside entirely from the content of the medical
3 certificate, he couldn't because he had relatives
4 living in the area and he felt that would be a breach
5 of Code 8.3, isn't that correct? You knew about that? 11:47

6 A. Yes.

7 152 Q. Okay. Then the second paragraph, your response to the
8 assistant commissioner:
9

10 "I have considered Sergeant Barry's grounds of appeal 11:47
11 as set out in his report. Sergeant Barry's current
12 place of work at Mitchelstown Garda Station is
13 approximately 36 kilometres from where his relative
14 resides. I do not believe that having a relative
15 residing in a rural area approximately 20 kilometres 11:48
16 from Fermoy would in any way impede Sergeant Barry from
17 carrying out his duties at that station in a fair and
18 impartial manner."
19

20 Fine. So that paragraph, that's you giving your view 11:48
21 as to Sergeant Barry's objection under Code 8.3, this
22 is your view about what he says is the reason why he
23 shouldn't go to Fermoy, under Code 8.3?

24 A. No, Mr. Costelloe.

25 153 Q. Oh. Okay. 11:48

26 A. That's not my view.

27 154 Q. Right.

28 A. That's Chief Superintendent Dillane's view.

29 155 Q. I'm sorry, can we go down to the signature. I thought

1 we had agreed earlier that this was your signature and
2 this was a letter you sent?

3 A. This is my signature and this is a letter I sent, but
4 if you look at it, it's on behalf of the chief
5 superintendent. 11:48

6 156 Q. So what you are saying is that this is a letter that
7 you signed on behalf of Chief Superintendent Dillane?

8 A. Correct.

9 157 Q. Were you aware of the content of the letter before you
10 signed it? 11:49

11 A. Yes.

12 158 Q. Okay. So that I am absolutely clear, because I seem to
13 have gotten this completely wrong now, and I want to be
14 a hundred percent certain before Chief Superintendent
15 Dillane, Mr. Dillane gives his evidence, you did not 11:49
16 dictate this letter?

17 A. No.

18 159 Q. You're certain about that?

19 A. One hundred percent.

20 160 Q. Having seen the letter, it's sent to you for your 11:49
21 signature but not Chief Superintendent Dillane?

22 A. It's not sent to me for my signature. Chief
23 Superintendent Dillane, from my recollection, and I am
24 pretty sure was not working in Fermoy. And any time
25 Chief Superintendent Dillane is off, I act as the chief 11:49
26 superintendent, and the correspondence from the
27 divisional office is signed by me on his behalf to keep
28 things moving while he's off.

29 161 Q. Okay. But he's not off here, because you've told us he

1 dictated this letter?

2 A. I've no idea when the letter was dictated.

3 CHAIRMAN: He didn't say that. He didn't say that.

4 162 Q. MR. COSTELLOE: Sorry, you didn't dictate this letter?

5 A. No, I did not dictate this letter. 11:50

6 163 Q. Okay. But it came to you via Chief Superintendent

7 Dillane?

8 A. No.

9 164 Q. So how did you get it to sign?

10 A. It came to me from his office staff. 11:50

11 165 Q. Okay.

12 A. On a daily basis while Chief Superintendent Dillane

13 would be not on duty in the division --

14 166 Q. Okay.

15 A. -- every evening the correspondence from the divisional 11:50

16 office would be brought to me from the divisional

17 office by Chief Superintendent Dillane's staff --

18 167 Q. Right.

19 A. -- and I would sign off to keep things moving.

20 168 Q. To be fair to you, you couldn't possibly know therefore 11:50

21 who wrote that letter?

22 A. Yes.

23 169 Q. We can assume for the moment that it's Chief

24 Superintendent Dillane asked, but we don't know that.

25 But it comes to you from his office? 11:50

26 A. Correct.

27 170 Q. And it comes to you at a time where you can recall,

28 because you've signed the letter, you were deputising,

29 if you will, you were filling in for Chief

1 Superintendent Dillane, he must have been unavailable?
2 A. That would happen regularly enough.
3 171 Q. Fine.
4 A. Similar to Inspector O'Sullivan when I would be off.
5 172 Q. Again, I think we can all understand that. Things have 11:51
6 to keep moving, so you go to the next most senior
7 officer, which in this case is you.
8 A. Yes.
9 173 Q. A letter is produced in response to a request from the 11:51
10 assistant commissioner, Human Resources Management,
11 asking for input about an objection being raised about
12 the transfer of Paul Barry based on the fact that it's
13 in breach of Code 8.3 and this is a letter which is
14 generated in response to that request, correct?
15 A. If you say so, Mr. Costelloe. I'm not sure what this 11:51
16 letter was in response to.
17 174 Q. All right. Well, we will go down a page then, we will
18 go down to page 4152. This is a letter addressed to
19 chief superintendent, Fermoy in:
20 11:52
21 "Re: Transfer appeal -- Sergeant Paul Barry
22 Mitchellstown Garda Station.
23
24 I refer to correspondence in the above matter.
25 11:52
26 The transfer of Sergeant Barry from Mitchellstown Garda
27 Station to Fermoy Garda Station is hereby deferred.
28
29 Please address the issue raised by Sergeant Barry in

1 relation to having a first cousin residing at
2 (redacted) as he states if it is in breach of Code 8.3.

3
4 Please have Sergeant Barry outline the grounds of his
5 appeal and forward same to this branch without delay. 11:52

6
7 Forwarded for your attention.

8
9 Fintan Fanning, assistant commissioner, dated 6th March
10 2014. " 11:52

11
12 Do you see that letter?

13 A. I wouldn't have seen that correspondence at the time.

14 175 Q. You see it now?

15 A. I see it now. 11:52

16 176 Q. Would you agree with me then that the letter I
17 previously put to you, the one that you signed but
18 wasn't written by you, appears to be in response to
19 that?

20 A. Yes. 11:52

21 177 Q. So it deals with the Code 8.3 objection made by
22 Mr. Barry and the paragraph specifically -- would you
23 mind scrolling back up a page, please. whoever wrote
24 the letter, we will find out in due course who wrote
25 it, but whoever wrote the letter says "According, I 11:53
26 wish to apply for an exemption from the provisions of
27 Garda Code 8.3 for Sergeant Barry to allow him to serve
28 at Fermoy Garda station and to allow transfer to
29 proceed from Mitchelstown to Fermoy to proceed as per

1 personnel bulletin 0314". Do you see that?

2 A. I do.

3 178 Q. You didn't write that letter, but you did sign it?

4 A. Correct.

5 179 Q. You have agreed with me that you would have been aware 11:53
6 of the content of that letter prior to signing it?

7 A. Yes.

8 180 Q. Was that not an extraordinary thing for you to sign off
9 on?

10 A. No. 11:53

11 181 Q. Despite the fact that it is actively trying to
12 circumvent or overrule or get around, however you want
13 to describe it, the appeal against the transfer
14 Mr. Barry has lodged, which would seem to work in your
15 favour because it would leave you with Gerry Quinn as a 11:53
16 sergeant, instead of Paul Barry, you're happy to sign
17 off on that assertion?

18 A. I am signing this for the chief superintendent.

19 182 Q. So it's all back to the chief superintendent, it's his
20 doing, have you no interaction, engagement whatsoever 11:54
21 in respect of this?

22 A. Well, I obviously signed the letter, but this is a
23 letter that was produced to me that the chief
24 superintendent wanted sent to A/C HRM, I signed it to
25 go to A/C HRM. 11:54

26 183 Q. Again, we don't need to tiptoe around this
27 superintendent. I mean I think probably everybody in
28 the room has I hope the point that I am trying to make.
29 At a point at which you are looking for Sergeant Gerry

1 Quinn, Chief Superintendent Dillane decides instead
2 that he's going to send you Paul Barry. You don't
3 raise any demure about that. Subsequently Paul Barry
4 appeals that transfer, you have a letter sent to you to
5 sign on behalf of the chief super and in that letter 11:54
6 you see that in fact Paul Barry has appealed and the
7 appeal is pursuant to Code 8.3 and you make no effort
8 to go back to the chief superintendent and say, isn't
9 that a good way to not transfer him, let's go back to
10 the original plan and give me Gerry Quinn? 11:55

11 A. That's correct.

12 184 Q. And I am putting it to you, given everything that had
13 been going on, given the existence of the medical
14 certificate, isn't that an extraordinary thing for you
15 to have not done? 11:55

16 A. I don't think so, Mr. Costelloe.

17 185 Q. If we move on, please, from that, we go to Inspector
18 O'Sullivan. Clearly Inspector O'Sullivan will have to
19 give his own answers, but can I just deal with one or
20 two things that you might be able to assist me on. You 11:55
21 were informed on the 3rd April by Chief Superintendent
22 Dillane that Mr. Barry was saying that it would be
23 injurious to his health to work with you at Fermoy
24 Garda Station, isn't that right?

25 A. That came from a meeting that Chief Superintendent 11:55
26 Dillane had with the CMO on that date.

27 186 Q. Yes.

28 A. And I think he rang me straight afterwards.

29 187 Q. Yes.

1 A. Because up to now, the advice coming from the CMO was
2 that this was a management issue not a medical issue.

3 188 Q. Yes.

4 A. But what was --

5 189 Q. I am not going to get into a discussion about the fact 11:56
6 that there was a medical certificate in being and what
7 was management and what was medical. The Tribunal will
8 make up its own mind about that, it has the documents.
9 But I didn't think there was any controversy at all
10 about this: On the 3rd April 2014 you're told by Chief 11:56
11 Superintendent Dillane that it would be injurious to
12 Paul Barry's health for him to work with you at Fermoy
13 Garda Station?

14 A. Yes.

15 190 Q. Okay. And at that stage Inspector O'Sullivan is asked 11:56
16 to deal with all matters relating to Sergeant Barry?

17 A. Yes.

18 191 Q. Okay. Because it's the words all matters that I really
19 want to ask you about. Yesterday in response to a
20 number of questions put by Mr. Marrinan, you said that 11:56
21 it was only in relation to correspondence to or from
22 Paul Barry that Inspector O'Sullivan was to intervene,
23 to act as a blocker, if you will, to deal with that?

24 A. Yeah, I would still have been dealing with
25 correspondence from Sergeant Barry up to that date, so 11:57
26 what I said to Inspector O'Sullivan, look, you deal
27 with everything, if anything comes to me, I'll put it
28 in your post box and you deal with it.

29 192 Q. Yes, again, I will come back to it in a moment, I am

1 not trying to preclude you from explaining that, but I
2 just want to be clear: I am going to suggest to you
3 that there is a difference between the answer
4 yesterday, which is that Inspector O'Sullivan was there
5 to deal with documentation to or from Paul Barry, 11:57
6 whereas you had previously said Inspector O'Sullivan
7 was inserted between - I am using the word inserted,
8 that's not a word you used, but - put before you and
9 Mr. Barry in relation to all matters, do you understand
10 the distinction between the two? 11:58

11 A. I do.

12 193 Q. And again to be fair to you, it's at page 552, 552 of
13 your statement. I will quote it to you:

14
15 "When I was informed by Chief Superintendent Dillane on 11:58
16 the 3rd April 2014 that it would be injurious to
17 Sergeant Barry's health to work with me or in Fermoy
18 Garda Station, I asked Inspector O'Sullivan --"

19
20 And this is the pertinent part 11:58

21
22 " -- if he would deal with all matters relating to
23 Sergeant Barry until the investigations were finished.
24 Inspector O'Sullivan agreed. And we also agreed that
25 if Inspector O'Sullivan had any issues he would contact 11:58
26 me and there would be consultation on the issue. "

27
28 Do you see that there in your statement?

29 A. Yes.

1 194 Q. Okay. I am suggesting to you that that is materially
2 different to the answer that you gave yesterday, which
3 was to confine the role of Inspector O'Sullivan to just
4 dealing with documentation?

5 A. I don't believe so. If there was a serious incident in 11:58
6 Mitchelstown, which did occur, I would still expect
7 Sergeant Barry to deal with me for...

8 195 Q. You would still expect to have personal contact with
9 Sergeant Barry?

10 A. Definitely. 11:59

11 196 Q. And that's despite the fact that the medical
12 certificate he had produced and which was still in
13 being appeared to preclude that?

14 A. Yes.

15 197 Q. Is that not yet again demonstrative of the fact that 11:59
16 you did not consider that medical certificate to be
17 anything other than an encumbrance on your management
18 of the district?

19 A. It's not, Mr. Costelloe. I had a job to do as the
20 superintendent and, you know, if a serious incident 11:59
21 happens I have to be able to talk to the sergeant.

22 198 Q. I am suggesting to you that in fact, from that point
23 on, which is the 3rd April 2014, Inspector O'Sullivan
24 is placed between you and Mr. Barry and he's to deal
25 with everything to do with Mr. Barry, personal 11:59
26 interactions, correspondence, telephone calls, e-mails,
27 everything, in other words all matters, not just
28 documentation.

29 A. No.

1 199 Q. Okay. And my question, the only other question I have
2 about that, is that insofar as this information coming
3 to you after the CMO meeting on that date in th
4 April --
5 A. Yes. 12:00

6 200 Q. -- my question is: why wasn't this facility either, as
7 you put it, just to deal with documentation, or, as you
8 said at the time, to deal with all matters, put in
9 place a year earlier, almost exactly a year earlier
10 when the medical certificate was produced? why did you 12:00
11 wait a clear to put this step in place?
12 A. Because of what I was told on that date.

13 201 Q. Being April 2014?
14 A. Yes.

15 202 Q. Could I suggest to you that what you're told in April 12:00
16 of 2014 is in no material respect any different to what
17 you knew from the medical certificate a year earlier?
18 A. I don't agree.

19 203 Q. Okay. And could I suggest to you that in fact a year 12:01
20 earlier you could have taken this exact same step
21 months previous, which would have at least to some
22 extent alleviated the issue about interactions between
23 yourself and Mr. Barry?
24 A. No, I don't agree.

25 204 Q. Can I suggest to you that again this is demonstrative 12:01
26 of the fact that as far as you were concerned, and this
27 is your answer to Mr. Marrinan yesterday, the only
28 solution here was to have him transferred out, not to
29 try and find other work arounds, other ways of solving

1 the problem?

2 A. I do agree with that.

3 205 Q. I am just going to put a couple of dates to you, if I
4 have any of them wrong, tell me how I have gotten them
5 wrong, please, before I move tonne the next thing. If 12:01
6 you don't know, you don't know, sorry, I'm not trying
7 to put you on the spot. This isn't a memory quiz. But
8 it seems to me that you moved from Fermoy district to
9 Mayfield district on the 9th March 2015, is that
10 roughly correct? 12:01

11 A. Yes.

12 206 Q. Mayfield at the time was in the Cork City division?

13 A. Yeah.

14 207 Q. Have I got that right?

15 A. Yes. 12:02

16 208 Q. Anglesea Street would have been the divisional
17 headquarters, have I got that right?

18 A. Yes.

19 209 Q. Do we take it, therefore, that if Mr. Barry had been
20 moved to Anglesea Street - I am from Cork, you would 12:02
21 think I would be able to say the name - Anglesea Street
22 station in that timeframe, in around March 2015, he
23 would again have been working in the same district as
24 you; isn't that correct?

25 A. No, different district. Same division, different 12:02
26 district.

27 210 Q. I beg your pardon, thank you for correcting me?

28 A. Yes.

29 211 Q. Then on the 25th February 2019, you move from Mayfield

1 to become the -- I think you became in fact the
2 divisional crime superintendent at Anglesea Street
3 Garda station, have I got that right?

4 A. Yeah. Detective superintendent.

5 212 Q. D/Superintendent. We call use abbreviations sometimes, 12:02
6 sometimes it comes across as I am speaking
7 pejoratively, that is not what I meant. You moved
8 anyway, 25th February 2019?

9 A. Yes.

10 213 Q. I am going to try and deal as briefly as I can with the 12:03
11 criticism. First of all, the complaint, if I describe
12 it that way, that Mr. Barry makes about how you dealt
13 with felt his reporting or the non-reporting of the
14 fatal fire incident and what I am going to suggest to
15 you is criticism by you of him in not adequately or 12:03
16 appropriately reporting that, okay. So I am moving on
17 to the fatal fire incident now?

18 A. Okay.

19 214 Q. This was an occurrence that started I think on the
20 night of the 9th April 2013, and seems to have gone on 12:03
21 for a couple of hours at least, isn't that correct?

22 A. Yes.

23 215 Q. I don't think it's necessary to open any or all or most
24 of these documents again. Let's see what we can agree
25 upon, they've been opened quite a bit so far. But 12:03
26 could I suggest to you that the minute from Assistant
27 Commissioner Quilter, dated 3rd August 2012, so that's,
28 give or take, approximately six months prior, makes no
29 reference to the sergeant or the guard making the

1 report, just that a report has to be sent so as to
2 inform more senior management, divisional management of
3 a potential serious incident, could I suggest that
4 that's correct?

5 A. Yes, regional management. 12:04

6 216 Q. Regional management.

7 A. Yes.

8 217 Q. It seems to be apparent from the face of the document,
9 there's no reference to it being a sergeant, in fact it
10 seems to refer to the superintendent of the district 12:04
11 moving the information up the ladder, if you will?

12 A. That would be normal, Mr. Costelloe.

13 218 Q. Yes. And you caused that e-mail, that minute by e-mail
14 to be sent out to every one of your sergeants in the
15 district. And we know this, because it's at page 5711, 12:04
16 5711 of the documents. You disseminated that
17 particular document?

18 A. I actually did it myself, yes.

19 219 Q. You actually physically did the e-mail yourself?

20 A. I did. 12:05

21 220 Q. Okay. Again, it seems to be that -- I mean, perhaps
22 this is an occasion where we should refer to the
23 document. 5711. We have it there in front of us,
24 thank you.

25 12:05

26 "Please ensure that all critical incidents occurring
27 within Fermoy district are notified to Superintendent
28 Comyns or Inspector O'Sullivan immediately after they
29 occur. A list of incidents... is set out below. For

1 immediate compliance."

2

3 This is you making it absolutely clear that you or
4 Inspector O'Sullivan are to be informed immediately if
5 a serious incident occurs? 12:05

6 A. Yes.

7 221 Q. There is no doubt whatsoever but that Inspector
8 O'Sullivan was contacted effectively immediately by the
9 gardaí who went to the fatal fire, to tell him that the
10 fatal fire -- that a fire with potential fatal 12:05
11 consequences was in being, isn't that correct?

12 A. Correct.

13 222 Q. In fact, it appears to be common case, nobody seems to
14 be arguing otherwise or suggesting otherwise, that
15 there are a number of phone calls to Inspector 12:05
16 O'Sullivan during the course of the night giving him
17 information about what is happening at the fire. He
18 seems to accept that himself?

19 A. Yeah, I'm not sure how many calls he got.

20 223 Q. Okay. He will give his own evidence? 12:06

21 A. We spoke once.

22 224 Q. Pardon?

23 A. We spoke once. He rang me once.

24 225 Q. Are you sure about that?

25 A. Yeah, I'm fairly sure. 12:06

26 226 Q. All right, we will come to your journal in a moment.
27 Okay, before we do that, Inspector O'Sullivan talks in
28 his own statement, refers in his own statement to the
29 fact that he came off duty at ten o'clock that night,

1 but regardless of that fact he continued to get phone
2 calls updating him on what was going on?

3 A. Yeah.

4 227 Q. Okay. Your evidence now is that you only had one phone
5 call from Inspector O'Sullivan? 12:06

6 A. That night.

7 228 Q. Yes. When you say that night, what do you mean,
8 beginning? When did the week recommence?

9 A. He rang me that night to inform me about the fire and
10 that there was a fatality in the fire. And the next 12:06
11 morning, I'm not sure if he was working or not, if he
12 was working we would have spoken about it, but then
13 during the day at some stage he stage he rang me to
14 update me on the postmortem, if my memory is correct.

15 229 Q. Okay. It may be that we can agree, I just simply don't 12:07
16 know. So let's go to your journal entries. If we
17 could look to the first one, which is at page 731.
18 These are handwritten, superintendent. So rather than
19 me reading them, may I ask you please to refer to
20 them -- 12:07

21 A. Yes.

22 230 Q. -- and tell us what they say. You have to scroll down
23 a tiny bit, please. There. Do you see the redacted
24 portion?

25 A. Yes. 12:07

26 231 Q. So just before that, 10.42pm it seems to me to be
27 saying Inspector Tony O'Sullivan, do you see that?

28 A. Yes.

29 232 Q. Could you continue on reading for me, please?

1 A. "Fatal fire at.." the address is obviously blacked out
2 "preserve scene for scenes of crime examination in the
3 morning and result of PM".

4 233 Q. Then if we go on to the next page, this is wednesday,
5 the 10th? 12:08

6 A. Yes.

7 234 Q. Okay. scroll down again for me there. Do you see the
8 entry, 7.49am?

9 A. Yes.

10 235 Q. what does that say? 12:08

11 A. "Inspector Tony O'Sullivan, scenes of crime examiner,
12 Garda Fergal Whelton at scene of fire, Garda Henry Ward
13 attending PM in Limerick at 11am."

14 236 Q. Then if we go on to the next page, 12.44pm, do you see
15 that there? 12:08

16 A. Yes.

17 237 Q. what does that say?

18 A. "Inspector Tony O'Sullivan. Fire started in downstairs
19 maybe were stove is. PM result, died from smoke
20 inhalation." 12:08

21 238 Q. These are handwritten entries into your work journal?

22 A. Yes.

23 239 Q. At least in respect of the very first one, was that
24 written down contemporaneously, so you're getting a
25 phone call and you're just jotting down a -- 12:08

26 A. Roughly.

27 240 Q. Pardon?

28 A. Roughly contemporaneous.

29 241 Q. An aide memoire, so to speak.

1 A. Yes.

2 242 Q. You have it to note it?

3 A. Yes.

4 243 Q. And then there are two follow up phone calls the next
5 day, one early in the morning and one just in the early 12:09
6 afternoon from Inspector O'Sullivan?

7 A. Yes.

8 244 Q. So all that information is available to you about the
9 fatal fire, what you've summarised in that?

10 A. Yes. 12:09

11 245 Q. Then obviously you had access to Pulse, so you the
12 Pulse data entry in respect of the fire?

13 A. Yes.

14 246 Q. I actually don't recall whether or not the Pulse entry
15 was ever opened, but let's go to page 409 of the 12:09
16 documents please. I don't think it ever has been
17 opened to the Chairman. So if we just go to page 409,
18 and then go down there to the bottom in respect of the
19 narrative, we will see:

20 12:09

21 "Report of a house fire at... occupant of the house
22 fatally injured in the fire. Doctor pronounced death
23 at 11.50pm. Deceased taken to Mid Western Regional
24 Hospital for postmortem. Scene preserved and SOC
25 (scene of crime) requested. No offence detected." 12:09

26

27 This again is information that you had available to
28 you, yeah?

29 A. Correct.

1 247 Q. And this was an entry made into the database by JJ
2 wall, the guard who is communicating with Inspector
3 O'Sullivan, isn't that correct?
4 A. Yes.

5 248 Q. I won't ask the Chairman to go back to the C71 yet 12:10
6 again, it's been opened, but that furthermore set out
7 various pieces of information about the fatal fire?
8 A. Yes.

9 249 Q. And what was being reported to the coroner, isn't that
10 correct? 12:10
11 A. Yes.

12 250 Q. Would you agree with me then that we have a situation
13 where we have a minute from A/C Quilter which makes no
14 reference to the sergeant being responsible for
15 reporting the incident, we have you in receipt of 12:10
16 information from Inspector O'Sullivan, apparently in
17 compliance with a memo or a minute that you sent out
18 whereby either he or you or both presumably are to be
19 informed of serious incidents, that information is
20 relayed to you by Inspector O'Sullivan, you have the 12:10
21 C71 and you have the Pulse data entry, isn't all that
22 correct?
23 A. Yes.

24 251 Q. But you're still critical of the fact that Paul Barry 12:10
25 didn't prepare a report either summarising or otherwise
26 restating all of that information?
27 A. As I said yesterday, it didn't matter who prepared the
28 report, it was the sergeant's responsibility to make
29 sure a report was submitted.

1 252 Q. Well, in that regard, yesterday, and this was in fact
2 the document that I couldn't find and I asked for sight
3 of, you referred to a pre-existing or historical
4 understanding of the obligation of the sergeant which
5 is under Code 33.10, do you remember saying that 12:11
6 yesterday?

7 A. No, I said there was a long standing practice that any
8 critical or significant issue would have to be
9 reported.

10 253 Q. Okay. The distinction being -- you're correcting me on 12:11
11 the fact that I put to you that it was the sergeant you
12 said had to do it, you're just saying that it is a long
13 standing practice that it gets done?

14 A. Correct.

15 254 Q. Okay. So perhaps then we don't even need to go through 12:11
16 that document in any great detail, we have it available
17 to us, but it's a new page number. We only got it this
18 morning, so I am not sure if it is added to the bundle
19 of documents. If anyone could assist me with a page
20 number. 5746. Thank you, Mr. Perry. Then we are 12:12
21 going to have to scroll down through it to get to
22 33.10, which is on page -- actually it doesn't have
23 page numbers in my version. 5753, thank you very much.
24 So this is the Code.

25 A. Yes. 12:12

26 255 Q. "Crimes and incidents that are to be immediately
27 reported to A/C Crime and Security:
28 1. All incidents of a security nature and all crimes
29 or incidents of any significance that give rise to or

1 likely to give rise to public interest or concern or
2 that are likely to attract significant media publicity,
3 shall be brought to the attention of A/C Crime and
4 Security once the basic facts are known and before they
5 come to the notice of the media." 12:13

6
7 Then perhaps the only other pertinent -- well, 2 and 3
8 deal with the nature of the reporting. You seem to
9 agree with me in any event that again there's no
10 reference here to it being the sergeant's 12:13
11 responsibility to submit that report?

12 A. Correct.

13 256 Q. Okay. And this older Code is advanced upon by the
14 minute of A/C Quilter, whereby he directs that the
15 information gets filtered to the regional management 12:13
16 rather than to A/C in charge of Crime and Security,
17 isn't that right?

18 A. At the time of the original Code there wouldn't have
19 been regional assistant commissioners.

20 257 Q. Exactly. 12:13

21 A. So they took over the responsibility that the assistant
22 commissioner Crime and Security had when they were
23 appointed.

24 258 Q. There's no controversy about that?

25 A. Yes. 12:13

26 259 Q. A/C Quilter sends out a memo in August 2012 and in it
27 he says, this is the way it's to be done. We've all
28 agreed, I think, that there's no reference to the
29 sergeant being the person who submits the report, you

1 in your evidence yesterday referred to the older
2 pre-existing, if you will, method which was
3 encapsulated by Code 33.10 and again you agree with me
4 now this afternoon that there's no reference it to it
5 being the sergeant's responsibility? 12:14

6 A. Correct.

7 260 Q. So, do I take it then that what you are saying is that
8 this is something that is generated over a period of
9 time, this is just the practice as it developed, that
10 the sergeant on duty was responsible for submitting 12:14
11 that report?

12 A. As long as I can remember, Mr. Costelloe.

13 261 Q. Because Mr. Barry, who was the sergeant in charge, was
14 very clear in his evidence, which was to say that as
15 far as he was concerned the report, as he was obliged 12:14
16 to ensure it was submitted, was submitted, because it
17 was in the form of a C71, coupled with the information
18 in the Pulse entry?

19 A. I don't agree with Sergeant Barry there.

20 262 Q. Could I suggest to you that when Chief Superintendent 12:14
21 Dillane wrote to you on the 11th April 2013 -- page 733
22 of the bundle of documents. This is from the chief
23 superintendent, it's addressed to the district officer
24 Fermoy, which is you, it's in reference to the fatal
25 fire and it says: 12:15
26
27 "Communication from this office dated 3rd August
28 2012 --"
29

1 That's A/C Quilter's minute

2

3 " -- clearly states that a report on all critical
4 incidents should be reported to the regional office
5 within 30 minutes of the incident occurring, with the 12:15
6 follow up report submitted to the regional office by
7 8.15am the following morning. This was not adhered to
8 in this case and I require a full explanation as to why
9 this direction was not complied with in respect of this
10 incident. " 12:15

11

12 Could I suggest to you, superintendent, that that in
13 fact is a criticism of you and not of your
14 subordinates, because you didn't comply with the minute
15 of A/C Quilter by communicating to the regional office 12:16
16 the information that was to hand at that time?

17 A. I would agree with you, Mr. Costelloe, yes.

18 263 Q. And in that vein, all you're really doing thereafter is
19 transferring that criticism to your subordinates, in
20 this instance Sergeant Barry, as he then was, even 12:16
21 though there doesn't appear to be any obligation on him
22 set out in any piece of paper that I have seen
23 requiring him to be the person who puts in writing the
24 report referred to in the minute by A/C Quilter?

25 A. Again, I will say, it was long standing practice. 12:16

26 264 Q. And, of course, you understand that what Mr. Barry says
27 is that you had the information, Inspector O'Sullivan
28 had been on to you, you had access to the C71, you had
29 access to the Pulse and that should have been enough

1 for you to comply with the minute by sending the report
2 to the regional office?

3 A. I didn't have the full information that would be
4 required.

5 265 Q. If we move on then please to -- well, let's as briefly 12:17
6 as we can, hopefully, deal with issue 4D, the complaint
7 that Mr. Barry raises about your engagement with his
8 non-attendance at the case conference on the 2nd
9 February 2015. You had this put to you yesterday, it's
10 the letter, it's at page 835 of the documents, but it's 12:17
11 the letter where you draw to the attention of Chief
12 Superintendent Dillane the fact that Mr. Barry hasn't
13 attended that case conference. You remember this,
14 don't you?

15 A. Yes. 12:17

16 266 Q. Yeah. And you go on to say that you just can't do your
17 job, despite the fact that you had been bringing this
18 to the attention of Garda management for over two
19 years, you don't get the backing of the hierarchy and
20 you can't run your district where you have a sergeant 12:17
21 who won't turn up to meetings. I am summarising and
22 paraphrasing, but that's effectively what you're
23 saying, correct?

24 A. This was more than a meeting; it was a conference on a
25 rape allegation. 12:18

26 267 Q. Absolutely. Sorry, I didn't mean to belittle it, but
27 he didn't show up as far as you were concerned to an
28 important event and this is you expressing your
29 unhappiness about the fact that this situation is

1 continuing to persist, yes?

2 A. Correct.

3 268 Q. I mean, insofar as that criticism is stated by you of
4 Mr. Barry in that letter, would you not agree with me
5 that it is somewhat unfair given that you're aware at 12:18
6 the time that you write that letter that he has a
7 medical certificate precluding him from being in your
8 presence?

9 A. In the letter what I was saying was, what I have said
10 from the start is happening, this is not workable. 12:18

11 269 Q. "I cannot perform my duties as district officer because
12 of Sergeant Barry's behaviour. It is challenging --"
13

14 Sorry, I am again paraphrasing. -- "...challenging
15 staff who do not perform. When I have challenged 12:19
16 Sergeant Barry I have been left in a situation where he
17 has ignored me for over two years and I have got no
18 backing by the hierarchy in An Garda Síochána." I mean
19 that is an express criticism of Mr. Barry, there's no
20 two ways about it. This is you expressing your 12:19
21 frustration about the behaviour of a subordinate is
22 that you cannot manage as far as you are concerned?

23 A. I would agree with that, Mr. Costelloe, yes.

24 270 Q. And my point to you is: would you not accept that that
25 is unfair in circumstances where Mr. Barry had been 12:19
26 told, and you were aware of this, by his doctor that he
27 was not to be in contact with you directly?

28 A. I don't believe so, Mr. Costelloe.

29 271 Q. You said that in relation to that particular case

1 conference, you had relied on a D/guard, I think his
2 name was Fitzgerald or Fitzpatrick, do you remember?

3 A. Jim Fitzpatrick.

4 272 Q. Fitzpatrick, thank you. You had relied on him to
5 communicate to Mr. Barry the fact that this case 12:19
6 conference was happening and that he had to be at it,
7 do you remember?

8 A. That would be the normal course for a case conference,
9 one of the members would notify everyone on my behalf.

10 273 Q. Just dealing with the specifics of this, okay, I am not 12:20
11 asking about the generality, I am asking about the
12 specifics. In this particular instance your evidence
13 was and your assertion was that you were relying on
14 Detective Garda Fitzpatrick to tell Paul Barry to be at
15 the case conference? 12:20

16 A. Correct.

17 274 Q. Yes. Did you make any enquiries as to the nature of
18 the communication that Detective Garda Fitzpatrick had
19 with Paul Barry whereby he says that he did tell him
20 that the case conference was happening? 12:20

21 A. No.

22 275 Q. Why didn't you call -- I think you may have just
23 answered this, but to come back on it, why didn't you
24 phone or text or e-mail Paul Barry yourself to tell him
25 to be at the case conference? 12:20

26 A. Because I told Jim Fitzpatrick to do it.

27 276 Q. Had it anything to do with the fact that you were not
28 having direct contact with Mr. Barry at that stage?

29 A. No. It would be normal, if I was holding a rape

1 conference, that I would talk to either the detective
2 sergeant or one of the detective gardaí and say, we
3 will have a conference at such a time, will you notify
4 everyone.

5 277 Q. Well, if that's the case, why is it that you did have 12:21
6 direct contact with Paul Barry on the instance of the
7 case conference on the 10th February 2014, that's page
8 561 of your evidence, and in relation to the PAF
9 meeting on the 3rd March 2014, that's page 562 of your
10 statement? I mean, if it was normal, why did you do it 12:21
11 then but not do it here? Do you understand?

12 A. No, I have missed -- the PAF meeting I understand.

13 278 Q. Yes.

14 A. The other one...?

15 279 Q. The other one was a case conference that was held on 12:21
16 the 10th February 2014, a year previous. And you
17 contacted Paul Barry directly, telling him to be at it.

18 A. Could you show me details of that, Mr. Costelloe?

19 280 Q. It's possible that that meeting wasn't a case
20 conference but was also a PAF meeting, another PAF 12:22
21 meeting. For the record, you're nodding in agreement
22 that that may have been a PAF meeting, not a case
23 conference?

24 A. Okay.

25 MR. HARTY: It might be helpful if Mr. Costelloe was to 12:22
26 open the part of the statement that he is referring to.

27 281 Q. MR. COSTELLOE: I am obliged to my friend for his
28 intervention, but I will do that in a moment. First of
29 all I am just dealing with this. It seems to be the

1 case that there were instances in the past when you had
2 contacted Mr. Barry directly telling him to be at a
3 meeting?

4 A. My recollection was that if Sergeant Barry's unit were
5 due to be at a PAF meeting, Sergeant Barry was still on 12:22
6 the group text, so he was getting texts all along.

7 282 Q. Okay. So again, it may very well be that that's the
8 answer and there's no controversy to this. If
9 necessary we will go back over it, but are you saying
10 that you were sending out a group text about PAF 12:23
11 meetings?

12 A. Every week.

13 283 Q. Okay. On those particular occasions which you
14 reference in your statement, he got that group text
15 because it was a PAF meeting, but there wouldn't have 12:23
16 been a group text for case conferences, is that the
17 distinction?

18 A. That's the distinction.

19 284 Q. Okay.

20 A. The PAF meeting happened once a week, every week, and 12:23
21 it was a different group that would attend the meeting
22 because the units wouldn't have been working on a
23 certain week. And also I might change the time of the
24 PAF meeting. So a group text went out usually on a
25 Sunday evening, telling everyone what time the PAF 12:23
26 meeting would be on the Monday.

27 285 Q. Could I go to page 561 of your statement, please. The
28 last two paragraphs. There we go. We have it there:
29

1 "On Monday morning, 10th February 2014, I became aware
2 that two of the three sergeants based in Mitchelstown
3 were on sick leave. This left Sergeant Paul Barry as
4 the only sergeant on duty. When Sergeant Barry did not
5 attend at the weekly PAF meeting at 2pm, I rang his 12:24
6 phone at 2.03pm. The phone was not answered and I left
7 a message. At 2.05pm I rang Mitchelstown Garda Station
8 and spoke with Garda JJ Wall. I asked Garda Wall to
9 get Sergeant Barry to ring me. He told me Sergeant
10 Barry was out in the detective branch car. Garda Wall 12:24
11 called Sergeant Barry over the radio and asked him to
12 contact me. Sergeant Barry did not contact me."
13

14 Do you see that?

15 A. Yes. 12:24

16 286 Q. So that's not a text message; that's a phone call,
17 right?

18 A. Correct.

19 287 Q. Yes. So again I go back to my question, which is that
20 in that instance you didn't have a difficulty picking 12:24
21 up the phone to Sergeant Barry looking for an
22 explanation here as to why he wasn't at the PAF
23 meeting?

24 A. If you go up to the paragraph above, Mr. Costelloe --

25 288 Q. Yes. 12:25

26 A. -- the content of the group text that went out every
27 week is at the very last sentence, at the top of the
28 page here.

29 289 Q. Yes.

1 A. Yeah.

2 290 Q. Again, we can all agree, I'm not challenging you for a
3 moment about the fact that group texts were being sent
4 out by PAF meetings or whatever, there's no challenge
5 to you on that. What I am just asking you is: Do you 12:25
6 agree that as you set out in your own statement, on
7 that particular instance you were in a position to pick
8 up the phone and contact Sergeant Barry directly
9 looking for an explanation as to why he hadn't been at
10 the meeting? 12:25

11 A. The point I'm making here, Mr. Costelloe, is the last
12 sentence of the group text is: "Each working sergeant
13 must attend. If on annual leave, non-effective course,
14 et cetera, must be represented by unit member."
15 So, in this circumstance, Sergeant Barry's unit was due 12:25
16 to report to the PAF and no one turned up, the sergeant
17 in charge in Mitchelstown should have been reporting to
18 the PAF but he went sick, so Sergeant Barry was acting
19 sergeant in charge in Mitchelstown, so he had a double
20 representation at the PAF meeting. And no one turned 12:26
21 up for either of the two. So I decided, I made a
22 decision, I'd ring Sergeant Barry and I'd just ask him.

23 291 Q. I fully appreciate that you felt that you needed to
24 explain why you did it. But that doesn't change the
25 fact that we agreed, did we not, that on that occasion 12:26
26 you did phone?

27 A. I did.

28 292 Q. Okay. Then just for completeness, because Mr. Harty
29 asked me to do this, if we move onto the next page, on

1 Monday 3rd March there's another PAF meeting, again
2 Paul Barry doesn't turn up and it seems, based on your
3 statement, that again you rang Sergeant Barry's mobile
4 phone, got no answer and left a message?

5 A. Yes. 12:27

6 293 Q. Okay. Same as the previous?

7 A. Yes.

8 294 Q. So those are two instances at least of you contacting
9 him directly?

10 A. Yes. 12:27

11 295 Q. But in relation to the case conference, which was to do
12 with a sexual assault allegation, which presumably is
13 considered to be much more serious than a weekly PAF
14 meeting, you didn't contact him directly, you relied on
15 Detective Garda Fitzpatrick to do so? 12:27

16 A. That's correct.

17 MR. HARTY: Sorry, Chairman, I have to object again.
18 This is an entirely unfair proposition. The
19 questioning was along the lines of, why didn't you
20 contact Sergeant Barry to come to the meeting in 12:27
21 relation to the case conference, and then he was
22 questioned as if the contact in relation to the PAF
23 meetings was to direct him to come to those meetings.
24 In fact, both of those contacts were seeking an
25 explanation for his failure to come to those meetings. 12:27
26 And the question is entirely unfair, because it is
27 suggesting that in the ordinary course he would have
28 phoned Sergeant Barry to come to those meetings, when
29 in fact on each case that question deals with his

1 failure to attend the meetings. And the contact with
2 Detective Fitzpatrick was in relation to request that
3 Sergeant Barry come to the meeting. So it's not a
4 correct juxtaposition to the witness. I just think I
5 need to have that on the transcript now. Thank you. 12:28

6 CHAIRMAN: well, Mr. Costelloe, what do you say to
7 that?

8 MR. COSTELLOE: well, I am not sure I need to reply to
9 it. I think Mr. Harty was just putting a point on the
10 record, Chairman. I don't believe I was being unfair. 12:28
11 I feel like I opened the relevant passages to the
12 witness and asked him to comment upon it. Even if I
13 was inadvertently or accidentally unfair, for which I
14 apologise, if that's the conclusion you draw, my answer
15 would be that there can be no doubt but that I have put 12:29
16 the relevant passages of the statement.

17 CHAIRMAN: No, I don't think there is any question of
18 Mr. Costelloe being unfair. I think things did -
19 what's the word? - segue from one. Where this began
20 there was a proposition by Mr. Costelloe that the 12:29
21 superintendent had behaved inconsistently, that his
22 conduct on the occasion in regard to the case
23 conference was inconsistent with previous occasions.
24 So I think that's where it began. Then it became clear
25 that the other meetings were PAF meetings. 12:29

26 Mr. Costelloe was about to mention a specific meeting
27 that contradicted the superintendent when I think his
28 junior drew his attention to the fact that it was a PAF
29 meeting and Mr. Costelloe pursued the question of the

1 PAF meetings then. I'm not sure that anybody was in a
2 terrible state of confusion. I understand Mr. Harty's
3 point, but I don't think there was any unfairness, I
4 don't think there was any intention to be unfair and I
5 don't think anybody was actually confused. I think the 12:30
6 superintendent knew what was going on, I knew what was
7 going on. But I think it may have happened because
8 Mr. Costelloe began on one line of the tracks and moved
9 to another line of the tracks, it seems to me. Maybe I
10 have misunderstood it, but that's my understanding. 12:30

11
12 So I don't think there's any question of unfairness.
13 There's nothing for Mr. Costelloe to apologise for and
14 I think we will proceed. I hope I have understood the
15 situation and I don't think that Superintendent Comyns 12:30
16 was in any way discommoded or misled by the
17 questioning. So I don't think there's any call for any
18 ruling or rebuke to Mr. Costelloe.

19 MR. COSTELLOE: Thank you, Chairman.

20 296 Q. Superintendent, we're going to move onto the annual 12:31
21 leave now, okay?

22 A. Yes.

23 297 Q. So that this is issue 5A, and it relates to Mr. Barry's
24 assertion that he was targeted in the manner in which
25 his leave application was dealt with -- the leave 12:31
26 application for May 2013 was dealt with, okay, that's
27 what we are on to now?

28 A. Yes.

29 298 Q. Right. Before we go any further, and it's clearly the

1 case but let's just set it out in black and white,
2 there are different leave applications, there's one in
3 April and there's one in May, correct?

4 A. Yes.

5 299 Q. I wasn't trying to trick you, I was just making sure 12:31
6 that we all know where we are starting from. So again,
7 there's different leave applications. But it seems to
8 be the case that Inspector O'Sullivan had been
9 delegated to handle the leave application in 2013, in
10 April of 2013 he was the acting district officer for 12:32
11 the purposes of the leave application, is that your
12 recollection too?

13 A. That must have been correct.

14 300 Q. Okay. It's at page 555 of the statement, but that
15 seems to be what everyone is -- 12:32

16 A. Yes.

17 301 Q. -- agreeing upon.

18 A. Yes.

19 302 Q. And you say in your correspondence, this is at page
20 746, that the reason for that, the reason Inspector 12:32
21 O'Sullivan is dealing with the leave application of
22 April 2013, is because of the ongoing investigation by
23 Chief Superintendent Kehoe, okay?

24 A. Okay.

25 303 Q. All right. Now, why then did you come back into the 12:32
26 frame or come back into the picture to deal with the
27 leave application of May 2013, even though the
28 investigation is ongoing?

29 A. I would say probably Inspector O'Sullivan was probably

1 not working or more than likely.

2 304 Q. Okay. Again, we can ask Inspector O'Sullivan that
3 directly --

4 A. Yeah.

5 305 Q. -- but you have no other explanation for it other than 12:33
6 the possibility that he just wasn't available?

7 A. Yeah...

8 306 Q. Again, superintendent, I'm not trying to trick you?

9 A. I know that, I just...

10 307 Q. I will give you another piece of information by way of 12:33
11 a question and it may or may not assist you but I am
12 going to ask it and then you will know where I am
13 coming from --

14 A. Yes.

15 308 Q. -- and then this may inform the answer you're giving to 12:33
16 this question I asked a moment ago. Inspector
17 O'Sullivan -- Mr. Barry has said that he discussed the
18 reason why he was looking for leave with Inspector
19 O'Sullivan in or about that time, do you recall that?

20 A. This is the May application now we're talking about? 12:33

21 309 Q. Yes, the May?

22 A. May.

23 310 Q. The subsequent one, the one that you deal with?

24 A. No.

25 311 Q. Okay. 12:33

26 A. He discussed it with Inspector O'Sullivan.

27 312 Q. Fair enough, I won't ask you any more about that, if
28 you don't know, you don't know. So, we can agree in
29 any event though that you do appear to be the person

1 who deals with the leave application, the annual leave
2 application for May of 2013, isn't that right?

3 A. Yes.

4 313 Q. Okay.

5 A. I did. 12:34

6 314 Q. And again, just so that we are all clear on the
7 timeframe, the decision in respect of the bullying and
8 harassment complaints wasn't made until June 2013, so
9 your rationale for previously delegating the annual
10 leave to Inspector O'Sullivan appears to continue to 12:34
11 persist at the time at which the annual leave is sought
12 in May of 2013. It's an unbelievably cumbersome
13 question and I'm sorry for it, but understand the
14 import of it?

15 A. I do, I do. 12:34

16 315 Q. April 2014 you get Inspector O'Sullivan to deal with it
17 because the investigation is ongoing; May 2013 you
18 decide to leave the annual leave application but the
19 investigation remains ongoing, that's what I am putting
20 to you, do you understand? 12:35

21 A. Yes.

22 316 Q. Would it not have been better then at that stage to do
23 what you had previously done, to get a different
24 officer to deal with the application for leave?

25 A. I cannot say, Mr. Costelloe. I don't know why I dealt 12:35
26 with it or if myself and Inspector O'Sullivan spoke
27 about it.

28 317 Q. Leaving aside entirely about why you dealt with it,
29 what I am really asking at this point is: Could you

1 not agree with it me that it would been preferable or
2 better, if somebody who - and I'm not suggesting that
3 you weren't, so don't read anything into the way I ask
4 this question - but someone who had the appearance of
5 impartiality was in fact determining the leave 12:35
6 application?

7 A. It probably would now, Mr. Costelloe, looking back from
8 now, but that's not the way we thought at the time.
9 Debt.

10 318 Q. The issue then revolved or descended to whether or not 12:35
11 there was cover for Mr. Barry to take leave on the
12 various dates which he sought, isn't that right?

13 A. Correct.

14 319 Q. And again, I have no intention of asking the Chairman 12:36
15 to traverse all the ground that's been done already,
16 it's page 751, 753 to 754 about the various
17 arrangements that Mr. Barry said he was putting in
18 place, but Sergeant Dunne, another sergeant from
19 Mitchelstown, did contact you and speak with you to say
20 that there would be cover for Sergeant Barry to take 12:36
21 leave at that time?

22 A. That's not exactly what he said.

23 320 Q. Okay, tell me where I am wrong?

24 A. It will be all right, if anything happens, we'll cover
25 it. 12:36

26 321 Q. Okay.

27 A. Some words to that effect. Now that's not exactly what
28 was said, but words to that effect.

29 322 Q. Because Sergeant Dunne did submit a report to you, page

1 1880 -- sorry, this isn't his report to you, I beg your
2 pardon, this is his statement. Just to correct myself
3 there.

4 A. Yes.

5 323 Q. If you go down to the third paragraph from the end, the 12:36
6 line beginning "I do recall difficulties with retired
7 Sergeant Barry's application for annual leave in mid
8 2013 referred to in pages 39, 40 and 41 of his
9 statement. I did submit a report to Superintendent
10 Comyns at Fermoy Garda Station and I did speak to the 12:37
11 superintendent about the issue, explaining that I
12 believed there was enough cover to facilitate the
13 application for leave, save one day, July 13th, 2013."

14

15 That seems to be what Mr. Dunne is saying. He gave you 12:37
16 a report and he told you that there was cover, except
17 for one specific day.

18 A. No.

19 324 Q. You disagree?

20 A. I disagree. 12:37

21 325 Q. Okay. Yesterday you told us about the fact that it was
22 necessary to have cover from -- sorry, this is very
23 much me putting words in your mouth now, so let's be
24 very careful here, because I could have gotten this
25 wrong again. I understood you to be telling the 12:38
26 Chairman that part of the issue about annual leave, the
27 annual leave request for May, was that Sergeant Geary,
28 who was -- no not Sergeant Geary, the unit B
29 sergeant -- yeah, Sergeant Gerry?

1 A. Sergeant Geary.

2 326 Q. The unit B sergeant at Fermoy was already booked in to
3 take annual leave over some of this time, and you
4 couldn't have a situation where the sergeant B from
5 Mitchelstown, that is my client, Mr. Barry, would be 12:38
6 out at the same time as a sergeant from unit B from
7 Fermoy?

8 A. Correct.

9 327 Q. Okay. So that we are completely clear therefore,
10 Sergeant Geary, who worked in Fermoy Garda Station in 12:38
11 unit B, had made an application to you to have annual
12 leave which encompassed some of the dates in May that
13 Paul Barry wanted leave for?

14 A. He made an application, I don't know was it to me or
15 did I sign it or Inspector O'Sullivan. One of us 12:39
16 signed it.

17 328 Q. One of you did?

18 A. Yeah.

19 329 Q. But you were aware of the fact that he had done that?

20 A. It was recorded. 12:39

21 330 Q. Okay. That's not quite the same thing, forgive me for
22 pushing you on this --

23 A. Yes.

24 331 Q. -- but you were aware of it?

25 A. When someone applies for annual leave, I would check 12:39
26 the person that they work with, if they were on annual
27 leave or not.

28 332 Q. And that seems to make sense based on your answer
29 yesterday and what you confirmed to me this afternoon,

1 which is that part of your problem with the request by
2 Sergeant Barry for leave was the fact that Sergeant
3 Geary was already going to be out on leave?
4 A. Correct.
5 333 Q. So Sergeant Barry makes a request, you go off and check 12:39
6 to see whether or not the other unit B sergeant is
7 available and lo and behold you find he's not, he's
8 already gotten annual leave for some of those dates?
9 A. I think for all of those dates.
10 334 Q. Fine. Some or all. And perhaps that's the best way of 12:39
11 moving on to the next question. I can see no document
12 anywhere in the nearly 8,000 pages that we've received,
13 which shows that Sergeant Geary informed you that he
14 had spoken to Sergeant Barry and that Sergeant Barry
15 would cover him over that period of time. Do you 12:40
16 understand?
17 A. I do.
18 335 Q. Is that not unusual?
19 A. Is it unusual...?
20 336 Q. wouldn't there have been a requirement for Sergeant 12:40
21 Geary to ensure that the other unit B sergeant, in this
22 case my client, was going to work at the time in which
23 he was seeking annual leave?
24 A. Yeah, they should discuss it between the two of them.
25 337 Q. Yes. Because we have a situation here where it seems 12:40
26 to be the case Sergeant Barry, my client, is looking
27 for leave apparently at a time when Sergeant Geary has
28 already been granted leave, which would surely imply
29 that he had never agreed to cover Sergeant Geary over

1 that period of time?

2 A. Yes.

3 338 Q. And there isn't a single document in all of the
4 material that we have been given to show that Sergeant
5 Geary has written to you or Inspector O'Sullivan to 12:41
6 say, I cleared it with my other unit B sergeant,
7 Mr. Barry, there's cover here, don't worry about it, I
8 can take my leave at that time, not a single piece of
9 paper to that effect?

10 A. That's not the way it works, Mr. Costelloe. 12:41

11 339 Q. Okay. What would happen?

12 A. Sergeant Geary would have applied on his annual leave
13 application form.

14 340 Q. Yes.

15 A. And we would have checked to see, either or either of 12:41
16 us, whoever granted leave, would have checked if
17 Sergeant Barry was working or not. Sergeant Barry was
18 going to work, so Sergeant Geary's leave was granted.

19 341 Q. So in this instance therefore either you or Inspector
20 O'Sullivan would have gone to the information, however 12:41
21 it's stored, and seen that Mr. Barry was due to work
22 that shift, those shifts, those days, so therefore you
23 could grant, either you or Inspector O'Sullivan could
24 grant Sergeant Geary's leave?

25 A. Yes. 12:41

26 342 Q. But shouldn't Sergeant Geary have enquired of Mr. Barry
27 if he was prepared to cover him at that time? I mean,
28 is there to be an engagement between the two unit
29 sergeants as to who would stay on and who would take

1 leave?

2 A. There should be, yeah.

3 343 Q. Because we don't seem to have any evidence that that
4 happened here?

5 A. There wouldn't be evidence. I have answered that 12:42
6 already.

7 344 Q. Okay. Excuse me one second. I am a little bit
8 chopping and changing here, I had intended to come back
9 to this at a different point but I think Mr. Perry is
10 right, in fairness to you, I should mention it now 12:42
11 rather than moving off topic. We have been provided
12 with quite a bit of material by the Tribunal that
13 concerns Inspector O'Sullivan, his engagement with my
14 client and also his engagement with some civilian staff
15 members in or about the time that Mr. Barry was makes 12:43
16 this application for leave in May of 2013.

17 A. Okay.

18 345 Q. Did you know that we had that material?

19 A. I saw the material.

20 346 Q. Okay. So you're aware therefore that Inspector 12:43
21 O'Sullivan says that he got the leave application, and
22 I am going to describe it as a moment of pique,
23 delivers it back, I am using the most neutral way I can
24 to describe it, to the civilian employee and says that
25 those applications are to go to you and that he's not 12:43
26 to be bothered by them?

27 A. My reading of it would be they were to go to the
28 district office, which is where all leave applications
29 go.

1 347 Q. Yes. But with all due respect, superintendent, we can
2 all agree, can't we, that it's either you or Inspector
3 O'Sullivan who is going to deal with the leave
4 application?
5 A. Yes. 12:44

6 348 Q. Okay. And Inspector O'Sullivan, having gotten the
7 leave application, has told the Tribunal that he threw
8 it back into his cubbyhole and told the civilian
9 employee don't bother him with stuff like that ever
10 again because you're the man to be told that those 12:44
11 leave applications are being made, not him - you know
12 that, don't you?
13 A. That's, in my opinion, not what's there.

14 349 Q. Inspector O'Sullivan -- let's try and make this as
15 neutral as possible, to see if we can agree. Inspector 12:44
16 O'Sullivan appears to be telling the Tribunal that he
17 was not dealing with the leave application of
18 Mr. Barry, the one from May of 2013, that it was your
19 responsibility, not his responsibility to deal with it.
20 Can we agree on that? 12:44
21 A. No. Inspector O'Sullivan was saying, in my opinion,
22 and Inspector O'Sullivan can answer this himself, but
23 in my opinion Inspector O'Sullivan was saying leave
24 applications are submitted to the district office, not
25 into my post box. 12:45

26 350 Q. Okay. I will move on.
27 A. And then whoever is working the next day deals with the
28 leave application.

29 351 Q. I was going to move on, but forgive me, I mean, it's

1 quite clear that Inspector O'Sullivan isn't dealing
2 with that leave application, isn't it? I mean,
3 superintendent, surely we can agree on this: Inspector
4 O'Sullivan has made it quite clear to the Tribunal that
5 when he saw that application for leave he was washing 12:45
6 his hands of it?

7 A. No, when he saw the way it was submitted, in my
8 opinion. It should not have been put into his post
9 box, because he says that he doesn't go to his post box
10 for days at a time. It should have gone to the 12:46
11 district office, where it would be dealt with
12 immediately. That, in my opinion, is what's there.
13 And again, Inspector O'Sullivan can answer that
14 himself.

15 352 Q. Okay, fair enough. We'll put it to Inspector 12:46
16 O'Sullivan. In any event, you didn't grant him the
17 entirety of the leave that he sought, isn't that right?
18 This was in July. He was looking for leave in July of
19 2013. You didn't give it all to him, you gave him some
20 of it? 12:46

21 A. Correct.

22 353 Q. And we've already had Sergeant Dunne's letter, which
23 appears to come from a request by you for an
24 explanation as to the way in which the station was
25 covered, because Mr. Barry went ahead and took that 12:46
26 leave anyway, isn't that right?

27 A. No, this is much bigger than the station being covered.
28 This is a whole unit in the district.

29 354 Q. You write a letter --

1 CHAIRMAN: Sorry, Mr. Costelloe, did we have Sergeant
2 Dunne's letter?

3 MR. COSTELLOE: I am now going to open it, Chairman,
4 because I don't want there to be any suggestion that I
5 am confusing the witness, directly or indirectly. 12:47

6 CHAIRMAN: To date, you've said we have his letter, but
7 we don't, we have his statement.

8 MR. COSTELLOE: No, no, this is previously.

9 CHAIRMAN: I'm sorry.

10 355 Q. MR. COSTELLOE: Superintendent, so that there is no 12:47
11 misunderstanding, I will go through it, okay. Would
12 you mind, please, going to page 159 of the documents,
13 please. Page 159 of the documents. I have got that
14 page wrong, I think. It's page 161, isn't it? Sorry,
15 would you mind going down to page 161, please. This is 12:48
16 the letter from Sergeant Dunne. It's dated the 11th
17 July 2013 and it addressed to you. Do you see that?

18 A. Yes.

19 356 Q. Okay.

20 12:48

21 "Application for annual leave - Sergeant Paul Barry.

22

23 With reference to the above, Sergeant Barry has already
24 attached a report with regard to cover during the
25 period of his annual leave from 3rd July 2013 to 18th 12:48
26 July 2013.

27

28 Sergeant Gerry Quinn worked nights on Sunday, 7th July
29 2013 and I covered the earlier shift on that date.

1 Sergeant Liam Kelleher will work 10am to 6pm on Sunday
2 14th July 2013 to provide cover.

3
4 In his report, Sergeant Barry has indicated that
5 Sergeant Hallinan and I would be working on the 13th 12:48
6 July 2013, this is not correct. Both Sergeant Hallinan
7 and I are on rest days.

8
9 The rest of Sergeant Barry's report appears accurate."
10 12:48

11 That was the letter sent to you by Sergeant Dunne, yes?

12 A. Correct.

13 357 Q. Is that the letter then that led you to understand that
14 there was one day that there was no cover?

15 A. No. 12:49

16 358 Q. Okay. Because again referencing Mr. Dunne's statement
17 that I have already put to you a moment ago, he says
18 that in fact there was cover except for that one day,
19 but that's not this letter?

20 CHAIRMAN: I am sorry, I am confused, Mr. Costelloe. 12:49

21 A. Yeah.

22 CHAIRMAN: what's your question?

23 359 Q. MR. COSTELLOE: On receipt of that letter,
24 superintendent, what was your understanding of the
25 situation regarding cover for Mr. Barry during his 12:49
26 leave application, during the dates of his leave
27 application?

28 A. I knew that on a lot of the dates there was no cover
29 and this report from Sergeant Dunne didn't provide any

1 comfort to me.

2 360 Q. why is that?

3 A. Because there was no cover on a lot of the dates.

4 361 Q. Despite what's set out on the face of that letter?

5 A. That letter only speaks of Sunday, 7th July, Sunday, 12:50
6 14th July. That's the only two dates that are covered
7 there.

8 362 Q. It may be then after lunch I will have to come back to
9 a different document. I think I am actually conflating
10 two different letters. So I am just going to check 12:50
11 myself over lunchtime and make sure that I am not doing
12 that, superintendent. I'll move on for the time being
13 and I will come back to that, if I have made a mistake.
14 In any event, your evidence is that the material,
15 either by way of direct communication or by way of 12:50
16 reports or letters sent by Mr. Dunne and Mr. Quinn, was
17 not sufficient to satisfy you that there would be
18 enough cover to allow Mr. Barry to take the leave that
19 he was looking for?

20 A. Mr. Quinn didn't send me any documentation and I knew 12:51
21 myself who was working and who wasn't working, and
22 there was no cover provided.

23 CHAIRMAN: Mr. Costelloe, if you want to leave that.

24 MR. COSTELLOE: well, I don't want to --

25 CHAIRMAN: If you want to leave it and return to it, 12:51
26 that's not a problem.

27 MR. COSTELLOE: Yes.

28 CHAIRMAN: Once you have sort of got your notes or your
29 information together.

1 MR. COSTELLOE: Yes. It seems that my page number is
2 different from the page number I have noted, Chairman.
3 So would you just bear with me one second, please.
4 CHAIRMAN: Yes, certainly, no problem.
5 MR. COSTELLOE: Sorry, it was a mistake on the page 12:52
6 numbering. Would you go to page 162 for me, please.
7 CHAIRMAN: 162.
8 MR. COSTELLOE: 162, please.
9 CHAIRMAN: Thank you very much.
10 363 Q. MR. COSTELLOE: It's a handwritten note and I read it 12:52
11 as being from the person I just referred you to, which
12 is Mr. Quinn. Do you see there, where the stamp is for
13 the 18th July.
14 CHAIRMAN: Sorry, Peter, can we go down?
15 MR. COSTELLOE: I'm sorry, you don't have it in front 12:52
16 of you, 162, two pages down or three pages down from
17 there. 162. Actually go back up, I think you just had
18 it there. That's it. Could you scroll down a tiny bit
19 for me, please. There. So you see the stamp,
20 superintendent, that says 18th July 2013? 12:52
21 A. Yes.
22 364 Q. And it's stamped your office, Garda Síochána,
23 superintendent office, Fermoy district. That stamp
24 goes through the signature of the person who writes the
25 memo directly above it, do you see that name? 12:53
26 A. I can short-circuit this, Mr. Costelloe. That is Gerry
27 Quinn's signature.
28 365 Q. Isn't that the person I was just asking you about?
29 A. Yes.

1 366 Q. Does that not seem to reflect the fact that he's giving
2 you information?

3 A. Yeah, I didn't recollect this note, Mr. Costelloe.

4 367 Q. Fair enough. Fair enough. Again, I said to you at the
5 outset, superintendent, it's not a memory quiz, I am 12:53
6 just happy that for once it's not my mistake. This
7 appears to be a note written by Mr. Quinn, addressed to
8 you and it seems to say "On the 15th July 2013, I spoke
9 with Sergeant Hallinan, who will cover unit B on
10 15th/16th July --" 12:53

11 CHAIRMAN: "& Sergeant Quinn will endeavour."

12 MR. COSTELLOE: The chairman thinks that is an
13 ampersand. So "& Sergeant Quinn will endeavour to
14 cover unit B on his working as he overlaps on Monday,
15 Tuesday, Wednesday and Thursday, 13th-19th July. For 12:54
16 your information, please. Badge number. Signed, Gerry
17 Quinn." Do you recollect receiving that.

18 A. I don't recollect receiving it, no, but I did receive
19 it obviously.

20 368 Q. Well, yeah, I mean, fine. 12:54

21 A. Yeah.

22 369 Q. Sorry, fair enough, you're conceding that you did,
23 because it's stamped by your office?

24 A. Yeah.

25 370 Q. But does that not appear to cover some of those dates 12:54
26 that you had a problem with?

27 A. It covers the 15th to the 19th and you will see that
28 Sergeant Quinn will endeavour to cover. He's not --
29 he's working different hours.

1 371 Q. Well, if it's a quibbling over the word endeavour, did
2 you phone to Sergeant Quinn and ask him, did you talk
3 to Sergeant Quinn and say, listen, I've just been told
4 by Gerry -- I have just been told that you're going to
5 cover Paul Barry, but hang on a second, you're working, 12:54
6 what do you mean by endeavouring? Did you not raise it
7 with him?

8 A. No.

9 372 Q. But wouldn't that have been a reasonable way of going
10 about solving this problem? 12:55

11 A. Mr. Costelloe, the reasonable way to solve this problem
12 was to give me the name of the sergeant for each date
13 who was covering the unit.

14 373 Q. Sorry for interrupting you. Finish, please.

15 A. That was -- there were 12 days, I was getting 12:55
16 piecemeal, I'll try to or endeavour to cover this, you
17 know. All I asked for was the name of the sergeant who
18 would cover Sergeant Barry's leave on 12 separate
19 dates.

20 CHAIRMAN: Just scroll down that letter for a moment, 12:55
21 please, because there is obviously a comment that you
22 make.

23 374 Q. MR. COSTELLOE: That's your handwriting,
24 superintendent?

25 A. It is, yes. 12:55

26 375 Q. It refers to just two days, the 3rd July and the 19th
27 July?

28 A. Between, Mr. Costelloe.

29 376 Q. I beg your pardon, sorry. So is that then in reference

1 to the answer you gave a moment ago, that this is all
2 coming to you piecemeal and you're still not clear on
3 who will provide cover?

4 A. This is afterwards, Mr. Costelloe. This is -- I am
5 asking the question, who actually provided cover, and I 12:56
6 never found out.

7 377 Q. Yes. I think we all know it's afterwards, but just a
8 moment ago you were saying that your difficulty was
9 that as this information is coming to you -- sorry, I
10 don't wish to say only, but part of your problem was 12:56
11 that it was coming to piecemeal and that that was part
12 of the problem you had with it?

13 A. Yes.

14 378 Q. No clear report setting out precise names, precise
15 dates? 12:56

16 A. Correct.

17 379 Q. And I suppose, I know I am repeating the question,
18 forgive me, but I am suggesting to you that a way of
19 solving that would have been to contact Sergeant Quinn
20 and/or Sergeant Dunne and say, do you actually have 12:56
21 cover for Paul Barry if I give him leave on the days he
22 wants?

23 A. I had a number of reports setting out days here and
24 days there. All I needed was one consolidated report
25 saying, this sergeant will do it on this day, this 12:57
26 sergeant will do it on this day. That's all I was
27 asking. The unit had to be supervised.

28 380 Q. Moving to the point that you made a moment ago, which
29 was that you said that after the fact, after leave had

1 been taken, you were looking for an explanation as to
2 how the unit had been supervised, the unit had been
3 covered, isn't that right?
4 A. Yes, yes.
5 381 Q. And again the Chairman has already had this opened to 12:57
6 him, that is the letter you sent to Chief
7 Superintendent Dillane, August of 2013, setting out
8 what you say had happened and the fact that the unit
9 had been left without cover because of the fact that
10 Mr. Barry had taken leave, regardless of the fact that 12:57
11 he had not been granted leave, isn't that right? You
12 wrote to Chief Superintendent Dillane, you said Paul
13 Barry took leave, there wasn't cover in the district
14 and I am still trying to understand what was going on?
15 A. Correct. 12:58
16 382 Q. Yes.
17 A. Correct.
18 383 Q. But Sergeant Dunne had written to you, and it's the
19 extract that has previously been opened to you, that
20 appears to say that with the exception of one day there 12:58
21 was cover in the district?
22 A. That was Sergeant Dunne's opinion. That was not a
23 fact.
24 384 Q. But you disagreed with it?
25 A. The facts are the unit wasn't covered. 12:58
26 385 Q. Okay. Did you go back to Sergeant Dunne and ask him to
27 explain how he was making that assertion, despite the
28 fact that as far as you were concerned he was wrong?
29 A. No.

1 386 Q. But nonetheless, without having done that, you wrote
2 that letter to Chief Superintendent Dillane?
3 A. Correct.

4 387 Q. The last thing I'll ask, I see the time, the last thing
5 I will ask on that before we move to the one or two 12:58
6 areas that are left after lunch: was it always the
7 case, as far as you were concerned, that whatever unit
8 sergeant was looking for leave he'd have to arrange
9 cover with another sergeant?

10 A. It depended, because there wasn't two sergeants at one 12:59
11 stage on each unit.

12 388 Q. Okay.

13 A. So we had to make other arrangements. If a unit with
14 just one sergeant on it needed leave, obviously we had
15 to make other arrangements. 12:59

16 CHAIRMAN: Maybe you would like to follow that up after
17 lunch, if you want to, Mr. Costelloe.

18 389 Q. MR. COSTELLOE: I think we're more or less finished on
19 this topic, Chairman.

20 CHAIRMAN: Oh sorry, no, no, please do that, 12:59
21 Mr. Costelloe, that is more convenient, you're right.

22 390 Q. MR. COSTELLOE: What I am wondering is, because it's
23 not clear to me from the documents that I have been
24 given -- sorry, that's the documents' problem, it's the
25 fact that I can't follow them. Was there a change in 12:59
26 policy in around 2014 that meant that a unit sergeant
27 didn't have to specify cover from another sergeant just
28 to -- so basically that the policy changed, that all
29 they had to ensure was that there were enough members

1 working, not that there was a specific sergeant to take
2 over their shifts. Was that change in policy to your
3 memory in 2014?

4 A. Can you put that again, Mr. Costelloe?

5 391 Q. So what I am asking you is: Did the policy in relation 13:00
6 to annual leave change in or around the middle of 2014,
7 do you remember?

8 A. Not that I am aware of, no.

9 392 Q. It may be that that is something I have got wrong, so I
10 won't go any further on that. If necessary I will come 13:00
11 back to it after lunch, Chairman, but as far as I will
12 take it?

13 CHAIRMAN: Thanks very much. Very good. We will
14 adjourn until after lunch. Thank you.

15 13:00

16 THE HEARING THEN ADJOURNED FOR LUNCH AND RESUMED, AS
17 FOLLOWS:

18

19 393 Q. MR. COSTELLOE: Good afternoon, Superintendent Comyns.
20 A. Afternoon Mr. Costelloe. 14:01

21 394 Q. We're nearly done. I want to deal briefly with one
22 thing and then one longer thing. Could we deal with
23 the issue pertaining to the force majeure leave
24 absence, et cetera?

25 A. Yes. 14:01

26 395 Q. I don't wish to spend a great deal of time on this, but
27 could I suggest to you, to see if you would agree with
28 me or not, that in your letter or report, however you
29 wish to describe it, to Chief Superintendent Dillane

1 when you deal with the annual leave issue but also the
2 force majeure issue, you're critical of the fact that,
3 as you see it, Mr. Barry has taken force majeure and
4 hasn't explained himself and hasn't complied with the
5 way in which one is to take force majeure, do you 14:01
6 understand my point?

7 A. Yes.

8 396 Q. Is that an acceptable proposition, can we agree on
9 that?

10 A. I am critical of the fact that myself and Inspector 14:02
11 O'Sullivan were not notified.

12 397 Q. I beg your pardon, sorry, I didn't have my microphone
13 on. What I was asking you and you have jumped ahead of
14 me, so I am going to put your proposition back to you
15 now so that it can be recorded on the transcript. You 14:02
16 were critical in that report to Chief Superintendent
17 Dillane of the fact that, as you saw it, neither
18 yourself nor Inspector O'Sullivan had been informed of
19 the fact that Mr. Barry was out on force majeure?

20 A. Correct. 14:02

21 398 Q. Okay. Did you make any enquiries with Inspector
22 O'Sullivan to see whether or not Mr. Barry had given an
23 explanation for his absence?

24 A. Yes.

25 399 Q. And what were you told? 14:02

26 A. Again, exactly I don't know.

27 400 Q. In general terms?

28 A. In general terms, Inspector O'Sullivan did not know why
29 Mr. Barry had not been on duty for the three days.

1 401 Q. Mr. Barry has said in evidence that he had told
2 Inspector O'Sullivan that if he wasn't granted leave
3 for particular days, he would likely end up taking, or
4 possibly, I think was the word he used, end up taking
5 force majeure because his wife might be unable to 14:03
6 perform certain functions at home and he would be
7 responsible for doing them, and he itemised them as
8 things like doing the driving, taking the kids to and
9 fro school, doing the shopping, things like that. He
10 said that in his evidence, you were here? 14:03
11 A. I heard that, yes.
12 402 Q. Yes. Did you know that prior to Mr. Barry giving that
13 evidence in the Tribunal?
14 A. No.
15 403 Q. Okay. And in your discussion with Inspector O'Sullivan 14:03
16 pertaining to the force majeure absence, did he tell
17 you that Mr. Barry had said that to him; that, by the
18 way, he told me a week or two weeks or four weeks ago,
19 that if he didn't get his leave he could end up taking
20 force majeure because his wife could be out sick? 14:04
21 A. No.
22 404 Q. It's obviously the case that one cannot apply for force
23 majeure in advance, isn't that right, by its very
24 definition it's not possible?
25 A. Yes. 14:04
26 405 Q. It seems to be the case, because Mr. Barry took force
27 majeure leave in 2010, that he on a previous occasion,
28 after the fact, wrote into the superintendent and that
29 was approved. That document has already been opened,

1 you're aware of it?

2 A. I have seen the document in the documents, yeah, in the
3 Tribunal documents, yeah.

4 406 Q. So that I am clear, are you saying that it should have
5 been done differently with regard to the application 14:04
6 the subject-matter of this complaint?

7 A. What I am saying, Mr. Costelloe, is that at some stage
8 during the three days and as early as possible,
9 Sergeant Barry should have contacted or had someone
10 contact either myself or Inspector O'Sullivan, just to 14:05
11 say, I am on force majeure leave, I won't be at work.

12 407 Q. And is that based on your understanding of the Garda
13 Code or rather, the legislation or is that just your
14 understanding of the practice?

15 A. I suppose that's based on, there was a member of 14:05
16 sergeant rank not on duty and we didn't know where he
17 was.

18 408 Q. And again, I am going to move off now, this is really
19 the end of it, but just to be absolutely clear,
20 Mr. Barry is emphatic, if you will, certain, that he 14:05
21 told Inspector O'Sullivan to Inspector O'Sullivan must
22 have known that if he wasn't in at that time it was
23 because his wife would have had back problem and he
24 would be required at home?

25 A. Again, as I said, Mr. Costelloe, I a hundred percent 14:05
26 did not know that.

27 409 Q. I appreciate that's your answer, we'll hear what
28 Inspector O'Sullivan has to say. Thank you. In
29 relation to the unit changes, very briefly, I had

1 prepared for, based on the material available to me,
2 the situation whereby you were unclear now as to why
3 those unit changes were necessary back then. You know
4 what I am referring to here? The movement of personnel
5 either to or from unit C and unit B, do you -- 14:06

6 A. Yes.

7 410 Q. And this again, it's a complaint, it's 5D in the
8 issues?

9 A. Yes.

10 411 Q. And we've already heard a certain amount of evidence? 14:06

11 A. Yes.

12 412 Q. You know what I am dealing with now?

13 A. Yes.

14 413 Q. To try and deal with it as succinctly and briefly as
15 possible, based on the papers that the Tribunal had 14:06
16 furnished us, including your statement, it seemed that
17 you were saying when you were asked by the Tribunal
18 about this, that you couldn't really elaborate or
19 provide reasons as to why it was necessary to make unit
20 changes back then? 14:06

21 A. No, I couldn't elaborate any more than I had in my
22 statement.

23 414 Q. When you say you -- sorry, I didn't mean to interrupt
24 you, did you have something else to add?

25 A. That was the answer to the question when I was asked. 14:07

26 415 Q. Okay. And I wonder then is that -- just so I
27 understand this is what we are talking about, if we go
28 to page 567 and I think it's down into page 568. I
29 hope I have got the right page. Yeah. Down at the

1 very bottom, the last paragraph:

2
3 "On Tuesday, 19th August 2014, I consulted with the
4 inspector and sergeants in charge on the proposed unit
5 changes in Fermoy district. On the same date I 14:07
6 circulated details of numerous other changes within
7 Fermoy district which were taken into effect from 15th
8 September 2014. Numerous members were transferred from
9 one unit to another as well as the two members who were
10 transferred to different stations. I transferred Garda 14:07
11 Séan Twomey to unit B in Mitchelstown so he could work
12 closely with Garda Denise Fitzgerald, who worked with
13 detective branch unit B and had an interest in drug
14 detections. I note Sergeant Barry takes issue with the
15 moving of Garda Wall and Garda Ward from his unit. I 14:08
16 can confirm that none of these changes had anything to
17 do with Sergeant Barry."
18

19 Is that the extent to which you are saying these
20 changes were necessary within the units? 14:08

21 A. Yes.

22 416 Q. What was the bit then yesterday about somebody retiring
23 or two people retiring?

24 A. That was -- on my e-mail that I sent out to everyone in
25 the district -- 14:08

26 417 Q. Yes.

27 A. -- there was, I'm trying to remember now, Garda Martin
28 Healy transferred from Mitchelstown to Rathcormac and
29 Garda Buckley transferred from Fermoy to

1 watergrasshill, I believe. They were on that e-mail.

2 418 Q. Yes.

3 A. And it was just as the e-mail was being shown to me

4 yesterday, I remembered that they were being sent there

5 to replace two members who had retired. 14:09

6 419 Q. Okay. Perhaps we can all understand that. You have

7 the e-mail in front of you. I don't wish to presume

8 what other people will accept. But if we can take it

9 as read that you see that e-mail, you see the reference

10 to people retiring, that refreshes your memory. The 14:09

11 only thing I want to put to you here is, and I want to

12 give you an opportunity to comment upon it, because

13 it's an express instruction which I have, is that my

14 client was approached by a colleague and he was told by

15 the colleague that if he didn't agree to move to unit 14:09

16 C, the staff in unit C would all be moved to unit B -

17 do you wish to say anything on that?

18 A. The discussion I had with Sergeant Dunne was --

19 420 Q. Okay, I wasn't going to name him, fine. That's fine,

20 Sergeant Dunne, that's fine. 14:09

21 A. -- was that because of the issues between your client

22 and the other member, that one or the other of them

23 would have to move. And if it was the other member

24 that moved, that Garda Twomey, who I'd sent to

25 Mitchelstown to work with the other member, would also 14:10

26 have to move, to keep working with that member. I

27 mightn't be explaining that great now.

28 421 Q. Well, I think I understand what you are saying, but

29 could I suggest to you that leaving aside motives, it

1 appears to be that both yourself and Mr. Barry are
2 saying roughly the same thing there; that Sergeant
3 Dunne was told either Sergeant Barry moves to unit C or
4 unit C effectively moves to unit B?

5 A. No. Like, there was either three or four members on 14:10
6 the unit, so all the unit would not be moved, but if
7 the other member who Sergeant Barry was not getting on
8 with moved, I would have had to move a different member
9 who I had sent to Mitchelstown specifically to work
10 with her. 14:11

11 422 Q. Okay. I have put my instructions to you,
12 superintendent, I am not going to labour the point, we
13 have heard your answer on that. Now, the last, I
14 think, I hope the last thing that I wish to cover with
15 you, and this may slightly longer is to do with the 14:11
16 Haddington Road agreement hours, the Haddington Road
17 hours. You understand, of course, that my client
18 complains about the way in which his request for hours
19 to be granted to him or acknowledged to him under the
20 Haddington Road agreement system was targeting because 14:11
21 he was treated differently by you than other people,
22 other members of An Garda Síochána who were stationed
23 in your district at the time. You understand that as
24 being his complaint?

25 A. I do, yes. 14:11

26 423 Q. Could I clarify something straight off the bat? You
27 gave, may I say, a somewhat technical answer yesterday
28 to Mr. Marrinan and I understand it to it be this:
29 Under the agreement a guard had to work a certain

1 number of hours in which to generate TOIL, time off in
2 lieu?

3 A. Yes.

4 424 Q. Have I got that correct?

5 A. Yes. 14:12

6 425 Q. And it seems there was a standard block of time, which
7 I think corresponds to a normal shift, if there is such
8 a thing as a normal shift, of a ten-hour block, one
9 would work a ten-hour shift and then would generate
10 time off in lieu? 14:12

11 A. That's correct.

12 426 Q. And the time off in lieu that was generated, did that
13 equate to the same number hours worked you had worked
14 or was that a smaller amount of hours?

15 A. It was actually a larger amount of hours. If my memory 14:12
16 is correct now, Mr. Costelloe, I think it was at 1.25
17 hours.

18 427 Q. Was it?

19 A. I think you got an extra 0.25 with the TOIL.

20 428 Q. I have to confess, I didn't quite follow your answer on 14:13
21 that yesterday, I assumed it was the same or greater,
22 because money wasn't being paid, it was time off in
23 lieu, but I thought you said something yesterday about
24 a two-hour block accruing, have I got that wrong?

25 A. No, what I said was, that was in relation to the ten 14:13
26 one-hour shifts. You had to work ten single -- sorry,
27 not shifts, that's the wrong word, ten single hours.

28 429 Q. CHAIRMAN: Duties?

29 A. Duties, sorry, Chairman.

1 CHAIRMAN: Don't apologise, I'm just trying to follow
2 it.

3 430 Q. MR. COSTELLOE: The point being, superintendent, that I
4 may not be rostered for, if I am a member to An Garda
5 Síochána -- 14:13

6 A. Yes.

7 431 Q. -- I apologise to the force in advance, but I am a
8 member of An Garda Síochána and I may not be rostered
9 for work but I end up working a certain number of
10 hours, when over a period of time that amounts to ten 14:13
11 hours, I am now entitled under the TOIL principle to a
12 certain number of hours off in lieu, assuming I have
13 met all of the technicalities in which to get my
14 Haddington Road hours, is that correct?

15 A. Em, no. 14:14

16 432 Q. Do you have to work the --

17 CHAIRMAN: Hold on, Mr. Costelloe, let him explain.
18 Don't jump in, he said no.

19 MR. COSTELLOE: Okay.

20 CHAIRMAN: And he's about to explain why it's no. 14:14

21 MR. COSTELLOE: Okay.

22 A. I think you're mixing up two different sets of hours,
23 Mr. Costelloe, and I will try to explain it. The ten
24 hours for time off in lieu was to be worked as one
25 shift. 14:14

26 433 Q. MR. COSTELLOE: Right.

27 A. And you would get 12 and a half hours time off in lieu
28 for that one ten-hour shift.

29 434 Q. Okay.

1 A. The ten one-hours were to be worked free gratis but you
2 could work it in ten one-hours but we also allowed
3 people to work it in five two-hours or three
4 three-hours and one-hour, and normally we would have
5 added them onto a shift or something like that. 14:15

6 435 Q. Yes. And in that situation, once you had agreed ten
7 hours, what were you entitled to?

8 A. The ten hours for TOIL, you were entitled to 12 hours
9 off in time off in lieu.

10 436 Q. Let me phrase it a different way: You can work an 14:15
11 extra shift, which is ten hours long --

12 A. Yes.

13 437 Q. -- then you're entitled to 1.25 hours off for each of
14 the hours you worked?

15 A. Correct. 14:15

16 438 Q. So the difference between doing it that way or accruing
17 ten hours in different blocks is what? what is the
18 difference in what you get?

19 A. You had to do all three.

20 439 Q. Yes. 14:15

21 A. Had you to do all three within the 12 months. You had
22 to do the ten one-hour shifts, I keep saying shifts,
23 sorry, ten one-hour duties.

24 440 Q. Yes.

25 A. You had to do one ten-hour shift free gratis and you 14:16
26 had to do a ten-hour shift, for which you would get 12
27 hours time off in lieu.

28 441 Q. Okay. I am worried that I might have made all of that
29 as clear as mud in the way I was asking the question.

1 So let's see if we can simplify things. The complaint
2 that Mr. Barry has is in relation to a ten-hour period
3 that he says he wanted the hours, the Haddington Road
4 hours and we know what flows from that, which is you
5 querying it, and we will come to that in a moment. 14:16
6 which of the three categories is that, is that request?
7 A. I'm not sure, at this stage I'm not sure which
8 Mr. Barry worked that category. But if it was a
9 ten-hour shift, it was either the ten hour free gratis
10 or the ten hours for which he should get 12 hours time 14:16
11 off.
12 442 Q. It certainly appears to be the latter, doesn't it?
13 Because he's writing in his letter Haddington Road
14 hours, I want this recognised as ten hours worked, he
15 wants acknowledgment for working those ten hours? 14:17
16 A. Well that's either number 2 or number 3, it can be
17 either.
18 443 Q. whichever it is, and maybe we will be able to clarify
19 that in a moment, but whichever it is, it is certainly
20 the case that you felt that he hadn't gone about it in 14:17
21 the right way in getting approval to work those hours?
22 A. Yes.
23 444 Q. Okay. And as I understand your answers yesterday, and
24 the material that's already been given to us, what
25 you're saying is that he should have applied to 14:17
26 yourself or Inspector O'Sullivan in advance of working
27 the hours so as to get approval from yourself or
28 Inspector O'Sullivan, and having then gotten that
29 approval, he'd go off, he'd work the hours, and then

1 he'd get whatever was coming to him, either recognition
2 that he had complied with the Haddington Road agreement
3 by doing the gratis, or the 12.5 hours off in lieu, the
4 time off in lieu, correct?

5 A. That's correct. 14:17

6 445 Q. So the essential difference being, and this is a word
7 that you used in your own letters and we'll come them
8 in a moment, is that he should have sought prior,
9 that's the word you used, approval and that had to be
10 sanctioned by you or Inspector O'Sullivan? 14:18

11 A. Correct.

12 446 Q. Okay.

13 A. Can I say, Mr. Costelloe, just, that approval did not
14 have to be in writing. We should have known that he
15 was going -- before he worked the hours, that he was 14:18
16 going to work the hours.

17 447 Q. Okay.

18 A. And then the paperwork could follow on.

19 448 Q. Well, that may become relevant in a moment in respect
20 of the some of the material I want to put to you. But 14:18
21 we can at least agree though that what you are saying
22 is that it is you or Inspector O'Sullivan --

23 A. Yes.

24 449 Q. -- who have to approve prior to the hours being done?

25 A. Yes. 14:18

26 450 Q. And so that I am clear, you're not saying, are you,
27 that this is just pertinent, just related to Mr. Barry;
28 you're saying it relates across the board --

29 A. Across the board.

1 451 Q. -- to all gardaí at that time?
2 A. Yes.

3 452 Q. Okay. I don't know if this will help us, help you in
4 order to help us determine which of the two types of
5 hours he's looking for, but if I ask, please, to go to 14:19
6 page 245, which is a letter stamped, it's actually sent
7 and received as stamped on the 3rd June 2014. Now, you
8 see that before you?
9 A. Yes.

10 453 Q. It's a letter from Mr. Barry, my client, and it's 14:19
11 addressed to the sergeant in charge at Mitchelstown.
12 And it comes under the heading:
13
14 "Re: Application for Haddington Road, ten hours tour
15 on 25th April 2014 - Sergeant Paul Barry and Garda 14:20
16 Henry Ward."
17
18 Before we go any further, or even taking into account
19 the rest of that, does anything on that letter assist
20 us in determining what type of Haddington Road hours 14:20
21 he's seeking there?
22 A. No.

23 454 Q. Okay.
24 A. It's one of the two ten-hour shifts.

25 455 Q. It's either the one that he's obliged to work or it's 14:20
26 either the one that by working it, he gets 1.25?
27 A. Correct.

28 456 Q. CHAIRMAN: Sorry, I thought he was obliged to work
29 both, but he got reward for one. So it's not the

1 one -- it was the one he was obliged to work free, is
2 that right?

3 A. He was obliged to work, as the Chair says, he was
4 obliged to work both.

5 457 Q. MR. COSTELLOE: Yeah, he had to do it. 14:20

6 A. Yeah.

7 458 Q. Because it's part of the agreement that An Garda
8 Síochána --

9 CHAIRMAN: I know, but Mr. Costelloe, sorry, you said,
10 is that one of the ones he was obliged to work, he was 14:20
11 obliged to work both. One he did free.

12 MR. COSTELLOE: Sorry.

13 CHAIRMAN: He had to do both. At least this is what
14 the witness is saying, I'm not sure if it's right, he
15 had to work both, he had to work 20 hours, but ten of 14:21
16 those hours he had to do free and for the other ten he
17 got a bonus of 25%. Is that correct?

18 A. That's correct.

19 459 Q. MR. COSTELLOE: I misled the Tribunal because of the 14:21
20 ineloquent way I asked that question. But just so we
21 are absolutely clear: Under the agreement he had to
22 work a ten-hour shift, from now on we are going to call
23 it the free ten hours, okay --

24 A. Yes.

25 460 Q. -- but he also had to work a ten-hour shift but for 14:21
26 that one he got 1.25 hours for that 10-hour shift.

27 A. Correct.

28 461 Q. Okay. We're not clear from this document which of the
29 two we're referring to but in any event it's part of

1 his obligation under the Haddington Road agreement that
2 An Garda had signed up to, isn't that right?

3 A. Correct.

4 462 Q. So that's the request, this is, if we want, the
5 foothill of the mountain, this is the preamble, this is 14:22
6 him writing to the sergeant in charge, saying:
7
8 "With reference to the above, I wish to report that
9 this duty was sanctioned prior to the date by sergeant
10 in charge, Mitchelstown Garda Station. Upon my return 14:22
11 from Limerick I assisted in the cataloguing of
12 interview tapes with D/Garda Fitzgerald and again
13 Sergeant Aidan Dunne had sanctioned that duty prior to
14 me performing it.
15 14:22

16 Forwarded for your information please and for Garda
17 Ward to explain his duty upon his return from sick
18 leave."
19

20 That's him saying what he did in order to merit the ten 14:22
21 hours, yes?

22 A. That's in reply to my question --

23 463 Q. Yes.

24 A. -- what did he do for the ten hours.

25 464 Q. And we're coming to that now in a moment, if we scroll 14:22
26 down, page 247, dated the 1st May. This is a letter
27 you caused to be sent, you've signed it, I assume you
28 dictated it?

29 A. I dictated it, yes.

1 465 Q. It's addressed to the sergeant in charge. We know that
2 to somebody Sergeant Dunne?
3 A. Yes.

4 466 Q. At Mitchelstown Garda Station. It's:
5
6 "Read application for Haddington Road hours ten hours
7 tour of duty on 25th April 2014, Sergeant Paul Barry
8 and Garda Henry Ward.
9
10 I refer to the above and attach applications. 14:23
11
12 In order to sanction this extra duty, I require a
13 report clarifying who sanctioned this duty -- "
14
15 And there's the word "prior" 14:23
16
17 " -- to the date.
18
19 2. Both members should explain exactly what they did
20 for ten hours. Cautioned statement of Mr. X or Ms. Y 14:23
21 or whatever."
22
23 You see that there in front of you?
24 A. Yes.

25 467 Q. "Reply required by Friday, 9th May 2014." 14:23
26
27 And you see your signature, this is you looking for
28 information about that, isn't that correct?
29 A. That's correct.

1 468 Q. If we scroll down a tiny bit further, we see written in
2 pen by Sergeant Dunne:
3
4 "Sergeant Barry for report please."
5
6 And it's signed by Sergeant Dunne, isn't that right? 14:23
7 A. Yes.
8 469 Q. Standard chain of command type of thing: Report
9 requested by the superintendent to the sergeant in
10 charge, the sergeant in charge forwards it to the 14:24
11 person who is to give the answer looked for; isn't that
12 right?
13 A. That's correct.
14 470 Q. We have that letter that I previously referred the 14:24
15 Tribunal to, which is page 245, which is him ostensibly
16 responding to that request for further information?
17 A. That's correct.
18 471 Q. Now, if we go to the document sandwiched in between
19 both of those, this is the -- I don't know if there is
20 actually a page number on it, but it's number 2 as 14:24
21 exhibit X, you have it there in front of you,
22 superintendent?
23 A. Yes.
24 MR. COSTELLOE: Chairman, I don't know that it has --
25 CHAIRMAN: It's Sergeant Dunne's explanation. 14:24
26 472 Q. MR. COSTELLOE: Yes, this seems to be sergeant, Fermoy,
27 have I got that right so far, superintendent?
28 CHAIRMAN: He's confirming.
29 A. Superintendent, Fermoy.

1 473 Q. MR. COSTELLOE: Superintendent, Fermoy, thank you.
2 "Sergeant Barry assisted Garda Ward with a number of
3 outstanding issues --"
4
5 I don't know what that next word is supposed to be. 14:24
6 " -- including the witness of --"
7
8 CHAIRMAN: The witnessing of the statement.
9 MR. COSTELLOE: And then:
10
11 "He did as stated complete category 8 -" 14:25
12 CHAIRMAN: Cataloguing of tapes.
13 MR. COSTELLOE: Cataloguing, thank you, Chairman.
14 " -- cataloguing tapes with D/Garda Fitzgerald."
15
16 and it's signed by -- 14:25
17 474 Q. CHAIRMAN: No, Fitzpatrick, D/Garda Fitzpatrick, isn't
18 it?
19 A. That's correct.
20 CHAIRMAN: If it was D/Garda Fitzgerald I would be 14:25
21 puzzled, that he would be cataloguing anything with
22 D/Garda Fitzgerald. So it's D/Garda Fitzpatrick?
23 475 Q. MR. COSTELLOE: It's signed by Sergeant Dunne and
24 prints again in ink but he prints his name underneath,
25 isn't that right. Yes? 14:25
26 A. Yes.
27 476 Q. Okay. Then, underneath that, is that your handwriting?
28 A. It is.
29 477 Q. And this seems to be stamped the 6th June 2014, is that

1 the date that you received the note from -- it's the
2 same as the date from the document before?

3 A. Yes.

4 478 Q. To which the paragraph that I just read out is
5 appended, isn't that right? 14:25

6 A. Yes.

7 479 Q. And you're making a note there, would you read your
8 note, please?

9 A. "Sergeant IC Mitchelstown, please instruct Sergeant
10 Barry that Superintendent Comyns and Inspector 14:26
11 O'Sullivan are the people who can sanction extra duty
12 of any type in Fermoy district. Did you sanction this
13 extra duty?"

14

15 480 Q. Okay. I am just -- the sequencing of that is a little 14:26
16 bit unclear to me, there's probably a very simple
17 answer, but, does he not seem to be saying that he did
18 sanction the duty or have I got it head to toe? I
19 don't really follow the sequencing of those two
20 paragraphs. Do you understand my question? 14:26

21 A. I don't really.

22 481 Q. If you go back up to what Sergeant Dunne says, as far
23 as you are concerned this is no way Sergeant Dunne
24 saying that he sanctioned it, it's just an -- okay,
25 they're not the same thing as far as you are concerned? 14:26

26 A. No, no.

27 482 Q. Fine. And then you make the point that it's only you
28 or Inspector O'Sullivan and then you ask the question
29 if Sergeant Dunne did in fact sanction the extra hours,

1 have I got that right?

2 A. Correct.

3 483 Q. Grand. Okay. And what I understand your evidence to
4 be, but now is the time to tell me if I have made a
5 mistake, it's that this isn't just for Sergeant Barry, 14:27
6 this is for everyone; once the Haddington Road
7 agreement came into effect, the obligation was on the
8 guard seeking to have their hours recognised as part of
9 the agreement or their obligations under the agreement,
10 had to get prior approval from either yourself or 14:27
11 Inspector O'Sullivan?

12 A. Correct.

13 484 Q. Could we turn to page 5520, please. I don't know would
14 you be able to scroll down a tiny bit so we can see if
15 there is a date written on that, please. The other 14:28
16 way. I am looking to see if there is a date on that.
17 Okay. So there we have, the date is given as 25th
18 August 2013. Sorry is that 26th? Thank you. 26th
19 August 2013. It's stamped as received on the same day,
20 An Garda Síochána, sergeant in charge, 26th August 14:28
21 2013, traffic corps, Fermoy County Cork, Cork North
22 division. And it's addressed to you, do you see that?

23 A. Yes.

24 485 Q. Superintendent Fermoy, re application for TOIL, time
25 off in lieu, by a certain sergeant in the traffic 14:28
26 corps?

27

28 "I wish to apply for 15 hours time off in lieu of duty
29 performed --"

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Past tense

" -- by me on the 26th August 2013 in accordance with the Haddington Road agreement. I worked a ten-hour extra tour of duty on the 26/8/13 from 9am to 7pm during the course of which I performed three two-hour checkpoints with RSA inspectors in Fermoy district."

14:29

There is a typographical error, it says I work wish, but it means:

14:29

"I wish to apply for TOIL as follows: Friday, 30th August 2013, from 7am to 12 midday, five hours." with a tick in ink next to it. "Saturday, 31st August 2013, from 7am to 5pm, 10 hours." with a tick in ink next to it.

14:29

Then if you scroll down, please. It seems that it is received from your office. There is a stamp from your office, dated 26th August 2013. And then there's something written in underneath that in ink, can you read it?

14:29

A. I can.

486 Q. Okay?

14:29

A. "Sanctioned. Records updated. Attached to A85."

CHAIRMAN: Inspector O'Sullivan.

MR. COSTELLOE: Just to finish it, this is Inspector

1 O'sullivan, one of the two people.

2 A. Yes.

3 487 Q. Okay.

4 A. Yes.

5 488 Q. I am just asking you, because obviously Inspector 14:30
6 O'sullivan has yet to give his evidence, we will come
7 to other matters where I think you've signed them, but
8 does that seem to be Inspector O'Sullivan sanctioning
9 hours after they have occurred?

10 A. Yes, but I don't know whether Inspector O'Sullivan or 14:30
11 myself were told about these hours before they were
12 occurred -- incurred, sorry.

13 489 Q. Obviously Inspector O'Sullivan will give his own
14 answer, I am not going to push you on that, but are you
15 allowing then for the possibility that somebody might 14:30
16 just mention to you, by the way, I am going to perform
17 X number of hours, is that okay, and you just say, go
18 on away off and do it?

19 A. Yes.

20 490 Q. And would you make a note of that? 14:30

21 A. The paperwork would follow.

22 491 Q. When you say the paperwork, what paperwork are you
23 referring to?

24 A. The extra duty application.

25 492 Q. Is that the A85? 14:30

26 A. No.

27 493 Q. Okay.

28 A. It's attached to the A85.

29 494 Q. So the A85 is what?

1 A. The A85 is the form on which you claim your allowances
2 for duty worked in the previous four weeks. Your
3 payment, your monetary payment comes from the A85.

4 495 Q. Okay. At any given time there would have been a very
5 significant number of gardaí of both sergeant and, no 14:31
6 offence meant, I'm sure none taken, ordinary garda rank
7 working underneath your supervision in or about this
8 time, isn't that right?

9 A. Yes.

10 496 Q. They all were under an obligation to comply with the 14:31
11 requirements of the Haddington Road agreement, correct?

12 A. Everyone.

13 497 Q. would you have been keeping track of who was complying
14 and who wasn't complying?

15 A. When you say keeping track...? 14:31

16 498 Q. Noting, making a record of who was doing what they
17 needed do?

18 A. No.

19 499 Q. Okay. Is that not something of concern?

20 A. No. 14:32

21 500 Q. Okay. what about then the idea that somebody could
22 just casually almost ask you verbally for prior
23 sanction to do X number of hours, would you not have
24 made a note of that?

25 A. No. 14:32

26 501 Q. Despite the fact that you have a large number of gardaí
27 working for you, would it not have been a problem if
28 certain gardaí came back later on and said, you did
29 sanction that, sure I said it to you and you said,

1 that's grand, go on off about it, or words to that
2 effect?

3 A. The paperwork for the sanction would come to us at the
4 end of every week, as in, the A85 --

5 502 Q. Yes. 14:32

6 A. -- and the attached application to work extra duty,
7 extra duty of whatever type. It could be --

8 503 Q. Let's be absolutely clear about this, superintendent.
9 The documents that would come to you every week, are
10 you saying that those documents would reference hours 14:32
11 in the future yet to happen --

12 A. No.

13 504 Q. -- or hours that had happened?

14 A. Hours that had happened during the previous week.

15 505 Q. Yeah. So my question is: How could you be confident, 14:33
16 if you weren't making a note of who had just verbally
17 asked you for permission prior to doing the hours, that
18 any particular guards had in fact gotten the permission
19 that you say they needed in advance?

20 A. I would be confident. 14:33

21 506 Q. Could I suggest to you that in fact what was happening
22 is an entirely understandable situation, where
23 effectively the skippers, if you will, the sergeants in
24 charge, were being delegated that function, people who
25 were working in various units were going to the 14:33
26 sergeants in charge saying, I need to X number of
27 hours, can you okay it, and the sergeants would say,
28 that's grand. And then they would, after the fact,
29 come to you with an explanation or whatever, you would

1 sign off on it as approving it?

2 A. No, I couldn't have gardaí and sergeants in the
3 district coming in for ten hours, working tours of duty
4 without myself or Inspector O'Sullivan knowing it.

5 507 Q. Yes. I suppose, though, that does lead back to the 14:33
6 question that I just put to you though, the question
7 before I just put to you, that if you are not keeping a
8 note of who you are approving in advance how could you
9 have been satisfied every week or every month, or
10 whatever, that you had in fact approved all of these 14:34
11 gardaí who were doing these hours?

12 A. Well, at the end of every week you would know who had
13 come to you during the week and you would sign off on
14 it at the end of the week, when the A85 and the
15 attached application would come. 14:34

16 508 Q. Let's see if we can deal with that then. Could I ask,
17 please, to go to page 5432. This is an A85, correct?

18 A. Yes.

19 509 Q. And it seems to relate to a period between the 24th
20 June 2013 down to the 21st July 2013, yes? 14:34

21 A. Yes.

22 510 Q. Okay. There are various different columns, I am not
23 going to you go through them all. But this seems to be
24 the logging of extra hours or hours that are performed,
25 as you have been referring us to, have I got that 14:35
26 right?

27 A. Yes.

28 511 Q. Okay. In the middle of the page there, beginning 1st
29 July 2013, we have what seems to me, but you tell me

1 now if I have this wrong, under the column for sergeant
2 in the middle of the page, some sergeant, and then in
3 the same font or the same ink or whatever, same person
4 has written in initials "MC"?

5 A. Yes. 14:35

6 512 Q. Do you recognise that?

7 A. Yes.

8 513 Q. Who is writing in MC there?

9 A. Me.

10 514 Q. Okay. Who is writing in the sergeant then just before 14:35
11 it?

12 A. I think, Mr. Costelloe, and I am not a hundred percent
13 on this, I think that was the sergeant in the
14 divisional office, maybe. I'm not sure.

15 515 Q. All right. Well, let's just say a sergeant then if 14:35
16 we're not sure?

17 A. Yes.

18 516 Q. So that is for the period the 1st July 2013 through to
19 the period the 7th July 2013, do we accept that?

20 A. Yes. 14:36

21 517 Q. That particular tranche, if you will?

22 A. Yes, yeah.

23 518 Q. Because then we move on to what seems to be the next
24 block, which is the 8th July 2013 to the 14th July 2013
25 and again we see the initials "MC" but now there's a 14:36
26 distinction, or it looks like it is written in a
27 different pen or something, do you agree with me?

28 A. Yes.

29 519 Q. So who is writing in the name of the sergeant there and

1 who is signing MC?

2 A. Again the sergeant, I don't know, but MC is certainly

3 me.

4 520 Q. Okay. But do you think you are the one writing in the

5 name of the sergeant? 14:36

6 A. No.

7 521 Q. All right. And then the column before that, "Nature of

8 duty, annual leave, annual leave, annual leave, rest

9 day, rest day, rest day", is that your handwriting?

10 A. No. 14:37

11 522 Q. So somebody else has written that in. Then the last

12 block on this page, this particular A85 document, goes

13 from 15th July 2013 to 21st July 2013, again if we go

14 back to the middle of the page, there are the initials

15 MC, is this you again? 14:37

16 A. That's me, yes.

17 523 Q. Okay. And again, it looks like somebody else has

18 written in initials for sergeant, it may be that it's

19 the same sergeant as the previous block, and an

20 explanation is given under the nature of duty, have I 14:37

21 got all that right?

22 A. Yes.

23 524 Q. This is called the A85, it's specific to unit A at

24 Fermoy Garda Station and it's for the roster that ends

25 on the 21st July 2013, correct? 14:37

26 A. Correct.

27 525 Q. So that appears to be a four-week roster, because it

28 begins on the 24th June and it looks like it's broken

29 up into four sevens, yeah?

1 A. Every A85 is for four weeks.

2 526 Q. Yes, okay. And by the way, superintendent, you may
3 very well know this because you may have gone over the
4 material, but we have literally dozens of these A85s in
5 the materials given. I have no intension of going 14:38
6 through all of them. But dealing with this one, we
7 have a document two pages on, which is at page 5434.
8 Now, is this the document that you were talking about
9 earlier?

10 A. The extra duty document, yes. 14:38

11 527 Q. So this is the document that deals with compliance or
12 hours done ostensibly in compliance with the TOIL
13 agreement, the Haddington Road hours, yeah?

14 A. All extra duty.

15 528 Q. Not just Haddington Road? 14:38

16 A. Every extra duty performed.

17 529 Q. Okay. What's the distinction then between TOIL and
18 JPC?

19 A. The column with TOIL is the sergeant telling myself or
20 the inspector that he wouldn't be claiming payment for 14:39
21 this overtime, he'd be claiming time off in lieu. JPC
22 is the 2.5 hours overtime for attendance at the joint
23 policing committee.

24 530 Q. The first entries in this particular document, which is
25 for the same roster period, so it seems to be the 14:39
26 document that relates to the A85 that we've just been
27 dealing with, the first number of entries are in blue
28 ink, I am talking now about the last column on the
29 page?

1 A. Yes.

2 531 Q. "Signature of district officer sanctioning the extra
3 duty involved" and it seems to be for the first four of
4 those that it's Inspector O'Sullivan, you agree with
5 me? 14:39

6 A. Correct.

7 532 Q. And then for the remaining five on that page, there's a
8 signature there, whose signature is that?

9 A. That's mine.

10 533 Q. Okay. And the date? 14:39

11 A. 16th July.

12 534 Q. Okay. Now, it seems to me from that page that the
13 various time off in lieu that are being dealt with
14 relate to the 1st July 2013, 2nd July 2013, 3rd July
15 2013, 4th July 2013 and the 5th July 2013, am I right? 14:40

16 A. Yes.

17 535 Q. Is that you then signing off on those on the 16th July?

18 A. Yes, I would say so.

19 536 Q. Is that not postdating you signing off on those hours?

20 A. No. 14:40

21 537 Q. Why not?

22 A. That's when I would have received the application.

23 538 Q. I am sorry, what?

24 A. I received the form on the 16th July and I signed off
25 on it on the 16th July. 14:40

26 539 Q. Okay. But you are telling the Chairman that you had
27 previously approved all of this?

28 A. I would have known about it, yes.

29 540 Q. You would have given prior approval --

1 A. Yes.

2 541 Q. -- to each of those?

3 A. Yes.

4 542 Q. You have no note of that but you are confident now that
5 you would have done that in advance? 14:41

6 A. I am.

7 543 Q. Okay. Can I ask you to move back one column there.
8 It's not clear to me what's written. So you have the
9 inclusive bracket, your signature?

10 A. Yes. 14:41

11 544 Q. I'm talking about the column directly on the left?
12 what does that say? Could I suggest it says sergeant
13 in charge, but I am not sure, I am genuinely not sure
14 what that says?

15 A. The heading, is it? 14:41

16 545 Q. No, no, the entry in ink between the third and final
17 column?

18 A. Oh yes.

19 546 Q. Yes, where the cursor is right now?

20 A. Yeah, it looks like sergeant in charge. 14:41

21 547 Q. And the heading for that particular column is
22 "Signature of sergeant in charge approving extra duty
23 involved and date" isn't that right?

24 A. Yes.

25 548 Q. There's a column in this page which specifically refers 14:41
26 to the sergeant in charge approving extra duty involved
27 and the date; isn't that right?

28 A. Yes.

29 549 Q. And it seems to be signed by the sergeant in charge,

1 isn't that right?

2 A. Yes.

3 550 Q. Doesn't that clearly show that it's the sergeant in
4 charge who initially approves this time off in lieu and
5 that you only approve it after the fact? 14:42

6 A. No.

7 551 Q. I mean -- okay. Why not?

8 A. The instruction from 2010 was that approval could only
9 be given by myself or Inspector O'Sullivan and the form
10 long predated that. We didn't change the form but the 14:42
11 form long predated 2010.

12 552 Q. Sorry, superintendent, with all due respect, if you're
13 putting this down to a fact that this is a prepopulated
14 or a pre-titled, rather, form that predates the
15 Haddington Road agreement 2010, why was the sergeant in 14:42
16 charge signing, initialling each of those pages, each
17 of those columns?

18 A. Can I say, Mr. Costelloe, I don't think any of this
19 extra duty is Haddington Road, is my first comment.
20 This is overtime worked for time off or overtime worked 14:43
21 for payment. I don't see Haddington Road anywhere in
22 this form.

23 553 Q. Well, it doesn't appear to be set out in any form that
24 we can make a --

25 A. What is? 14:43

26 554 Q. Sorry, I meant in this document there doesn't appear to
27 be a reference to Haddington Road, sorry.

28 A. Yeah.

29 555 Q. So the A85 that we have there and this particular

1 document, which goes with the A85 for this period, the
2 21st July 2013, makes no reference to it, but it does
3 make reference to the fact that this is request for
4 time off in lieu. You agree with me about that?

5 A. Time off in law for overtime worked. 14:43

6 556 Q. Okay. So, do I understand your answer then to be that
7 there is a distinction between time off in lieu for
8 work, extra work, versus time off in lieu to comply
9 with the obligations under the Haddington Road
10 agreement? 14:44

11 A. Yes.

12 557 Q. Pardon?

13 A. Yes.

14 558 Q. Okay.

15 A. Yes. 14:44

16 559 Q. So you are telling us that there is a distinction and
17 what is the distinction between the two?

18 A. They are two separate types of extra duty.

19 560 Q. No, grand, we all understand that. But in relation to
20 the approval, is it the same approval process? 14:44

21 A. The same approval.

22 561 Q. Sorry?

23 A. Same approval, yes.

24 562 Q. Well then the question applies, whether you are right
25 or you are wrong, the question is the same: why is
26 there a sergeant ostensibly approving these hours,
27 putting a signature in the box for it and you signing
28 off on that ten days later, approximately? 14:44

29 A. That was the system we had in operation.

1 563 Q. CHAIRMAN: Sorry, can you explain that, superintendent?
2 what do you mean that was the system?
3 A. When a member would work extra duty, Chair, this form
4 would be attached to his A85. This form was in use in
5 Fermoy district since the year 2000. So the member 14:45
6 would submit the form and that second last column to
7 the right would be signed by the sergeant. It should
8 be certifying really. The word approving is in there,
9 it should be certifying. And then it would be
10 sanctioned by myself or Inspector O'Sullivan. 14:45
11 564 Q. CHAIRMAN: And what does that mean? what was the role
12 of the sergeant as you understand it, whatever it says
13 on the --
14 A. The member worked the duty.
15 565 Q. CHAIRMAN: I am sorry? 14:45
16 A. The member worked the duty. The sergeant is certifying
17 that the member actually worked the duty.
18 566 Q. CHAIRMAN: And do you say that this form or this
19 process was the same or different from the Haddington
20 Road process? 14:46
21 A. The same.
22 567 Q. CHAIRMAN: The same?
23 A. The same. We continued with this form.
24 568 Q. CHAIRMAN: I see.
25 A. Actually, Haddington Road had just been introduced at 14:46
26 this stage, July '13, and the A85 changed with the
27 introduction of Haddington Road. So the following
28 roster after this, there was a new A85.
29 569 Q. CHAIRMAN: And what did it say?

1 A. It had columns on the reverse side of the A85 to write
2 in the A85 that you had -- or write in the Haddington
3 Road that you had worked.

4 570 Q. CHAIRMAN: I see. Sorry, Mr. Costelloe.
5 MR. COSTELLOE: No, not at all. 14:46

6 571 Q. As I understand your answer, both to myself and to the
7 Chair, that whether it is Haddington Road or ordinary,
8 if I use that word, overtime, the system is the same;
9 yourself or Inspector O'Sullivan have to sign off on
10 it, prior to it being sanctioned? 14:47

11 A. No, no.

12 572 Q. Okay.

13 A. We sanction it.

14 CHAIRMAN: He didn't have to sign it, he had to
15 sanction it. 14:47

16 573 Q. MR. COSTELLOE: Okay, sorry. You had to sanction it?
17 A. Normally it was afterwards when we wrote.

18 574 Q. But you had to sanction it in advance?
19 A. Yes.

20 575 Q. And you draw the distinction between what's set out in 14:47
21 that page, which you say is just ordinary overtime,
22 where you are saying that for Haddington Road it was
23 different?

24 A. Yes.

25 576 Q. All right. 14:47

26 A. No, but Haddington Road would be written in the four
27 column over, "full description of duty and reasons for
28 incurring extra duty" --

29 577 Q. Exactly.

1 A. -- Haddington Road would be written in there if it was
2 Haddington Road duty.

3 578 Q. Exactly. If we turn to page 5546, maybe we have a good
4 example of what are you talking about. 5546, please.
5 This now relates to a roster that ended on the 13th 14:48
6 October 2013. And if we scroll down a tiny bit, we see
7 three entries, in the middle column it references
8 Haddington Road in each instance, isn't that correct?

9 A. Correct.

10 579 Q. "Haddington Road road, sergeant in charge duties. 14:48
11 Haddington Road, sergeant in charge duties. Haddington
12 Road, sergeant in charge duties." Isn't that correct?

13 A. Correct.

14 580 Q. For all three of those we have the collective bracket,
15 again by yourself, and what seems to be your signature, 14:48
16 isn't that correct?

17 A. Yes.

18 581 Q. Superintendent, 15th October 2013, correct?

19 A. Yes.

20 582 Q. In each instance in the column in between, correct me 14:48
21 now if you think I am wrong in this, again it seems to
22 be the sergeant in charge is initialling, that the
23 sergeant in charge has approved the extra hours?

24 A. Yes.

25 583 Q. Isn't that very clearly contrary to what you have told 14:48
26 the Chairman yesterday and today?

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

28 584 Q. Isn't that a sergeant approving the hours and then you
29 signing off on the sergeant's approval two days after

1 the roster is submitted?

2 A. As I said to the Chairman a few minutes ago, the
3 sergeant is certifying that the member worked those
4 hours. We didn't change the form. We should have
5 changed the form, but we didn't. 14:49

6 585 Q. Ms. Cody just reminds me that you said a moment ago
7 that you would have been applied -- it would have been
8 mentioned to you on a week by week basis by various
9 gardaí that they were looking for approval, isn't that
10 right? 14:49

11 A. Yes.

12 586 Q. The dates here appear to be one month apart?

13 A. Yes.

14 587 Q. So over a three-month period, does the situation
15 persist, that are you not taking any note of who has 14:49
16 come to you in advance looking for prior sanctioning?

17 A. Yes.

18 588 Q. But nonetheless you're saying that over a three-month
19 period you would be confident that you would remember
20 that so and so mentioned to you that he wanted to do 14:49
21 these hours in advance?

22 A. No, this is not a three-month period.

23 589 Q. I see.

24 A. The A85 has to be submitted once --

25 590 Q. Sorry, I am only going from the dates in the first 14:50
26 column. 25th August 2013, twenty-something of
27 September 2013, 1st October 2013 and the 3rd October
28 2013?

29 A. I think the first date, Mr. Costelloe, is the 25th

1 September '13. It's all within the rostered period for
2 the A85. It's within a four-week period.

3 591 Q. Okay. Well, I won't quibble with you. It's not clear
4 to me. But taking your answer as being correct, it's
5 still over a period from the 25th, as you say, of 14:50
6 September 2013 through to the 3rd October 2013?

7 A. Yes.

8 592 Q. Okay. I am just putting it to you, I hope as clearly
9 as possible, that the situation that existed throughout
10 this time, prior to and then after Haddington Road came 14:50
11 into effect, was that people who were working overtime
12 hours or Haddington Road hours would say it to the
13 sergeant in charge, the sergeant in charge would
14 sanction it and then after the fact you would approve
15 it or Inspector O'Sullivan would approve it? 14:51

16 A. If I didn't know about the hours, Mr. Costelloe, I
17 wouldn't, I wouldn't approve it and the person wouldn't
18 get paid, and everyone knew that.

19 593 Q. Excuse me, superintendent. There are many other of
20 these forms -- 14:51

21 A. Yes.

22 594 Q. -- referring to Haddington Road. I don't wish nor
23 presume to open all of them to you, just to say that
24 that's not the only example of it and in each instance
25 that we can see, it looks like it's the sergeant in 14:52
26 charge is initialling the second column from the end.

27 A. Mr. Costelloe, I would not have signed the form
28 sanctioning the extra hours if that third column wasn't
29 signed by a sergeant.

1 595 Q. Yes. I don't dispute that fact, superintendent. I am
2 just putting it to you that you wouldn't have signed it
3 because it was signed by a sergeant, so you knew the
4 sergeant had sanctioned the hours in advance, not, as
5 you are telling the Tribunal, that you're signing it,
6 because you had sanctioned the hours in advance?

7 A. That's not correct.

8 MR. MARRINAN: Sorry, Chairman, we're just checking, we
9 have lost our live feed.

10 CHAIRMAN: That is what appears, but not everybody
11 appears to have lost it. Have you lost your live feed,
12 Mr. Costelloe?

13 MR. COSTELLOE: I do appear to have lost it, yes,
14 Chairman.

15 CHAIRMAN: Thank you very much.

16 MR. COSTELLOE: I swear I didn't touch anything.

17 CHAIRMAN: We'll get it sorted out.

18 MR. COSTELLOE: I am nearly done, will I wait?

19 CHAIRMAN: If you're happy to continue, we can take
20 notes, Mr. Costelloe.

21 MR. COSTELLOE: I will wait a moment and see what
22 happens, Chairman. I am nearly finished.

23 CHAIRMAN: Carry on, Mr. Costelloe. If everybody is
24 happy we will carry on.

25 596 Q. MR. COSTELLOE: I think the very last thing I want to
26 put to you on the Haddington Road issue, I truly can't
27 remember if this has been opened, so if it hasn't, just
28 for clarity sake, at page 1881, Mr. Dunne, as he is
29 now, Sergeant Dunne says that at one stage:

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"In relation to the issue raised by retired Sergeant Paul Barry regarding Haddington Road duty, I can confirm that at one time I did sign and approve all such applications made by retired Sergeant Barry as well as for the other sergeant attached to Mitchelstown Garda Station, Sergeant Jerry Quinn. However, this practice changed under Superintendent Michael Comyns in which he directed that all such applications should be forwarded to him for sanction or to the district inspector, Anthony O'Sullivan."

Had you seen that before?

A. I had.

597 Q. Okay. And are you saying that that coincides with what you are saying was the practice at the time?

A. No, the practice never changed.

598 Q. Okay. So Mr. Dunne is wrong when he says that there was a change in practice?

A. The only time the practice changed that I am aware of was when I came to Fermoy, and I told everyone that from the start.

599 Q. I thought you came to Fermoy before the Haddington Road agreement?

A. Long before it.

600 Q. Yes.

A. I was in Haddington Road -- sorry, I was in Fermoy three hours when Haddington Road came into being.

601 Q. That's roughly what I had as well from my Google

1 researches but it seems to be then that yourself and
2 Mr. Dunne are diametrically opposed at least in respect
3 of that particular point?

4 A. Correct.

5 602 Q. Because he's -- sorry, that is giving more weight to 14:55
6 it, and that's not a matter for me, but he appears to
7 be saying the contrary, which is that the system did
8 change?

9 A. That is what he says.

10 603 Q. I understand that a statement was furnished to us at 14:55
11 lunchtime today and I understand that the import of it
12 is that Mr. Quinn, that's retired Sergeant Jeremiah a
13 Quinn says that he has no recollection of ever having
14 to make a request to you or Inspector O'Sullivan for
15 Haddington Road hours, but he has no recollection other 14:56
16 than that. I am going to read you the statement, it
17 seems to be very short.

18 A. Yes.

19 604 Q. I haven't seen it myself, it came in over lunch. It's
20 with the standard caution, in fact: 14:56
21
22 "I hereby declare this statement is it true to the best
23 of my knowledge and belief and I make it knowing that
24 if it is tendered in evidence I will be liable to
25 prosecution if I state in it anything which I know to 14:56
26 be false or do not believe to be true.
27
28 In relation to the query referenced DT 290 P, I wish to
29 state that I cannot recall having to make an

1 application to Superintendent Comyns or Inspector
2 O'Sullivan for permission to incur Haddington Road
3 duty. This happened eight years ago and unfortunately
4 I cannot recall any of the circumstances in relation to
5 Haddington Road applications. I did not take any notes 14:57
6 or keep any correspondence in relation to this matter.
7 This statement is true."

8
9 And it is signed by Sergeant Quinn. It appears he's
10 still Sergeant Quinn in fact and it's dated 29th May 14:57
11 2022. I'm not sure that advances anything anyway.

12 CHAIRMAN: You are absolutely right about that,
13 Mr. Costelloe.

14 MR. COSTELLOE: He says he has no recollection one way
15 or the other. 14:57

16 CHAIRMAN: You needn't be unsure about it, it doesn't.
17 Thank you very much.

18 MR. COSTELLOE: That's it, thank you very much,
19 superintendent.

20 14:57
21 END OF EXAMINATION

22
23 CHAIRMAN: Thank you very much Mr. Costelloe. Now, are
24 you okay there, superintendent?

25 THE WITNESS: I'm fine. 14:57

26 CHAIRMAN: You are still going strong. Okay. So
27 Mr. O'Higgins for the Gardaí.

1 SUPERINTENDENT MICHAEL COMYNS WAS CROSS-EXAMINED BY
2 MR. O'HIGGINS AS FOLLOWS:

3
4 605 Q. MR. O'HIGGINS: Thank you, Chairman. Superintendent
5 Comyns, Micheál O'Higgins for the Garda Commissioner 14:58
6 and certain members of senior management in An Garda
7 Síochána.

8 A. Yes.

9 606 Q. Just bringing matters back a small bit, I want to deal
10 with the two, it's been done to an extent, so I want to 14:58
11 do this reasonably briefly, but the different roles and
12 responsibilities within the ranks. Just ahead of that,
13 you first came to Fermoy in July 2010, isn't that
14 right?

15 A. That's correct. 14:58

16 607 Q. Prior to that you were in Kilrush in County Clare as a
17 superintendent?

18 A. That's correct.

19 608 Q. I want to ask you then about the difference in the
20 roles. Could I ask you first of all to look at a 14:58
21 portion of the Garda Code, which starts on page 3644,
22 but Mr. Kavanagh might put up page 3648. Towards the
23 bottom of this we have the Garda Code description of
24 the roles and functions of a superintendent, towards
25 the bottom of that page. So you will see there it 14:59
26 says: "Purpose: Superintendent, to manage and lead
27 the development, delivery and evaluation of
28 comprehensive policing services within his/her assigned
29 Garda district."

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Broadly speaking, is that your understanding of the remit of your role?

A. It is, Mr. O'Higgins, yes.

609 Q. And it goes on under A and B, it says:

14:59

"Thereby ensuring that accountable quality assured continuously improving professional services are provided for customers and citizens."

14:59

Could I ask you briefly just to deal with, over the next page, and we're not going to go through this document extensively, but under the heading of "Management and Leadership responsibilities" you will see there, there is a list of different individual responsibilities that a superintendent has?

14:59

A. I am well aware of it, Mr. O'Higgins, yes.

610 Q. And in 2G it says:

"To build competent and effective district/portfolio operational teams, thus ensuring functions and priority work processes are cohesively managed and led.

15:00

H. To develop written plans and operational strategies for the information, guidance and direction of all staff and stakeholders."

15:00

scrolling down to K:

1 "To continuously review progress towards the effective
2 implementation of district plans and the achievement of
3 operational goals."

4
5 And L, at the bottom:

15:00

6
7 "To manage the allocated budget."

8
9 And over the page, to page 3650, in R, halfway down:

10 15:00

11 "To plan for serious incidents occurring within his/her
12 district and to take personal charge of the policing
13 investigation of such incidents."

14
15 So can I just ask you, first of all, in terms of a
16 serious incident happening in a district,
17 superintendent, ultimately upon whose shoulders did
18 responsibility lie to ensure that effective action was
19 taken?

15:00

20 A. My shoulders.

15:01

21 611 Q. And in terms of the superintendent, just lifting it out
22 of your own individual situation, in terms of a
23 superintendent doing his or her job effectively, what
24 is the input that is required from sergeants carrying
25 out a supervisory function?

15:01

26 A. You would expect the sergeant -- you would require the
27 sergeant to carry out your directions in relation to
28 the matter, and to bring your directions to the gardaí.
29 The sergeant would be a vital cog in any investigation.

1 612 Q. In terms of any requirement to bring information to the
2 attention of the district officer, what is the
3 responsibility of each sergeant?
4 A. To ensure that any incident, any information really, is
5 provided to the district officer. 15:02
6 613 Q. Could I ask you to look at the next page, 3654, which
7 details -- it's a few pages on, sorry. 3654, it
8 details in the Garda Code the role and function of a
9 sergeant. Again, we won't go through this extensively,
10 but you see there in paragraph 3.8, under the heading 15:02
11 of sergeant, the following is stated under the heading
12 "purpose":
13
14 "The sergeant is the first line supervisor and
15 operational team leader. The sergeant shall take 15:02
16 charge of assigned personnel and operational duties and
17 challenges. He or she shall ensure that all frontline
18 garda services are delivered and that tasks are carried
19 out in a timely, efficient and effective manner."
20 15:02
21 Does that accord with your understanding of the role of
22 each sergeant?
23 A. It does.
24 614 Q. And it's broken down then and again we needn't go
25 through it extensively, but in "2A, to take charge of 15:03
26 the portfolio; B, ensure relevant provisions of the
27 Code are implemented; C, support the superintendent in
28 the implementation of local policing plan and
29 operations; and H, ensure and prompt attendance for

1 duty, proper turn out and good discipline of staff."

2
3 would it be fair to say, superintendent, that in order
4 for a superintendent to discharge his or her role as a
5 district manager, it requires a platform of each 15:03
6 sergeant carrying out their functions as outlined there
7 in subparagraph 2?

8 A. The superintendent relies on the sergeant to carry out
9 those functions.

10 615 Q. Could I ask you now briefly to look at some of the 15:03
11 changes that came in subsequent to your arrival in
12 Fermoy. The first of these then is, we might look
13 briefly at page 625 in volume 2. This is the
14 guidelines for the implementation of the new roster. I
15 think you have told the Chairman already, these came in 15:04
16 in April of 2012, isn't that so?

17 A. Correct.

18 616 Q. We have looked at this document before, so we needn't
19 dwell on it, but in the third line down, the following
20 is stated: 15:04

21
22 "The following are guidelines for the benefit of
23 everyone and will be implemented by each sergeant in
24 the district."

25
26 Do you see that there? 15:04

27 A. Yes.

28 617 Q. Why is that directed at the rank of sergeant?

29 A. Again, as I said, I relied on the sergeant to ensure

1 that my directions were carried out within the
2 district.

3 618 Q. Towards the bottom of that, of those guidelines, which
4 run for some pages, we might look at page 632. There's
5 the heading of "other issues" and Mr. Marrinan I think 15:05
6 brought you over this, so again I will do it very
7 briefly. But on page 632, under the heading of "other
8 issues" halfway down that page, we have there, there's
9 a number of wrap-up points made.

10
11 "All annual leave applications must be submitted 16
12 days in advance and must be forwarded through the
13 supervising sergeant with a recommendation to the
14 district office. Leave is not granted until signed off
15 by the district officer or acting district officer." 15:05
16

17 Did I understand you to indicate to the Chairman
18 previously that as far as you're concerned this was not
19 the introduction of a new rule, but the implementation
20 of an existing rule, is that right? 15:05

21 A. Yes. Yeah, that was just a reiteration of what was
22 there already.

23 619 Q. All right. If we could go on to the final page, the
24 next page, page 663, please, Mr. Kavanagh. And the top
25 two I want to ask you about: 15:05
26

27 "A sergeant must brief, detail and inspect all members
28 reporting for duty."
29

1 And secondly:
2
3 "A sergeant must certify each member's tour of duty
4 when the member reports off duty." Why were you
5 putting that in to this guideline document that's 15:06
6 issued in April 2012 -- in May 2012?
7 A. I wanted to ensure that, number one, any member
8 arriving for duty was, as it says, briefed, detailed
9 and inspected by the sergeant, and that -- the form D27
10 was a new form that came in with the rosters. 15:06
11 620 Q. Yes.
12 A. And that was just a direction in relation to the
13 signing of that form.
14 621 Q. And I think, if we might go very briefly to page 616,
15 you also introduced an aide memoire for sergeants to 15:07
16 assist the implementation of the new arrangements,
17 isn't that so?
18 A. Yes. Something shorter than my big long direction.
19 622 Q. Yes, that's what I meant. So is this the document?
20 It's an aide memoire. It's headed "aide memoire for 15:07
21 sergeants"?
22 A. Yes.
23 623 Q. "New roster period, 30th April 2012". And I think this
24 is sort of more user friendly version of the document
25 we were looking at a moment ago? 15:07
26 A. Correct.
27 624 Q. On the change over to the new roster, superintendent,
28 what directions did you give concerning whether
29 sergeants should work the full core hours with their

1 units?

2 A. There was -- under the old roster system, some of the
3 sergeants did work across two units and didn't work
4 directly with a unit. They worked maybe not full tours
5 of night duty or that. So, I wanted to ensure that 15:08
6 each sergeant worked with their unit, they would work
7 the core hours the same as their unit.

8 625 Q. Yes. What attitude initially did unit sergeants in
9 Mitchelstown, including Sergeant Barry, take to the new
10 arrangements? Was it universally welcomed initially? 15:08

11 A. I don't believe it was.

12 626 Q. Was there a bedding down period, if I can put it that
13 way?

14 A. Yes, there was.

15 627 Q. All right. They were initially brought in on a pilot 15:08
16 basis, isn't that so?

17 A. The rosters were brought in on a pilot basis at that
18 time, yeah.

19 628 Q. After the bedding down period, can I ask this question,
20 did Sergeant Barry enthusiastically embrace -- 15:09

21 MR. COSTELLOE: Excuse me, Chairman, I don't wish to
22 make a big deal about this, but none of this was put to
23 Mr. Barry and in fairness, the witness is saying he's
24 acting on his interpretation or impression of what was
25 going on at the time. I mean, if there's a specific 15:09
26 document that's different and obviously Mr. O'Higgins
27 may be coming to that, but where Mr. Barry was never
28 even asked about what his attitude to any of this
29 was --

1 CHAIRMAN: Where are you going with that,
2 Mr. O'Higgins? Suppose Superintendent Comyns says, no,
3 he didn't or, yes, he did, what difference does it
4 make? Suppose Sergeant Barry was, just for the sake of
5 argument, I don't what the answer might be -- 15:10
6 MR. O'HIGGINS: Yes.
7 CHAIRMAN: -- but suppose he said, no, Sergeant Barry
8 hated it, what difference would that make? I mean,
9 would that mean that Sergeant Barry was wrong or right?
10 How does it make any difference whether he welcomed it 15:10
11 or not? I mean, frankly I can guess what the reaction
12 of most people is to new rosters or new changes.
13 Frankly, I can guess.
14 MR. O'HIGGINS: Two things in response, Chairman --
15 CHAIRMAN: Sorry, I can guess in a general way, I'm not 15:10
16 guessing about Mr. Barry. But Mr. Costelloe says,
17 where are we going, so...
18 MR. O'HIGGINS: Well, it's firstly relevant to the
19 possibility that it's part of Sergeant Barry's
20 complaint against Garda management that there was 15:10
21 unfairness in the way he was dealt with.
22 CHAIRMAN: Absolutely.
23 MR. O'HIGGINS: There's a specific -- I am just looking
24 at the issue, the list of issues.
25 CHAIRMAN: But not about the new rosters. 15:11
26 MR. O'HIGGINS: For instance at 3H, one of the Tribunal
27 issues is to explore whether by making implicit
28 criticism of Sergeant Barry, including requiring him to
29 make a report in respect of a fatal fire that occurred

1 on the 9th April 2013. So that's the standalone issue
2 of the fire.

3 CHAIRMAN: We know that, and we know there's evidence
4 about that.

5 MR. O'HIGGINS: Yes. 15:11

6 CHAIRMAN: And we know that what Mr. Barry says about
7 it and he says it was all on the C71 and the Pulse and,
8 moreover, anything else was told to Inspector
9 O'Sullivan in a series of phone calls. Now that's what
10 he says. It doesn't mean he's right. And the 15:11
11 alternative position is, that's all very well, but it's
12 not what's required, what was required was the report,
13 in addition to that.

14 MR. O'HIGGINS: Yes. There's a standalone issue on
15 that. But I suppose to answer your question, 15:11
16 Chairman --

17 CHAIRMAN: So either the requirement is that there was
18 a requirement of a report in addition to that or there
19 wasn't, or whether Sergeant Barry effected sufficient
20 compliance to make it unreasonable and overly 15:12
21 punctilious to chase after him, because he didn't.
22 That's what I am assuming I am going to have to write.
23 In a word, Mr. O'Higgins, in a word, Mr. Costelloe
24 says, what on earth has it got to do with anything the
25 Tribunal has to decide, to know how he responded to the 15:12
26 new roster?

27 MR. O'HIGGINS: This is its relevance: One of the
28 complaints in a general sense that the sergeant has is
29 that unfairly I was picked on and there are a number of

1 headings, including not attending PAF meetings.

2 CHAIRMAN: Correct.

3 MR. O'HIGGINS: Not going to a case conference.

4 CHAIRMAN: Yes.

5 MR. O'HIGGINS: A fatal fire. A range of issues -- 15:13

6 CHAIRMAN: Yes.

7 MR. O'HIGGINS: -- where it was said there was

8 unpersonal, unnecessary --

9 CHAIRMAN: I am well aware of all that, yes.

10 MR. O'HIGGINS: But if it be the case that in fact - 15:13

11 and it's an if - if it be the case that a legitimate

12 querying of his position in relation to these various

13 headings was carried out and that in fact the

14 difficulty was that he was not overly enthusiastic

15 about complying with those new procedures, that would 15:13

16 be a relevant matter for you.

17 CHAIRMAN: I don't agree, Mr. O'Higgins, I think he's

18 entitled to be enthusiastic or not enthusiastic, in

19 favour or not in favour, he has to do his job as

20 specified. And if it wasn't specified, the 15:13

21 superintendent may say, well, it was understood as the

22 obvious thing and everybody knew it was the obvious

23 thing. Okay, that can be an argument. But anyway, how

24 he responded, I mean this is assuming the

25 superintendent is in a position to know how he 15:14

26 responded. But he's entitled to be unhappy, he is

27 entitled to say, I don't like this system. But has to

28 apply it.

29 MR. O'HIGGINS: May it please you, Chairman.

1 CHAIRMAN: So, no, I am with Mr. Costelloe on that one,
2 I am not interested in what his attitude was. As I
3 say, one can guess in general terms a lot of the times,
4 myself included, people have objected to new systems,
5 new rules, new regimes and so on. Anyway, enough, 15:14
6 enough. Maybe I am making too much of it.
7 Mr. Costelloe made a modest query and I am sorry, I
8 seem to have droned on about it. But anyway, there's
9 the position Mr. O'Higgins. I don't care -- I'm sorry.
10 MR. O'HIGGINS: I will move on from that issue. 15:14
11 CHAIRMAN: Thanks.
12 629 Q. MR. O'HIGGINS: In relation to PAF meetings?
13 A. Yes.
14 630 Q. What was in a practical way was the problem if a member
15 who was required to attend those meetings did not 15:15
16 attend those meetings, what specific problem did that
17 give rise to?
18 A. The message coming from the meeting, whatever the
19 message was for the coming week or whatever people were
20 expected to do, would not get to the unit of the 15:15
21 sergeant who wouldn't turn up, or in relation to
22 investigations, ongoing investigations, my wishes in
23 relation to those investigations, as in, well, I think
24 we need to get this done or we need to get that done,
25 again would not be communicated to the unit if the 15:15
26 sergeant wasn't at the PAF meetings.
27 631 Q. Can I ask you about a separate issue, superintendent.
28 April 2013, one of the issues the Chairman is looking
29 at. You wrote to Chief Superintendent Dillane, the

1 document is at page 397, regarding the, as you saw it,
2 difficulties stemming from the medical certificate that
3 had been provided by the general practitioner, isn't
4 that so?

5 A. Yes. 15:16

6 632 Q. And you see there it says on this document from April
7 2013:

8
9 "In my opinion Sergeant Barry cannot perform the duties
10 which I as district officer require him to perform." 15:16

11 A. Yes.

12 633 Q. "While these conditions are accepted..."

13
14 Perhaps it is blindingly obvious, but can you just
15 elaborate upon that? In what way was the sergeant 15:16
16 unable to perform his duty if that medical certificate
17 stipulation was complied with?

18 A. The most obvious things were the detailing of the unit
19 at half seven in the morning and half nine at night in
20 Fermoy, and the attendance at the PAF meeting. And 15:17
21 then, any other issues that would occur where I would
22 have to interact with Sergeant Barry.

23 634 Q. So if there was a major road traffic accident outside
24 Mitchelstown Garda Station and you had an overseer role
25 in relation to that, what practical difficulties would 15:17
26 arise in that situation?

27 A. If it was a fatal accident --

28 635 Q. Yes.

29 A. -- I have more than an overseer role in that I am

1 obliged to attend the scene and if Sergeant Barry's
2 unit are working, the direction in Fermoy district was
3 that the sergeant investigates fatal accidents. So,
4 there you would have at the scene the sergeant
5 investigating the fatal accident and the
6 superintendent, who cannot come in contact with each
7 other.

15:18

8 636 Q. Yes. The letter continues in saying:

9
10 "Neither can I perform my duty as district officer by
11 having a medical doctor certify that I cannot come in
12 contact with a sergeant over whom I have supervisory
13 and managerial responsibility."

15:18

14
15 Just in practical terms, why do you say that is the
16 case?

15:18

17 A. Again, if I needed anything to be done while unit B
18 were working in Mitchelstown, it would be through
19 Sergeant Barry. If I needed to question anything that
20 happened in Mitchelstown while unit B were working, it
21 would be through Sergeant Barry. Everything from
22 Sergeant Barry's unit, the people he supervised, flowed
23 through Sergeant Barry to me and back. So I
24 couldn't -- you know, if you can't come in contact with
25 the person, how can you carry out your duties?

15:18

15:19

26 637 Q. From the point of view of the recipient of this letter,
27 superintendent, who was Chief Superintendent Dillane,
28 would you agree that the ongoing issues, and without
29 getting into the rights or wrongs of the ongoing issues

1 between yourself and the sergeant, would you agree that
2 the ongoing issues presented something of a managerial
3 dilemma for the chief superintendent?
4 A. Yes. Yes, I couldn't fix the issues and I was pushing
5 it up the line at all times to the chief 15:19
6 superintendent, saying, what are you going to do about
7 this, or, can you do something about this or...
8 638 Q. Finally, superintendent, the issue, the overall,
9 overarching issue the Chairman is looking into, is the
10 question of whether senior Garda management targeted or 15:20
11 discredited the sergeant on foot of him making a
12 protected disclosure. You had a number of dealings
13 over this period with Chief Superintendent Dillane?
14 A. Yes.
15 639 Q. Are you aware and did you at any stage become aware of 15:20
16 any intention or stated determination on the part of
17 Chief Superintendent Dillane to discredit or target the
18 sergeant?
19 A. No, I did not.
20 640 Q. Did you at any stage become aware of any intention of 15:20
21 anybody in Garda management to target Mr. Barry?
22 A. No.
23 MR. O'HIGGINS: Thanks very much.
24
25 END OF EXAMINATION 15:21
26
27 CHAIRMAN: Thanks, Mr. O'Higgins. Now, who is next in
28 the order?
29

1 MR. O'BRIEN: Chairman, sorry, Patrick O'Brien for
2 Inspector O'Sullivan and former commissioner --
3 CHAIRMAN: Mr. O'Brien, it's nice to see you again,
4 Mr. O'Brien.
5 MR. O'BRIEN: Thank you, Chairman. I have no questions 15:21
6 for this witness.
7 CHAIRMAN: Who are you for, Mr. O'Brien?
8 MR. O'BRIEN: Inspector Anthony O'Sullivan and former
9 Assistant Commissioner Fintan Fanning.
10 CHAIRMAN: Very good. You have no questions for the 15:21
11 superintendent?
12 MR. O'BRIEN: No
13 CHAIRMAN: Yes, Mr. Carroll.
14 MR. CARROLL: Just briefly, I am for Mr. John Quilter,
15 retired Superintendent John Quilter. 15:21
16 CHAIRMAN: Yes.
17 MR. CARROLL: I have just really one question, just
18 very short for this witness.
19
20 SUPERINTENDENT MICHAEL COMYNS WAS CROSS-EXAMINED BY 15:21
21 MR. CARROLL, AS FOLLOWS:
22
23 641 Q. MR. CARROLL: Superintendent Comyns, I just want to ask
24 you one thing, you told Mr. Marrinan and the Tribunal
25 yesterday about taking over the golf open at Fota from 15:21
26 Superintendent Quilter who was on leave, annual leave.
27 Just in general terms, to take over functions or jobs
28 of an adjoining superintendent or a superintendent to
29 an adjoining district, would that be something that is

1 unusual?

2 A. No, that would normal in the normal course of events.
3 When a superintendent would take leave, he would ask
4 the superintendent in the next district to carry out
5 his functions while he is on leave. 15:22

6 642 Q. I presume that that could apply in other areas as well.
7 One could think of when is person is detained pursuant
8 to the criminal justice legislation, that if extensions
9 of detention are sought or if search warrants are being
10 sought, that sort of... 15:22

11 A. Correct, the normal course of business can be done by
12 the inspector acting for the superintendent. But the
13 likes of extensions and warrants, the superintendent in
14 the neighbouring district, we'll call it, would cover
15 for the superintendent on leave. 15:23

16 643 Q. So there's nothing unusual in itself, as I say, in a
17 superintendent from an adjoining district taking over
18 the role of a superintendent who is not available
19 effectively?

20 A. It happens all the time. 15:23

21 644 Q. And finally then, I think there was one mention of it,
22 there's mention of it in the papers as well at 4590, we
23 don't need to go to it, but I think you referenced it
24 to Mr. Marrinan as well, that there was another big
25 event going on at the time in Mallow, I think. It's 15:23
26 referred to in the papers as a garden fair or festival,
27 is that --

28 A. Yes, that was on the same weekend as the golf.

29 645 Q. One of the other superintendents nearby was

1 Superintendent McCarthy, but he was involved in that,
2 is my understanding, would that be correct?

3 A. Yes, that would be correct.

4 MR. CARROLL: Thank you.

5

15:23

6 END OF EXAMINATION

7

8 CHAIRMAN: Now we're around to you, Mr. Harty, I think
9 we are.

10

15:24

11 SUPERINTENDENT MICHAEL COMYNS WAS THEN QUESTIONED BY
12 MR. HARTY, AS FOLLOWS:

13

14 646 Q. MR. HARTY: Thank you, Chairman. Superintendent
15 Comyns, there were some matters which were dealt with
16 and some very brief matters which were dealt with by
17 Mr. Barry in his evidence, that weren't put to you by
18 Mr. Costelloe and I think in fairness, they should be
19 at least addressed by you and that's principally what I
20 intend to deal with.

15:24

15:24

21

22 Mr. Barry, in his evidence, suggested is that in effect
23 his copybook had been blotted with you long before you
24 ever came to the division. And can you just assist me
25 again, and I appear to have a -- who was the chief
26 superintendent in the Cork North division in 2004?

15:24

27 A. Tim Callahan.

28 647 Q. And Mr. Callahan was somebody who you would say you
29 were a friend of?

1 A. Yes.

2 648 Q. Mr. Barry's evidence was that he had succeeded in an
3 attempt to -- defeating an attempt to transfer him in
4 2004 and that had somehow rankled with Mr. Callahan.
5 Do you recall what discussion you had, if any, with 15:25
6 Mr. Callahan when you came into the Cork North division
7 in relation to that?

8 A. We never had a discussion in relation to it.

9 649 Q. In terms of your dealings with Mr. Barry from when you
10 came in to the division and the suggestion that he 15:25
11 somehow was targeted was even prior to any protected
12 disclosure, what do you say to that?

13 A. I did not target Mr. Barry or deal with him any
14 differently than anyone else in any way.

15 650 Q. After Mr. Barry, and I think it's easiest to describe 15:26
16 it as the Reg 10 notice, did you take any steps to
17 target Sergeant Barry after that?

18 A. No.

19 651 Q. In general terms in relation to the question from 15:26
20 Mr. Costelloe this morning, it was suggested to you or
21 at least put to you that you had some form of
22 discretion in signing Chief Superintendent Dillane's
23 letters when you came into the office to sign them on
24 his behalf. In An Garda Síochána, and I think this is
25 one venue where perhaps least needs to be said, but An 15:26
26 Garda Síochána is a hierarchical organisation, I take
27 it that while you discuss things, for example, with
28 Chief Superintendent Dillane, in the end of the day
29 when it is his remit, he's the one who makes those

1 decisions?

2 A. Correct.

3 652 Q. Once that decision is made, what role do you have?

4 A. I don't have a role. It's the chief superintendent's
5 decision. 15:27

6 653 Q. And can you imagine a circumstance whereby you would
7 somehow not sign a letter as dictated on behalf of a
8 chief superintendent?

9 A. No.

10 654 Q. I take it you'd agree with me also that in terms of 15:27
11 gardaí in a unit, it is their obligation to follow the
12 direction of the sergeants in that unit, would that
13 be -- their sergeant?

14 A. Yes.

15 655 Q. You would agree with me that it is the obligation of 15:27
16 sergeants to follow the directions of superintendents?

17 A. Yes.

18 656 Q. And inspectors when they are in the divisional or
19 district office?

20 A. Yes. 15:28

21 657 Q. And it is the obligation of superintendents to follow
22 the directions of chief superintendents?

23 A. That's correct.

24 658 Q. And so on and so forth?

25 A. That's how it works. 15:28

26 659 Q. In relation to the situation created by Mr. Barry in
27 refusing to have engagement with you, what was the
28 affect on your ability to follow your directions from a
29 chief superintendent and to ensure the proper provision

1 of policing services within your district?

2 A. It cut off a whole line of communications really and a
3 whole line of supervision of the group of members that
4 Sergeant Barry was in charge of.

5 MR. HARTY: Thank you, Superintendent Comyns, I don't 15:28
6 have anything else.

7

8 END OF EXAMINATION

9

10 CHAIRMAN: Now, Mr. Marrinan. 15:29

11 MR. MARRINAN: I have no further questions.

12 CHAIRMAN: Thank you very much. Everybody has asked
13 all the questions they want. Thank you very much.
14 Thank you, Superintendent Comyns.

15 THE WITNESS: Thank you very much, Chairman. 15:29

16 CHAIRMAN: Are you free to stay to go as you please, or
17 you may come or go as you please.

18 THE WITNESS: Thank you, Chair.

19 CHAIRMAN: Thank you.

20

15:29

21 THE WITNESS THEN WITHDREW

22

23 MR. MARRINAN: The next witness is retired Chief
24 Superintendent Dillane.

25 CHAIRMAN: Yes. 15:29

26 MR. MARRINAN: I don't know whether you want to
27 commence that now.

28 CHAIRMAN: I am happy, whatever you want to do,
29 whatever the parties want to do. would you like to get

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started --.

CHIEF SUPERINTENDENT DILLANE: I am easy, Chairman.

CHAIRMAN: Very good. Why don't we get you started and introduced at least. Thanks very much.

15:29

MR. GERARD DILLANE, HAVING BEEN SWORN, WAS
DIRECTLY-EXAMINED BY MR. MARRINAN, AS FOLLOWS:

CHAIRMAN: Thanks very much. We will call you chief superintendent, if that's all right.

15:30

THE WITNESS: Anything.

CHAIRMAN: Unless you'd prefer to be called anything else.

THE WITNESS: No, whatever suits.

CHAIRMAN: If anybody wants to call you Mr. Dillane, they can call you Mr. Dillane, and if they wish to call you chief superintendent, they can call you that, is that all right.

15:30

THE WITNESS: Whatever suits.

MR. MARRINAN: And it is Gerard Dillane.

15:30

A. That's correct. My official name is William, but Gerard I am known as.

660 Q. Now, I think that you retired from An Garda Síochána in November of 2018?

A. That's correct.

15:30

661 Q. You retired at the rank of chief superintendent, is that right?

A. That's correct.

662 Q. I think that in your statement to the Tribunal you

1 indicat that your last six and a half years were spent
2 as the divisional officer at the Cork North division
3 and that you were based in Fermoy Garda Station, is
4 that right?

5 A. That's correct. 15:31

6 663 Q. I think that you, in fact, commenced your duty in
7 Fermoy in February of 2012, isn't that right?

8 A. That's right.

9 664 Q. I think you replaced Chief Superintendent Kieran McGann
10 and he retired on 11th November 2011? 15:31

11 A. That's correct.

12 665 Q. Now, prior to arriving in Fermoy, had you any dealings
13 with Sergeant Paul Barry?

14 A. Not that I can remember, but I had been stationed in
15 Mallow for two and a half years and I could have had 15:31
16 acquaintances with him or bumped into him, but nothing
17 that I could actually distinctly remember.

18 666 Q. Yes. Now, I think that you became aware that on the
19 6th August 2012 that Sergeant Barry reported
20 non-effective for duty, claiming that he was suffering 15:32
21 from work-related stress, is that right?

22 A. That's correct.

23 667 Q. And on the 9th August of 2012, Superintendent Michael
24 Comyns appointed Inspector Anthony O'Sullivan to
25 investigate Sergeant Barry's work-related stress, and 15:32
26 that's done in accordance with HQ Directive 139/10,
27 isn't that right?

28 A. That's correct.

29 668 Q. Now, you received a letter on the 10th August 2012 from

1 Superintendent Comyns, informing you that Inspector
2 O'Sullivan had met with Sergeant Barry by appointment
3 on the 4th September 2012, isn't that right?

4 A. That's correct.

5 669 Q. And if we could just have page 367 up on the screen, 15:32
6 please. Sorry, page 366, I beg your pardon, the page
7 before that, Mr. Kavanagh. Yes, we see there that it's
8 dated the 10th, a letter from Superintendent Comyns to
9 you on the 10th September 2012. And if we look at the
10 third paragraph down, it says: 15:33

11
12 "Inspector O'Sullivan met Sergeant Barry by appointment
13 on the 4th September. Sergeant Barry alleged that he
14 had an issue with me and that an officer from outside
15 Fermoy district should investigate the matter." 15:33

16
17 Then he goes on to say:

18
19 "On the 2nd August 2012, I dealt with a minor breach of
20 discipline by Sergeant Barry under Regulation 10. A 15:34
21 copy of the Regulation 10 notice served on Sergeant
22 Barry is attached."

23
24 And then it refers to the fact that Sergeant Barry's
25 medical certificate certifies he is unable to attend 15:34
26 work from the 7th August to the 27th August 2012 and
27 from the 27th August 2012 to the 10th August 2012,
28 suffering from medical illness. And then copies of
29 that were attached. That's over on page 367 and a copy

1 of the sick absence report is there. And if we look in
2 the second box down, we see "work-related stress" is
3 written in there, isn't that right?

4 A. That's correct.

5 670 Q. Now, when you read that, did you link the Regulation 10 15:34
6 notice that had been served on Sergeant Barry by
7 Superintendent Comyns with the issue that Sergeant
8 Barry apparently had with Superintendent Comyns?

9 A. Well, it's the only thing I could think of at the time.

10 671 Q. Indeed, Superintendent Comyns seems to have linked the 15:35
11 two there in his letter to you?

12 A. That's correct.

13 672 Q. That would seem to be a fairly minor issue in the first
14 instance, would it not?

15 A. That's correct. 15:35

16 673 Q. I mean, was that something that was immediately going
17 to lead to an investigation by a chief superintendent
18 from outside the district?

19 A. Well, do you see, Mr. Marrinan --

20 674 Q. Or the division? 15:35

21 A. -- the rules are that if the issue is with a chief
22 superintendent it has to be an officer at least one
23 rank higher than investigates it.

24 675 Q. Right.

25 A. So my obligation then, I had no choice, when I was 15:36
26 sending it on the assistant commissioner, I had to
27 recommend one officer higher, which is a chief
28 superintendent. It couldn't be me, because I was in
29 the same division as Superintendent Comyns. So I just

1 applied for a chief superintendent from outside the
2 division to investigate the issues that Sergeant Barry
3 had. That's just the way the system worked.

4 676 Q. If we then just look at page 368 of the materials.

5 This is a letter that you sent to the assistant
6 commissioner in the Southern Region. And if we look
7 down there, that would be Assistant Commissioner
8 Quilter, is that right?

15:36

9 A. That's correct.

10 677 Q. You outline the circumstances, there's no need to go

11 through it but we will see in the third paragraph
12 Sergeant Barry had been disciplined for a minor breach
13 under Regulation 10. So you are highlighting that fact
14 again. Then you note:

15:36

15
16 "As Sergeant Barry's issue is with an officer of
17 superintendent rank, I would request that a chief
18 superintendent from another division be appointed to
19 investigate this matter."

15:37

20
21 Then if we look at page 369 of the material, this is a
22 letter that was sent by you to Assistant Commissioner
23 Human Resource Management. Again, we don't see the
24 entire letter there but we know the contents of it.
25 Again, it's reporting on the sick report of Sergeant
26 Barry. And again we see in the third paragraph there's
27 a reference to the member being disciplined for a minor
28 breach, dealt with under Regulation 10. And again a
29 request there that the matter be investigated by a

15:37

15:37

1 chief superintendent from outside the division.

2

3 So that's as far as matters stood and that's all you
4 knew about the matter, isn't that right?

5 A. There's no application in this sick report. That's 15:38
6 just sending on the sick report. I don't think there's
7 any application in that. I looked for an appointment
8 in the Garda occupational health to have him brought up
9 and examined by the Garda occupational health to see
10 what was the work-related stress issue. That was my 15:38
11 application in the second paragraph there.

12 678 Q. Yes, indeed.

13 A. "I respectfully look for an appointment for the member
14 with the Garda Occupational Health Service."

15 679 Q. Yes. And then you point out in the next paragraph that 15:38
16 you have requested that an officer from outside the
17 district be appointed to deal with it?

18 A. Yes.

19 680 Q. And then if we could just come to what you say is a 15:39
20 meeting on the 13th September with Sergeant Barry. In
21 the first instance, where did this take place?

22 A. Well, I am basing my recollection on what I wrote four
23 days later. I wrote to the assistant commissioner four
24 days later that I met him in Watergrasshill, and that's
25 what I am basing my recollection on, it happened 15:39
26 somewhere around Watergrasshill. But it doesn't seem
27 to have been a very significant meeting.

28 681 Q. So, will you just tell us about your recollection of
29 the meeting?

1 A. Well, I am basing my recollection on the letter I wrote
2 there, that it was, I just met him and just tried to
3 tease out or, I suppose the two things I had at the
4 time were, to get -- when I had appointed -- first of
5 all to inform him that I had appointed or applied for 15:39
6 somebody from outside the division to investigate his
7 complaint, and secondly then, just to see how he was
8 and I knew he'd a wife and kids and he was on basic
9 pay. Just welfare as well as everything else.

10 682 Q. And how did he respond? 15:40

11 A. Grand. I gathered from what I read myself in the
12 documentation supplied that we'd agreed another meeting
13 on the 21st September.

14 683 Q. Yes. Sorry, I am about to be electrocuted here
15 apparently! Mr. Barry, when he was giving evidence, 15:40
16 hotly contested the fact that there was a meeting or
17 that this discussion took place on the 13th September,
18 as you're suggesting. What do you say in relation to
19 that?

20 A. Well, you know, what I heard him saying is, I thought 15:40
21 it was a phone call. But I am saying I based it on a
22 letter I wrote four days later.

23 684 Q. Yes, all right.

24 685 Q. CHAIRMAN: Sorry, you heard him say he thought it was a
25 phone call, is that right? 15:41

26 A. That's correct.

27 686 Q. CHAIRMAN: And what do you say to that, chief
28 superintendent?

29 A. I am just saying I am basing it on what I wrote four

1 days later.

2 687 Q. CHAIRMAN: All right.

3 A. I wouldn't have written the letter unless I attended.

4 I wrote to the assistant commissioner saying I did

5 attend, so... 15:41

6 688 Q. MR. MARRINAN: So you have no recollection yourself?

7 A. No.

8 689 Q. And it's purely on the basis of the letter and the

9 documents that the Tribunal has in that regard, is that

10 right? 15:41

11 A. That's correct.

12 690 Q. Now, if we could just have page 371 up on the screen,

13 please. This is effectively almost a standard form

14 letter that was sent to you.

15 A. That's correct. 15:41

16 691 Q. From Assistant Commissioner Fanning, indicating that an

17 appointment had been made for Sergeant Barry for the

18 11th October, isn't that right?

19 A. That's correct.

20 692 Q. And it's effectively a standard form letter and the 15:42

21 Tribunal is very familiar with these types of letter.

22 And then, if we have page 372 up on the screen, please.

23 This is a letter that you sent to --

24 A. That's correct.

25 693 Q. -- Sergeant Barry, isn't that right? 15:42

26 A. That's correct.

27 694 Q. You refer to the period of absence and you say that

28 you're investigating it in accordance with Garda Code

29 regulations, and then you say:

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"As you are aware, I have sought a written statement from you outlining your complaint in relation to this matter. On Friday, 21st September 2012, you gave me an undertaking to submit a written statement to my office the following week, outlining your complaint, but this was not received. 15:43

On this date, the 1st October 2012, I am aware that you informed my office that following legal advice you would be submitting the said statement directly to Human Resource Management, Garda Headquarters. I have no objection to this course of action but I do require that you submit your statement outlining your full complaint within seven days in order that I can conclude my investigation. 15:43

You're aware of the fact that Mr. Barry makes the case that this letter, which is what it is, but did you intend to convey to him that you required a copy of the statement to be sent to you? 15:43

A. No, but what I am reading into it is that, the 21st September was the date he cancelled a meeting with me, and it seems from that that he gave an undertaking -- he didn't speak to me that day, he speak to the sergeant in my office, that he gave an undertaking to provide the statement, but if he did provide the statement, I presume it would be in a sealed envelope and we would forward it to HRM. But I have since been 15:44

1 informed that he needed -- he wanted to send it to HRM
2 himself. I said, I have no problem with that once it
3 is sent within seven days. Because my intention here
4 was: I had an open investigation, I now had the
5 investigation transferred to whoever was going to 15:44
6 investigate it and I could, as I say, close my file in
7 my office, it was transferred to somebody else.

8 695 Q. Now, I think that on the same day, the 1st October, you
9 contacted Chief Superintendent John Grogan at HRM and
10 informed him that Sergeant Barry would be submitting 15:44
11 his complaint --

12 A. That's correct.

13 696 Q. -- directly to HRM. I think you made a note of that --

14 A. I, yeah.

15 697 Q. -- in your diary, isn't that right? 15:45

16 A. That's correct.

17 698 Q. That note is at 374, I don't require it up on the
18 screen, Mr. Kavanagh.

19 A. Mr. Marrinan, that was to me the investigation was
20 being transferred off my shoulders. I had an 15:45
21 obligation to have it investigated, his work-related
22 stress, so it was now transferred to another person of
23 chief superintendent or higher.

24 699 Q. Now, we just come to the meeting now on the 13th
25 October of 2012, at 2pm, and your meeting with Sergeant 15:45
26 Barry in a car park in Glanmire. This was by
27 appointment, isn't that right?

28 A. That's correct.

29 700 Q. Will you just outline the conversation that you had

1 with him at that time, as best you can recall?

2 A. Well, initially when I met him I would ask -- I asked
3 him about his health, how he was and I had informed him
4 that his -- I am trying to get this in the right
5 correlation now. But his statement had been received 15:46
6 in headquarters and there had been an outside person,
7 whoever it was at the time, to investigate it. And
8 then I just said to him, Paul, you have a wife and
9 kids, if you have an issue with Superintendent Comyns
10 I'll arrange for you to be -- you can go somewhere else 15:46
11 that will suit you while this issue is being resolved.
12 And immediately he told me that if anyone -- that he
13 had made the statement, and if anyone was to move, it
14 would be the superintendent. Then I pointed out to him
15 that's not practical because I can't transfer a 15:46
16 superintendent or move a superintendent, but I may have
17 some say in where sergeants are allocated and I said,
18 if you have an issue with a person, I don't expect you
19 to be working with them, so I can arrange for somewhere
20 and he just point blankly said, if anyone has to move, 15:46
21 it'll have to be the superintendent. And he claimed
22 because he made the statement, it was the
23 superintendent who should move.

24 701 Q. Did you have any particular station in mind?

25 A. I had Glanmire in mind, because Glanmire was close to 15:47
26 him, Glanmire was the same type of station, worked the
27 same hours, there was one sergeant and two -- one IC
28 and two unit sergeants and they were short one at the
29 time. There was the same number of gardaí and the same

1 operating hours as Mitchelstown. So, it would be very
2 similar and it wouldn't be a big change for him and it
3 would have shortened his journey much more.

4 702 Q. Now obviously at this point in time you're offering a
5 transfer to Sergeant Barry, all you knew at that time 15:47
6 was that there was some class of a complaint that was
7 being made by Sergeant Barry?

8 A. That's correct.

9 703 Q. Did you believe it was going to be a bullying and
10 harassment complaint? 15:48

11 A. No, I didn't know anything about bullying and
12 harassment until sometime after the new year anyway.

13 704 Q. And did you know that -- you had no idea what it had --
14 A. No.

15 705 Q. What it related to? 15:48

16 A. No.

17 706 Q. But that it was being linked in some way to -- it
18 involved, you believed, Superintendent Comyns
19 obviously?

20 A. He had told Inspector O'Sullivan that he had an issue 15:48
21 with Superintendent Comyns. So I didn't -- what I was
22 trying to say to him, look, if you have an issue with
23 him, we're all human beings, I'll facilitate you
24 somewhere while the issue was being resolved.

25 707 Q. Right. 15:48

26 A. That's all I was offering. It wasn't anything major.
27 It was saying, look, I will facilitate you somewhere if
28 you have an issue. It was he who had the issue.

29 708 Q. All right. So again, you've heard Mr. Barry's account

1 of that meeting?

2 A. Yeah.

3 709 Q. And I think he suggests that it ended fairly
4 acrimoniously?

5 A. Yes. He also said that he mentioned Mallow, which
6 never came into the conversation. The first time I
7 ever heard of him looking to go to Mallow was when I
8 came into this Tribunal and heard his evidence. And
9 secondly, I never threw him out of any car. It
10 ended -- the meeting ended grand. He told me he'd go
11 away and think about my offer. I wasn't pushing
12 anything at the time. It was just nice, you know, we
13 ended well.

15:49

15:49

14 710 Q. Okay. When you left the meeting, what impression were
15 you left with?

15:49

16 A. I got the impression that, yes, he would come back to
17 work. But I am not saying he will go somewhere, but
18 that he will come back to work.

19 711 Q. I think on the 11th October 2012, Sergeant Barry was
20 reviewed by the Chief Medical Officer, isn't that
21 right?

15:49

22 A. I believe so.

23 712 Q. I think on the 22nd October you were sent a minute by
24 HRM, informing you that Sergeant Barry was temporarily
25 unfit to attend regularly and render effective service
26 undertaking policing duties?

15:50

27 A. That's correct.

28 713 Q. I think that letter is at page 375 of the material.
29 Again, we don't need to have it up on screen, but it

1 concludes by saying:

2

3 "You should ensure the provisions of Code 11.39 are
4 strictly adhered to."

5

15:50

6 what is that a reference to?

7 A. His welfare. Mainly his welfare and, you know, that
8 he's in contact with and we'll look after him. And
9 that if anything else comes up, we'll report it
10 immediately?

15:50

11 714 Q. Now, if I can just refer you to your statement then at
12 page 335 of the material. This is a statement that you
13 made:

14

15 "When Sergeant Barry submitted his complaint directly
16 to assistant commissioner, Human Resources Management,
17 Assistant Commissioner Nolan was appointed to
18 investigate all matters complained. Assistant
19 commissioner Nolan procured the assistance of Chief
20 Superintendent Kehoe, who assisted him throughout. I
21 believe that Sergeant Barry made a full and
22 comprehensive statement of complaint to Chief
23 Superintendent Kehoe some time at the end of 2012."

15:51

15:51

24

25 Do you recall when you became aware of the complaint?

15:51

26 A. I became aware of that sometime in January or February
27 the following year, because I have a note in my journal
28 and I think it was at one of the first case conferences
29 was the first time I was told by Assistant Commissioner

1 Nolan and it was subsequent to that then I was told
2 about Chief Superintendent Kehoe.

3 715 Q. Did you have discussions with Superintendent Comyns
4 about the matter?

5 A. No, we didn't, we didn't really discuss the matter. 15:51

6 716 Q. Well, you didn't really discuss it or you didn't
7 discuss it?

8 A. No, we didn't discuss it. Because I found subsequently
9 that Superintendent Lordan had come down to take a
10 statement, I didn't know about that until months later. 15:52

11 717 Q. But just leaving that aside for the moment, but going
12 in to a stage when Superintendent Comyns is aware of
13 the fact that there's issues 1-8 in relation to a
14 bullying and harassment claim that's been made against
15 him, he then later became aware of the fact that there 15:52
16 would be a criminal investigation and a disciplinary
17 investigation and he's a superintendent under your
18 direction, surely he informed you that these matters
19 were pending and were being investigated?

20 A. The first time I saw the issues 1-8 and number 9 is 15:52
21 when I got documentation from this Tribunal.

22 718 Q. Right. So are you saying to the Chairman that --

23 A. I am saying to the Chairman I became aware that there
24 were bullying and harassment and discipline/complaint
25 but what they were or what was about them, I did not 15:53
26 know and I was never informed by anyone.

27 719 Q. Did you become aware of the fact there was a
28 disciplinary investigation?

29 A. Yes, I became aware of that at one of the case

1 conferences, we were told that, yes, HRM have -- the
2 people from HRM have told us that, yes, there are a
3 number of issues. First of all, I think it was
4 bullying and harassment is what I was told.

5 720 Q. Were you also aware of the fact that there was a 15:53
6 criminal investigation?

7 A. Subsequent I was told, yeah.

8 721 Q. Now, I think on the 22nd January of 2013, you attended
9 a case conference meeting at Garda Headquarters, is
10 that correct? 15:53

11 A. That's correct.

12 722 Q. If we have page 379 up on the screen. We see there a
13 note of the meeting. Are you happy with that?

14 A. Ah yeah, yeah, I'm happy enough.

15 723 Q. And the accuracy? 15:54

16 A. Because the other thing I left out, Mr. Marrinan, was
17 the part there where I met him in October, Mr. Barry
18 also looked for his injury on duty certificate.

19 724 Q. Yes.

20 A. I left that out and it's here, I can just see it now, 15:54
21 because I remember the CMO discussing it, and I asked
22 the CMO what's the story with it and the answer was on
23 the far side "nothing to be done in relation to the
24 injury on duty classification until official
25 investigation complete". 15:54

26 725 Q. I think that you had told Sergeant Barry when he
27 brought up the issue, I think he requested a
28 certificate under 11.37, isn't that right?

29 A. That's correct.

1 726 Q. And you wouldn't be able to give that to him until such
2 time as a full investigation had been carried out?
3 A. Yes, that is correct.

4 727 Q. Yes. And that would be done in consultation with the
5 Chief Medical Officer and on the Chief Medical 15:55
6 Officer's advice, is that right?
7 A. That's correct.

8 728 Q. And in this instance you weren't in a position to carry
9 out an investigation because the complaint that was
10 made was against the superintendent and, therefore, you 15:55
11 had indicated that the matter should be dealt with --
12 A. That's correct.

13 729 Q. -- by somebody outside your division, isn't that right?
14 A. That's correct.

15 730 Q. Then you had also advised Sergeant Barry that an 11.37 15:55
16 was matter for the CMO and he could raise the issue of
17 the 11.37 certification with the Chief Medical Officer?
18 A. That's correct.

19 731 Q. We see here, this is on the 22nd January:
20 15:55
21 "Member was sanctioned due to being late for start of
22 shift."
23
24 Again, this seems to be feeding in again this matter of
25 the Regulation 10. 15:56
26
27 "Member has complaint against superintendent that
28 initiated the sanction. Member was offered transfer to
29 Glanmire - refused. Member seeking injury on duty

1 classification for absence. Member seeking medical
2 retirement as well."

3

4 Is this your input into this?

5 A. No, I had nothing to do with -- I didn't know about the 15:56
6 medical retirement until I saw this document from the
7 Tribunal.

8 732 Q. Yes. Again, could you tell us who could have brought
9 that to the meeting or do you recall this being
10 mentioned? 15:56

11 A. Well you see, these are the CMO's secretary's notes.
12 The CMO had his own secretary at the meeting and these
13 are her notes.

14 733 Q. Right. And then if we look across to the third column,
15 we see there "management actions" and it's noted: 15:56

16

17 "Nothing can be done in relation to injury on duty
18 classification until official investigation complete.
19 Assistant commissioner wrote to member extending
20 investigation until March 2013." 15:57

21

22 So that's how matters stood arising out of that case
23 conference, isn't that right?

24 A. That's correct.

25 734 Q. All right. I think that you noted in your statement 15:57
26 that there had been a discussion about how to get
27 Sergeant Barry back to work, is that right?

28 A. That was the purpose of the case conference.

29 735 Q. Yes. And that you told the meeting that you were able

1 to facilitate Sergeant Barry with a transfer to
2 Glanmire Garda Station, pending the outcome of the
3 investigation?

4 A. That's correct.

5 736 Q. I think you pointed out to the meeting that Glanmire 15:57
6 was closer to his home and was a very similar sized
7 station to the one he would be leaving, isn't that
8 right?

9 A. That's correct.

10 737 Q. I think you also noted that Dr. Oghuvbu indicated that 15:58
11 he felt that this was would be a reasonable move but
12 that he needed to discuss it with Sergeant Barry when
13 they were next to meet within the next few days, isn't
14 that right?

15 A. That's correct. 15:58

16 738 Q. Now, the issue of the 11.37 was raised by Dr. Oghuvbu,
17 isn't that right?

18 A. That's correct.

19 739 Q. Do you recall what he said in relation to it?

20 A. I don't, I don't, but it's just on the notes here that 15:58
21 it could not be decided until the investigation had
22 been complete.

23 740 Q. Now, I think on the 7th February of 2013 you received
24 an e-mail from Assistant Commissioner Quilter, isn't
25 that right? 15:59

26 A. That's correct.

27 741 Q. And this was an e-mail that was sent looking for your
28 observations contained in an e-mail that had been sent
29 from Mr. Barry to the chief, Chief Superintendent

1 Grogan in HRM, isn't that right?

2 A. That's correct.

3 742 Q. If we just have page 377 up on the screen. If we
4 scroll down there, we see this is the e-mail that had
5 been sent by Sergeant Barry to Chief Superintendent
6 Grogan. You note there in the first paragraph:

15:59

7
8 "On Friday, 21st January I had to attend the Chief
9 Medical Officer in Dublin. He stated that the sole
10 reason he wanted to see me was to discuss a medical
11 report submitted by Dr. Kiely and Dr. Dennehy. The CMO
12 was upset because Dr. Kiely and Dr. Dennehy expressed
13 the opinion that my medical condition was work
14 related."

16:00

15
16 Now, he then goes on to say:

16:00

17
18 "Does HRM find it acceptable that I should have to work
19 with a person against whom I have made an allegation of
20 bullying and criminal behaviour? What steps have HRM
21 taken to provide me with a safe working environment?"

16:00

22
23 He says:

24
25 "I spoke with Chief Superintendent John Grogan on the
26 29th January and I outlined the above concerns. I also
27 expressed my view that a transfer was not an option for
28 me because of the nature of my complaint and the
29 persons mentioned therein. Chief Superintendent Grogan

16:00

1 said he would pass my concerns on to Assistant
2 Commissioner Jack Nolan and I have not heard anything
3 since. I would like an answer to the above and I
4 believe that the actions of HRM are prolonging and
5 contributing to my illness." 16:01

6
7 So, we note there that he is highlighting the fact that
8 he has made a criminal allegation as well against
9 Superintendent Comyns, isn't that right?

10 A. That's correct. 16:01

11 743 Q. And you also noted from that, that in fact an offer of
12 a transfer had also been made by Chief Superintendent
13 Grogan in HRM?

14 A. That's correct.

15 744 Q. If we just come back to the issue of the offer of a 16:01
16 transfer. Mr. Barry, in his evidence, drew a
17 distinction between an application for a transfer and
18 then being transferred, and that it had an impact in
19 relation to financial matters. Is that correct?

20 A. It is correct. But at this stage there was no 16:02
21 permanent transfer for anyone. We were looking to put
22 him somewhere temporary that would suit Mr. Barry while
23 this issue was being resolved. That's all we were
24 looking at. There was no issue of transfer or transfer
25 expenses or anything like that. That never came into 16:02
26 my mind, I don't think, or anyone else's mind.

27 745 Q. Do you think there was a misunderstanding in relation
28 to this between you and he, because apparently if he
29 makes an application to transfer it's at his own

1 expense?

2 A. Yes, Mr. Marrinan, but I had offered to move him.

3 746 Q. Right.

4 A. I had offered to move him to Glanmire. I was going to
5 do it. 16:02

6 747 Q. Did you make it clear that it wouldn't be at his own
7 expense?

8 A. But sure that wouldn't come into it. That wouldn't
9 come into it, at his own expense, because he was moving
10 closer to his home, do you see, what he would be 16:03
11 entitled to is the difference between travelling from
12 his home to Mitchelstown and travelling to home to the
13 new station. And his new station was closer to home,
14 so it wouldn't -- it's not a matter, it wouldn't come
15 into it. 16:03

16 748 Q. We'll come to deal with it tomorrow but when we're
17 dealing with the various conversations that you
18 subsequently had with him in relation to this and an
19 offer of a transfer, I mean was the issue of any costs
20 involved discussed between you and he? 16:03

21 A. Never. Never raised once, Mr. Marrinan.

22 MR. MARRINAN: I don't know whether that is an
23 appropriate time to leave it.

24 CHAIRMAN: Very good. Thank you very much. We will
25 leave it there until tomorrow, thank you. 16:03

26

27 THE HEARING THEN ADJOURNED UNTIL THURSDAY, 2ND JUNE
28 2022 AT 11 A.M.
29

	101:8, 101:21, 101:26, 102:10, 112:14	2	118:13, 118:25, 120:14, 120:15, 123:2, 126:6, 126:18, 127:26, 127:27, 127:28, 128:6, 142:1, 144:28, 145:7, 169:8, 171:20, 172:23	29th [2] - 132:10, 173:26 2A [1] - 136:25 2G [1] - 134:18 2ND [1] - 175:27 2nd [3] - 61:8, 120:14, 156:19 2pm [2] - 66:5, 163:25	4151 [1] - 37:18 4152 [1] - 41:18 430 [1] - 34:20 4590 [1] - 149:22 4D [1] - 61:6 4th [7] - 6:12, 9:18, 25:4, 120:15, 156:3, 156:13	
'13 [2] - 124:26, 128:1 'medical [4] - 26:5, 26:21, 26:23, 27:28	12.44pm [1] - 54:14 12.5 [1] - 103:3 133 [1] - 4:6 139/10 [6] - 20:12, 20:22, 21:3, 21:28, 22:17, 155:26 13th [6] - 75:13, 83:5, 126:5, 159:20, 160:17, 163:24 13th-19th [1] - 86:15 148 [1] - 4:7 14th [3] - 83:2, 84:6, 117:24 15 [1] - 111:28 150 [1] - 4:8 154 [1] - 4:12 159 [2] - 82:12, 82:13 15th [5] - 86:8, 86:27, 96:7, 118:13, 126:18 15th/16th [1] - 86:10 16 [1] - 138:11 161 [2] - 82:14, 82:15 162 [5] - 85:6, 85:7, 85:8, 85:16, 85:17 16th [4] - 120:11, 120:17, 120:24, 120:25 1880 [1] - 75:1 1881 [1] - 129:28 18th [4] - 7:2, 82:25, 85:13, 85:20 19 [1] - 18:24 19th [6] - 27:12, 27:14, 27:16, 86:27, 87:26, 96:3 1st [10] - 16:3, 17:21, 28:23, 106:26, 116:28, 117:18, 120:14, 127:27, 162:9, 163:8 1ST [1] - 5:1	2 [7] - 3:10, 58:7, 102:16, 107:19, 108:20, 137:7, 137:13 2.03pm [1] - 66:6 2.05pm [1] - 66:7 2.5 [1] - 119:22 20 [5] - 16:6, 16:7, 16:13, 38:15, 105:15 2000 [1] - 124:5 2004 [2] - 150:26, 151:4 2010 [6] - 28:23, 93:27, 122:8, 122:11, 122:15, 133:13 2011 [1] - 155:10 2012 [22] - 18:12, 50:27, 58:26, 59:28, 137:16, 139:6, 155:7, 155:19, 155:23, 155:29, 156:3, 156:9, 156:19, 156:26, 156:27, 162:4, 162:9, 163:25, 166:19, 167:23 2012" [1] - 139:23 2013 [77] - 6:6, 6:10, 6:13, 7:2, 9:3, 9:18, 15:6, 25:4, 29:23, 30:7, 30:28, 34:14, 34:17, 34:21, 34:28, 50:20, 59:21, 70:26, 71:9, 71:10, 71:22, 71:27, 73:2, 73:8, 73:12, 73:17, 75:8, 75:13, 79:16, 80:18, 81:19, 82:17, 82:25, 82:26, 82:29, 83:2, 83:6, 85:20, 86:8, 89:7, 111:18, 111:19, 111:21, 112:4, 112:14, 112:16, 112:21, 116:20, 116:29, 117:18, 117:19, 117:24,	118:13, 118:25, 120:14, 120:15, 123:2, 126:6, 126:18, 127:26, 127:27, 127:28, 128:6, 142:1, 144:28, 145:7, 169:8, 171:20, 172:23 2014 [29] - 27:3, 27:5, 27:15, 27:16, 28:29, 29:8, 34:14, 37:19, 42:10, 45:10, 46:16, 47:23, 48:13, 48:16, 64:7, 64:9, 64:16, 66:1, 73:16, 90:26, 91:3, 91:6, 96:3, 96:8, 104:7, 104:15, 107:7, 107:25, 109:29 2015 [3] - 49:9, 49:22, 61:9 2018 [1] - 154:24 2019 [2] - 49:29, 50:8 2022 [3] - 5:2, 132:11, 175:28 21 [2] - 3:10, 18:23 21st [8] - 116:20, 118:13, 118:25, 123:2, 160:13, 162:4, 162:22, 173:8 22nd [3] - 166:23, 169:8, 170:19 245 [2] - 104:6, 108:15 247 [1] - 106:26 24th [2] - 116:19, 118:28 25% [1] - 105:17 25th [8] - 49:29, 50:8, 104:15, 107:7, 111:17, 127:26, 127:29, 128:5 26/8/13 [1] - 112:6 26th [6] - 7:3, 111:18, 111:20, 112:4, 112:21 27th [2] - 156:26, 156:27 28 [1] - 7:24 290 [1] - 131:28	3 [3] - 58:7, 82:25, 102:16 3.8 [1] - 136:10 30 [3] - 10:11, 10:23, 60:5 30th [2] - 112:13, 139:23 31st [1] - 112:15 32 [1] - 3:4 33.10 [3] - 57:5, 57:22, 59:3 335 [1] - 167:12 36 [1] - 38:13 3644 [1] - 133:21 3648 [1] - 133:22 3650 [1] - 135:9 3654 [2] - 136:6, 136:7 366 [1] - 156:6 367 [2] - 156:5, 156:29 368 [1] - 158:4 369 [1] - 158:21 371 [1] - 161:12 372 [1] - 161:22 374 [1] - 163:17 375 [1] - 166:28 377 [1] - 173:3 379 [1] - 169:12 39 [1] - 75:8 397 [1] - 145:1 3H [1] - 141:26 3rd [13] - 44:21, 45:10, 46:16, 47:23, 50:27, 59:27, 64:9, 68:1, 87:26, 104:7, 120:14, 127:27, 128:6	3 3 [3] - 58:7, 82:25, 102:16 3.8 [1] - 136:10 30 [3] - 10:11, 10:23, 60:5 30th [2] - 112:13, 139:23 31st [1] - 112:15 32 [1] - 3:4 33.10 [3] - 57:5, 57:22, 59:3 335 [1] - 167:12 36 [1] - 38:13 3644 [1] - 133:21 3648 [1] - 133:22 3650 [1] - 135:9 3654 [2] - 136:6, 136:7 366 [1] - 156:6 367 [2] - 156:5, 156:29 368 [1] - 158:4 369 [1] - 158:21 371 [1] - 161:12 372 [1] - 161:22 374 [1] - 163:17 375 [1] - 166:28 377 [1] - 173:3 379 [1] - 169:12 39 [1] - 75:8 397 [1] - 145:1 3H [1] - 141:26 3rd [13] - 44:21, 45:10, 46:16, 47:23, 50:27, 59:27, 64:9, 68:1, 87:26, 104:7, 120:14, 127:27, 128:6	5 5 [1] - 4:5 5432 [1] - 116:17 5434 [1] - 119:7 549 [1] - 6:22 550 [1] - 7:11 552 [2] - 46:12 5520 [1] - 111:13 5546 [2] - 126:3, 126:4 555 [1] - 71:14 561 [2] - 64:8, 65:27 562 [1] - 64:9 567 [1] - 95:28 568 [1] - 95:28 5711 [3] - 51:15, 51:16, 51:23 5746 [1] - 57:20 5753 [1] - 57:23 593 [1] - 13:7 5A [1] - 70:23 5D [1] - 95:7 5pm [1] - 112:16 5th [1] - 120:15
0				4		
0.25 [1] - 99:19 0314" [1] - 43:1				40 [1] - 75:8 409 [2] - 55:15, 55:17 41 [1] - 75:8		
1					6	
1 [1] - 57:28 1-8 [7] - 6:15, 8:27, 9:13, 15:5, 15:20, 168:13, 168:20 1.25 [4] - 99:16, 101:13, 104:26, 105:26 10 [18] - 15:29, 16:1, 16:25, 16:26, 22:7, 22:19, 23:7, 23:12, 23:17, 112:16, 151:16, 156:20, 156:21, 157:5, 158:13, 158:28, 170:25 10-hour [1] - 105:26 10.42pm [1] - 53:26 10am [1] - 83:1 10th [11] - 34:17, 34:21, 34:28, 54:5, 64:7, 64:16, 66:1, 155:29, 156:8, 156:9, 156:27 11 [1] - 175:28 11.37 [4] - 169:28, 170:15, 170:17, 172:16 11.39 [1] - 167:3 11.50pm [1] - 55:23 11am [1] - 54:13 11th [6] - 15:4, 59:21, 82:16, 155:10, 161:18, 166:19 12 [10] - 16:6, 48:20, 87:15, 87:18, 100:27,				616 [1] - 139:14 625 [1] - 137:13 632 [2] - 138:4, 138:7 647 [1] - 6:20 654 [1] - 7:14 656 [1] - 7:17 658 [2] - 7:14, 7:23 663 [1] - 138:24 6pm [1] - 83:1 6th [4] - 37:19, 42:9, 109:29, 155:19		
					7	
					7 [1] - 3:5 7.49am [1] - 54:8	

<p>731 ^[1] - 53:17 733 ^[1] - 59:21 74 ^[1] - 31:20 746 ^[1] - 71:20 751 ^[1] - 74:16 753 ^[1] - 74:16 754 ^[1] - 74:16 76 ^[1] - 33:18 780-781 ^[1] - 26:1 781 ^[1] - 26:14 7am ^[2] - 112:14, 112:16 7pm ^[1] - 112:6 7th ^[5] - 82:28, 84:5, 117:19, 156:26, 172:23</p>	<p>119:26, 122:29, 123:1, 124:4, 124:26, 124:28, 125:1, 125:2, 127:24, 128:2 A85s ^[1] - 119:4 abbreviations ^[1] - 50:5 ability ^[3] - 17:5, 28:19, 152:28 able ^[12] - 5:18, 5:22, 13:23, 15:11, 17:11, 44:20, 47:21, 49:21, 102:18, 111:14, 170:1, 171:29 absence ^[7] - 34:13, 91:24, 92:23, 93:16, 157:1, 161:27, 171:1 absent ^[1] - 18:13 absolutely ^[16] - 17:27, 19:26, 27:17, 27:20, 31:7, 32:3, 32:22, 33:4, 39:12, 52:3, 61:26, 94:19, 105:21, 115:8, 132:12, 141:22 accept ^[8] - 12:13, 20:2, 32:22, 34:23, 52:18, 62:24, 97:8, 117:19 acceptable ^[2] - 92:8, 173:18 accepted ^[1] - 24:1 accepted.. ^[1] - 145:12 access ^[3] - 55:11, 60:28, 60:29 accident ^[3] - 145:23, 145:27, 146:5 accidentally ^[1] - 69:13 accidents ^[1] - 146:3 accommodations ^[1] - 23:27 accompanied ^[1] - 7:17 accord ^[1] - 136:21 accordance ^[3] -</p>	<p>112:4, 155:26, 161:28 According ^[1] - 42:25 account ^[2] - 104:18, 165:29 accountable ^[1] - 134:7 accruing ^[2] - 99:24, 101:16 accuracy ^[1] - 169:15 accurate ^[1] - 83:9 achievement ^[1] - 135:2 acknowledged ^[3] - 8:4, 36:12, 98:19 acknowledging ^[1] - 34:11 acknowledgment ^[1] - 102:15 acquaintances ^[1] - 155:16 acrimoniously ^[1] - 166:4 act ^[3] - 10:7, 39:25, 45:23 acting ^[5] - 67:18, 71:10, 138:15, 140:24, 149:12 action ^[2] - 135:18, 162:13 actions ^[2] - 171:15, 174:4 actively ^[2] - 37:14, 43:11 add ^[2] - 15:21, 95:24 added ^[2] - 57:18, 101:5 addition ^[2] - 142:13, 142:18 address ^[3] - 31:22, 41:29, 54:1 addressed ^[10] - 37:20, 37:29, 41:18, 59:23, 82:17, 86:7, 104:11, 107:1, 111:22, 150:19 adequately ^[1] - 50:15 adhered ^[2] - 60:7, 167:4 adjoining ^[3] - 148:28, 148:29,</p>	<p>149:17 adjourn ^[1] - 91:14 ADJOURNED ^[2] - 91:16, 175:27 advance ^[14] - 17:2, 20:14, 93:23, 100:7, 102:26, 115:19, 116:8, 121:5, 125:18, 127:16, 127:21, 129:4, 129:6, 138:12 advanced ^[1] - 58:13 advances ^[1] - 132:11 advice ^[3] - 45:1, 162:10, 170:6 advised ^[1] - 170:15 affect ^[1] - 152:28 afternoon ^[6] - 5:8, 55:6, 59:4, 76:29, 91:19, 91:20 afterwards ^[4] - 44:28, 88:4, 88:7, 125:17 ago ^[12] - 21:19, 37:8, 72:16, 83:17, 88:1, 88:8, 88:28, 93:18, 127:2, 127:6, 132:3, 139:25 agree ^[43] - 6:2, 6:22, 7:6, 10:5, 15:13, 16:24, 28:21, 32:14, 32:15, 33:11, 42:16, 48:18, 48:24, 49:2, 50:24, 53:15, 56:12, 58:9, 59:3, 59:19, 60:17, 62:4, 62:23, 67:2, 67:6, 72:28, 74:1, 80:2, 80:15, 80:20, 81:3, 91:27, 92:8, 97:15, 103:21, 117:27, 120:4, 123:4, 143:17, 146:28, 147:1, 152:10, 152:15 agreed ^[12] - 27:13, 33:29, 37:7, 39:1, 43:5, 46:24, 58:28,</p>	<p>67:25, 77:29, 101:6, 160:12 agreeing ^[1] - 71:17 agreement ^[17] - 64:21, 98:16, 98:20, 98:29, 103:2, 105:7, 105:21, 106:1, 111:7, 111:9, 112:5, 114:11, 119:13, 122:15, 123:10, 130:24 ahead ^[4] - 8:3, 81:25, 92:13, 133:12 Aidan ^[1] - 106:13 aide ^[4] - 54:29, 139:15, 139:20 allegation ^[10] - 9:1, 10:6, 12:6, 12:7, 12:17, 14:17, 61:25, 68:12, 173:19, 174:8 allegations ^[11] - 7:19, 9:2, 10:16, 10:27, 11:12, 13:22, 15:4, 15:20, 33:1, 35:13, 35:27 alleged ^[4] - 6:5, 10:6, 14:4, 156:13 allegedly ^[1] - 14:2 alleviated ^[1] - 48:22 allocated ^[2] - 135:7, 164:17 allow ^[3] - 42:27, 42:28, 84:18 allowances ^[1] - 114:1 allowed ^[1] - 101:2 allowing ^[1] - 113:15 almost ^[4] - 29:5, 48:9, 114:22, 161:13 alternative ^[1] - 142:11 amount ^[3] - 95:10, 99:14, 99:15 amounts ^[1] - 100:10 ampersand ^[1] -</p>	<p>86:13 AND ^[1] - 91:16 ANDREW ^[1] - 3:3 Anglesea ^[4] - 49:16, 49:20, 49:21, 50:2 annoyed ^[1] - 25:27 annual ^[25] - 67:13, 70:20, 73:1, 73:9, 73:11, 73:18, 75:7, 75:26, 75:27, 76:3, 76:11, 76:25, 76:26, 77:8, 77:23, 78:12, 82:21, 82:25, 91:6, 92:1, 118:8, 138:11, 148:26 answer ^[37] - 8:22, 11:27, 12:29, 13:9, 13:17, 19:28, 22:11, 24:21, 24:26, 26:11, 28:2, 46:3, 47:2, 48:27, 65:8, 68:4, 69:14, 72:15, 76:28, 80:22, 81:13, 88:1, 94:27, 95:25, 98:13, 98:27, 99:20, 108:11, 110:17, 113:14, 123:6, 125:6, 128:4, 141:5, 142:15, 169:22, 174:3 answered ^[4] - 19:1, 63:23, 66:6, 79:5 answers ^[3] - 25:10, 44:19, 102:23 ANTHONY ^[1] - 3:1 Anthony ^[3] - 130:11, 148:8, 155:24 anyway ^[8] - 37:2, 50:8, 81:26, 132:11, 143:23, 144:5, 144:8, 165:12 apart ^[1] - 127:12 apologise ^[6] - 5:21, 27:15,</p>
8					
<p>8 ^[1] - 109:11 8,000 ^[1] - 77:12 8.15am ^[1] - 60:7 8.3 ^[9] - 37:26, 38:5, 38:21, 38:23, 41:13, 42:2, 42:21, 42:27, 44:7 835 ^[1] - 61:10 8th ^[1] - 117:24</p>					
9					
<p>9 ^[4] - 8:28, 12:7, 33:18, 168:20 9am ^[1] - 112:6 9th ^[8] - 18:12, 18:26, 49:9, 50:20, 107:25, 142:1, 155:23</p>					
A					
<p>A.M ^[1] - 175:28 A/C ^[13] - 8:28, 9:8, 43:24, 43:25, 56:13, 57:27, 58:3, 58:14, 58:16, 58:26, 60:1, 60:15, 60:24 A85 ^[22] - 112:26, 113:25, 113:28, 113:29, 114:1, 114:3, 115:4, 116:14, 116:17, 118:12, 118:23, 119:1,</p>					

69:14, 70:13, 100:1, 100:7 apparent [1] - 51:8 appeal [5] - 38:10, 41:21, 42:5, 43:13, 44:7 appealed [1] - 44:6 appeals [1] - 44:4 appear [10] - 6:3, 9:12, 60:21, 72:29, 86:25, 122:23, 122:26, 127:12, 129:13, 150:25 appearance [1] - 74:4 appeared [1] - 47:13 appended [1] - 110:5 application [42] - 70:25, 70:26, 71:9, 71:11, 71:21, 71:27, 72:20, 73:1, 73:2, 73:18, 73:24, 74:6, 75:7, 75:13, 76:11, 76:14, 78:13, 79:16, 79:21, 80:4, 80:7, 80:17, 80:28, 81:2, 81:5, 82:21, 83:26, 83:27, 94:5, 104:14, 107:6, 111:24, 113:24, 115:6, 116:15, 120:22, 132:1, 159:5, 159:7, 159:11, 174:17, 174:29 applications [11] - 71:2, 71:7, 79:25, 79:28, 80:11, 80:24, 107:10, 130:5, 130:9, 132:5, 138:11 applied [5] - 78:12, 102:25, 127:7, 158:1, 160:5 applies [2] - 76:25, 123:24 apply [6] - 42:26, 93:22, 111:28, 112:13, 143:28, 149:6	appoint [1] - 20:23 appointed [9] - 20:16, 21:15, 58:23, 155:24, 158:18, 159:17, 160:4, 160:5, 167:17 appointing [1] - 21:28 appointment [6] - 156:2, 156:12, 159:7, 159:13, 161:17, 163:27 appreciate [2] - 67:23, 94:27 approached [1] - 97:14 appropriate [1] - 175:23 appropriately [1] - 50:16 approval [14] - 102:21, 102:27, 102:29, 103:9, 103:13, 111:10, 120:29, 122:8, 123:20, 123:21, 123:23, 126:29, 127:9 approve [6] - 103:24, 122:5, 128:14, 128:15, 128:17, 130:4 approved [4] - 93:29, 116:10, 120:27, 126:23 approves [1] - 122:4 approving [7] - 116:1, 116:8, 121:22, 121:26, 123:26, 124:8, 126:28 April [26] - 6:6, 25:3, 25:4, 27:3, 27:14, 44:21, 45:10, 46:16, 47:23, 48:4, 48:13, 48:15, 50:20, 59:21, 71:3, 71:10, 71:22, 73:16, 104:15, 107:7, 137:16, 139:6, 139:23, 142:1, 144:28, 145:6 area [4] - 14:27, 15:1, 38:4, 38:15 areas [2] - 90:6,	149:6 arguing [1] - 52:14 argument [2] - 141:5, 143:23 arise [1] - 145:26 arises [1] - 37:23 arising [1] - 171:22 arounds [1] - 48:29 ARRAN [1] - 3:4 arrange [3] - 90:8, 164:10, 164:19 arrangements [5] - 74:17, 90:13, 90:15, 139:16, 140:10 arrival [1] - 137:11 arrived [1] - 6:14 arriving [2] - 139:8, 155:12 AS [7] - 5:1, 5:13, 91:16, 133:2, 148:21, 150:12, 154:7 aside [4] - 38:2, 73:28, 97:29, 168:11 aspect [2] - 7:20, 8:13 assault [1] - 68:12 asserting [1] - 19:29 assertion [8] - 14:8, 15:14, 17:13, 18:6, 43:17, 63:13, 70:24, 89:27 assigned [5] - 6:26, 9:21, 23:1, 133:28, 136:16 assist [7] - 34:14, 44:20, 57:19, 72:11, 104:19, 139:16, 150:24 assistance [2] - 5:8, 167:19 assistant [14] - 9:9, 37:20, 37:24, 38:8, 41:10, 42:9, 58:19, 58:21, 157:26, 158:5, 159:23, 161:4,	167:16, 171:19 Assistant [12] - 6:11, 11:10, 50:26, 148:9, 158:7, 158:22, 161:16, 167:17, 167:18, 167:29, 172:24, 174:1 assisted [3] - 106:11, 109:2, 167:20 assume [2] - 40:23, 106:27 assumed [1] - 99:21 assuming [4] - 19:27, 100:12, 142:22, 143:24 assured [1] - 134:7 AT [1] - 175:28 at [1] - 54:1 at.. [1] - 55:21 attach [1] - 107:10 attached [9] - 82:24, 112:26, 113:28, 115:6, 116:15, 124:4, 130:6, 156:22, 156:29 attempt [2] - 151:3 attempts [1] - 14:8 attend [12] - 25:7, 65:21, 66:5, 67:13, 69:1, 144:15, 144:16, 146:1, 156:25, 161:5, 166:25, 173:8 attendance [4] - 61:8, 119:22, 136:29, 145:20 attended [3] - 61:13, 161:3, 169:8 attending [2] - 54:13, 143:1 attention [7] - 37:25, 42:7, 58:3, 61:11, 61:18, 69:28, 136:2 attired [1] - 16:11 attitude [5] - 25:17, 25:18, 140:8, 140:28, 144:2	attract [1] - 58:2 August [26] - 16:4, 17:21, 18:12, 18:26, 50:27, 58:26, 59:27, 89:7, 96:3, 111:18, 111:19, 111:20, 112:4, 112:14, 112:15, 112:21, 127:26, 155:19, 155:23, 155:29, 156:19, 156:26, 156:27 available [8] - 14:10, 55:8, 55:27, 57:16, 72:6, 77:7, 95:1, 149:18 aware [34] - 6:5, 8:11, 18:13, 24:14, 34:5, 36:13, 39:9, 43:5, 62:5, 62:26, 66:1, 76:19, 76:24, 79:20, 91:8, 94:1, 130:20, 134:17, 143:9, 147:15, 147:20, 155:18, 162:2, 162:9, 162:18, 167:25, 167:26, 168:12, 168:15, 168:23, 168:27, 168:29, 169:5 awareness [1] - 34:12	32:10, 32:12, 32:18, 32:19, 32:21, 33:9, 34:6, 34:19, 34:29, 35:16, 36:17, 37:2, 37:25, 38:1, 38:16, 41:12, 41:21, 41:26, 41:29, 42:4, 42:22, 42:27, 43:14, 43:16, 44:2, 44:3, 44:6, 44:22, 45:16, 45:22, 45:25, 46:5, 46:9, 46:23, 47:7, 47:9, 47:24, 47:25, 48:23, 49:19, 50:12, 56:24, 59:13, 59:19, 60:20, 60:26, 61:7, 61:12, 62:4, 62:16, 62:19, 62:25, 63:5, 63:14, 63:19, 63:24, 63:28, 64:6, 64:17, 65:2, 65:5, 66:3, 66:4, 66:9, 66:10, 66:11, 66:12, 66:21, 67:8, 67:18, 67:22, 68:2, 68:20, 68:28, 69:3, 72:17, 74:11, 74:17, 74:20, 76:5, 76:13, 77:2, 77:5, 77:14, 77:26, 78:7, 78:17, 78:21, 78:26, 79:15, 80:18, 81:25, 82:21, 82:23, 83:4, 83:25, 84:18, 87:5, 88:21, 89:10, 89:13, 92:3, 92:19, 92:22, 92:29, 93:1, 93:12, 93:17, 93:26, 94:9, 94:20, 96:14, 96:17, 98:1, 98:3, 98:7, 102:2, 102:8, 103:27, 104:10, 104:15, 107:7, 108:4, 109:2, 110:10, 111:5, 130:3, 130:5, 140:9, 140:20, 140:23,
B					
backing [2] - 61:19, 62:18 badge [1] - 86:16 barry [1] - 141:16 Barry [220] - 5:25, 6:5, 6:18, 9:2, 13:26, 14:6, 16:17, 17:12, 17:15, 17:24, 18:13, 18:19, 18:27, 19:11, 19:28, 20:13, 21:21, 22:8, 22:26, 23:6, 23:11, 23:13, 23:20, 24:7, 24:10, 25:23, 28:18, 29:7, 29:11, 31:23,					

140:27, 141:4, 141:7, 141:9, 141:28, 142:6, 142:19, 145:9, 145:22, 146:19, 146:21, 146:23, 147:21, 150:17, 150:22, 151:9, 151:13, 151:15, 151:17, 152:26, 153:4, 155:13, 155:19, 156:2, 156:12, 156:13, 156:20, 156:22, 157:6, 157:8, 158:2, 158:12, 158:26, 159:20, 160:15, 161:17, 161:25, 162:18, 163:10, 163:26, 165:5, 165:7, 166:19, 166:24, 167:15, 167:21, 169:17, 169:26, 170:15, 171:27, 172:1, 172:12, 172:29, 173:5, 174:16, 174:22 Barry's [24] - 9:7, 14:1, 18:5, 38:10, 38:11, 38:21, 45:12, 46:17, 62:12, 65:4, 67:15, 68:3, 70:23, 75:7, 83:9, 87:18, 141:19, 146:1, 146:22, 151:2, 155:25, 156:24, 158:16, 165:29 based [10] - 41:12, 66:2, 68:2, 76:28, 94:12, 94:15, 95:1, 95:15, 155:3, 160:21 basic [2] - 58:4, 160:8 basing [4] - 159:22, 159:25, 160:1, 160:29 basis [6] - 35:19, 40:12, 127:8, 140:16, 140:17, 161:8 bat [1] - 98:26 bear [1] - 85:3 became [9] - 50:1, 66:1, 69:24, 155:18, 167:25,	167:26, 168:15, 168:23, 168:29 become [7] - 8:11, 34:5, 50:1, 103:19, 147:15, 147:20, 168:27 bedding [2] - 140:12, 140:19 BEEN [1] - 154:6 beg [7] - 8:19, 12:20, 49:27, 75:1, 87:29, 92:12, 156:6 began [3] - 69:19, 69:24, 70:8 begin [2] - 5:6, 5:22 beginning [4] - 15:29, 53:8, 75:6, 116:28 begins [1] - 118:28 behalf [8] - 5:24, 39:4, 39:7, 39:27, 44:5, 63:9, 151:24, 152:7 behaved [1] - 69:21 behaviour [3] - 62:12, 62:21, 173:20 behest [1] - 28:18 behind [1] - 13:2 behold [1] - 77:7 beings [1] - 165:23 belief [1] - 131:23 belittle [1] - 61:26 below [1] - 51:29 benefit [2] - 19:27, 137:22 benign [1] - 5:25 best [6] - 22:11, 23:9, 32:24, 77:10, 131:22, 164:1 better [3] - 10:17, 73:22, 74:2 between [23] - 46:3, 46:7, 46:10, 47:24, 48:22, 77:24, 78:28, 87:28, 97:21, 101:16, 108:18,	116:19, 119:17, 121:16, 123:7, 123:17, 125:20, 126:20, 147:1, 174:17, 174:28, 175:11, 175:20 big [4] - 139:18, 140:22, 149:24, 165:2 bigger [1] - 81:27 bit [13] - 27:8, 35:18, 50:25, 53:23, 79:7, 79:12, 85:18, 96:22, 108:1, 110:16, 111:14, 126:6, 133:9 BL [2] - 3:2, 3:7 black [1] - 71:1 blacked [1] - 54:1 blankly [1] - 164:20 blindingly [1] - 145:14 block [6] - 99:6, 99:8, 99:24, 117:24, 118:12, 118:19 blocker [1] - 45:23 blocks [1] - 101:17 blotted [1] - 150:23 blue [1] - 119:27 board [2] - 103:28, 103:29 bonus [1] - 105:17 booked [3] - 17:2, 17:4, 76:2 bother [1] - 80:9 bothered [1] - 79:26 bottom [6] - 55:18, 96:1, 133:23, 133:25, 135:5, 138:3 box [6] - 45:28, 80:25, 81:9, 123:27, 157:2 bracket [2] - 121:9, 126:14 branch [3] - 42:5, 66:10, 96:13 breach [6] - 38:4, 41:13, 42:2,	156:19, 158:12, 158:28 BREFFNI [1] - 3:7 brief [2] - 138:27, 150:16 briefed [1] - 139:8 briefly [12] - 50:10, 61:5, 91:21, 94:29, 95:14, 133:11, 134:11, 137:10, 137:13, 138:7, 139:14, 148:14 bring [6] - 11:21, 17:15, 22:23, 23:16, 135:28, 136:1 bringing [4] - 18:2, 37:25, 61:17, 133:9 broadly [1] - 134:2 broken [2] - 118:28, 136:24 brought [8] - 40:16, 58:3, 138:6, 140:15, 140:17, 159:8, 169:27, 171:8 Buckley [1] - 96:29 budget [1] - 135:7 build [1] - 134:20 building [2] - 29:13, 33:4 bulletin [1] - 43:1 bullying [7] - 73:7, 165:9, 165:11, 168:14, 168:24, 169:4, 173:20 bumped [1] - 155:16 bundle [2] - 57:18, 59:22 business [1] - 149:11 BY [12] - 3:3, 3:8, 4:5, 4:6, 4:7, 4:8, 4:12, 5:12, 133:1, 148:20, 150:11, 154:7	C	162:18, 167:28, 168:29, 169:9, 171:22, 171:28 casually [1] - 114:22 cataloguing [4] - 106:11, 109:12, 109:14, 109:21 Cataloguing [1] - 109:13 categories [1] - 102:6 category [2] - 102:8, 109:11 caused [2] - 51:13, 106:27 causing [1] - 20:9 caution [1] - 131:20 cautioned [1] - 107:20 cautious [1] - 12:14 certain [15] - 9:13, 11:20, 17:27, 39:14, 39:18, 65:23, 93:6, 94:20, 95:10, 98:29, 100:9, 100:12, 111:25, 114:28, 133:6 certainly [6] - 22:21, 23:14, 85:4, 102:12, 102:19, 118:2 certificate [36] - 19:17, 24:16, 24:17, 24:19, 25:2, 25:17, 26:1, 26:3, 26:10, 26:26, 28:4, 28:9, 28:16, 29:16, 32:16, 33:2, 35:14, 35:29, 36:12, 36:18, 36:21, 36:26, 37:7, 38:3, 44:14, 45:6, 47:12, 47:16, 48:10, 48:17, 62:7, 145:2, 145:16, 156:25, 169:18, 169:28 certificate' [4] - 26:5, 26:21, 26:23, 27:28 certification [1] - 170:17
--	--	--	---	----------	--

<p>certified [1] - 18:27</p> <p>certifies [1] - 156:25</p> <p>certify [2] - 139:3, 146:11</p> <p>certifying [4] - 124:8, 124:9, 124:16, 127:3</p> <p>cetera [2] - 67:14, 91:24</p> <p>chain [1] - 108:8</p> <p>chair [3] - 124:3, 125:7, 153:18</p> <p>Chair [1] - 105:3</p> <p>CHAIRMAN [94] - 5:4, 5:10, 14:13, 14:23, 27:10, 27:12, 40:3, 69:6, 69:17, 82:1, 82:6, 82:9, 83:20, 83:22, 84:23, 84:25, 84:28, 85:4, 85:7, 85:9, 85:14, 86:11, 87:20, 90:16, 90:20, 91:13, 99:28, 100:1, 100:17, 100:20, 104:28, 105:9, 105:13, 108:25, 108:28, 109:8, 109:12, 109:17, 109:20, 112:28, 124:1, 124:11, 124:15, 124:18, 124:22, 124:24, 124:29, 125:4, 125:14, 129:10, 129:15, 129:17, 129:19, 129:23, 132:12, 132:16, 132:23, 132:26, 141:1, 141:7, 141:15, 141:22, 141:25, 142:3, 142:6, 142:17, 143:2, 143:4, 143:6, 143:9, 143:17, 144:1, 144:11, 147:27, 148:3, 148:7, 148:10, 148:13, 148:16, 150:8, 153:10, 153:12, 153:16, 153:19, 153:25, 153:28, 154:3, 154:9, 154:12, 154:15, 160:24, 160:27,</p>	<p>161:2, 175:24</p> <p>Chairman [41] - 5:5, 13:24, 15:3, 30:17, 55:17, 56:5, 68:17, 69:10, 70:19, 74:14, 75:26, 82:3, 85:2, 86:12, 89:5, 90:19, 91:11, 99:29, 108:24, 109:13, 120:26, 126:26, 127:2, 129:8, 129:14, 129:22, 133:4, 137:15, 138:17, 140:21, 141:14, 142:16, 143:29, 144:28, 147:9, 148:5, 150:14, 153:15, 154:2, 168:22, 168:23</p> <p>chairman [2] - 5:5, 148:1</p> <p>challenge [1] - 67:4</p> <p>challenged [1] - 62:15</p> <p>challenges [1] - 136:17</p> <p>challenging [4] - 32:24, 62:12, 62:14, 67:2</p> <p>CHAMBERS [1] - 3:9</p> <p>chance [2] - 25:22, 28:6</p> <p>change [12] - 37:11, 65:23, 67:24, 90:25, 91:2, 91:6, 122:10, 127:4, 130:19, 131:8, 139:27, 165:2</p> <p>changed [7] - 37:22, 90:28, 124:26, 127:5, 130:8, 130:17, 130:20</p> <p>changes [9] - 94:29, 95:3, 95:20, 96:5, 96:6, 96:16, 96:20, 137:11, 141:12</p> <p>changing [1] - 79:8</p> <p>charge [36] - 24:29, 25:12, 36:24, 58:16, 59:13, 67:17,</p>	<p>67:19, 96:4, 104:11, 106:6, 106:10, 107:1, 108:10, 111:20, 115:24, 115:26, 121:13, 121:20, 121:22, 121:26, 121:29, 122:4, 122:16, 126:10, 126:11, 126:12, 126:22, 126:23, 128:13, 128:26, 135:12, 136:16, 136:25, 153:4</p> <p>chase [1] - 142:21</p> <p>check [4] - 17:16, 76:25, 77:5, 84:10</p> <p>checked [2] - 78:15, 78:16</p> <p>checking [1] - 129:8</p> <p>checkpoints [1] - 112:8</p> <p>Chief [72] - 6:24, 7:4, 7:12, 7:18, 7:28, 9:20, 10:14, 12:18, 12:19, 12:20, 12:26, 13:8, 14:18, 26:4, 26:16, 27:21, 33:16, 34:8, 34:15, 34:19, 34:26, 35:3, 35:11, 36:4, 37:1, 37:12, 38:28, 39:7, 39:14, 39:21, 39:22, 39:25, 40:6, 40:12, 40:17, 40:23, 40:29, 44:1, 44:21, 44:25, 45:10, 46:15, 59:20, 61:11, 71:23, 89:6, 89:12, 90:2, 91:29, 92:16, 144:29, 146:27, 147:13, 147:17, 151:22, 151:28, 153:23, 155:9, 163:9, 166:20, 167:19, 167:22, 168:2, 170:5, 170:17, 172:29, 173:5, 173:8, 173:25, 173:29, 174:12</p> <p>chief [34] -</p>	<p>31:26, 31:29, 33:14, 34:1, 36:20, 36:23, 39:4, 39:25, 41:19, 43:18, 43:19, 43:23, 44:5, 44:8, 59:22, 147:3, 147:5, 150:25, 152:4, 152:8, 152:22, 152:29, 154:9, 154:17, 154:26, 157:17, 157:21, 157:27, 158:1, 158:17, 159:1, 160:27, 163:23, 172:29</p> <p>CHIEF [1] - 154:2</p> <p>choice [2] - 17:17, 157:25</p> <p>chopping [1] - 79:8</p> <p>circuit [1] - 85:26</p> <p>circulated [1] - 96:6</p> <p>circumstance [3] - 36:15, 67:15, 152:6</p> <p>circumstances [4] - 11:2, 62:25, 132:4, 158:10</p> <p>circumvent [1] - 43:12</p> <p>citizens [1] - 134:9</p> <p>city [2] - 28:29, 49:12</p> <p>civilian [3] - 79:14, 79:24, 80:8</p> <p>claim [2] - 114:1, 168:14</p> <p>claimed [1] - 164:21</p> <p>claiming [5] - 18:14, 18:15, 119:20, 119:21, 155:20</p> <p>Clare [1] - 133:16</p> <p>clarify [3] - 19:7, 98:26, 102:18</p> <p>clarifying [2] - 9:11, 107:13</p> <p>clarity [1] - 129:28</p> <p>class [1] - 165:6</p> <p>classification</p>	<p>[3] - 169:24, 171:1, 171:18</p> <p>clear [29] - 9:12, 27:1, 27:17, 30:16, 31:7, 31:24, 39:12, 46:2, 48:11, 52:3, 59:14, 69:24, 73:6, 76:9, 81:1, 81:4, 88:2, 88:14, 90:23, 94:4, 94:19, 101:29, 103:26, 105:21, 105:28, 115:8, 121:8, 128:3, 175:6</p> <p>cleared [1] - 78:6</p> <p>clearly [7] - 10:25, 44:18, 60:3, 70:29, 122:3, 126:25, 128:8</p> <p>client [10] - 16:3, 16:13, 76:5, 77:22, 77:26, 79:14, 97:14, 97:21, 98:17, 104:10</p> <p>close [2] - 163:6, 164:25</p> <p>closely [1] - 96:12</p> <p>closer [3] - 172:6, 175:10, 175:13</p> <p>CMO [8] - 44:26, 45:1, 48:3, 169:21, 169:22, 170:16, 171:12, 173:11</p> <p>CMO's [1] - 171:11</p> <p>code [21] - 37:26, 38:5, 38:21, 38:23, 41:13, 42:2, 42:21, 42:27, 44:7, 57:5, 57:24, 58:13, 58:18, 59:3, 94:13, 133:21, 133:23, 136:8, 136:27, 161:28, 167:3</p> <p>Cody [1] - 127:6</p> <p>cog [1] - 135:29</p> <p>cognisance [1] - 8:10</p> <p>cohesively [1] - 134:22</p>	<p>coincides [1] - 130:15</p> <p>colleague [2] - 97:14, 97:15</p> <p>collect [1] - 17:14</p> <p>collective [1] - 126:14</p> <p>column [17] - 117:1, 118:7, 119:19, 119:28, 121:7, 121:11, 121:17, 121:21, 121:25, 124:6, 125:27, 126:7, 126:20, 127:26, 128:26, 128:28, 171:14</p> <p>columns [3] - 116:22, 122:17, 125:1</p> <p>comfort [1] - 84:1</p> <p>coming [14] - 22:26, 28:4, 45:1, 48:2, 72:13, 88:2, 88:9, 88:11, 103:1, 106:25, 116:3, 140:27, 144:18, 144:19</p> <p>command [1] - 108:8</p> <p>commence [1] - 153:27</p> <p>COMMENCED [1] - 5:1</p> <p>commenced [1] - 155:6</p> <p>comment [5] - 13:19, 69:12, 87:21, 97:12, 122:19</p> <p>Commissioner [12] - 6:12, 11:10, 50:27, 133:5, 148:9, 158:7, 158:22, 161:16, 167:17, 167:29, 172:24, 174:2</p> <p>commissioner [15] - 9:10, 37:21, 37:24, 38:8, 41:10, 42:9, 58:22, 148:2, 157:26, 158:6, 159:23, 161:4, 167:16, 167:19, 171:19</p> <p>commissioner s [1] - 58:19</p>
---	--	--	--	--	---

<p>committee [1] - 119:23</p> <p>common [3] - 6:7, 33:4, 52:13</p> <p>communicate [2] - 21:21, 63:5</p> <p>communicated [1] - 144:25</p> <p>communicating [2] - 56:2, 60:15</p> <p>communication [3] - 59:27, 63:18, 84:15</p> <p>communications [1] - 153:2</p> <p>COMPANY [1] - 3:3</p> <p>company [1] - 16:4</p> <p>competent [1] - 134:20</p> <p>complained [1] - 167:18</p> <p>complains [1] - 98:18</p> <p>complaint [27] - 8:27, 8:29, 9:4, 9:14, 9:17, 20:1, 23:24, 50:11, 61:6, 94:6, 95:7, 98:24, 102:1, 141:20, 160:7, 162:3, 162:6, 162:15, 163:11, 165:6, 165:10, 167:15, 167:22, 167:25, 170:9, 170:27, 173:28</p> <p>complaints [13] - 6:15, 6:18, 6:26, 7:21, 8:14, 8:16, 8:25, 9:8, 9:22, 13:27, 14:11, 73:8, 142:28</p> <p>complete [3] - 109:11, 171:18, 172:22</p> <p>complete" [1] - 169:25</p> <p>completely [2] - 39:13, 76:9</p> <p>completeness [1] - 67:28</p> <p>compliance [6] - 20:12, 52:1, 56:17, 119:11, 119:12, 142:20</p> <p>complied [4] - 60:9, 92:4, 103:2, 145:17</p>	<p>comply [7] - 20:5, 20:22, 22:17, 60:14, 61:1, 114:10, 123:8</p> <p>complying [3] - 114:13, 114:14, 143:15</p> <p>component [3] - 7:27, 8:5, 8:9</p> <p>comprehensive [4] - 11:1, 11:7, 133:28, 167:22</p> <p>COMYNS [5] - 4:3, 5:12, 133:1, 148:20, 150:11</p> <p>Comyns [29] - 5:15, 12:18, 12:20, 51:28, 70:15, 75:10, 91:19, 110:10, 130:8, 132:1, 133:5, 141:2, 148:23, 150:15, 153:5, 153:14, 155:24, 156:1, 156:8, 157:7, 157:8, 157:10, 157:29, 164:9, 165:18, 165:21, 168:3, 168:12, 174:9</p> <p>conceding [1] - 86:22</p> <p>concern [2] - 58:1, 114:19</p> <p>concerned [15] - 10:2, 10:12, 10:26, 17:1, 24:6, 24:22, 48:26, 59:15, 61:27, 62:22, 89:28, 90:7, 110:23, 110:25, 138:18</p> <p>concerning [1] - 139:28</p> <p>concerns [4] - 14:28, 79:13, 173:26, 174:1</p> <p>conclude [1] - 162:16</p> <p>concludes [1] - 167:1</p> <p>conclusion [1] - 69:14</p> <p>condition [1] - 173:13</p> <p>conditions [1] - 145:12</p> <p>conduct [1] -</p>	<p>69:22</p> <p>conducted [1] - 7:28</p> <p>conference [23] - 13:12, 61:8, 61:13, 61:24, 63:1, 63:6, 63:8, 63:15, 63:20, 63:25, 64:1, 64:3, 64:7, 64:15, 64:20, 64:23, 68:11, 68:21, 69:23, 143:3, 169:9, 171:23, 171:28</p> <p>conferences [3] - 65:16, 167:28, 169:1</p> <p>confess [2] - 14:23, 99:20</p> <p>confident [4] - 115:15, 115:20, 121:4, 127:19</p> <p>confine [1] - 47:3</p> <p>confirm [2] - 96:16, 130:4</p> <p>confirmed [1] - 76:29</p> <p>confirming [1] - 108:28</p> <p>conflating [1] - 84:9</p> <p>confused [2] - 70:5, 83:20</p> <p>confusing [1] - 82:5</p> <p>confusion [1] - 70:2</p> <p>consequences [1] - 52:11</p> <p>consider [1] - 47:16</p> <p>considered [3] - 11:1, 38:10, 68:13</p> <p>consolidated [1] - 88:24</p> <p>consultation [2] - 46:26, 170:4</p> <p>consulted [1] - 96:3</p> <p>contact [29] - 6:24, 24:11, 24:16, 25:8, 29:19, 33:3, 35:14, 35:17, 36:2, 37:5, 46:25, 47:8, 62:27, 63:28, 64:6,</p>	<p>66:12, 67:8, 68:14, 68:20, 68:22, 69:1, 74:19, 88:19, 94:10, 146:6, 146:12, 146:24, 167:8</p> <p>contacted [8] - 7:3, 7:7, 7:8, 52:8, 64:17, 65:2, 94:9, 163:9</p> <p>contacting [1] - 68:8</p> <p>contacts [1] - 68:24</p> <p>contained [1] - 172:28</p> <p>contemporaneous [1] - 54:28</p> <p>contemporaneously [1] - 54:24</p> <p>contempt [1] - 28:15</p> <p>content [4] - 38:2, 39:9, 43:6, 66:26</p> <p>contents [1] - 158:24</p> <p>contested [1] - 160:16</p> <p>context [3] - 10:14, 25:10, 27:1</p> <p>continue [3] - 53:29, 73:10, 129:19</p> <p>continued [2] - 53:1, 124:23</p> <p>continues [1] - 146:8</p> <p>continuing [1] - 62:1</p> <p>continuously [2] - 134:8, 135:1</p> <p>contradicted [1] - 69:27</p> <p>contrary [2] - 126:25, 131:7</p> <p>contravention [1] - 36:21</p> <p>contributing [1] - 174:5</p> <p>control [1] - 18:8</p> <p>controversy [4] - 6:3, 45:9, 58:24, 65:8</p> <p>convenient [1] - 90:21</p> <p>conversation [7] - 21:26, 22:16,</p>	<p>22:23, 36:4, 36:19, 163:29, 166:6</p> <p>conversations [1] - 175:17</p> <p>convey [1] - 162:20</p> <p>copies [1] - 156:28</p> <p>copy [3] - 156:21, 156:29, 162:20</p> <p>copybook [1] - 150:23</p> <p>core [2] - 139:29, 140:7</p> <p>Cork [7] - 49:12, 49:20, 111:21, 150:26, 151:6, 155:2</p> <p>coroner [1] - 56:9</p> <p>corps [2] - 111:21, 111:26</p> <p>correct [167] - 6:1, 6:8, 6:17, 6:18, 6:19, 6:27, 6:28, 7:10, 7:22, 9:5, 9:19, 9:26, 10:20, 10:28, 12:18, 13:4, 16:8, 16:9, 18:16, 18:23, 19:3, 19:10, 21:3, 21:7, 21:27, 24:1, 25:15, 28:26, 29:14, 29:20, 29:21, 31:16, 31:25, 32:6, 34:3, 34:4, 36:27, 37:11, 37:15, 38:5, 39:8, 40:26, 41:14, 43:4, 44:11, 49:10, 49:24, 50:21, 51:4, 52:11, 52:12, 53:14, 55:29, 56:3, 56:10, 56:22, 57:14, 58:12, 59:6, 61:23, 62:2, 63:16, 66:18, 68:16, 69:4, 71:3, 71:13, 74:13, 75:2, 76:8, 77:4, 81:21, 83:6, 83:12, 88:16, 89:15, 89:17, 90:3, 92:20, 99:4, 99:11, 99:16,</p>	<p>100:14, 101:15, 103:4, 103:5, 103:11, 104:27, 105:17, 105:18, 105:27, 106:3, 107:28, 107:29, 108:13, 108:17, 109:19, 111:2, 111:12, 114:11, 116:17, 118:25, 118:26, 120:6, 126:8, 126:9, 126:12, 126:13, 126:16, 126:18, 126:20, 128:4, 129:7, 131:4, 133:15, 133:18, 137:17, 139:26, 143:2, 149:11, 150:2, 150:3, 152:2, 152:23, 154:21, 154:25, 154:28, 155:5, 155:11, 155:22, 155:28, 156:4, 157:4, 157:12, 157:15, 158:9, 160:26, 161:11, 161:15, 161:19, 161:24, 161:26, 163:12, 163:16, 163:28, 165:8, 166:27, 169:10, 169:11, 169:29, 170:3, 170:7, 170:12, 170:14, 170:18, 171:24, 172:4, 172:9, 172:15, 172:18, 172:26, 173:2, 174:10, 174:14, 174:19, 174:20</p> <p>correcting [2] - 49:27, 57:10</p> <p>correctly [2] - 16:11, 17:6</p> <p>correlation [1] - 164:5</p> <p>correspondence [9] - 39:26, 40:15, 41:24, 42:13, 45:21, 45:25, 47:26, 71:19, 132:6</p> <p>corresponds [1] - 99:7</p> <p>COSTELLO [1] - 3:3</p> <p>Costelloe [67] - 5:4, 5:23, 14:8,</p>
---	---	--	---	--	--

<p>14:13, 14:23, 17:27, 22:13, 25:18, 28:2, 28:21, 32:14, 38:24, 41:15, 44:16, 47:19, 51:12, 59:12, 60:17, 62:23, 62:28, 64:18, 64:25, 66:24, 67:11, 69:6, 69:18, 69:20, 69:26, 69:29, 70:8, 70:13, 70:18, 73:25, 74:7, 82:1, 83:20, 84:23, 85:26, 86:3, 87:11, 87:28, 88:4, 90:17, 90:21, 91:4, 91:20, 94:7, 94:25, 99:16, 100:17, 100:23, 103:13, 105:9, 117:12, 122:18, 125:4, 127:29, 128:16, 128:27, 132:13, 132:23, 141:16, 142:23, 144:1, 144:7, 150:18, 151:20</p> <p>COSTELLOE [54] - 4:5, 5:5, 5:13, 5:15, 14:14, 15:3, 27:3, 27:6, 27:11, 27:13, 40:4, 64:27, 69:8, 70:19, 82:3, 82:8, 82:10, 83:23, 84:24, 84:27, 85:1, 85:5, 85:8, 85:10, 85:15, 86:12, 87:23, 90:18, 90:22, 91:19, 100:3, 100:19, 100:21, 100:26, 105:5, 105:12, 105:19, 108:24, 108:26, 109:1, 109:9, 109:13, 109:23, 112:29, 125:5, 125:16, 129:13, 129:16, 129:18, 129:21, 129:25, 132:14, 132:18, 140:21</p> <p>costelloe [4] - 78:10, 129:12, 129:20, 129:23</p> <p>costs [1] -</p>	<p>175:19</p> <p>County [2] - 111:21, 133:16</p> <p>couple [2] - 49:3, 50:21</p> <p>coupled [1] - 59:17</p> <p>course [13] - 12:25, 25:2, 42:24, 52:16, 60:26, 63:8, 67:13, 68:27, 98:17, 112:7, 149:2, 149:11, 162:13</p> <p>cousin [1] - 42:1</p> <p>cover [36] - 74:11, 74:20, 74:24, 75:12, 75:16, 75:22, 77:15, 77:29, 78:7, 78:27, 82:24, 83:2, 83:14, 83:18, 83:25, 83:28, 84:3, 84:18, 84:22, 86:9, 86:14, 86:25, 86:28, 87:5, 87:16, 87:18, 88:3, 88:5, 88:21, 89:9, 89:13, 89:21, 90:9, 90:27, 98:14, 149:14</p> <p>covered [6] - 81:25, 81:27, 82:29, 84:6, 89:3, 89:25</p> <p>covering [1] - 87:13</p> <p>covers [1] - 86:27</p> <p>created [1] - 152:26</p> <p>Crime [4] - 57:27, 58:3, 58:16, 58:22</p> <p>crime [4] - 50:2, 54:2, 54:11, 55:25</p> <p>crimes [2] - 57:26, 57:28</p> <p>criminal [17] - 7:27, 8:5, 8:9, 8:12, 8:15, 8:24, 8:28, 9:24, 10:1, 10:7, 12:6, 12:17, 149:8, 168:16, 169:6, 173:20,</p>	<p>174:8</p> <p>critical [7] - 51:26, 56:24, 57:8, 60:3, 92:2, 92:10, 92:16</p> <p>criticising [1] - 14:26</p> <p>criticism [7] - 50:11, 50:15, 60:13, 60:19, 62:3, 62:19, 141:28</p> <p>CROSS [6] - 4:5, 4:6, 4:7, 5:12, 133:1, 148:20</p> <p>CROSS-EXAMINED [6] - 4:5, 4:6, 4:7, 5:12, 133:1, 148:20</p> <p>cubbyhole [1] - 80:8</p> <p>cumbersome [1] - 73:12</p> <p>current [1] - 38:11</p> <p>cursor [1] - 121:19</p> <p>customers [1] - 134:9</p> <p>cut [2] - 8:19, 153:2</p>	<p>107:17, 110:1, 110:2, 111:15, 111:16, 111:17, 120:10, 121:23, 121:27, 127:29, 162:9, 162:23</p> <p>dated [9] - 27:14, 42:9, 50:27, 59:27, 82:16, 106:26, 112:21, 132:10, 156:8</p> <p>dates [15] - 7:7, 49:3, 74:12, 76:12, 77:8, 77:9, 83:26, 83:28, 84:3, 84:6, 86:25, 87:19, 88:15, 127:12, 127:25</p> <p>day-to-day [1] - 35:19</p> <p>days [21] - 78:22, 81:10, 83:7, 87:15, 87:26, 88:21, 88:23, 88:24, 92:29, 93:3, 94:8, 123:28, 126:29, 138:12, 159:23, 159:24, 160:22, 161:1, 162:15, 163:3, 172:13</p> <p>deaf [1] - 15:9</p> <p>deal [36] - 12:4, 13:6, 14:7, 44:19, 45:16, 45:23, 45:26, 45:28, 46:5, 46:22, 47:7, 47:24, 48:7, 48:8, 50:10, 58:8, 61:6, 71:26, 72:23, 73:16, 73:24, 80:3, 80:19, 91:21, 91:22, 91:26, 92:1, 95:14, 116:16, 133:9, 134:11, 140:22, 150:20, 151:13, 159:17, 175:16</p> <p>dealing [11] - 45:24, 47:4, 63:10, 64:29, 71:21, 80:17, 81:1, 95:12, 119:6, 119:27, 175:17</p> <p>dealings [3] - 147:12, 151:9, 155:12</p>	<p>deals [6] - 10:6, 42:21, 68:29, 73:1, 80:27, 119:11</p> <p>dealt [14] - 14:5, 50:12, 70:25, 70:26, 73:25, 73:28, 81:11, 120:13, 141:21, 150:15, 150:16, 156:19, 158:28, 170:11</p> <p>death [1] - 55:22</p> <p>debt [1] - 74:9</p> <p>deceased [1] - 55:23</p> <p>December [3] - 34:17, 34:21, 34:28</p> <p>decide [2] - 73:18, 142:25</p> <p>decided [5] - 20:21, 20:23, 21:5, 67:21, 172:21</p> <p>decides [1] - 44:1</p> <p>decision [5] - 36:23, 67:22, 73:7, 152:3, 152:5</p> <p>decisions [1] - 152:1</p> <p>declare [1] - 131:22</p> <p>defeating [1] - 151:3</p> <p>defer [1] - 5:15</p> <p>deferred [1] - 41:27</p> <p>definitely [1] - 47:10</p> <p>definition [1] - 93:24</p> <p>delay [3] - 5:20, 13:28, 42:5</p> <p>delegated [2] - 71:9, 115:24</p> <p>delegating [1] - 73:9</p> <p>delivered [1] - 136:18</p> <p>delivers [1] - 79:23</p> <p>delivery [1] - 133:27</p> <p>delta [1] - 30:3</p> <p>delving [1] - 19:27</p> <p>demonstrative</p>	<p>[2] - 47:15, 48:25</p> <p>demure [2] - 36:29, 44:3</p> <p>Denise [1] - 96:12</p> <p>Dennehy [2] - 173:11, 173:12</p> <p>depended [1] - 90:10</p> <p>deputising [1] - 40:28</p> <p>descended [1] - 74:10</p> <p>describe [9] - 8:11, 10:18, 11:7, 43:13, 50:11, 79:22, 79:24, 91:29, 151:15</p> <p>describing [1] - 24:2</p> <p>description [2] - 125:27, 133:23</p> <p>deserve [1] - 21:1</p> <p>despite [9] - 8:8, 9:29, 17:23, 43:11, 47:11, 61:17, 84:4, 89:27, 114:26</p> <p>detail [3] - 29:22, 57:16, 138:27</p> <p>detailed [1] - 139:8</p> <p>detailing [1] - 145:18</p> <p>details [4] - 64:18, 96:6, 136:7, 136:8</p> <p>detained [1] - 149:7</p> <p>detected [1] - 55:25</p> <p>detections [1] - 96:14</p> <p>detective [8] - 50:4, 63:18, 64:1, 64:2, 66:10, 68:15, 69:2, 96:13</p> <p>Detective [1] - 63:14</p> <p>detention [1] - 149:9</p> <p>determination [1] - 147:16</p> <p>determine [1] - 104:4</p> <p>determining [2] - 74:5, 104:20</p>
D					
		<p>D/Garda [6] - 106:12, 109:14, 109:17, 109:20, 109:22</p> <p>D/guard [1] - 63:1</p> <p>D/ Superintendent [1] - 50:5</p> <p>D27 [1] - 139:9</p> <p>daily [1] - 40:12</p> <p>data [2] - 55:12, 56:21</p> <p>database [1] - 56:1</p> <p>date [29] - 15:7, 15:14, 15:15, 18:18, 26:29, 27:10, 27:16, 28:23, 44:26, 45:25, 48:3, 48:12, 82:6, 82:29, 87:12, 96:5, 106:9,</p>			

<p>develop [1] - 134:24</p> <p>developed [1] - 59:9</p> <p>development [1] - 133:27</p> <p>diametrically [1] - 131:2</p> <p>diary [1] - 163:15</p> <p>dictate [3] - 39:16, 40:4, 40:5</p> <p>dictated [7] - 27:22, 27:27, 40:1, 40:2, 106:28, 106:29, 152:7</p> <p>died [1] - 54:19</p> <p>difference [9] - 46:3, 101:16, 101:18, 103:6, 133:19, 141:3, 141:8, 141:10, 175:11</p> <p>different [25] - 47:2, 48:16, 49:25, 65:21, 71:2, 71:7, 73:23, 79:9, 84:9, 84:10, 85:2, 86:29, 96:10, 98:8, 100:22, 101:10, 101:17, 116:22, 117:27, 124:19, 125:23, 133:11, 134:15, 140:26</p> <p>differently [3] - 94:5, 98:21, 151:14</p> <p>difficulties [3] - 75:6, 145:2, 145:25</p> <p>difficulty [3] - 66:20, 88:8, 143:14</p> <p>dig [1] - 14:9</p> <p>dilemma [1] - 147:3</p> <p>Dillane [43] - 26:4, 26:16, 27:22, 33:16, 34:9, 34:16, 34:19, 34:27, 35:3, 35:11, 36:4, 37:1, 39:7, 39:15, 39:21, 39:23, 39:25, 40:7, 40:12, 40:24, 41:1, 44:1, 44:22, 44:26, 45:11,</p>	<p>46:15, 59:21, 61:12, 89:7, 89:12, 90:2, 91:29, 92:17, 144:29, 146:27, 147:13, 147:17, 151:28, 153:24, 154:15, 154:16, 154:20</p> <p>DILLANE [3] - 4:10, 154:2, 154:6</p> <p>Dillane's [4] - 37:12, 38:28, 40:17, 151:22</p> <p>direct [7] - 5:17, 29:9, 29:11, 63:28, 64:6, 68:23, 84:15</p> <p>directed [2] - 130:9, 137:28</p> <p>direction [7] - 60:9, 134:25, 139:12, 139:18, 146:2, 152:12, 168:18</p> <p>directions [7] - 135:27, 135:28, 138:1, 139:28, 152:16, 152:22, 152:28</p> <p>directive [7] - 20:12, 20:22, 20:28, 21:1, 21:3, 22:17, 155:26</p> <p>directly [15] - 36:11, 62:27, 64:17, 65:2, 67:8, 68:9, 68:14, 72:3, 82:5, 85:25, 121:11, 140:4, 162:11, 163:13, 167:15</p> <p>DIRECTLY [2] - 4:12, 154:7</p> <p>DIRECTLY-EXAMINED [2] - 4:12, 154:7</p> <p>directs [1] - 58:14</p> <p>disagree [3] - 32:10, 75:19, 75:20</p> <p>disagreed [1] - 89:24</p> <p>disagrees [1] - 5:26</p> <p>discharge [1] - 137:4</p> <p>disciplinary [5] -</p>	<p>7:20, 22:18, 23:2, 168:16, 168:28</p> <p>discipline [4] - 9:21, 23:8, 137:1, 156:20</p> <p>discipline/</p> <p>complaint [1] - 168:24</p> <p>discipline/</p> <p>harassment [1] - 10:3</p> <p>disciplined [2] - 158:12, 158:27</p> <p>disclosed [1] - 6:21</p> <p>disclosure [4] - 14:3, 14:5, 147:12, 151:12</p> <p>disclosures [1] - 6:5</p> <p>discommoded [1] - 70:16</p> <p>discredit [1] - 147:17</p> <p>discredited [1] - 147:11</p> <p>discretion [1] - 151:22</p> <p>discuss [9] - 23:2, 77:24, 151:27, 168:5, 168:6, 168:7, 168:8, 172:12, 173:10</p> <p>discussed [9] - 22:24, 22:25, 23:4, 23:5, 33:16, 33:17, 72:17, 72:26, 175:20</p> <p>discussing [3] - 25:29, 26:3, 169:21</p> <p>discussion [7] - 45:5, 93:15, 97:18, 151:5, 151:8, 160:17, 171:26</p> <p>discussions [1] - 168:3</p> <p>disposal [1] - 15:18</p> <p>disprove [1] - 10:27</p> <p>dispute [1] - 129:1</p> <p>disseminated [1] - 51:16</p> <p>distinction [11] - 46:10, 57:10, 65:17, 65:18,</p>	<p>117:26, 119:17, 123:7, 123:16, 123:17, 125:20, 174:17</p> <p>distinctly [1] - 155:17</p> <p>district [71] - 15:23, 15:26, 24:8, 24:23, 24:29, 25:12, 26:20, 28:11, 28:20, 28:26, 30:10, 30:25, 31:4, 34:7, 35:16, 36:16, 37:2, 47:18, 49:8, 49:9, 49:23, 49:25, 49:26, 51:10, 51:15, 51:27, 59:23, 61:20, 62:11, 71:10, 79:28, 80:24, 81:11, 81:28, 85:23, 89:13, 89:21, 96:5, 96:7, 96:25, 98:23, 110:12, 112:8, 116:3, 120:2, 124:5, 130:10, 133:29, 135:2, 135:12, 135:16, 136:2, 136:5, 137:5, 137:24, 138:2, 138:14, 138:15, 145:10, 146:2, 146:10, 148:29, 149:4, 149:14, 149:17, 152:19, 153:1, 156:15, 157:18, 159:17</p> <p>district/</p> <p>portfolio [1] - 134:20</p> <p>division [17] - 32:1, 40:13, 49:12, 49:25, 111:22, 150:24, 150:26, 151:6, 151:10, 155:2, 157:20, 157:29, 158:2, 158:18, 159:1, 160:6, 170:13</p> <p>divisional [9] - 39:27, 40:15, 40:16, 49:16, 50:2, 51:2, 117:14, 152:18, 155:2</p>	<p>doctor [5] - 28:12, 28:18, 55:22, 62:26, 146:11</p> <p>document [47] - 5:7, 5:17, 9:15, 12:19, 12:22, 12:27, 13:21, 25:16, 26:13, 28:9, 28:15, 29:15, 29:19, 37:19, 37:20, 37:23, 51:8, 51:17, 51:23, 57:2, 57:16, 77:11, 78:3, 84:9, 93:29, 94:2, 105:28, 108:18, 110:2, 118:12, 119:7, 119:8, 119:10, 119:11, 119:24, 119:26, 122:26, 123:1, 134:13, 137:18, 139:5, 139:19, 139:24, 140:26, 145:1, 145:6, 171:6</p> <p>documentation [18] - 10:16, 10:19, 10:27, 11:2, 11:8, 11:11, 11:14, 11:17, 11:26, 20:16, 34:11, 46:5, 47:4, 47:28, 48:7, 84:20, 160:12, 168:21</p> <p>documents [28] - 6:21, 7:1, 11:22, 12:2, 13:7, 13:13, 13:22, 14:20, 15:22, 15:23, 23:28, 34:21, 45:8, 50:24, 51:16, 55:16, 57:19, 59:22, 61:10, 82:12, 82:13, 90:23, 94:2, 94:3, 115:9, 115:10, 161:9</p> <p>documents' [1] - 90:24</p> <p>done [22] - 44:15, 57:13, 58:27, 73:23, 74:15, 76:19, 90:1, 91:21, 94:5, 103:24, 119:12, 121:5, 129:18,</p>	<p>133:10, 144:24, 146:17, 149:11, 155:26, 169:23, 170:4, 171:17</p> <p>double [1] - 67:19</p> <p>doubt [12] - 10:11, 12:29, 13:5, 22:13, 22:14, 23:6, 23:8, 23:10, 33:20, 34:24, 52:7, 69:15</p> <p>down [37] - 38:29, 41:17, 41:18, 53:22, 54:7, 54:24, 54:25, 55:18, 57:21, 75:5, 82:15, 85:14, 85:16, 85:18, 87:20, 95:28, 95:29, 106:26, 108:1, 111:14, 112:19, 116:20, 122:13, 126:6, 134:28, 135:9, 136:24, 137:19, 138:8, 140:12, 140:19, 156:10, 157:2, 158:7, 168:9, 173:4</p> <p>downstairs [2] - 35:21, 54:18</p> <p>dozens [1] - 119:4</p> <p>Dr [6] - 172:10, 172:16, 173:11, 173:12</p> <p>draw [3] - 61:11, 69:14, 125:20</p> <p>drew [2] - 69:28, 174:16</p> <p>driving [1] - 93:8</p> <p>droned [1] - 144:8</p> <p>drop [1] - 17:17</p> <p>dropped [1] - 16:19</p> <p>drug [1] - 96:13</p> <p>Ds [1] - 30:9</p> <p>DT [1] - 131:28</p> <p>Dublin [1] - 173:9</p> <p>DUBLIN [2] - 3:5, 3:10</p> <p>due [10] - 18:14, 18:15, 37:3, 42:24, 65:5, 67:15, 78:21,</p>
---	--	--	---	--	---

80:1, 122:12, 170:21 Dunne [25] - 74:18, 74:29, 75:15, 82:16, 83:11, 83:29, 84:16, 88:20, 89:18, 89:26, 97:18, 97:20, 98:3, 106:13, 107:2, 108:2, 108:6, 109:23, 110:22, 110:23, 110:29, 129:28, 129:29, 130:18, 131:2 Dunne's [5] - 81:22, 82:2, 83:16, 89:22, 108:25 during [11] - 12:25, 13:13, 52:16, 53:13, 82:24, 83:25, 83:26, 94:8, 112:7, 115:14, 116:13 duties [12] - 38:17, 62:11, 99:28, 99:29, 101:23, 126:10, 126:11, 126:12, 136:16, 145:9, 146:25, 166:26 duty [58] - 6:26, 9:21, 17:4, 40:13, 52:29, 59:10, 66:4, 92:29, 94:16, 106:9, 106:13, 106:17, 107:7, 107:12, 107:13, 110:11, 110:13, 110:18, 111:28, 112:6, 113:24, 114:2, 115:6, 115:7, 116:3, 118:8, 118:20, 119:10, 119:14, 119:16, 120:3, 121:22, 121:26, 122:19, 123:18, 124:3, 124:14, 124:16, 124:17, 125:27, 125:28, 126:2, 130:3, 132:3, 137:1, 138:28, 139:3, 139:4, 139:8, 140:5, 145:16, 146:10,	155:6, 155:20, 169:18, 169:24, 170:29, 171:17 dwell [1] - 137:19 E e-mail [14] - 36:3, 51:13, 51:19, 63:24, 96:24, 97:1, 97:3, 97:7, 97:9, 172:24, 172:27, 172:28, 173:4 e-mails [1] - 47:26 early [3] - 55:5, 94:8 earth [1] - 142:24 easiest [1] - 151:15 easy [2] - 5:20, 154:2 effect [9] - 21:27, 74:27, 74:28, 78:9, 96:7, 111:7, 115:2, 128:11, 150:22 effected [1] - 142:19 effective [8] - 28:11, 67:13, 134:20, 135:1, 135:18, 136:19, 155:20, 166:25 effectively [10] - 7:18, 28:14, 52:8, 61:22, 98:4, 115:23, 135:23, 149:19, 161:13, 161:20 efficient [1] - 136:19 effort [1] - 44:7 eight [4] - 8:14, 8:16, 8:25, 132:3 either [24] - 14:10, 48:6, 56:18, 56:25, 64:1, 67:21, 78:15, 78:19, 78:23, 80:2, 84:15, 94:10, 95:5, 98:3, 98:5, 102:9, 102:16, 102:17, 103:1, 104:25, 104:26, 111:10, 142:17	elaborate [3] - 95:18, 95:21, 145:15 electrocuted [1] - 160:14 elephant [1] - 26:9 elevate [2] - 16:23, 20:29 em [1] - 100:15 embrace [1] - 140:20 emphatic [1] - 94:20 employee [2] - 79:24, 80:9 encapsulated [1] - 59:3 encompass [1] - 12:9 encompassed [1] - 76:12 encumbering [1] - 28:19 encumbrance [2] - 28:10, 47:17 END [4] - 132:21, 147:25, 150:6, 153:8 end [12] - 75:5, 93:3, 93:4, 93:19, 94:19, 100:9, 115:4, 116:12, 116:14, 128:26, 151:28, 167:23 endeavour [5] - 86:11, 86:13, 86:28, 87:1, 87:16 endeavouring [1] - 87:6 ended [5] - 126:5, 166:3, 166:10, 166:13 ends [2] - 26:18, 118:24 engagement [6] - 43:20, 61:7, 78:28, 79:13, 79:14, 152:27 engine [1] - 17:16 enquire [1] - 13:25 enquired [1] - 78:26 enquiries [4] - 17:20, 19:23, 63:17, 92:21 ensure [15] -	37:15, 51:26, 59:16, 77:21, 90:29, 135:18, 136:4, 136:17, 136:26, 136:29, 137:29, 139:7, 140:5, 152:29, 167:3 ensuring [2] - 134:7, 134:21 entailed [1] - 21:26 enthusiastic [3] - 143:14, 143:18 enthusiastically [1] - 140:20 entire [1] - 158:24 entirely [6] - 18:8, 38:2, 68:18, 68:26, 73:28, 115:22 entirety [2] - 20:4, 81:17 entitled [8] - 100:11, 101:7, 101:8, 101:13, 143:18, 143:26, 143:27, 175:11 entries [5] - 53:16, 54:21, 119:24, 119:27, 126:7 entry [7] - 54:8, 55:12, 55:14, 56:1, 56:21, 59:18, 121:16 envelope [1] - 162:28 environment [1] - 173:21 equate [1] - 99:13 error [1] - 112:10 essential [1] - 103:6 establish [2] - 11:26, 33:29 et [2] - 67:14, 91:24 evaluation [1] - 133:27 evening [2] - 40:15, 65:25 event [10] - 6:22, 16:25, 27:16, 58:9, 61:28, 72:29, 81:16, 84:14, 105:29,	149:25 events [1] - 149:2 evidence [39] - 5:17, 5:27, 10:10, 10:22, 11:6, 14:10, 17:12, 17:24, 18:10, 30:16, 31:11, 31:20, 33:6, 33:19, 34:26, 39:15, 52:20, 53:4, 59:1, 59:14, 63:12, 64:8, 79:3, 79:5, 84:14, 93:1, 93:10, 93:13, 95:10, 111:3, 113:6, 131:24, 142:3, 150:17, 150:22, 151:2, 160:15, 166:8, 174:16 exact [3] - 15:15, 18:3, 48:20 exactly [9] - 31:1, 48:9, 58:20, 74:22, 74:27, 92:26, 107:19, 125:29, 126:3 examination [1] - 54:2 EXAMINATION [4] - 132:21, 147:25, 150:6, 153:8 EXAMINED [8] - 4:5, 4:6, 4:7, 4:12, 5:12, 133:1, 148:20, 154:7 examined [1] - 159:9 examiner [1] - 54:11 example [3] - 126:4, 128:24, 151:27 except [2] - 75:16, 83:18 exception [1] - 89:20 excluded [1] - 14:28 excuse [4] - 10:13, 79:7, 128:19, 140:21 exemption [1] - 42:26 exhibit [1] - 108:21 existed [1] -	128:9 existence [1] - 44:13 existing [3] - 57:3, 59:2, 138:20 expect [4] - 47:6, 47:8, 135:26, 164:18 expected [1] - 144:20 expense [3] - 175:1, 175:7, 175:9 expenses [1] - 174:25 explain [8] - 67:24, 89:27, 100:17, 100:20, 100:23, 106:17, 107:19, 124:1 explained [2] - 29:23, 92:4 explaining [4] - 17:24, 46:1, 75:11, 97:27 explains [1] - 28:2 explanation [11] - 60:8, 66:22, 67:9, 68:25, 72:5, 81:24, 89:1, 92:23, 108:25, 115:29, 118:20 explore [1] - 141:27 exploring [1] - 15:2 express [2] - 62:19, 97:13 expressed [2] - 173:12, 173:27 expressing [2] - 61:28, 62:20 expression [1] - 10:17 extending [1] - 171:19 extensions [2] - 149:8, 149:13 extensively [3] - 134:13, 136:9, 136:25 extent [5] - 11:25, 14:19, 48:22, 96:19, 133:10 extra [24] - 99:19, 101:11, 107:12, 110:11,
--	--	--	--	---	---

110:13, 110:29, 112:6, 113:24, 115:6, 115:7, 116:24, 119:10, 119:14, 119:16, 120:2, 121:22, 121:26, 122:19, 123:8, 123:18, 124:3, 125:28, 126:23, 128:28 extract [1] - 89:19 extraordinary [5] - 13:20, 22:22, 36:9, 43:8, 44:14	116:10, 122:5, 122:13, 123:3, 128:14, 129:1, 131:20, 132:10, 143:10, 143:13, 155:6, 156:24, 158:13, 160:16, 162:18, 168:13, 168:15, 168:27, 169:5, 174:7, 174:11 facts [2] - 58:4, 89:25 failing [2] - 26:22, 30:1 failure [2] - 68:25, 69:1 fair [17] - 5:29, 8:17, 8:26, 9:27, 10:24, 12:13, 24:8, 38:17, 40:20, 46:12, 72:27, 81:15, 86:4, 86:22, 137:3, 149:26 fairly [5] - 31:18, 31:19, 52:25, 157:13, 166:3 fairness [3] - 79:10, 140:23, 150:18 fall [1] - 24:20 false [1] - 131:26 familiar [2] - 5:17, 161:21 Fanning [3] - 42:9, 148:9, 161:16 FANNING [1] - 3:1 far [25] - 9:17, 10:2, 10:7, 10:12, 10:26, 16:29, 22:6, 24:6, 24:17, 24:22, 31:16, 48:26, 50:25, 59:15, 61:27, 62:22, 89:28, 90:7, 91:11, 108:27, 110:22, 110:25, 138:18, 159:3, 169:23 fatal [14] - 50:14, 50:17, 52:9, 52:10, 54:1, 55:9, 56:7, 59:24, 141:29, 143:5, 145:27, 146:3, 146:5 fatality [1] -	53:10 fatally [1] - 55:22 fault [2] - 15:9 favour [3] - 43:15, 143:19 favourable [2] - 11:15, 11:18 fax [2] - 12:9, 12:23 faxes [1] - 12:9 February [12] - 7:2, 7:3, 49:29, 50:8, 61:9, 64:7, 64:16, 66:1, 155:7, 167:26, 172:23 feed [2] - 129:9, 129:11 feeding [1] - 170:24 fellow [2] - 35:8, 36:7 felt [5] - 38:4, 50:13, 67:23, 102:20, 172:11 Fergal [1] - 54:12 Fermoy [65] - 25:7, 25:21, 28:4, 28:22, 28:25, 29:8, 29:20, 29:24, 30:5, 30:18, 30:28, 31:9, 31:12, 31:27, 32:17, 32:20, 34:20, 35:17, 35:20, 36:1, 36:24, 37:6, 37:26, 38:1, 38:16, 38:23, 39:24, 41:19, 41:27, 42:28, 42:29, 44:23, 45:12, 46:17, 49:8, 51:27, 59:24, 75:10, 76:2, 76:7, 76:10, 85:23, 96:5, 96:7, 96:29, 108:26, 108:29, 109:1, 110:12, 111:21, 111:24, 112:8, 118:24, 124:5, 130:21, 130:23, 130:27, 133:13, 137:12, 145:20, 146:2, 155:3, 155:7, 155:12, 156:15	festival [1] - 149:26 few [4] - 23:28, 127:2, 136:7, 172:13 files [1] - 163:6 file [1] - 15:26 filled [2] - 19:11, 30:2 filling [1] - 40:29 filtered [1] - 58:15 final [2] - 121:16, 138:23 finally [2] - 147:8, 149:21 financial [1] - 174:19 fine [10] - 12:13, 38:20, 41:3, 77:10, 86:20, 97:19, 97:20, 110:27, 132:25 finish [3] - 8:22, 87:14, 112:29 finished [4] - 8:23, 46:23, 90:18, 129:22 Fintan [2] - 42:9, 148:9 FINTAN [1] - 3:1 fire [20] - 50:14, 50:17, 52:9, 52:10, 52:17, 53:9, 53:10, 54:1, 54:12, 54:18, 55:9, 55:12, 55:21, 55:22, 56:7, 59:25, 141:29, 142:2, 143:5 first [26] - 32:4, 42:1, 50:11, 53:17, 54:23, 64:28, 119:24, 119:27, 120:3, 122:19, 127:25, 127:29, 133:13, 133:20, 135:15, 136:14, 137:12, 157:13, 159:21, 160:4, 166:6, 167:28, 167:29, 168:20, 169:3, 173:6 firstly [1] - 141:18 Fitzgerald [6] - 63:2, 96:12, 106:12, 109:14,	109:20, 109:22 Fitzpatrick [11] - 63:2, 63:3, 63:4, 63:14, 63:18, 63:26, 68:15, 69:2, 109:17, 109:22 five [3] - 101:3, 112:14, 120:7 fix [1] - 147:4 flies [1] - 36:11 flowed [1] - 146:22 flows [1] - 102:4 focusing [1] - 10:3 folder [3] - 13:1, 13:11, 13:15 follow [13] - 55:4, 60:6, 90:16, 90:25, 99:20, 100:1, 103:18, 110:19, 113:21, 152:11, 152:16, 152:21, 152:28 followed [1] - 6:13 following [10] - 14:4, 16:22, 60:7, 124:27, 136:11, 137:19, 137:22, 162:6, 162:10, 167:27 FOLLOWS [7] - 5:1, 5:13, 91:17, 133:2, 148:21, 150:12, 154:7 follows [1] - 112:13 font [1] - 117:3 foot [1] - 147:11 foothill [1] - 106:5 FOR [3] - 3:1, 3:7, 91:16 for.. [1] - 47:7 force [12] - 91:23, 92:2, 92:3, 92:5, 92:19, 93:5, 93:16, 93:20, 93:22, 93:26, 94:11, 100:7 forgive [6] - 29:4, 29:12, 30:13, 76:21, 80:29, 88:18 form [32] - 7:17, 12:6, 15:29, 16:25, 19:11, 22:19, 23:12,	59:17, 78:13, 114:1, 120:24, 122:9, 122:10, 122:11, 122:14, 122:22, 122:23, 124:3, 124:4, 124:6, 124:18, 124:23, 127:4, 127:5, 128:27, 139:9, 139:10, 139:13, 151:21, 161:13, 161:20 former [2] - 148:2, 148:8 forms [2] - 23:8, 128:20 forth [1] - 152:24 forward [2] - 42:5, 162:29 forwarded [4] - 42:7, 106:16, 130:10, 138:12 forwards [1] - 108:10 Fota [1] - 148:25 four [13] - 93:18, 98:5, 114:2, 118:27, 118:29, 119:1, 120:3, 125:26, 128:2, 159:22, 159:23, 160:22, 160:29 four-week [2] - 118:27, 128:2 frame [1] - 71:26 frankly [2] - 141:11, 141:13 free [8] - 101:1, 101:25, 102:9, 105:1, 105:11, 105:16, 105:23, 153:16 FREEMAN [1] - 3:3 Friday [3] - 107:25, 162:4, 173:8 friday [1] - 112:13 friend [2] - 64:27, 150:29 friendly [1] - 139:24 friends [1] - 13:6 fro [2] - 93:9, 143:16 front [5] - 51:23, 85:15, 97:7, 107:23, 108:21 frontline [1] -
F					
face [6] - 24:11, 36:11, 36:25, 51:8, 84:4 face-to-face [1] - 24:11 facilitate [4] - 75:12, 165:23, 165:27, 172:1 facility [1] - 48:6 fact [91] - 7:26, 8:8, 9:14, 9:24, 9:29, 17:23, 18:13, 24:14, 31:22, 33:15, 33:17, 34:5, 34:12, 35:12, 35:25, 36:20, 37:14, 37:24, 37:25, 41:12, 43:11, 44:6, 45:5, 47:11, 47:15, 47:22, 48:19, 48:26, 50:1, 51:9, 52:13, 52:29, 53:1, 56:24, 57:1, 57:11, 60:13, 61:12, 61:17, 61:29, 63:5, 63:27, 67:3, 67:25, 68:24, 68:29, 69:28, 74:5, 75:21, 76:19, 77:2, 83:18, 86:1, 88:29, 89:8, 89:9, 89:10, 89:23, 89:28, 90:25, 92:2, 92:10, 92:17, 92:19, 93:28, 110:29, 114:26, 115:18, 115:21, 115:28,					

136:17 frustration [1] - 62:21 full [8] - 60:8, 61:3, 125:27, 139:29, 140:4, 162:14, 167:21, 170:2 fully [1] - 67:23 function [3] - 115:24, 135:25, 136:8 functions [7] - 93:6, 133:24, 134:21, 137:6, 137:9, 148:27, 149:5 furnished [2] - 95:16, 131:10 furthermore [1] - 56:6 future [1] - 115:11	133:23, 133:29, 136:8, 141:20, 145:24, 147:10, 147:21, 151:24, 151:26, 154:23, 155:3, 159:8, 159:14, 161:28, 162:12, 169:9, 172:2 Gardaí [1] - 132:27 gardaí [13] - 16:10, 52:9, 64:2, 104:1, 114:5, 114:26, 114:28, 116:2, 116:11, 127:9, 135:28, 152:11, 164:29 garden [1] - 149:26 gathered [1] - 160:11 Geary [12] - 75:27, 75:28, 76:1, 76:10, 77:3, 77:13, 77:21, 77:27, 77:29, 78:5, 78:12, 78:26 Geary's [2] - 78:18, 78:24 general [11] - 12:8, 12:10, 16:11, 92:27, 92:28, 141:15, 142:28, 144:3, 145:3, 148:27, 151:19 generality [1] - 63:11 generate [2] - 99:1, 99:9 generated [4] - 28:17, 41:14, 59:8, 99:12 genuinely [1] - 121:13 Gerard [2] - 154:20, 154:22 GERARD [2] - 4:10, 154:6 Gerry [19] - 31:2, 31:10, 31:13, 31:24, 32:4, 32:13, 33:12, 33:17, 33:21, 34:3, 36:7, 43:15, 43:29, 44:10, 75:29, 82:28, 85:26, 86:16,	87:4 given [19] - 8:27, 23:9, 30:18, 30:22, 35:24, 35:25, 44:12, 44:13, 62:5, 78:4, 90:24, 92:22, 102:24, 111:17, 114:4, 118:20, 119:5, 120:29, 122:9 Glanmire [8] - 163:26, 164:25, 164:26, 170:29, 172:2, 172:5, 175:4 goals [1] - 135:3 golf [2] - 148:25, 149:28 Google [1] - 130:29 GORDON [1] - 3:7 GP [3] - 18:28, 19:10, 19:16 grand [6] - 111:3, 115:1, 115:28, 123:19, 160:11, 166:10 grant [3] - 78:23, 78:24, 81:16 granted [7] - 77:28, 78:16, 78:18, 89:11, 93:2, 98:19, 138:14 gratis [4] - 101:1, 101:25, 102:9, 103:3 great [3] - 57:16, 91:26, 97:27 greater [1] - 99:21 Grogan [6] - 163:9, 173:1, 173:6, 173:25, 173:29, 174:13 ground [2] - 33:25, 74:15 grounds [2] - 38:10, 42:4 group [10] - 65:6, 65:10, 65:14, 65:16, 65:21, 65:24, 66:26, 67:3, 67:12, 153:3 guard [9] - 16:5, 16:11, 16:13, 19:11, 21:3,	50:29, 56:2, 98:29, 111:8 guards [1] - 115:18 guess [4] - 141:11, 141:13, 141:15, 144:3 guessing [1] - 141:16 guidance [1] - 134:25 guideline [1] - 139:5 guidelines [3] - 137:14, 137:22, 138:3 guy [1] - 35:9	118:9 handwritten [3] - 53:18, 54:21, 85:10 hang [1] - 87:5 hanging [1] - 5:21 happy [7] - 43:16, 86:6, 129:19, 129:24, 153:28, 169:13, 169:14 harassment [8] - 7:19, 9:22, 73:8, 165:10, 165:12, 168:14, 168:24, 169:4 Harty [6] - 7:9, 14:29, 27:7, 67:28, 69:9, 150:8 HARTY [8] - 13:24, 26:27, 27:5, 64:25, 68:17, 150:12, 150:14, 153:5 Harty's [1] - 70:2 HARTY..... [1] - 4:8 hated [1] - 141:8 HAVING [1] - 154:6 head [9] - 7:8, 8:15, 8:24, 15:7, 15:15, 25:20, 25:25, 33:13, 110:18 headed [1] - 139:20 heading [8] - 104:12, 121:15, 121:21, 134:13, 136:10, 136:11, 138:5, 138:7 headings [2] - 143:1, 143:13 headquarters [3] - 28:26, 49:17, 164:6 Headquarters [2] - 162:12, 169:9 health [6] - 44:23, 45:12, 46:17, 159:8, 159:9, 164:3 Health [1] - 159:14 Healy [1] - 96:28 hear [4] - 11:19,	15:11, 18:11, 94:27 heard [14] - 17:12, 17:18, 17:19, 18:7, 18:10, 93:11, 95:10, 98:13, 160:20, 160:24, 165:29, 166:7, 166:8, 174:2 HEARING [3] - 5:1, 91:16, 175:27 held [2] - 11:26, 64:15 help [3] - 104:3, 104:4 helpful [1] - 64:25 Henry [3] - 54:12, 104:16, 107:8 hereby [2] - 41:27, 131:22 hierarchical [1] - 151:26 hierarchy [2] - 61:19, 62:18 higher [3] - 157:23, 157:27, 163:23 highlighting [2] - 158:13, 174:7 himself [7] - 14:6, 18:9, 52:18, 80:22, 81:14, 92:4, 163:2 his/her [2] - 133:28, 135:11 historical [1] - 57:3 hold [1] - 100:17 holding [1] - 63:29 home [7] - 93:6, 94:24, 172:6, 175:10, 175:12, 175:13 hope [5] - 43:28, 70:14, 95:29, 98:14, 128:8 hopefully [1] - 61:6 Hospital [1] - 55:24 hotly [1] - 160:16 hour [18] - 99:8, 99:9, 99:24, 99:26, 100:28,
G			H		
garage [1] - 17:17 garda [4] - 21:2, 114:6, 136:18, 159:9 Garda [78] - 16:19, 25:7, 25:21, 26:21, 28:4, 29:20, 29:24, 30:6, 32:28, 35:17, 36:1, 37:6, 38:12, 41:22, 41:26, 41:27, 42:27, 42:28, 44:24, 45:13, 46:18, 50:3, 54:12, 61:18, 62:18, 63:14, 63:18, 66:7, 66:8, 66:10, 68:15, 75:10, 76:10, 85:22, 94:12, 96:10, 96:12, 96:15, 96:27, 96:29, 97:24, 98:22, 100:4, 100:8, 104:15, 105:7, 106:2, 106:10, 106:16, 107:4, 107:8, 109:2, 111:20, 118:24, 130:7, 133:5, 133:6, 133:21,			Haddington [45] - 98:16, 98:20, 100:14, 102:3, 102:13, 103:2, 104:14, 104:20, 106:1, 107:6, 111:6, 112:5, 114:11, 119:13, 119:15, 122:15, 122:19, 122:21, 122:27, 123:9, 124:19, 124:25, 124:27, 125:2, 125:7, 125:22, 125:26, 126:1, 126:2, 126:8, 126:10, 126:11, 128:10, 128:12, 128:22, 129:26, 130:3, 130:23, 130:27, 130:28, 131:15, 132:2, 132:5 half [5] - 100:27, 145:19, 155:1, 155:15 halfway [2] - 135:9, 138:8 HALIDAY [1] - 3:4 Hallinan [3] - 83:5, 83:6, 86:9 HANAHOE [1] - 3:9 hand [1] - 60:16 handle [1] - 71:9 hands [1] - 81:6 handwriting [3] - 87:23, 109:27,		

<p>101:4, 101:22, 101:23, 101:25, 101:26, 102:2, 102:9, 104:24, 105:22, 105:25, 112:5, 112:7</p> <p>hours [95] - 50:21, 86:29, 98:16, 98:17, 98:18, 99:1, 99:13, 99:14, 99:15, 99:17, 99:27, 100:10, 100:11, 100:12, 100:14, 100:22, 100:24, 100:27, 101:1, 101:2, 101:3, 101:4, 101:7, 101:8, 101:11, 101:13, 101:14, 101:17, 101:27, 102:3, 102:4, 102:10, 102:14, 102:15, 102:21, 102:27, 102:29, 103:3, 103:15, 103:16, 103:24, 104:5, 104:14, 104:20, 105:15, 105:16, 105:23, 105:26, 106:21, 106:24, 107:6, 107:20, 110:29, 111:8, 111:28, 112:14, 112:16, 113:9, 113:11, 113:17, 114:23, 115:10, 115:13, 115:14, 115:17, 115:27, 116:3, 116:11, 116:24, 119:12, 119:13, 119:22, 120:19, 123:26, 126:23, 126:28, 127:4, 127:21, 128:12, 128:16, 128:28, 129:4, 129:6, 130:28, 131:15, 139:29, 140:7, 164:27, 165:1</p> <p>house [2] - 55:21</p> <p>HOUSE [1] - 3:4</p> <p>how.. [1] - 25:19</p> <p>HQ [1] - 155:26</p> <p>HRM [15] - 34:16, 43:24, 43:25, 162:29,</p>	<p>163:1, 163:9, 163:13, 166:24, 169:1, 169:2, 173:1, 173:18, 173:20, 174:4, 174:13</p> <p>Human [5] - 37:21, 41:10, 158:23, 162:12, 167:16</p> <p>human [2] - 32:29, 165:23</p> <p>hundred [4] - 39:14, 39:19, 94:25, 117:12</p>	<p>73:14, 131:11</p> <p>important [2] - 26:29, 61:28</p> <p>impression [3] - 140:24, 166:14, 166:16</p> <p>improving [1] - 134:8</p> <p>inadvertently [1] - 69:13</p> <p>incident [13] - 22:18, 23:3, 47:5, 47:20, 50:14, 50:17, 51:3, 52:5, 56:15, 60:5, 60:10, 135:16, 136:4</p> <p>incidents [8] - 51:26, 56:19, 57:26, 57:28, 57:29, 60:4, 135:11, 135:13</p> <p>incidents.. [1] - 51:29</p> <p>included [4] - 6:15, 9:14, 15:17, 144:4</p> <p>including [5] - 95:16, 109:6, 140:9, 141:28, 143:1</p> <p>inclusive [1] - 121:9</p> <p>inconsistent [1] - 69:23</p> <p>inconsistently [1] - 69:21</p> <p>incorrect [1] - 10:18</p> <p>incredibly [1] - 35:27</p> <p>incur [1] - 132:2</p> <p>incurred [1] - 113:12</p> <p>incurring [1] - 125:28</p> <p>indeed [5] - 6:11, 14:6, 31:18, 157:10, 159:12</p> <p>INDEX [1] - 4:1</p> <p>indicat [1] - 155:1</p> <p>indicate [1] - 138:17</p> <p>indicated [4] - 16:29, 83:4, 170:11, 172:10</p> <p>indicating [1] - 161:16</p> <p>indirectly [1] -</p>	<p>82:5</p> <p>individual [2] - 134:15, 135:22</p> <p>ineloquent [1] - 105:20</p> <p>inform [4] - 51:2, 53:9, 72:15, 160:5</p> <p>information [38] - 7:12, 15:17, 20:14, 20:29, 21:2, 21:6, 21:7, 21:22, 21:23, 22:3, 22:28, 23:2, 48:2, 51:11, 52:17, 55:8, 55:27, 56:7, 56:16, 56:19, 56:26, 58:15, 59:17, 60:16, 60:27, 61:3, 72:10, 78:20, 84:29, 86:2, 86:16, 88:9, 106:16, 107:28, 108:16, 134:25, 136:1, 136:4</p> <p>informed [15] - 6:25, 18:26, 34:29, 44:21, 46:15, 52:4, 56:19, 77:13, 92:18, 162:10, 163:1, 163:10, 164:3, 168:18, 168:26</p> <p>informing [2] - 156:1, 166:24</p> <p>inhalation [1] - 54:20</p> <p>initialling [3] - 122:16, 126:22, 128:26</p> <p>initials [4] - 117:4, 117:25, 118:14, 118:18</p> <p>initiated [1] - 170:28</p> <p>injured [1] - 55:22</p> <p>injurious [3] - 44:23, 45:11, 46:16</p> <p>injury [4] - 169:18, 169:24, 170:29, 171:17</p> <p>ink [7] - 109:24, 112:15, 112:16, 112:22, 117:3, 119:28, 121:16</p>	<p>input [3] - 41:11, 135:24, 171:4</p> <p>inquiry [1] - 8:13</p> <p>inserted [2] - 46:7</p> <p>insofar [2] - 48:2, 62:3</p> <p>inspect [1] - 138:27</p> <p>inspected [1] - 139:9</p> <p>inspector [118] - 18:17, 18:18, 19:6, 19:23, 19:29, 20:4, 20:11, 20:13, 20:15, 20:16, 20:21, 20:27, 21:7, 21:10, 22:17, 23:6, 23:10, 23:15, 23:19, 23:21, 23:23, 23:25, 41:4, 44:17, 44:18, 45:15, 45:22, 45:26, 46:4, 46:6, 46:18, 46:24, 46:25, 47:3, 47:23, 51:28, 52:4, 52:7, 52:15, 52:27, 53:5, 53:27, 54:11, 54:18, 55:6, 56:2, 56:16, 56:20, 60:27, 71:8, 71:20, 71:29, 72:2, 72:16, 72:18, 72:26, 73:10, 73:16, 73:26, 76:15, 78:5, 78:19, 78:23, 79:13, 79:20, 80:2, 80:6, 80:14, 80:15, 80:21, 80:22, 80:23, 81:1, 81:3, 81:13, 81:15, 92:10, 92:18, 92:21, 92:28, 93:2, 93:15, 94:10, 94:21, 94:28, 96:4, 102:26, 102:28, 103:10, 103:22, 110:10, 110:28, 111:11, 112:28, 112:29, 113:5, 113:8, 113:10, 113:13, 116:4, 119:20,</p>	<p>120:4, 122:9, 124:10, 125:9, 128:15, 130:11, 131:14, 132:1, 142:8, 148:2, 148:8, 149:12, 155:24, 156:1, 156:12, 165:20</p> <p>inspectors [2] - 112:8, 152:18</p> <p>instance [13] - 60:20, 63:12, 64:6, 66:20, 67:7, 78:19, 126:8, 126:20, 128:24, 141:26, 157:14, 159:21, 170:8</p> <p>instances [2] - 65:1, 68:8</p> <p>instead [2] - 43:16, 44:1</p> <p>instruct [1] - 110:9</p> <p>INSTRUCTED [2] - 3:3, 3:8</p> <p>instructed [1] - 5:24</p> <p>instruction [2] - 97:13, 122:8</p> <p>instructions [1] - 98:11</p> <p>insulting [1] - 29:6</p> <p>intend [2] - 150:20, 162:20</p> <p>intended [1] - 79:8</p> <p>intension [1] - 119:5</p> <p>intention [5] - 70:4, 74:14, 147:16, 147:20, 163:3</p> <p>interact [1] - 145:22</p> <p>interaction [2] - 32:29, 43:20</p> <p>interactions [2] - 47:26, 48:22</p> <p>interest [2] - 58:1, 96:13</p> <p>interested [1] - 144:2</p> <p>interpretation [1] - 140:24</p> <p>interrupt [2] - 26:27, 95:23</p> <p>interrupted [1] - 19:7</p> <p>interrupting [1]</p>
---	--	--	---	--	---

<p>- 87:14 intervene [1] - 45:22 intervened [2] - 14:29 intervention [1] - 64:28 interview [1] - 106:12 introduced [3] - 124:25, 139:15, 154:4 introduction [2] - 124:27, 138:19 investigate [12] - 6:26, 20:17, 20:25, 21:28, 155:25, 156:15, 158:2, 158:19, 160:6, 163:6, 164:7, 167:18 investigated [3] - 158:29, 163:21, 168:19 investigates [2] - 146:3, 157:23 investigating [6] - 7:19, 7:20, 9:21, 14:4, 146:5, 161:28 investigation [35] - 7:5, 7:28, 9:25, 10:2, 12:25, 13:13, 13:28, 14:2, 14:10, 14:19, 21:6, 35:28, 71:22, 71:28, 73:17, 73:19, 135:13, 135:29, 157:17, 162:16, 163:4, 163:5, 163:19, 168:16, 168:17, 168:28, 169:6, 169:25, 170:2, 170:9, 171:18, 171:20, 172:3, 172:21 investigations [5] - 10:3, 46:23, 144:22, 144:23 invite [1] - 13:19 involved [6] - 120:3, 121:23, 121:26, 150:1, 165:18, 175:20 Ireland [1] - 30:15 issue [51] - 18:20, 23:16,</p>	<p>23:26, 30:29, 37:4, 41:29, 45:2, 46:26, 48:22, 57:8, 61:6, 70:23, 74:10, 75:11, 75:26, 91:23, 92:1, 92:2, 96:14, 129:26, 130:2, 141:24, 142:1, 142:14, 144:10, 144:27, 147:8, 147:9, 156:14, 157:7, 157:13, 157:21, 158:16, 159:10, 164:9, 164:11, 164:18, 165:20, 165:22, 165:24, 165:28, 169:27, 170:16, 172:16, 174:15, 174:23, 174:24, 175:19 issued [2] - 28:12, 139:6 issues [23] - 12:12, 14:6, 14:7, 26:12, 46:25, 95:8, 97:21, 109:3, 138:5, 138:8, 141:24, 141:27, 143:5, 144:28, 145:21, 146:28, 146:29, 147:2, 147:4, 158:2, 168:13, 168:20, 169:3 it'll [1] - 164:21 itemised [1] - 93:7 itself [1] - 149:16</p>	<p>25:23, 47:19, 61:17, 135:23, 143:19 jobs [1] - 148:27 JOHN [1] - 3:7 John [4] - 148:14, 148:15, 163:9, 173:25 joint [1] - 119:22 jotting [1] - 54:25 journal [9] - 17:28, 17:29, 18:1, 18:3, 34:10, 52:26, 53:16, 54:21, 167:27 journey [1] - 165:3 JPC [2] - 119:18, 119:21 July [40] - 28:23, 75:13, 81:18, 82:17, 82:25, 82:26, 82:28, 83:2, 83:6, 84:5, 84:6, 85:13, 85:20, 86:8, 86:10, 86:15, 87:26, 87:27, 116:20, 116:29, 117:18, 117:19, 117:24, 118:13, 118:25, 120:11, 120:14, 120:15, 120:17, 120:24, 120:25, 123:2, 124:26, 133:13 jump [1] - 100:18 jumped [1] - 92:13 June [5] - 73:8, 104:7, 109:29, 116:20, 118:28 JUNE [2] - 5:2, 175:27 junior [2] - 35:26, 69:28 just.. [1] - 72:9 justice [1] - 149:8 juxtaposition [1] - 69:4</p>	<p>kavanagh [1] - 138:24 keep [7] - 27:10, 39:27, 40:19, 41:6, 97:26, 101:22, 132:6 keeping [3] - 114:13, 114:15, 116:7 Keheo [15] - 6:25, 7:4, 7:13, 7:18, 7:29, 9:20, 10:15, 12:20, 12:21, 12:26, 13:8, 71:23, 167:20, 167:23, 168:2 Keheo's [1] - 14:18 Kelleher [1] - 83:1 kept [1] - 15:26 kids [3] - 93:8, 160:8, 164:9 Kiely [2] - 173:11, 173:12 Kieran [1] - 155:9 kilometres [2] - 38:13, 38:15 Kilrush [1] - 133:16 knowing [2] - 116:4, 131:23 knowledge [4] - 22:12, 22:15, 23:12, 131:23 known [7] - 22:9, 22:21, 58:4, 94:22, 103:14, 120:28, 154:22</p>	<p>16:4, 16:10, 16:14, 17:9, 17:21, 170:21 latter [1] - 102:12 law [1] - 123:5 lawyers [1] - 11:21 lead [3] - 116:5, 133:26, 157:17 leader [1] - 136:15 leadership [1] - 134:14 least [16] - 12:17, 24:26, 27:1, 33:11, 48:21, 50:21, 54:23, 68:8, 103:21, 105:13, 131:2, 150:19, 151:21, 151:25, 154:4, 157:22 leave [93] - 43:15, 66:3, 67:13, 70:21, 70:25, 71:2, 71:7, 71:9, 71:11, 71:21, 71:27, 72:18, 73:1, 73:10, 73:11, 73:18, 73:24, 74:5, 74:11, 74:21, 75:7, 75:13, 75:26, 75:27, 76:3, 76:12, 76:13, 76:25, 76:27, 77:2, 77:3, 77:8, 77:23, 77:27, 77:28, 78:8, 78:12, 78:16, 78:18, 78:24, 79:1, 79:16, 79:21, 79:28, 80:3, 80:7, 80:11, 80:17, 80:23, 80:28, 81:2, 81:5, 81:17, 81:18, 81:26, 82:21, 82:25, 83:26, 84:18, 84:23, 84:25, 87:18, 88:21, 88:29, 89:10, 89:11, 89:13, 90:8, 90:14, 91:6, 91:23, 92:1, 93:2, 93:19, 93:27, 94:11, 106:18,</p>	<p>118:8, 138:11, 138:14, 148:26, 149:3, 149:5, 149:15, 175:23, 175:25 leaving [5] - 33:28, 73:28, 97:29, 168:11, 172:7 led [2] - 83:13, 134:22 left [11] - 62:16, 66:3, 66:6, 68:4, 89:9, 90:6, 121:11, 166:14, 166:15, 169:16, 169:20 legal [2] - 5:6, 162:10 legislation [2] - 94:13, 149:8 legitimate [1] - 143:11 less [1] - 90:18 letter [94] - 6:13, 7:23, 7:26, 8:3, 8:15, 8:25, 9:7, 9:9, 9:23, 9:29, 10:14, 11:9, 14:1, 15:5, 25:29, 26:14, 26:15, 26:28, 26:29, 27:17, 27:22, 27:24, 27:27, 39:2, 39:3, 39:6, 39:9, 39:16, 39:20, 40:1, 40:2, 40:4, 40:5, 40:21, 40:28, 41:9, 41:13, 41:16, 41:18, 42:12, 42:16, 42:24, 42:25, 43:3, 43:6, 43:22, 43:23, 44:4, 44:5, 61:10, 61:11, 62:4, 62:6, 62:9, 81:22, 81:29, 82:2, 82:6, 82:16, 83:11, 83:13, 83:19, 83:23, 84:4, 84:5, 87:20, 89:6, 90:2, 91:28, 102:13, 104:6, 104:10, 104:19, 106:26, 108:14, 146:8, 146:26, 152:7, 155:29, 156:8, 157:11, 158:5, 158:22, 158:24,</p>
	J		L		
<p>Jack [1] - 174:2 January [11] - 6:10, 6:12, 9:3, 9:10, 9:18, 15:5, 167:26, 169:8, 170:19, 173:8, 173:26 Jeremiah [1] - 131:12 Jerry [1] - 130:7 Jim [2] - 63:3, 63:26 JJ [3] - 16:5, 56:1, 66:8 job [8] - 21:11, 21:22, 22:27,</p>		<p>K</p> <p>Kavanagh [3] - 133:22, 156:7, 163:18</p>			

<p>160:1, 160:22, 161:3, 161:8, 161:14, 161:20, 161:21, 161:23, 162:19, 166:28</p> <p>letters [6] - 7:12, 7:16, 84:10, 84:16, 103:7, 151:23</p> <p>level [1] - 21:1</p> <p>liable [1] - 131:24</p> <p>Liam [1] - 83:1</p> <p>lie [1] - 135:18</p> <p>lieu [19] - 99:2, 99:10, 99:12, 99:23, 100:12, 100:24, 100:27, 101:9, 101:27, 103:3, 103:4, 111:25, 111:28, 119:21, 120:13, 122:4, 123:4, 123:7, 123:8</p> <p>lifting [1] - 135:21</p> <p>light [1] - 17:16</p> <p>likely [4] - 58:1, 58:2, 72:1, 93:3</p> <p>Limerick [2] - 54:13, 106:11</p> <p>line [10] - 18:24, 33:18, 70:8, 70:9, 75:6, 136:14, 137:19, 147:5, 153:2, 153:3</p> <p>lines [1] - 68:19</p> <p>link [1] - 157:5</p> <p>linked [2] - 157:10, 165:17</p> <p>list [3] - 51:29, 134:15, 141:24</p> <p>listen [1] - 87:3</p> <p>listened [1] - 14:24</p> <p>litany [1] - 9:2</p> <p>literally [1] - 119:4</p> <p>live [2] - 129:9, 129:11</p> <p>living [1] - 38:4</p> <p>lo [1] - 77:7</p> <p>local [1] - 136:28</p> <p>locate [3] - 12:23, 12:24, 13:23</p> <p>lodged [1] - 43:14</p> <p>logging [1] - 116:24</p>	<p>look [19] - 10:8, 39:4, 45:26, 53:17, 133:20, 136:6, 137:10, 137:12, 138:4, 156:9, 157:1, 158:4, 158:6, 158:21, 159:13, 165:22, 165:27, 167:8, 171:14</p> <p>looked [5] - 8:5, 108:11, 137:18, 159:7, 169:18</p> <p>looking [27] - 11:11, 15:28, 31:11, 34:1, 43:29, 66:21, 67:9, 72:18, 74:7, 77:26, 81:18, 84:19, 89:1, 90:8, 104:5, 107:27, 111:16, 127:9, 127:16, 139:25, 141:23, 144:28, 147:9, 166:7, 172:27, 174:21, 174:24</p> <p>looks [5] - 117:26, 118:17, 118:28, 121:20, 128:25</p> <p>Lordan [1] - 168:9</p> <p>lost [4] - 129:9, 129:11, 129:13</p> <p>LUNCH [1] - 91:16</p> <p>lunch [6] - 84:8, 90:6, 90:17, 91:11, 91:14, 131:19</p> <p>lunchtime [2] - 84:11, 131:11</p>	<p>major [2] - 145:23, 165:26</p> <p>Mallow [4] - 149:25, 155:15, 166:5, 166:7</p> <p>man [8] - 21:22, 31:2, 31:10, 33:1, 33:5, 36:20, 36:25, 80:10</p> <p>manage [3] - 62:22, 133:26, 135:7</p> <p>managed [1] - 134:22</p> <p>Management [6] - 37:21, 41:10, 134:14, 158:23, 162:12, 167:16</p> <p>management [15] - 28:11, 45:2, 45:7, 47:17, 51:2, 51:5, 51:6, 58:15, 61:18, 133:6, 141:20, 147:10, 147:21, 171:15</p> <p>manager [2] - 36:15, 137:5</p> <p>managerial [2] - 146:13, 147:2</p> <p>mandates [1] - 21:2</p> <p>manner [3] - 38:18, 70:24, 136:19</p> <p>March [12] - 15:4, 27:5, 27:12, 27:14, 27:16, 37:19, 42:9, 49:9, 49:22, 64:9, 68:1, 171:20</p> <p>marks [3] - 26:5, 27:28, 28:14</p> <p>marrinan [1] - 19:5</p> <p>MARRINAN [9] - 4:12, 129:8, 153:11, 153:23, 153:26, 154:7, 154:20, 161:6, 175:22</p> <p>Marrinan [15] - 19:9, 24:5, 24:21, 45:20, 48:27, 98:28, 138:5, 148:24, 149:24, 153:10, 157:19, 163:19, 169:16, 175:2, 175:21</p> <p>Martin [1] - 96:27</p>	<p>material [13] - 48:16, 78:4, 79:12, 79:18, 79:19, 84:14, 95:1, 102:24, 103:20, 119:4, 158:21, 166:28, 167:12</p> <p>materially [1] - 47:1</p> <p>materials [2] - 119:5, 158:4</p> <p>matter [19] - 23:19, 41:24, 56:27, 94:6, 131:6, 132:6, 135:28, 143:16, 156:15, 158:19, 158:29, 159:4, 162:4, 168:4, 168:5, 170:11, 170:16, 170:24, 175:14</p> <p>matters [17] - 13:29, 14:1, 45:16, 45:18, 46:9, 46:22, 47:27, 48:8, 113:7, 133:9, 150:15, 150:16, 159:3, 167:18, 168:18, 171:22, 174:19</p> <p>Mayfield [3] - 49:9, 49:12, 49:29</p> <p>MC [6] - 117:4, 117:8, 117:25, 118:1, 118:2, 118:15</p> <p>McCarthy [1] - 150:1</p> <p>McGann [1] - 155:9</p> <p>MCGARRY [1] - 3:1</p> <p>ME [1] - 3:9</p> <p>mean [33] - 8:19, 11:3, 14:14, 17:2, 17:10, 24:25, 25:24, 32:9, 36:28, 43:27, 51:21, 53:7, 61:26, 62:3, 62:18, 64:10, 78:27, 80:29, 81:2, 86:20, 87:6, 95:23, 122:7, 124:2, 124:11, 140:25, 141:8,</p>	<p>141:9, 141:11, 142:10, 143:24, 157:16, 175:19</p> <p>means [1] - 112:11</p> <p>meant [6] - 28:25, 50:7, 90:26, 114:6, 122:26, 139:19</p> <p>media [2] - 58:2, 58:5</p> <p>Medical [5] - 166:20, 170:5, 170:17, 173:9</p> <p>medical [40] - 24:15, 24:17, 24:19, 25:2, 25:16, 25:29, 26:9, 26:26, 28:3, 28:9, 28:12, 28:16, 29:16, 32:16, 33:2, 35:14, 35:29, 36:12, 36:17, 36:25, 37:7, 38:2, 44:13, 45:2, 45:6, 45:7, 47:11, 47:16, 48:10, 48:17, 62:7, 145:2, 145:16, 146:11, 156:25, 156:28, 171:1, 171:6, 173:10, 173:13</p> <p>meet [5] - 21:9, 25:13, 35:20, 172:13</p> <p>meeting [45] - 44:25, 48:3, 61:24, 64:9, 64:12, 64:19, 64:20, 64:21, 64:22, 65:3, 65:5, 65:15, 65:20, 65:21, 65:24, 65:26, 66:5, 66:23, 67:10, 67:20, 68:1, 68:14, 68:20, 69:3, 69:26, 69:29, 144:18, 145:20, 159:20, 159:27, 159:29, 160:12, 160:16, 162:23, 163:24, 163:25, 166:1, 166:10, 166:14, 169:9, 169:13, 171:9, 171:12, 171:29, 172:5</p>	<p>meetings [17] - 25:13, 61:21, 65:11, 67:4, 68:23, 68:25, 68:28, 69:1, 69:25, 70:1, 143:1, 144:12, 144:15, 144:16, 144:26</p> <p>member [27] - 67:14, 94:15, 97:22, 97:23, 97:25, 97:26, 98:7, 98:8, 100:4, 100:8, 124:3, 124:5, 124:14, 124:16, 124:17, 127:3, 139:4, 139:7, 144:14, 158:27, 159:13, 170:21, 170:27, 170:28, 170:29, 171:1, 171:19</p> <p>member's [1] - 139:3</p> <p>members [12] - 63:9, 79:15, 90:29, 96:8, 96:9, 97:5, 98:5, 98:22, 107:19, 133:6, 138:27, 153:3</p> <p>memo [3] - 56:17, 58:26, 85:25</p> <p>memoire [4] - 54:29, 139:15, 139:20</p> <p>memory [9] - 8:14, 16:6, 16:18, 49:7, 53:14, 86:5, 91:3, 97:10, 99:15</p> <p>mention [5] - 69:26, 79:10, 113:16, 149:21, 149:22</p> <p>mentioned [5] - 127:8, 127:20, 166:5, 171:10, 173:29</p> <p>mentioning [1] - 37:24</p> <p>merit [1] - 106:20</p> <p>message [5] - 66:7, 66:16, 68:4, 144:18, 144:19</p> <p>met [10] - 18:18, 18:19, 21:19, 100:13, 156:2,</p>
M					

<p>156:12, 159:24, 160:2, 164:2, 169:17</p> <p>method [1] - 59:2</p> <p>Michael [2] - 130:8, 155:23</p> <p>MICHAEL [5] - 4:3, 5:12, 133:1, 148:20, 150:11</p> <p>Micheál [1] - 133:5</p> <p>microphone [2] - 15:10, 92:12</p> <p>mid [1] - 75:7</p> <p>Mid [1] - 55:23</p> <p>midday [1] - 112:14</p> <p>middle [7] - 25:21, 28:5, 91:6, 116:28, 117:2, 118:14, 126:7</p> <p>might [13] - 24:24, 34:12, 44:20, 64:25, 65:23, 93:5, 101:28, 113:15, 133:22, 137:12, 138:4, 139:14, 141:5</p> <p>mightn't [1] - 97:27</p> <p>mince [1] - 28:15</p> <p>mind [10] - 31:22, 37:12, 42:23, 45:8, 82:12, 82:15, 164:24, 164:25, 174:26</p> <p>mine [1] - 120:9</p> <p>minor [4] - 156:19, 157:13, 158:12, 158:27</p> <p>minute [10] - 50:26, 51:13, 56:13, 56:17, 58:14, 60:1, 60:14, 60:24, 61:1, 166:23</p> <p>minutes [4] - 16:7, 16:14, 60:5, 127:2</p> <p>misled [2] - 70:16, 105:19</p> <p>missed [1] - 64:12</p> <p>mistake [4] - 84:13, 85:5, 86:6, 111:5</p>	<p>misunderstand [2] - 82:11, 174:27</p> <p>misunderstood [2] - 8:6, 70:10</p> <p>Mitchelstown [38] - 16:12, 19:14, 25:23, 25:24, 30:6, 30:21, 31:1, 31:9, 31:13, 31:23, 31:28, 35:19, 38:12, 41:22, 41:26, 42:29, 47:6, 66:2, 66:7, 67:17, 67:19, 74:19, 76:5, 96:11, 96:28, 97:25, 98:9, 104:11, 106:10, 107:4, 110:9, 130:6, 140:9, 145:24, 146:18, 146:20, 165:1, 175:12</p> <p>mixing [1] - 100:22</p> <p>mobile [1] - 68:3</p> <p>modest [1] - 144:7</p> <p>moment [23] - 36:19, 37:8, 40:23, 45:29, 52:26, 64:28, 67:3, 72:16, 79:22, 83:17, 87:20, 88:1, 88:8, 88:28, 102:5, 102:19, 103:8, 103:19, 106:25, 127:6, 129:21, 139:25, 168:11</p> <p>Monday [4] - 65:26, 66:1, 68:1, 86:14</p> <p>monetary [1] - 114:3</p> <p>money [1] - 99:22</p> <p>month [5] - 116:9, 127:12, 127:14, 127:18, 127:22</p> <p>months [4] - 48:21, 50:28, 101:21, 168:10</p> <p>moreover [1] - 142:8</p> <p>morning [9] - 5:5, 53:11, 54:3,</p>	<p>55:5, 57:18, 60:7, 66:1, 145:19, 151:20</p> <p>most [8] - 10:7, 12:7, 13:21, 41:6, 50:23, 79:23, 141:12, 145:18</p> <p>motives [1] - 97:29</p> <p>mountain [1] - 106:5</p> <p>mouth [2] - 9:28, 75:23</p> <p>move [33] - 15:28, 31:7, 32:2, 32:6, 33:10, 37:10, 37:15, 38:1, 44:17, 49:5, 49:29, 61:5, 67:29, 70:20, 80:26, 80:29, 84:12, 90:5, 94:18, 97:15, 97:23, 97:26, 98:8, 117:23, 121:7, 144:10, 164:13, 164:16, 164:20, 164:23, 172:11, 175:2, 175:4</p> <p>moved [11] - 28:29, 29:8, 37:26, 49:8, 49:20, 50:7, 70:8, 97:16, 97:24, 98:6, 98:8</p> <p>movement [2] - 12:8, 95:4</p> <p>moves [2] - 98:3, 98:4</p> <p>moving [10] - 39:28, 40:19, 41:6, 50:16, 51:11, 77:11, 79:11, 88:28, 96:15, 175:9</p> <p>MR [109] - 3:1, 3:2, 3:3, 3:7, 3:7, 3:8, 4:5, 4:6, 4:7, 4:8, 4:10, 4:12, 5:5, 5:13, 5:15, 13:24, 14:14, 15:3, 26:27, 27:3, 27:5, 27:6, 27:11, 27:13, 40:4, 64:25, 64:27, 68:17, 69:8, 70:19, 82:3, 82:8, 82:10, 83:23, 84:24, 84:27,</p>	<p>85:1, 85:5, 85:8, 85:10, 85:15, 86:12, 87:23, 90:18, 90:22, 91:19, 100:3, 100:19, 100:21, 100:26, 105:5, 105:12, 105:19, 108:24, 108:26, 109:1, 109:9, 109:13, 109:23, 112:29, 125:5, 125:16, 129:8, 129:13, 129:16, 129:18, 129:21, 129:25, 132:14, 132:18, 133:2, 133:4, 140:21, 141:6, 141:14, 141:18, 141:23, 141:26, 142:5, 142:14, 142:27, 143:3, 143:5, 143:7, 143:10, 143:29, 144:10, 144:12, 147:23, 148:1, 148:5, 148:8, 148:12, 148:14, 148:17, 148:21, 148:23, 150:4, 150:12, 150:14, 153:5, 153:11, 153:23, 153:26, 154:6, 154:7, 154:20, 161:6, 175:22</p> <p>mud [1] - 101:29</p> <p>must [11] - 14:15, 21:2, 41:1, 67:13, 67:14, 71:13, 94:21, 138:11, 138:12, 138:27, 139:3</p>	<p>nature [6] - 20:1, 57:28, 58:8, 63:17, 118:20, 173:28</p> <p>Nature [1] - 118:7</p> <p>NCO [1] - 35:26</p> <p>nearby [1] - 149:29</p> <p>nearly [5] - 21:19, 77:12, 91:21, 129:18, 129:22</p> <p>necessary [7] - 50:23, 65:9, 75:22, 91:10, 95:3, 95:19, 96:20</p> <p>need [16] - 8:29, 24:3, 26:2, 29:23, 31:8, 31:27, 43:26, 57:15, 69:5, 69:8, 115:26, 144:24, 149:23, 158:10, 166:29</p> <p>needed [11] - 12:1, 30:2, 67:23, 88:24, 90:14, 114:17, 115:19, 146:17, 146:19, 163:1, 172:12</p> <p>needn't [4] - 34:24, 132:16, 136:24, 137:18</p> <p>needs [1] - 151:25</p> <p>neighbouring [1] - 149:14</p> <p>neutral [2] - 79:23, 80:15</p> <p>never [13] - 13:11, 35:11, 77:29, 88:6, 130:17, 140:27, 151:8, 166:6, 166:9, 168:26, 174:25, 175:21</p> <p>new [20] - 57:17, 124:28, 137:14, 138:19, 139:10, 139:16, 139:23, 139:27, 140:9, 141:12, 141:25, 142:26, 143:15, 144:4, 144:5, 165:12, 175:13</p> <p>next [22] - 41:6, 49:5, 53:10, 54:4, 54:14, 55:4,</p>	<p>67:29, 77:11, 80:27, 109:5, 112:15, 112:17, 117:23, 134:12, 136:6, 138:24, 147:27, 149:4, 153:23, 159:15, 172:13</p> <p>nice [2] - 148:3, 166:12</p> <p>night [10] - 25:21, 28:5, 50:20, 52:16, 52:29, 53:6, 53:7, 53:9, 140:5, 145:19</p> <p>nights [1] - 82:28</p> <p>nine [3] - 9:7, 10:7, 145:19</p> <p>ninth [3] - 9:1, 9:14, 10:5</p> <p>nobody [1] - 52:13</p> <p>Nolan [8] - 6:12, 8:28, 9:9, 11:10, 167:17, 167:19, 168:1, 174:2</p> <p>non [4] - 50:13, 61:8, 67:13, 155:20</p> <p>non-attendance [1] - 61:8</p> <p>non-effective [2] - 67:13, 155:20</p> <p>non-reporting [1] - 50:13</p> <p>none [3] - 96:16, 114:6, 140:22</p> <p>nonetheless [2] - 90:1, 127:18</p> <p>nonsense [1] - 10:17</p> <p>normal [9] - 51:12, 63:8, 63:29, 64:10, 99:7, 99:8, 149:2, 149:11</p> <p>normally [2] - 101:4, 125:17</p> <p>north [4] - 111:21, 150:26, 151:6, 155:2</p> <p>note [22] - 34:11, 55:2, 85:10, 86:3, 86:7, 96:14, 110:1, 110:7, 110:8, 113:20, 114:24, 115:16,</p>
N					
<p>name [14] - 16:5, 31:2, 31:10, 37:22, 49:21, 63:2, 85:25, 87:12, 87:17, 97:19, 109:24, 117:29, 118:5, 154:21</p> <p>names [1] - 88:14</p> <p>narrative [1] - 55:19</p> <p>national [1] - 30:11</p>					

<p>116:8, 121:4, 127:15, 158:14, 163:13, 163:17, 167:27, 169:13, 173:6, 174:7 noted [5] - 85:2, 171:15, 171:25, 172:10, 174:11 notes [7] - 13:12, 84:28, 129:20, 132:5, 171:11, 171:13, 172:20 nothing [13] - 8:15, 8:24, 14:17, 17:25, 24:7, 29:7, 32:27, 70:13, 149:16, 155:16, 169:23, 171:5, 171:17 notice [6] - 16:1, 16:26, 58:5, 151:16, 156:21, 157:6 notified [2] - 51:27, 92:11 notify [2] - 63:9, 64:3 noting [1] - 114:16 November [5] - 29:23, 30:7, 30:28, 154:24, 155:10 number [34] - 8:28, 12:7, 14:16, 36:16, 45:20, 52:15, 57:17, 57:20, 85:1, 85:2, 86:16, 88:23, 99:1, 99:13, 100:9, 100:12, 102:16, 108:20, 109:2, 113:17, 114:5, 114:23, 114:26, 115:26, 119:27, 138:9, 139:7, 142:29, 147:12, 164:29, 168:20, 169:3 numbering [1] - 85:6 numbers [1] - 57:23 numerous [2] - 96:6, 96:8</p>	<p>3:2, 148:1, 148:5, 148:8, 148:12 O'Brien [3] - 148:1, 148:3, 148:4 O'Brien [1] - 148:7 o'clock [1] - 52:29 O'HIGGINS [19] - 4:6, 133:2, 133:4, 141:6, 141:14, 141:18, 141:23, 141:26, 142:5, 142:14, 142:27, 143:3, 143:5, 143:7, 143:10, 143:29, 144:10, 144:12, 147:23 O'Higgins [1] - 143:17 O'Higgins [9] - 132:27, 133:5, 134:4, 134:17, 140:26, 141:2, 142:23, 144:9, 147:27 O'SULLIVAN [1] - 3:1 O'Sullivan [115] - 18:18, 18:19, 19:6, 19:23, 19:29, 20:5, 20:11, 20:13, 20:15, 20:17, 20:21, 20:27, 21:7, 21:10, 22:17, 23:7, 23:11, 23:16, 23:19, 23:21, 23:23, 23:25, 41:4, 44:18, 45:15, 45:22, 45:26, 46:4, 46:6, 46:18, 46:24, 46:25, 47:3, 47:23, 51:28, 52:4, 52:8, 52:16, 52:27, 53:5, 53:27, 54:11, 54:18, 55:6, 56:3, 56:16, 56:20, 60:27, 71:8, 71:21, 71:29, 72:2, 72:17, 72:19, 72:26, 73:10, 73:16, 73:26, 76:15, 78:5, 78:20,</p>	<p>78:23, 79:13, 79:21, 80:3, 80:6, 80:14, 80:16, 80:21, 80:22, 80:23, 81:1, 81:4, 81:13, 81:16, 92:11, 92:18, 92:22, 92:28, 93:2, 93:15, 94:10, 94:21, 94:28, 102:26, 102:28, 103:10, 103:22, 110:11, 110:28, 111:11, 112:28, 113:1, 113:6, 113:8, 113:10, 113:13, 116:4, 120:4, 122:9, 124:10, 125:9, 128:15, 130:11, 131:14, 132:2, 142:9, 148:2, 148:8, 155:24, 156:2, 156:12, 165:20 object [3] - 6:4, 32:9, 68:17 objected [1] - 144:4 objection [6] - 14:24, 37:26, 38:21, 41:11, 42:21, 162:13 obligation [10] - 57:4, 60:21, 106:1, 111:7, 114:10, 152:11, 152:15, 152:21, 157:25, 163:21 obligations [2] - 111:9, 123:9 obliged [12] - 5:8, 8:2, 59:15, 64:27, 104:25, 104:28, 105:1, 105:3, 105:4, 105:10, 105:11, 146:1 observations [1] - 172:28 obvious [5] - 14:14, 143:22, 145:14, 145:18 obviously [17] - 11:10, 20:2, 21:24, 28:28, 29:15, 43:22, 54:1, 55:11, 86:19, 87:21, 90:14, 93:22,</p>	<p>113:5, 113:13, 140:26, 165:4, 165:19 obviousness [1] - 29:6 occasion [6] - 16:3, 23:21, 51:22, 67:25, 69:22, 93:27 occasions [3] - 7:2, 65:13, 69:23 occupant [1] - 55:21 occupational [2] - 159:8, 159:9 Occupational [1] - 159:14 occur [3] - 47:6, 51:29, 145:21 occurred [3] - 113:9, 113:12, 141:29 occurrence [1] - 50:19 occurring [3] - 51:26, 60:5, 135:11 occurs [1] - 52:5 October [12] - 126:6, 126:18, 127:27, 128:6, 161:18, 162:9, 163:8, 163:25, 166:19, 166:23, 169:17 OF [4] - 132:21, 147:25, 150:6, 153:8 of.. [1] - 149:10 offence [2] - 55:25, 114:6 offer [4] - 166:11, 174:11, 174:15, 175:19 offered [3] - 170:28, 175:2, 175:4 offering [2] - 165:4, 165:26 office [29] - 15:23, 15:27, 35:21, 39:27, 40:10, 40:16, 40:17, 40:25, 59:27, 60:4, 60:6, 60:15, 61:2, 79:28, 80:24, 81:11, 85:22, 85:23, 86:23, 112:20, 112:21,</p>	<p>117:14, 138:14, 151:23, 152:19, 162:5, 162:10, 162:26, 163:7 Officer [4] - 166:20, 170:5, 170:17, 173:9 officer [20] - 26:20, 35:26, 41:7, 59:23, 62:11, 71:10, 73:24, 120:2, 136:2, 136:5, 138:15, 145:10, 146:10, 155:2, 156:14, 157:22, 157:27, 158:16, 159:16 Officer's [1] - 170:6 official [3] - 154:21, 169:24, 171:18 Oghuvbu [2] - 172:10, 172:16 old [1] - 140:2 older [2] - 58:13, 59:1 ON [1] - 5:1 once [14] - 35:11, 52:21, 52:23, 58:4, 65:20, 84:28, 86:6, 101:6, 111:6, 127:24, 152:3, 163:2, 175:21 one [105] - 7:14, 7:15, 7:16, 10:6, 10:18, 12:12, 13:22, 15:28, 16:11, 23:10, 25:3, 25:12, 27:8, 31:8, 31:23, 31:28, 36:16, 39:19, 42:17, 44:19, 51:14, 53:4, 53:17, 54:23, 55:5, 63:9, 64:2, 64:15, 67:16, 67:20, 69:19, 70:8, 71:2, 71:3, 72:23, 75:13, 75:17, 76:15, 76:17, 79:7, 80:18, 83:14, 83:18, 85:3, 88:24, 89:20, 90:5, 90:10, 90:14,</p>	<p>91:21, 91:22, 92:5, 93:22, 96:9, 97:22, 99:8, 99:26, 100:24, 100:28, 101:1, 101:2, 101:4, 101:22, 101:23, 101:25, 104:24, 104:25, 104:26, 104:29, 105:1, 105:10, 105:11, 105:26, 113:1, 118:4, 119:6, 121:7, 127:12, 129:29, 130:4, 132:14, 139:7, 141:26, 142:27, 144:1, 144:3, 144:28, 148:17, 148:24, 149:7, 149:21, 149:29, 151:25, 151:29, 157:22, 157:27, 164:27, 164:28, 167:28, 168:29, 172:7 one-hour [4] - 99:26, 101:4, 101:22, 101:23 one-hours [2] - 101:1, 101:2 one.. [1] - 64:14 ones [1] - 105:10 ongoing [9] - 35:28, 71:22, 71:28, 73:17, 73:19, 144:22, 146:28, 146:29, 147:2 open [9] - 7:14, 24:4, 26:2, 50:23, 64:26, 82:3, 128:23, 148:25, 163:4 opened [12] - 7:15, 7:16, 26:1, 50:25, 55:15, 55:17, 56:6, 69:11, 89:5, 89:19, 93:29, 129:27 operating [1] - 165:1 operation [1] - 123:29 operational [5] - 134:21, 134:24, 135:3, 136:15, 136:16</p>
O					
O'BRIEN [5] -					

<p>operations [1] - 136:29</p> <p>opinion [13] - 11:14, 11:17, 17:7, 25:1, 26:21, 80:13, 80:21, 80:23, 81:8, 81:12, 89:22, 145:9, 173:13</p> <p>opportunity [2] - 18:22, 97:12</p> <p>opposed [1] - 131:2</p> <p>option [3] - 24:20, 31:28, 173:27</p> <p>or... [1] - 147:7</p> <p>order [8] - 17:15, 21:10, 104:4, 106:20, 107:12, 137:3, 147:28, 162:15</p> <p>ordinary [5] - 32:29, 68:27, 114:6, 125:7, 125:21</p> <p>organisation [2] - 26:22, 151:26</p> <p>original [4] - 9:7, 11:9, 44:10, 58:18</p> <p>ostensibly [3] - 108:15, 119:12, 123:26</p> <p>otherwise [3] - 52:14, 56:25</p> <p>outcome [1] - 172:2</p> <p>outline [3] - 42:4, 158:10, 163:29</p> <p>outlined [2] - 137:6, 173:26</p> <p>outlining [3] - 162:3, 162:6, 162:14</p> <p>outset [1] - 86:5</p> <p>outside [10] - 18:8, 145:23, 156:14, 157:18, 158:1, 159:1, 159:16, 160:6, 164:6, 170:13</p> <p>outstanding [1] - 109:3</p> <p>overall [1] - 147:8</p> <p>overarching [1] - 147:9</p> <p>overlaps [1] -</p>	<p>86:14</p> <p>overly [2] - 142:20, 143:14</p> <p>overrule [1] - 43:12</p> <p>overseer [2] - 145:24, 145:29</p> <p>overtime [8] - 119:21, 119:22, 122:20, 123:5, 125:8, 125:21, 128:11</p> <p>own [17] - 6:29, 10:25, 11:5, 18:9, 44:19, 45:8, 52:20, 52:28, 67:6, 103:7, 113:13, 135:22, 171:12, 174:29, 175:6, 175:9</p>	<p>82:13, 82:14, 82:15, 85:1, 85:2, 85:5, 85:6, 95:28, 95:29, 104:6, 106:26, 108:15, 108:20, 111:13, 116:17, 116:28, 117:2, 118:12, 118:14, 119:7, 119:29, 120:7, 120:12, 121:25, 125:21, 126:3, 129:28, 133:21, 133:22, 133:25, 134:12, 135:9, 136:6, 137:13, 138:4, 138:7, 138:8, 138:23, 138:24, 139:14, 145:1, 156:5, 156:6, 156:29, 158:4, 158:21, 161:12, 161:22, 166:28, 167:12, 169:12, 173:3</p> <p>pages [9] - 7:13, 75:8, 77:12, 85:16, 119:7, 122:16, 136:7, 138:4</p> <p>paid [2] - 99:22, 128:18</p> <p>paper [3] - 21:15, 60:22, 78:9</p> <p>papers [3] - 95:15, 149:22, 149:26</p> <p>paperwork [5] - 103:18, 113:21, 113:22, 115:3</p> <p>paragraph [15] - 26:17, 38:7, 38:20, 42:22, 66:24, 75:5, 96:1, 110:4, 136:10, 156:10, 158:11, 158:26, 159:11, 159:15, 173:6</p> <p>paragraphs [2] - 65:28, 110:20</p> <p>paraphrasing [3] - 21:23, 61:22, 62:14</p> <p>pardon [10] - 8:19, 12:20, 49:27, 52:22, 54:27, 75:2, 87:29, 92:12, 123:12, 156:6</p>	<p>parenthesis [1] - 29:17</p> <p>park [1] - 163:26</p> <p>PARLIAMENT [1] - 3:10</p> <p>part [13] - 12:17, 46:20, 64:26, 75:26, 77:1, 88:10, 88:11, 105:7, 105:29, 111:8, 141:19, 147:16, 169:17</p> <p>particular [19] - 7:26, 9:4, 9:17, 12:19, 12:22, 51:17, 62:29, 63:12, 65:13, 67:7, 93:3, 115:18, 117:21, 118:12, 119:24, 121:21, 122:29, 131:3, 164:24</p> <p>parties [1] - 153:29</p> <p>parts [2] - 5:26, 32:3</p> <p>pass [1] - 174:1</p> <p>passages [2] - 69:11, 69:16</p> <p>past [3] - 16:6, 65:1, 112:2</p> <p>Patrick [1] - 148:1</p> <p>PATRICK [1] - 3:2</p> <p>Paul [35] - 21:21, 22:7, 32:10, 32:12, 33:9, 34:6, 36:17, 37:25, 41:12, 41:21, 43:16, 44:2, 44:3, 44:6, 45:12, 45:22, 46:5, 56:24, 63:14, 63:19, 63:24, 64:6, 64:17, 66:3, 68:2, 76:13, 82:21, 87:5, 88:21, 89:12, 104:15, 107:7, 130:3, 155:13, 164:8</p> <p>PAUL [2] - 3:1, 3:7</p> <p>pay [1] - 160:9</p> <p>payment [4] - 114:3, 119:20, 122:21</p> <p>pejoratively [2] - 24:25, 50:7</p>	<p>pen [3] - 11:24, 108:2, 117:27</p> <p>penalisation [1] - 14:4</p> <p>pending [2] - 168:19, 172:2</p> <p>penultimate [1] - 26:17</p> <p>people [16] - 17:9, 36:16, 96:23, 97:8, 97:10, 98:21, 101:3, 110:11, 113:1, 115:24, 128:11, 141:12, 144:4, 144:19, 146:22, 169:2</p> <p>per [1] - 42:29</p> <p>percent [4] - 39:14, 39:19, 94:25, 117:12</p> <p>perform [8] - 62:11, 62:15, 93:6, 113:16, 145:9, 145:10, 145:16, 146:10</p> <p>performed [4] - 111:29, 112:7, 116:24, 119:16</p> <p>performing [1] - 106:14</p> <p>perhaps [10] - 5:25, 6:2, 26:13, 51:21, 57:15, 58:7, 77:10, 97:6, 145:14, 151:25</p> <p>period [22] - 59:8, 77:15, 78:1, 82:25, 100:10, 102:2, 116:19, 117:18, 117:19, 119:25, 123:1, 127:14, 127:19, 127:22, 128:1, 128:2, 128:5, 139:23, 140:12, 140:19, 147:13, 161:27</p> <p>permanent [1] - 174:21</p> <p>permission [3] - 115:17, 115:18, 132:2</p> <p>Perry [2] - 57:20, 79:9</p> <p>persist [3] - 62:1, 73:11, 127:15</p> <p>person [21] - 21:5, 21:20, 23:1,</p>	<p>25:14, 25:20, 58:29, 60:23, 72:29, 76:26, 85:11, 85:24, 85:28, 108:11, 117:3, 128:17, 146:25, 149:7, 163:22, 164:6, 164:18, 173:19</p> <p>personal [4] - 15:24, 47:8, 47:25, 135:12</p> <p>personnel [3] - 43:1, 95:4, 136:16</p> <p>persons [1] - 173:29</p> <p>pertain [1] - 25:11</p> <p>pertained [1] - 12:7</p> <p>pertaining [2] - 91:23, 93:16</p> <p>pertinent [3] - 46:20, 58:7, 103:27</p> <p>Peter [1] - 85:14</p> <p>petrol [1] - 17:15</p> <p>phone [21] - 6:11, 21:15, 21:20, 36:3, 52:15, 53:1, 53:4, 54:25, 55:4, 63:24, 66:6, 66:16, 66:21, 67:8, 67:26, 68:4, 87:2, 142:9, 160:21, 160:25</p> <p>phoned [1] - 68:28</p> <p>phrase [1] - 101:10</p> <p>phrased [1] - 11:3</p> <p>phraseology [1] - 23:27</p> <p>physically [3] - 21:9, 21:10, 51:19</p> <p>pick [1] - 67:7</p> <p>picked [2] - 13:13, 142:29</p> <p>picking [1] - 66:20</p> <p>picture [2] - 11:24, 71:26</p> <p>piece [5] - 11:22, 14:9, 60:22, 72:10, 78:8</p> <p>piecemeal [3] -</p>
P					
	<p>PAF [28] - 25:13, 64:8, 64:12, 64:20, 64:22, 65:5, 65:10, 65:15, 65:20, 65:24, 65:25, 66:5, 66:22, 67:4, 67:16, 67:18, 67:20, 68:1, 68:13, 68:22, 69:25, 69:28, 70:1, 143:1, 144:12, 144:26, 145:20</p> <p>PAGE [1] - 4:2</p> <p>page [104] - 6:20, 6:22, 7:11, 7:15, 7:17, 7:23, 7:24, 10:11, 10:23, 13:7, 18:23, 26:1, 26:14, 26:17, 27:4, 27:8, 31:20, 33:18, 34:20, 37:18, 41:17, 41:18, 42:23, 46:12, 51:15, 53:17, 54:4, 54:14, 55:15, 55:17, 57:17, 57:19, 57:22, 57:23, 59:21, 61:10, 64:7, 64:9, 65:27, 66:28, 67:29, 71:14, 71:19, 74:16, 74:29, 82:12,</p>				

<p>87:16, 88:2, 88:11</p> <p>pieces [1] - 56:7</p> <p>pilot [2] - 140:15, 140:17</p> <p>pique [1] - 79:22</p> <p>place [6] - 38:12, 48:9, 48:11, 74:18, 159:21, 160:17</p> <p>placed [2] - 29:17, 47:24</p> <p>plan [3] - 44:10, 135:11, 136:28</p> <p>plans [2] - 134:24, 135:2</p> <p>platform [1] - 137:5</p> <p>pleases [1] - 15:3</p> <p>PM [2] - 54:13, 54:19</p> <p>PM [1] - 54:3</p> <p>point [23] - 11:26, 19:17, 33:10, 35:25, 43:28, 43:29, 47:22, 62:24, 67:11, 69:9, 70:3, 73:29, 79:9, 88:28, 92:6, 98:12, 100:3, 110:27, 131:3, 146:26, 159:15, 164:20, 165:4</p> <p>pointed [3] - 30:2, 164:14, 172:5</p> <p>points [1] - 138:9</p> <p>policing [6] - 119:23, 133:28, 135:12, 136:28, 153:1, 166:26</p> <p>policy [5] - 20:17, 90:26, 90:28, 91:2, 91:5</p> <p>poorly [1] - 11:3</p> <p>portfolio [1] - 136:26</p> <p>portion [2] - 53:24, 133:21</p> <p>position [10] - 5:19, 11:27, 15:18, 30:2, 67:7, 142:11, 143:12, 143:25, 144:9, 170:8</p> <p>possession [2] - 10:19, 15:24</p>	<p>possibility [3] - 72:6, 113:15, 141:19</p> <p>possible [7] - 5:26, 64:19, 80:15, 93:24, 94:8, 95:15, 128:9</p> <p>possibly [5] - 5:28, 6:14, 35:18, 40:20, 93:4</p> <p>post [5] - 15:10, 45:28, 80:25, 81:8, 81:9</p> <p>postdating [1] - 120:19</p> <p>postmortem [2] - 53:14, 55:24</p> <p>potential [8] - 7:27, 8:9, 8:12, 8:28, 9:24, 10:1, 51:3, 52:10</p> <p>practical [4] - 144:14, 145:25, 146:15, 164:15</p> <p>practice [10] - 57:7, 57:13, 59:9, 60:25, 94:14, 130:8, 130:16, 130:17, 130:19, 130:20</p> <p>practitioner [1] - 145:3</p> <p>pre [3] - 57:3, 59:2, 122:14</p> <p>pre-existing [2] - 57:3, 59:2</p> <p>pre-titled [1] - 122:14</p> <p>preamble [1] - 106:5</p> <p>preceding [1] - 37:23</p> <p>precise [2] - 88:14</p> <p>preclude [2] - 46:1, 47:13</p> <p>precluded [1] - 24:15</p> <p>precludes [1] - 37:7</p> <p>precluding [2] - 32:16, 62:7</p> <p>predated [2] - 122:10, 122:11</p> <p>predates [1] - 122:14</p> <p>prefer [1] - 154:12</p> <p>preferable [1] -</p>	<p>74:1</p> <p>preference [5] - 31:12, 31:24, 33:11, 33:21, 34:3</p> <p>prepare [1] - 56:25</p> <p>prepared [4] - 36:29, 56:27, 78:27, 95:1</p> <p>preplanned [1] - 17:25</p> <p>prepopulated [1] - 122:13</p> <p>presence [1] - 62:8</p> <p>presented [1] - 147:2</p> <p>preserve [1] - 54:2</p> <p>preserved [1] - 55:24</p> <p>presumably [2] - 56:18, 68:12</p> <p>presume [4] - 97:7, 128:23, 149:6, 162:28</p> <p>pretty [1] - 39:24</p> <p>previous [11] - 23:13, 25:10, 28:2, 48:21, 64:16, 68:6, 69:23, 93:27, 114:2, 115:14, 118:19</p> <p>previously [9] - 42:17, 46:6, 73:9, 73:23, 82:8, 89:19, 108:14, 120:27, 138:18</p> <p>primary [1] - 13:21</p> <p>principally [1] - 150:19</p> <p>principle [1] - 100:11</p> <p>prints [2] - 109:24</p> <p>priority [1] - 134:21</p> <p>problem [16] - 5:23, 49:1, 77:1, 84:26, 85:4, 86:26, 87:10, 87:11, 88:10, 88:12, 90:24, 94:23, 114:27, 144:14, 144:16, 163:2</p> <p>procedures [1] -</p>	<p>143:15</p> <p>proceed [4] - 5:19, 42:29, 70:14</p> <p>proceeding [1] - 19:5</p> <p>process [3] - 123:20, 124:19, 124:20</p> <p>processes [1] - 134:22</p> <p>procured [1] - 167:19</p> <p>produced [4] - 41:9, 43:23, 47:12, 48:10</p> <p>professional [1] - 134:8</p> <p>progress [1] - 135:1</p> <p>prolonging [1] - 174:4</p> <p>prompt [1] - 136:29</p> <p>pronounced [1] - 55:22</p> <p>proper [2] - 137:1, 152:29</p> <p>properly [1] - 14:7</p> <p>propose [2] - 7:14, 11:21</p> <p>proposed [1] - 96:4</p> <p>proposition [4] - 68:18, 69:20, 92:8, 92:14</p> <p>prosecution [1] - 131:25</p> <p>protected [3] - 14:3, 147:12, 151:11</p> <p>prove [1] - 10:19</p> <p>provide [7] - 83:2, 83:29, 88:3, 95:19, 162:27, 173:21</p> <p>provided [7] - 5:9, 79:11, 84:22, 88:5, 134:9, 136:5, 145:3</p> <p>providing [1] - 15:17</p> <p>provision [1] - 152:29</p> <p>provisions [3] - 42:26, 136:26, 167:3</p> <p>précis [1] - 11:25</p>	<p>public [1] - 58:1</p> <p>publicity [1] - 58:2</p> <p>Pulse [7] - 55:11, 55:12, 55:14, 56:21, 59:18, 60:29, 142:7</p> <p>punctilious [1] - 142:21</p> <p>PURCELL [1] - 3:8</p> <p>purely [1] - 161:8</p> <p>Purpose [1] - 133:26</p> <p>purpose [3] - 29:7, 136:12, 171:28</p> <p>purposes [1] - 71:11</p> <p>pursuant [2] - 44:7, 149:7</p> <p>pursued [1] - 69:29</p> <p>push [1] - 113:14</p> <p>pushing [3] - 76:22, 147:4, 166:11</p> <p>put [40] - 7:24, 9:27, 12:8, 13:6, 16:28, 26:4, 26:25, 27:27, 31:19, 32:11, 33:9, 42:17, 45:20, 45:27, 46:8, 48:7, 48:8, 48:11, 49:3, 49:7, 57:11, 61:9, 69:15, 81:8, 81:15, 83:17, 91:4, 92:14, 97:11, 98:11, 103:20, 116:6, 116:7, 129:26, 133:22, 140:12, 140:22, 150:17, 151:21, 174:21</p> <p>puts [1] - 60:23</p> <p>putting [13] - 23:20, 28:13, 29:5, 44:12, 69:9, 73:19, 74:17, 75:23, 122:13, 123:27, 128:8, 129:2, 139:5</p> <p>puzzled [1] - 109:21</p>	<p>Q</p> <p>quality [1] - 134:7</p> <p>QUAY [1] - 3:4</p> <p>query [2] - 131:28, 144:7</p> <p>querying [2] - 102:5, 143:12</p> <p>questioned [1] - 68:22</p> <p>QUESTIONED [2] - 4:8, 150:11</p> <p>questioning [3] - 5:16, 68:19, 70:17</p> <p>questions [7] - 14:25, 24:5, 45:20, 148:5, 148:10, 153:11, 153:13</p> <p>quibble [1] - 128:3</p> <p>quibbling [1] - 87:1</p> <p>Quilter [5] - 50:27, 148:14, 148:15, 158:8, 172:24</p> <p>QUILTER [1] - 3:7</p> <p>quilter [6] - 56:13, 58:14, 58:26, 60:15, 60:24, 148:26</p> <p>quilter's [1] - 60:1</p> <p>Quinn [31] - 31:2, 31:10, 31:14, 31:24, 32:4, 32:13, 33:12, 33:17, 33:21, 34:3, 36:7, 43:15, 44:1, 44:10, 82:28, 84:16, 84:20, 85:12, 86:7, 86:11, 86:13, 86:17, 86:28, 87:2, 87:3, 88:19, 130:7, 131:12, 131:13, 132:9, 132:10</p> <p>Quinn's [1] - 85:27</p> <p>quite [9] - 14:7, 14:14, 17:23, 50:25, 76:21, 79:12, 81:1, 81:4,</p>
---	--	---	---	--	--

99:20 quiz [2] - 49:7, 86:5 quotation [3] - 26:5, 27:28, 28:13 quotations [1] - 26:26 quote [1] - 46:13	53:19, 53:29, 79:27, 162:22 ready [1] - 5:4 reality [1] - 32:8 really [19] - 10:1, 11:23, 29:4, 31:26, 32:3, 32:27, 45:18, 60:18, 73:29, 94:18, 95:18, 110:19, 110:21, 124:8, 136:4, 148:17, 153:2, 168:5, 168:6 reason [5] - 38:22, 71:20, 72:18, 173:10 reasonable [3] - 87:9, 87:11, 172:11 reasonably [1] - 133:11 reasons [2] - 95:19, 125:27 rebuke [1] - 70:18 receipt [3] - 10:14, 56:15, 83:23 receive [1] - 86:18 received [12] - 15:5, 77:12, 104:7, 110:1, 111:19, 112:20, 120:22, 120:24, 155:29, 162:7, 164:5, 172:23 receiving [2] - 86:17, 86:18 recipient [1] - 146:26 recognise [1] - 117:6 recognised [2] - 102:14, 111:8 recognition [1] - 103:1 recollect [3] - 86:3, 86:17, 86:18 recollection [11] - 39:23, 65:4, 71:12, 131:13, 131:15, 132:14, 159:22, 159:25, 159:28, 160:1, 161:6 recommence [1] - 53:8	recommend [1] - 157:27 recommendati on [1] - 138:13 record [7] - 5:9, 6:20, 16:6, 29:7, 64:21, 69:10, 114:16 recorded [2] - 76:20, 92:15 records [1] - 112:26 redacted [2] - 42:2, 53:23 refer [10] - 7:26, 8:4, 8:10, 41:24, 51:10, 51:22, 53:19, 107:10, 161:27, 167:11 reference [21] - 8:9, 9:23, 22:18, 50:29, 51:9, 56:14, 58:10, 58:28, 59:4, 59:24, 65:14, 82:23, 87:29, 97:9, 106:8, 115:10, 122:27, 123:2, 123:3, 158:27, 167:6 referenced [3] - 5:16, 131:28, 149:23 references [2] - 9:13, 126:7 referencing [1] - 83:16 referred [12] - 6:15, 9:23, 10:1, 19:17, 36:25, 57:3, 59:1, 60:24, 75:8, 85:11, 108:14, 149:26 referring [6] - 64:26, 95:4, 105:29, 113:23, 116:25, 128:22 refers [4] - 52:28, 87:26, 121:25, 156:24 reflect [1] - 86:1 refreshes [1] - 97:10 refused [1] - 170:29 refusing [1] - 152:27 reg [1] - 151:16 regard [8] - 19:15, 28:8,	28:16, 57:1, 69:22, 82:24, 94:5, 161:9 regarded [1] - 28:10 regarding [3] - 83:25, 130:3, 145:1 regardless [2] - 53:1, 89:10 regimes [1] - 144:5 Region [1] - 158:6 Regional [1] - 55:23 regional [8] - 51:5, 51:6, 58:15, 58:19, 60:4, 60:6, 60:15, 61:2 registrar [1] - 8:2 regularly [2] - 41:2, 166:25 Regulation [14] - 15:29, 16:1, 16:26, 22:7, 22:19, 23:7, 23:12, 23:17, 156:20, 156:21, 157:5, 158:13, 158:28, 170:25 regulations [2] - 20:6, 161:29 reiteration [1] - 138:21 relate [2] - 116:19, 120:14 related [14] - 18:15, 18:28, 19:16, 20:18, 20:25, 21:29, 103:27, 155:21, 155:25, 157:2, 159:10, 163:21, 165:15, 173:14 relates [4] - 70:23, 103:28, 119:26, 126:5 relating [2] - 45:16, 46:22 relation [46] - 7:5, 12:22, 13:21, 13:27, 13:29, 14:11, 23:26, 31:1, 42:1, 45:21, 46:9, 62:29, 64:8, 68:11, 68:21, 68:22, 69:2, 91:5, 94:29, 99:25,	102:2, 123:19, 130:2, 131:28, 132:4, 132:6, 135:27, 139:12, 143:12, 144:12, 144:21, 144:23, 145:25, 151:7, 151:8, 151:19, 152:26, 160:18, 162:3, 168:13, 169:23, 171:17, 172:19, 174:19, 174:27, 175:18 relative [2] - 38:13, 38:14 relatives [1] - 38:3 relayed [1] - 56:20 relevance [1] - 142:27 relevant [6] - 69:11, 69:16, 103:19, 136:26, 141:18, 143:16 relied [4] - 63:1, 63:4, 68:14, 137:29 relief [2] - 11:19, 11:20 relies [1] - 137:8 relying [3] - 14:21, 63:13 remaining [1] - 120:7 remains [1] - 73:19 remember [16] - 7:29, 12:25, 15:14, 26:6, 57:5, 59:12, 61:13, 63:2, 63:7, 91:7, 96:27, 127:19, 129:27, 155:14, 155:17, 169:21 remembered [1] - 97:4 reminds [1] - 127:6 remit [2] - 134:3, 151:29 render [1] - 166:25 repeated [1] - 14:15 repeating [2] - 11:6, 88:17 rephrase [1] - 24:24 replace [1] -	97:5 replaced [1] - 155:9 reply [3] - 69:8, 106:22, 107:25 report [42] - 21:17, 38:11, 51:1, 55:21, 56:25, 56:28, 56:29, 58:11, 58:29, 59:11, 59:15, 60:3, 60:6, 60:24, 61:1, 67:16, 74:29, 75:1, 75:9, 75:16, 82:24, 83:4, 83:9, 83:29, 88:14, 88:24, 91:28, 92:16, 106:8, 107:13, 108:4, 108:8, 141:29, 142:12, 142:18, 157:1, 158:25, 159:5, 159:6, 167:9, 173:11 reported [6] - 19:12, 56:9, 57:9, 57:27, 60:4, 155:19 reporting [8] - 50:13, 50:16, 56:15, 58:8, 67:17, 138:28, 158:25 reports [3] - 84:16, 88:23, 139:4 representation [1] - 67:20 represented [1] - 67:14 request [16] - 34:27, 41:9, 41:14, 69:2, 75:27, 77:1, 77:5, 81:23, 98:18, 102:6, 106:4, 108:16, 123:3, 131:14, 158:17, 158:29 requested [4] - 55:25, 108:9, 159:16, 169:27 require [6] - 60:8, 107:12, 135:26, 145:10, 162:13, 163:17 required [8] - 61:4, 94:24, 107:25, 135:24,
R					
radio [1] - 66:11 raise [4] - 36:29, 44:3, 87:6, 170:16 raised [7] - 35:11, 37:26, 41:11, 41:29, 130:2, 172:16, 175:21 raises [1] - 61:7 raising [1] - 36:18 rang [8] - 21:14, 44:28, 52:23, 53:9, 53:13, 66:5, 66:7, 68:3 range [1] - 143:5 rank [6] - 94:16, 114:6, 137:28, 154:26, 157:23, 158:17 rankled [1] - 151:4 ranks [1] - 133:12 rape [2] - 61:25, 63:29 Rathcormac [1] - 96:28 rather [5] - 53:18, 58:16, 79:11, 94:13, 122:14 rationale [1] - 73:9 rd [1] - 82:25 re [3] - 41:21, 104:14, 111:24 reaction [1] - 141:11 read [11] - 5:18, 74:3, 85:10, 97:9, 107:6, 110:4, 110:7, 112:23, 131:16, 157:5, 160:11 reading [4] -					

142:12, 144:15, 162:20 requirement [4] - 77:20, 136:1, 142:17, 142:18 requirements [1] - 114:11 requires [2] - 20:28, 137:5 requiring [2] - 60:23, 141:28 researches [1] - 131:1 resides [1] - 38:14 residing [2] - 38:15, 42:1 resolved [3] - 164:11, 165:24, 174:23 Resource [2] - 158:23, 162:12 Resources [3] - 37:21, 41:10, 167:16 respect [13] - 37:3, 43:21, 48:16, 54:23, 55:12, 55:18, 60:9, 73:7, 80:1, 103:19, 122:12, 131:2, 141:29 respectfully [1] - 159:13 respond [1] - 160:10 responded [5] - 15:4, 15:8, 142:25, 143:24, 143:26 responding [1] - 108:16 response [9] - 16:28, 24:5, 38:7, 41:9, 41:14, 41:16, 42:18, 45:19, 141:14 responsibilitie s [3] - 133:12, 134:14, 134:16 responsibility [9] - 56:28, 58:11, 58:21, 59:5, 80:19, 135:18, 136:3, 146:13 responsible [3] - 56:14, 59:10, 93:7 rest [6] - 83:7, 83:9, 104:19,	118:8, 118:9 restart [1] - 10:13 restating [1] - 56:26 result [2] - 54:3, 54:19 RESUMED [1] - 91:16 retained [3] - 14:20, 15:21, 15:22 retired [10] - 75:6, 97:5, 130:2, 130:5, 131:12, 148:15, 153:23, 154:23, 154:26, 155:10 retirement [2] - 171:2, 171:6 retiring [3] - 96:22, 96:23, 97:10 return [3] - 84:25, 106:10, 106:17 reverse [1] - 125:1 review [1] - 135:1 reviewed [1] - 166:20 revolved [1] - 74:10 reward [1] - 104:29 ridiculous [1] - 36:6 rights [2] - 24:13, 146:29 ring [2] - 66:9, 67:22 rise [3] - 57:29, 58:1, 144:17 road [2] - 126:10, 145:23 Road [45] - 98:16, 98:20, 100:14, 102:3, 102:13, 103:2, 104:14, 104:20, 106:1, 107:6, 111:6, 112:5, 114:11, 119:13, 119:15, 122:15, 122:19, 122:21, 122:27, 123:9, 124:20, 124:25, 124:27, 125:3, 125:7, 125:22,	125:26, 126:1, 126:2, 126:8, 126:10, 126:11, 126:12, 128:10, 128:12, 128:22, 129:26, 130:3, 130:23, 130:27, 130:28, 131:15, 132:2, 132:5 ROBERT [1] - 3:8 role [11] - 47:3, 124:11, 134:3, 136:8, 136:21, 137:4, 145:24, 145:29, 149:18, 152:3, 152:4 roles [3] - 133:11, 133:20, 133:24 room [3] - 11:21, 26:9, 43:28 roster [11] - 118:24, 118:27, 119:25, 124:28, 126:5, 127:1, 137:14, 139:23, 139:27, 140:2, 142:26 rostered [3] - 100:4, 100:8, 128:1 rosters [4] - 139:10, 140:17, 141:12, 141:25 roughly [5] - 49:10, 54:26, 54:28, 98:2, 130:29 RSA [1] - 112:8 rule [2] - 138:19, 138:20 rules [2] - 144:5, 157:21 ruling [1] - 70:18 run [3] - 28:19, 61:20, 138:4 rural [1] - 38:15	125:13, 125:15, 125:16, 125:18, 128:14, 130:10, 170:28 sanctioned [11] - 103:10, 106:9, 106:13, 107:13, 110:24, 112:26, 124:10, 125:10, 129:4, 129:6, 170:21 sanctioning [4] - 113:8, 120:2, 127:16, 128:28 sandwiched [1] - 108:18 satisfied [1] - 116:9 satisfy [1] - 84:17 Saturday [1] - 112:15 save [2] - 13:28, 75:13 saw [8] - 16:13, 79:19, 81:5, 81:7, 92:17, 145:1, 168:20, 171:6 SC [2] - 3:1, 3:7 scene [6] - 54:2, 54:12, 55:24, 55:25, 146:1, 146:4 scenes [2] - 54:2, 54:11 school [1] - 93:9 screen [7] - 156:5, 161:12, 161:22, 163:18, 166:29, 169:12, 173:3 scroll [12] - 27:8, 53:22, 54:7, 57:21, 85:18, 87:20, 106:25, 108:1, 111:14, 112:19, 126:6, 173:4 scrolling [2] - 42:23, 134:28 sealed [1] - 162:28 SEAN [1] - 3:3 search [1] - 149:9 searched [1] - 13:14 second [11] - 26:14, 26:16, 26:17, 38:7, 79:7,	85:3, 87:5, 124:6, 128:26, 157:2, 159:11 secondly [3] - 139:1, 160:7, 166:9 secretary [1] - 171:12 secretary's [1] - 171:11 Security [4] - 57:27, 58:4, 58:16, 58:22 security [1] - 57:28 see [71] - 17:11, 25:25, 28:3, 34:10, 42:12, 42:14, 42:15, 43:1, 44:6, 46:28, 50:24, 53:23, 53:27, 54:7, 54:14, 55:19, 66:14, 77:6, 77:11, 78:15, 80:15, 82:17, 85:12, 85:19, 85:25, 86:27, 90:4, 91:27, 92:3, 92:22, 97:9, 102:1, 104:8, 107:23, 107:27, 108:1, 111:14, 111:16, 111:22, 116:16, 117:25, 122:21, 124:24, 125:4, 126:6, 127:23, 128:25, 129:21, 133:25, 134:15, 136:10, 137:26, 145:6, 148:3, 156:7, 157:2, 157:19, 158:11, 158:23, 158:26, 159:9, 160:7, 169:12, 169:20, 170:19, 171:11, 171:15, 173:4, 173:10, 175:10 seeking [6] - 68:24, 77:23, 104:21, 111:8, 170:29, 171:1 seem [12] - 6:3, 14:26, 39:12, 43:14, 58:8, 79:3, 86:1, 110:17, 113:8, 144:8, 157:13, 159:26	segue [1] - 69:19 send [4] - 20:21, 44:2, 84:20, 163:1 sending [8] - 27:21, 35:8, 35:12, 36:5, 61:1, 65:10, 157:26, 159:6 sends [1] - 58:26 senior [5] - 36:15, 41:6, 51:2, 133:6, 147:10 sense [7] - 23:15, 28:7, 32:5, 32:13, 33:5, 76:28, 142:28 sent [39] - 7:12, 9:8, 9:10, 19:23, 19:29, 20:11, 20:13, 21:17, 36:21, 37:23, 39:2, 39:3, 39:20, 39:22, 43:24, 44:4, 51:1, 51:14, 56:17, 67:3, 83:11, 84:16, 89:6, 96:24, 97:4, 97:24, 98:9, 104:6, 106:27, 158:5, 158:22, 161:14, 161:23, 162:21, 163:3, 166:23, 172:27, 172:28, 173:5 sentence [3] - 26:18, 66:27, 67:12 separate [3] - 87:18, 123:18, 144:27 September [12] - 96:8, 127:27, 128:1, 128:6, 156:3, 156:9, 156:13, 159:20, 160:13, 160:17, 162:4, 162:23 sequencing [2] - 110:15, 110:19 Sergeant [63] - 33:11, 41:21, 43:29, 66:3, 74:18, 74:29, 75:27, 75:28, 75:29, 76:1, 76:10, 77:2, 77:13, 77:20,
S					
safe [1] - 173:21 sake [2] - 129:28, 141:4 sanction [15] - 107:12, 110:11, 110:12, 110:18, 110:29, 114:23, 114:29, 115:3,					

<p>77:27, 77:29, 78:4, 78:12, 78:18, 78:24, 78:26, 81:22, 82:1, 82:16, 82:21, 82:28, 83:5, 83:6, 83:11, 83:29, 86:9, 86:11, 86:13, 86:28, 87:2, 87:3, 88:19, 88:20, 89:18, 89:22, 89:26, 97:18, 97:20, 98:2, 98:3, 104:15, 106:13, 107:2, 107:7, 108:2, 108:6, 108:25, 109:23, 110:22, 110:23, 110:29, 129:29, 130:2, 130:7, 131:12, 132:9, 132:10, 155:13</p> <p>sergeant [249] - 14:6, 18:19, 18:27, 19:11, 22:26, 23:5, 25:23, 29:24, 30:3, 30:29, 31:2, 31:8, 31:9, 31:11, 31:13, 31:22, 31:27, 32:5, 32:6, 32:18, 32:19, 32:20, 32:28, 34:1, 34:2, 35:1, 35:12, 35:16, 37:2, 38:10, 38:11, 38:16, 38:21, 41:26, 41:29, 42:4, 42:27, 43:16, 45:16, 45:25, 46:17, 46:23, 47:7, 47:9, 47:21, 50:29, 51:9, 56:14, 57:4, 57:11, 58:29, 59:10, 59:13, 59:19, 60:20, 61:20, 62:12, 62:16, 64:2, 65:4, 65:5, 66:4, 66:9, 66:11, 66:12, 66:21, 67:8, 67:12, 67:15, 67:16, 67:18, 67:19, 67:22, 68:3, 68:20, 68:28, 69:3, 74:18, 74:20, 75:7, 75:29, 76:2,</p>	<p>76:4, 76:6, 77:2, 77:5, 77:6, 77:14, 77:21, 77:26, 78:6, 78:17, 82:23, 83:1, 83:4, 83:9, 87:12, 87:17, 87:18, 88:25, 88:26, 90:8, 90:9, 90:14, 90:26, 90:27, 91:1, 94:9, 94:16, 96:14, 96:17, 98:7, 104:11, 106:6, 106:9, 107:1, 108:4, 108:9, 108:10, 108:26, 109:2, 110:9, 111:5, 111:20, 111:25, 114:5, 117:1, 117:2, 117:10, 117:13, 117:15, 117:29, 118:2, 118:5, 118:18, 118:19, 119:19, 121:12, 121:20, 121:22, 121:26, 121:29, 122:3, 122:15, 123:26, 124:7, 124:12, 124:16, 126:10, 126:11, 126:12, 126:22, 126:23, 126:28, 127:3, 128:13, 128:25, 128:29, 129:3, 129:4, 130:5, 130:6, 135:26, 135:27, 135:29, 136:3, 136:9, 136:11, 136:14, 136:15, 136:22, 137:6, 137:8, 137:23, 137:28, 137:29, 138:13, 138:27, 139:3, 139:9, 140:6, 140:9, 140:20, 141:4, 141:7, 141:9, 141:19, 141:28, 142:19, 142:28, 144:21, 144:26, 145:9, 145:15, 145:22, 146:1, 146:3, 146:4, 146:12, 146:19, 146:21, 146:22, 146:23, 147:1, 147:11, 147:18, 151:17, 152:13, 153:4,</p>	<p>155:19, 155:25, 156:2, 156:12, 156:13, 156:20, 156:21, 156:24, 157:6, 157:7, 158:2, 158:12, 158:16, 158:25, 159:20, 161:17, 161:25, 162:26, 163:10, 163:25, 164:27, 165:5, 165:7, 166:19, 166:24, 167:15, 167:21, 169:26, 170:15, 171:27, 172:1, 172:12, 173:5</p> <p>sergeant's [4] - 56:28, 58:10, 59:5, 126:29</p> <p>sergeants [25] - 25:12, 30:27, 31:4, 31:23, 31:28, 35:20, 51:14, 66:2, 78:29, 90:10, 96:4, 115:23, 115:26, 115:27, 116:2, 135:24, 139:15, 139:21, 139:29, 140:3, 140:8, 152:12, 152:16, 164:17, 164:28</p> <p>series [1] - 142:9</p> <p>serious [12] - 10:7, 13:21, 35:6, 35:27, 47:5, 47:20, 51:3, 52:5, 56:19, 68:13, 135:11, 135:16</p> <p>serve [1] - 42:27</p> <p>served [6] - 16:22, 22:7, 23:7, 23:12, 156:21, 157:6</p> <p>service [9] - 15:29, 16:20, 17:7, 17:22, 18:2, 18:3, 22:19, 23:16, 166:25</p> <p>Service [1] - 159:14</p> <p>services [4] - 133:28, 134:8, 136:18, 153:1</p> <p>servicing [3] - 17:1, 17:7, 17:8</p> <p>set [18] - 5:27,</p>	<p>6:18, 6:21, 7:10, 7:13, 7:23, 10:25, 13:29, 15:5, 38:11, 51:29, 56:6, 60:22, 67:6, 71:1, 84:4, 122:23, 125:20</p> <p>sets [1] - 100:22</p> <p>setting [4] - 7:17, 88:14, 88:23, 89:7</p> <p>seven [3] - 145:19, 162:15, 163:3</p> <p>sevens [1] - 118:29</p> <p>sexual [1] - 68:12</p> <p>shall [3] - 58:3, 136:15, 136:17</p> <p>shape [1] - 12:6</p> <p>shift [16] - 78:22, 82:29, 99:7, 99:8, 99:9, 100:25, 100:28, 101:5, 101:11, 101:25, 101:26, 102:9, 105:22, 105:25, 105:26, 170:22</p> <p>shifts [7] - 78:22, 91:2, 99:26, 99:27, 101:22, 104:24</p> <p>shopping [1] - 93:9</p> <p>short [4] - 85:26, 131:17, 148:18, 164:28</p> <p>short-circuit [1] - 85:26</p> <p>shortened [1] - 165:3</p> <p>shorter [1] - 139:18</p> <p>shoulders [3] - 135:17, 135:20, 163:20</p> <p>show [5] - 10:16, 61:27, 64:18, 78:4, 122:3</p> <p>showing [2] - 28:14, 28:15</p> <p>shown [1] - 97:3</p> <p>shows [1] - 77:13</p> <p>sick [15] - 19:12, 20:9, 21:3, 21:21, 23:6, 23:18, 23:24, 66:3,</p>	<p>67:18, 93:20, 106:17, 157:1, 158:25, 159:5, 159:6</p> <p>sickness [1] - 22:27</p> <p>side [2] - 125:1, 169:23</p> <p>sight [2] - 9:17, 57:2</p> <p>sign [14] - 40:9, 40:19, 43:3, 43:8, 43:16, 44:5, 76:15, 116:1, 116:13, 125:9, 125:14, 130:4, 151:23, 152:7</p> <p>Signature [1] - 121:22</p> <p>signature [14] - 38:29, 39:1, 39:3, 39:21, 39:22, 85:24, 85:27, 107:27, 120:2, 120:8, 121:9, 123:27, 126:15</p> <p>signed [24] - 39:7, 39:10, 39:27, 40:28, 42:17, 43:22, 43:24, 76:16, 86:16, 106:2, 106:27, 108:6, 109:16, 109:23, 113:7, 120:24, 121:29, 124:7, 128:27, 128:29, 129:2, 129:3, 132:9, 138:14</p> <p>significance [1] - 57:29</p> <p>significant [4] - 57:8, 58:2, 114:5, 159:27</p> <p>signing [11] - 43:6, 43:18, 118:1, 120:17, 120:19, 122:16, 123:27, 126:29, 129:5, 139:13, 151:22</p> <p>similar [3] - 41:4, 165:2, 172:6</p> <p>simple [3] - 32:8, 32:29, 110:16</p> <p>simplify [1] - 102:1</p> <p>simply [1] -</p>	<p>53:15</p> <p>single [4] - 78:3, 78:8, 99:26, 99:27</p> <p>sitting [1] - 17:11</p> <p>situation [18] - 18:9, 22:26, 24:28, 56:12, 61:29, 62:16, 70:15, 76:4, 77:25, 83:25, 95:2, 101:6, 115:22, 127:14, 128:9, 135:22, 145:26, 152:26</p> <p>six [2] - 50:28, 155:1</p> <p>sized [1] - 172:6</p> <p>skippers [1] - 115:23</p> <p>slightest [1] - 36:29</p> <p>slightly [1] - 98:15</p> <p>small [1] - 133:9</p> <p>smaller [1] - 99:14</p> <p>SMITHFIELD [1] - 3:5</p> <p>smoke [1] - 54:19</p> <p>so.. [2] - 141:17, 161:5</p> <p>SOC [1] - 55:24</p> <p>sole [1] - 173:9</p> <p>SOLICITORS [2] - 3:3, 3:9</p> <p>solution [1] - 48:28</p> <p>solve [1] - 87:11</p> <p>solving [3] - 48:29, 87:10, 88:19</p> <p>someone [5] - 28:4, 32:1, 74:4, 76:25, 94:9</p> <p>sometime [2] - 165:12, 167:26</p> <p>sometimes [2] - 50:5, 50:6</p> <p>somewhat [2] - 62:5, 98:27</p> <p>somewhere [8] - 13:12, 159:26, 164:10, 164:19, 165:24, 165:27, 166:17, 174:22</p> <p>soon [3] - 15:1, 15:8, 15:16</p>
--	---	--	---	--	---

<p>sorry [66] - 5:19, 7:16, 8:17, 10:13, 12:19, 13:24, 15:11, 15:12, 19:9, 24:24, 26:11, 26:27, 27:9, 38:29, 40:4, 49:6, 61:26, 62:14, 68:17, 73:13, 75:1, 75:22, 82:1, 82:9, 82:14, 83:20, 85:5, 85:14, 85:15, 86:22, 87:14, 87:29, 88:9, 90:20, 90:24, 92:12, 95:23, 99:26, 99:29, 101:23, 104:28, 105:9, 105:12, 111:18, 113:12, 120:23, 122:12, 122:26, 122:27, 123:22, 124:1, 124:15, 125:4, 125:16, 127:25, 129:8, 130:27, 131:5, 136:7, 141:15, 144:7, 144:9, 148:1, 156:6, 160:14, 160:24</p> <p>sort [3] - 84:28, 139:24, 149:10</p> <p>sorted [1] - 129:17</p> <p>sought [7] - 73:11, 74:12, 81:17, 103:8, 149:9, 149:10, 162:2</p> <p>sound [1] - 24:24</p> <p>source [2] - 15:23, 20:6</p> <p>sourcing [1] - 5:7</p> <p>Southern [1] - 158:6</p> <p>speaking [3] - 24:25, 50:6, 134:2</p> <p>speaks [1] - 84:5</p> <p>specific [7] - 69:26, 75:17, 91:1, 118:23, 140:25, 141:23, 144:16</p> <p>specifically [3] - 42:22, 98:9,</p>	<p>121:25</p> <p>specifics [2] - 63:10, 63:12</p> <p>specified [2] - 143:20</p> <p>specify [1] - 90:27</p> <p>spend [1] - 91:26</p> <p>spent [1] - 155:1</p> <p>spin [1] - 32:11</p> <p>spoken [3] - 16:18, 53:12, 77:14</p> <p>spot [1] - 49:7</p> <p>staff [9] - 27:25, 27:26, 40:10, 40:17, 62:15, 79:14, 97:16, 134:26, 137:1</p> <p>stage [17] - 13:1, 34:5, 34:9, 45:15, 53:13, 63:28, 73:22, 90:11, 94:7, 102:7, 124:26, 129:29, 147:15, 147:20, 168:12, 174:20</p> <p>stakeholders [1] - 134:26</p> <p>stamp [4] - 85:12, 85:19, 85:23, 112:20</p> <p>stamped [7] - 37:19, 85:22, 86:23, 104:6, 104:7, 109:29, 111:19</p> <p>standalone [2] - 142:1, 142:14</p> <p>standard [5] - 99:6, 108:8, 131:20, 161:13, 161:20</p> <p>standing [3] - 57:7, 57:13, 60:25</p> <p>start [3] - 62:10, 130:22, 170:21</p> <p>started [5] - 28:22, 50:19, 54:18, 154:1, 154:3</p> <p>starting [1] - 71:6</p> <p>starts [1] - 133:21</p> <p>state [3] - 70:2, 131:25, 131:29</p> <p>statement [50] -</p>	<p>5:25, 6:21, 7:1, 7:11, 10:25, 11:4, 11:5, 12:10, 14:22, 29:29, 46:13, 46:28, 52:28, 64:10, 64:26, 65:14, 65:27, 67:6, 68:3, 69:16, 71:14, 75:2, 75:9, 82:7, 83:16, 95:16, 95:22, 107:20, 109:8, 131:10, 131:16, 131:22, 132:7, 154:29, 162:2, 162:5, 162:11, 162:14, 162:21, 162:27, 162:28, 164:5, 164:13, 164:22, 167:11, 167:12, 167:22, 168:10, 171:25</p> <p>states [2] - 42:2, 60:3</p> <p>stating [2] - 24:17, 29:4</p> <p>station [20] - 16:12, 17:15, 25:13, 29:10, 29:20, 33:6, 35:20, 35:21, 36:22, 38:17, 42:28, 49:22, 50:3, 81:24, 81:27, 164:24, 164:26, 172:7, 175:13</p> <p>Station [25] - 25:7, 25:21, 28:5, 29:24, 30:7, 35:17, 36:1, 37:6, 38:12, 41:22, 41:27, 44:24, 45:13, 46:18, 66:7, 75:10, 76:10, 106:10, 107:4, 118:24, 130:7, 145:24, 155:3, 172:2</p> <p>stationed [4] - 28:25, 35:18, 98:22, 155:14</p> <p>stations [3] - 30:25, 31:5, 96:10</p> <p>status [1] - 16:24</p> <p>stay [2] - 78:29, 153:16</p>	<p>stemming [1] - 145:2</p> <p>step [3] - 20:20, 48:11, 48:20</p> <p>steps [2] - 151:16, 173:20</p> <p>still [14] - 28:28, 29:17, 34:14, 45:24, 47:6, 47:8, 47:12, 56:24, 65:5, 88:2, 89:14, 128:5, 132:10, 132:26</p> <p>stipulation [1] - 145:17</p> <p>stood [3] - 13:2, 159:3, 171:22</p> <p>stop [2] - 17:17, 28:4</p> <p>stored [1] - 78:21</p> <p>story [1] - 169:22</p> <p>stove [1] - 54:19</p> <p>straight [3] - 13:8, 44:28, 98:26</p> <p>strategies [1] - 134:24</p> <p>Street [4] - 49:16, 49:20, 49:21, 50:2</p> <p>STREET [1] - 3:10</p> <p>stress [11] - 18:15, 18:28, 19:16, 20:18, 20:25, 21:29, 155:21, 155:25, 157:2, 159:10, 163:22</p> <p>strictly [2] - 9:5, 167:4</p> <p>strong [1] - 132:26</p> <p>stuff [1] - 80:9</p> <p>subject [2] - 14:12, 94:6</p> <p>subject-matter [1] - 94:6</p> <p>submit [6] - 58:11, 74:29, 75:9, 124:6, 162:5, 162:14</p> <p>submits [1] - 58:29</p> <p>submitted [11] - 56:29, 59:16, 60:6, 80:24, 81:7, 127:1, 127:24,</p>	<p>138:11, 167:15, 173:11</p> <p>submitting [3] - 59:10, 162:11, 163:10</p> <p>subordinate [1] - 62:21</p> <p>subordinates [2] - 60:14, 60:19</p> <p>subparagraph [1] - 137:7</p> <p>subsequent [4] - 72:23, 137:11, 168:1, 169:7</p> <p>subsequently [3] - 44:3, 168:8, 175:18</p> <p>substance [5] - 9:1, 12:5, 14:11, 14:17, 15:19</p> <p>succeeded [1] - 151:2</p> <p>succinctly [1] - 95:14</p> <p>suffering [3] - 18:27, 155:20, 156:28</p> <p>sufficient [2] - 84:17, 142:19</p> <p>suggest [21] - 13:19, 28:8, 28:13, 29:22, 31:19, 32:4, 32:28, 35:27, 46:2, 48:15, 48:19, 48:25, 50:14, 50:26, 51:3, 59:20, 60:12, 91:27, 97:29, 115:21, 121:12</p> <p>suggested [3] - 13:26, 150:22, 151:20</p> <p>suggesting [8] - 8:7, 47:1, 47:22, 52:14, 68:27, 74:2, 88:18, 160:18</p> <p>suggestion [3] - 13:20, 82:4, 151:10</p> <p>suggests [1] - 166:3</p> <p>suit [2] - 164:11, 174:22</p> <p>suits [2] - 154:14, 154:19</p> <p>summarised [1] - 55:9</p>	<p>summarising [2] - 56:25, 61:21</p> <p>Sunday [5] - 65:25, 82:28, 83:1, 84:5</p> <p>SUNLIGHT [1] - 3:9</p> <p>super [3] - 34:2, 36:20, 44:5</p> <p>superintendent [113] - 8:19, 14:20, 15:11, 20:19, 28:22, 31:27, 31:29, 32:25, 33:14, 35:24, 36:24, 37:3, 39:5, 39:26, 41:19, 43:18, 43:19, 43:24, 43:27, 44:8, 47:20, 50:2, 50:4, 51:10, 53:18, 59:23, 60:12, 69:21, 69:27, 70:6, 70:20, 72:8, 75:11, 80:1, 81:3, 82:10, 83:24, 84:12, 85:20, 85:23, 86:5, 87:24, 93:28, 98:12, 100:3, 108:9, 108:22, 108:27, 108:29, 111:24, 115:8, 119:2, 122:12, 124:1, 126:18, 128:19, 129:1, 132:19, 132:24, 133:17, 133:24, 133:26, 134:16, 135:17, 135:21, 135:23, 136:27, 137:3, 137:4, 137:8, 139:27, 143:21, 143:25, 144:27, 146:6, 146:27, 147:3, 147:6, 147:8, 148:11, 148:23, 148:28, 149:3, 149:4, 149:12, 149:13, 149:15, 149:17, 149:18, 150:26, 152:8, 152:29, 154:10, 154:17, 154:26, 157:17, 157:22, 157:28, 158:1, 158:17, 158:18, 159:1, 160:28,</p>
--	--	--	---	---	---

<p>163:23, 164:14, 164:16, 164:21, 164:23, 168:17, 170:10, 170:27</p> <p>Superintenden t [98] - 5:15, 6:25, 7:4, 7:13, 7:18, 7:28, 9:20, 10:15, 12:18, 12:19, 12:21, 12:26, 13:8, 14:18, 26:4, 26:16, 27:21, 33:16, 34:8, 34:15, 34:19, 34:27, 35:3, 35:11, 36:4, 37:1, 37:12, 38:28, 39:7, 39:14, 39:21, 39:23, 39:25, 40:6, 40:12, 40:17, 40:24, 41:1, 44:1, 44:21, 44:25, 45:11, 46:15, 51:27, 59:20, 61:12, 70:15, 71:23, 75:9, 89:7, 89:12, 90:2, 91:19, 91:29, 92:16, 109:1, 110:10, 130:8, 132:1, 133:4, 141:2, 144:29, 146:27, 147:13, 147:17, 148:15, 148:26, 150:1, 150:14, 151:22, 151:28, 153:5, 153:14, 153:24, 155:9, 155:23, 156:1, 156:8, 157:7, 157:8, 157:10, 157:29, 163:9, 164:9, 165:18, 165:21, 167:20, 167:23, 168:2, 168:3, 168:9, 168:12, 172:29, 173:5, 173:25, 173:29, 174:9, 174:12</p> <p>SUPERINTEND ENT [6] - 4:3, 5:12, 133:1, 148:20, 150:11, 154:2</p> <p>superintendent 's [2] - 36:23, 152:4</p> <p>superintendent</p>	<p>s [4] - 149:29, 152:16, 152:21, 152:22</p> <p>supervised [3] - 88:27, 89:2, 146:22</p> <p>supervising [1] - 138:13</p> <p>supervision [4] - 29:9, 29:11, 114:7, 153:3</p> <p>supervisor [1] - 136:14</p> <p>supervisory [2] - 135:25, 146:12</p> <p>supplied [1] - 160:12</p> <p>support [2] - 15:18, 136:27</p> <p>suppose [9] - 15:28, 88:17, 94:15, 116:5, 141:2, 141:4, 141:7, 142:15, 160:3</p> <p>supposed [1] - 109:5</p> <p>surely [3] - 77:28, 81:3, 168:18</p> <p>surprise [1] - 5:29</p> <p>suspect [1] - 19:26</p> <p>swear [1] - 129:16</p> <p>SWORN [1] - 154:6</p> <p>system [8] - 98:20, 123:29, 124:2, 125:8, 131:7, 140:2, 143:27, 158:3</p> <p>systems [1] - 144:4</p> <p>Séan [1] - 96:11</p> <p>Síochána [12] - 32:28, 62:18, 85:22, 98:22, 100:5, 100:8, 105:8, 111:20, 133:7, 151:24, 151:26, 154:23</p>	<p>109:14</p> <p>target [4] - 147:17, 147:21, 151:13, 151:17</p> <p>targeted [3] - 70:24, 147:10, 151:11</p> <p>targeting [1] - 98:20</p> <p>tasks [1] - 136:18</p> <p>team [2] - 5:6, 136:15</p> <p>teams [1] - 134:21</p> <p>tease [1] - 160:3</p> <p>technical [1] - 98:27</p> <p>technicalities [1] - 100:13</p> <p>telephone [1] - 47:26</p> <p>temporarily [1] - 166:24</p> <p>temporary [2] - 23:26, 174:22</p> <p>ten [40] - 21:19, 52:29, 99:8, 99:9, 99:25, 99:26, 99:27, 100:10, 100:23, 100:28, 101:1, 101:2, 101:6, 101:8, 101:11, 101:17, 101:22, 101:23, 101:25, 101:26, 102:2, 102:9, 102:10, 102:14, 102:15, 104:14, 104:24, 105:15, 105:16, 105:22, 105:23, 105:25, 106:20, 106:24, 107:6, 107:20, 112:5, 116:3, 123:28</p> <p>ten-hour [1] - 99:8, 99:9, 100:28, 101:25, 101:26, 102:2, 102:9, 104:24, 105:22, 105:25, 112:5</p> <p>tendered [1] - 131:24</p> <p>tense [1] - 112:2</p> <p>terms [13] - 12:11, 92:27, 92:28, 135:15, 135:21, 135:22,</p>	<p>136:1, 144:3, 146:15, 148:27, 151:9, 151:19, 152:10</p> <p>terrible [1] - 70:2</p> <p>test [1] - 26:22</p> <p>text [9] - 63:24, 65:6, 65:10, 65:14, 65:16, 65:24, 66:16, 66:26, 67:12</p> <p>texts [2] - 65:6, 67:3</p> <p>th [1] - 48:3</p> <p>THE [10] - 5:1, 91:16, 132:25, 153:15, 153:18, 153:21, 154:11, 154:14, 154:19, 175:27</p> <p>THEN [4] - 91:16, 150:11, 153:21, 175:27</p> <p>thereafter [3] - 6:24, 9:20, 60:18</p> <p>thereby [1] - 134:7</p> <p>therefore [9] - 24:20, 28:28, 40:20, 49:19, 76:9, 78:19, 78:22, 79:20, 170:10</p> <p>therein [1] - 173:29</p> <p>they've [1] - 50:25</p> <p>thinks [1] - 86:12</p> <p>third [8] - 75:5, 121:16, 128:28, 137:19, 156:10, 158:11, 158:26, 171:14</p> <p>three [17] - 66:2, 85:16, 92:29, 94:8, 98:5, 101:3, 101:4, 101:19, 101:21, 102:6, 112:7, 126:7, 126:14, 127:14, 127:18, 127:22, 130:28</p> <p>three-hours [1] - 101:4</p> <p>three-month [3] - 127:14, 127:18, 127:22</p> <p>threw [2] - 80:7, 166:9</p>	<p>throughout [3] - 30:15, 128:9, 167:20</p> <p>THURSDAY [1] - 175:27</p> <p>Thursday [1] - 86:15</p> <p>tick [2] - 112:15, 112:16</p> <p>Tim [1] - 150:27</p> <p>timeframe [2] - 49:22, 73:7</p> <p>timely [1] - 136:19</p> <p>tiny [6] - 27:8, 53:23, 85:18, 108:1, 111:14, 126:6</p> <p>tiptoe [1] - 43:26</p> <p>titled [1] - 122:14</p> <p>today [2] - 126:26, 131:11</p> <p>toe [1] - 110:18</p> <p>together [1] - 84:29</p> <p>TOIL [9] - 99:1, 99:19, 100:11, 101:8, 111:24, 112:13, 119:12, 119:17, 119:19</p> <p>tomorrow [2] - 175:16, 175:25</p> <p>tonne [1] - 49:5</p> <p>Tony [4] - 18:17, 53:27, 54:11, 54:18</p> <p>took [6] - 10:15, 58:21, 81:25, 89:13, 93:26, 160:17</p> <p>top [5] - 7:7, 15:7, 15:15, 66:27, 138:24</p> <p>topic [2] - 79:11, 90:19</p> <p>touch [1] - 129:16</p> <p>tour [4] - 104:14, 107:7, 112:6, 139:3</p> <p>tours [2] - 116:3, 140:4</p> <p>towards [5] - 25:17, 133:22, 133:24, 135:1, 138:3</p> <p>track [1] - 114:13</p> <p>track. [1] -</p>	<p>114:15</p> <p>tracks [2] - 70:8, 70:9</p> <p>traffic [3] - 111:21, 111:25, 145:23</p> <p>tranche [1] - 117:21</p> <p>transcript [10] - 7:25, 8:6, 10:11, 10:23, 18:21, 31:21, 33:18, 33:19, 69:5, 92:15</p> <p>transfer [22] - 37:16, 41:12, 41:21, 41:26, 42:28, 43:13, 44:4, 44:9, 151:3, 164:15, 165:5, 170:28, 172:1, 173:27, 174:12, 174:16, 174:17, 174:21, 174:24, 174:29, 175:19</p> <p>transferred [19] - 24:8, 24:29, 31:12, 32:19, 33:6, 33:7, 34:6, 34:20, 48:28, 96:8, 96:10, 96:28, 96:29, 163:5, 163:7, 163:20, 163:22, 174:18</p> <p>transferring [1] - 60:19</p> <p>transgress [1] - 12:16</p> <p>travelling [2] - 175:11, 175:12</p> <p>traverse [1] - 74:15</p> <p>traversed [1] - 33:26</p> <p>treated [1] - 98:21</p> <p>trespassing [1] - 14:27</p> <p>Tribunal [32] - 5:6, 5:27, 7:10, 8:2, 8:7, 9:28, 11:5, 14:2, 14:3, 14:12, 14:22, 45:7, 79:12, 80:7, 80:16, 81:4, 93:13, 94:3, 95:15, 95:17, 105:19, 108:15, 129:5, 141:26,</p>
	T				
	<p>talks [1] - 52:27</p> <p>tapes [3] - 106:12, 109:12,</p>				

142:25, 148:24, 154:29, 161:9, 161:21, 166:8, 168:21, 171:7 Tribunal's [1] - 14:28 trick [3] - 27:18, 71:5, 72:8 tried [1] - 160:2 true [3] - 131:22, 131:26, 132:7 truly [1] - 129:26 try [7] - 12:14, 48:29, 50:10, 80:14, 87:16, 95:14, 100:23 trying [15] - 11:24, 27:17, 37:11, 37:14, 43:11, 43:28, 46:1, 49:6, 71:5, 72:8, 89:14, 96:27, 100:1, 164:4, 165:22 Tuesday [2] - 86:15, 96:3 turn [7] - 12:29, 61:21, 68:2, 111:13, 126:3, 137:1, 144:21 turned [3] - 16:5, 67:16, 67:20 twenty [1] - 127:26 twenty-something [1] - 127:26 two [49] - 7:2, 17:9, 17:12, 31:28, 32:3, 44:20, 46:10, 55:4, 61:18, 62:17, 62:20, 65:28, 66:2, 67:21, 68:8, 77:24, 78:28, 84:6, 84:10, 85:16, 87:26, 90:5, 90:10, 93:18, 96:9, 96:23, 97:5, 99:24, 100:22, 101:3, 104:4, 104:24, 105:29, 110:19, 112:7, 113:1, 119:7, 123:17, 123:18, 126:29, 133:10, 138:25, 140:3, 141:14, 155:15,	157:11, 160:3, 164:27, 164:28 two-hour [2] - 99:24, 112:7 two-hours [1] - 101:3 Twomey [2] - 96:11, 97:24 type [7] - 27:24, 36:19, 104:20, 108:8, 110:12, 115:7, 164:26 typed [1] - 27:26 types [3] - 104:4, 123:18, 161:21 typographical [1] - 112:10	undertaking [4] - 162:5, 162:24, 162:26, 166:26 unexpected [1] - 17:13 unfair [9] - 27:7, 62:5, 62:25, 68:18, 68:26, 69:10, 69:13, 69:18, 70:4 unfairly [1] - 142:29 unfairness [3] - 70:3, 70:12, 141:21 unfit [1] - 166:25 unfortunately [1] - 132:3 unhappiness [1] - 61:29 unhappy [1] - 143:26 unit [75] - 30:3, 30:5, 30:6, 30:9, 30:11, 30:14, 30:18, 30:21, 30:24, 30:27, 31:2, 31:4, 31:8, 31:9, 31:13, 32:5, 65:4, 67:14, 67:15, 75:28, 76:2, 76:6, 76:11, 77:6, 77:21, 78:6, 78:28, 81:28, 86:9, 86:14, 87:13, 88:27, 89:2, 89:8, 89:25, 90:7, 90:11, 90:13, 90:26, 94:29, 95:3, 95:5, 95:19, 96:4, 96:9, 96:11, 96:13, 96:15, 97:15, 97:16, 98:3, 98:4, 98:6, 118:23, 140:4, 140:6, 140:7, 140:8, 144:20, 144:25, 145:18, 146:2, 146:17, 146:20, 146:22, 152:11, 152:12, 164:28 units [5] - 65:22, 96:20, 115:25, 140:1, 140:3 universally [1] - 140:10 unless [3] - 31:29, 154:12, 161:3	unnecessary [1] - 143:8 unpersonal [1] - 143:8 unreasonable [1] - 142:20 unreasonably [1] - 28:19 unsure [1] - 132:16 UNTIL [1] - 175:27 untrue [1] - 10:18 unusual [4] - 22:29, 77:18, 149:1, 149:16 unusual.. [1] - 77:19 unworkable [1] - 25:11 up [53] - 6:13, 12:29, 13:13, 16:5, 18:2, 20:27, 22:23, 23:16, 23:28, 27:3, 27:7, 27:8, 27:10, 35:25, 42:23, 45:1, 45:8, 45:25, 51:11, 55:4, 60:6, 61:21, 61:27, 66:21, 66:24, 67:8, 67:16, 67:21, 68:2, 85:17, 90:16, 93:3, 93:4, 93:19, 100:9, 100:22, 106:2, 110:22, 118:29, 133:22, 138:9, 144:21, 147:5, 156:5, 159:8, 161:12, 161:22, 163:17, 166:29, 167:9, 169:12, 169:27, 173:3 update [1] - 53:14 updated [1] - 112:26 updating [1] - 53:2 upfront [1] - 27:20 upset [1] - 173:12 upstairs [1] - 35:22 user [1] - 139:24	V validity [1] - 26:22 various [11] - 6:15, 14:20, 56:7, 74:12, 74:16, 115:25, 116:22, 120:13, 127:8, 143:12, 175:17 vein [2] - 17:10, 60:18 venue [1] - 151:25 verbally [2] - 114:22, 115:16 version [2] - 57:23, 139:24 versus [1] - 123:8 via [1] - 40:6 view [8] - 10:15, 11:27, 38:20, 38:22, 38:26, 38:28, 146:26, 173:27 vital [1] - 135:29 Volume [1] - 137:13	159:26 ways [2] - 48:29, 62:20 Wednesday [2] - 54:4, 86:15 WEDNESDAY [1] - 5:1 week [26] - 22:8, 22:9, 22:10, 22:21, 23:5, 23:13, 53:8, 65:12, 65:20, 65:23, 66:27, 93:18, 115:4, 115:9, 115:14, 116:9, 116:12, 116:13, 116:14, 118:27, 127:8, 128:2, 144:19, 162:6 weekend [1] - 149:28 weekly [2] - 66:5, 68:13 weeks [5] - 17:12, 93:18, 114:2, 119:1 weight [1] - 131:5 welcomed [2] - 140:10, 141:10 welfare [3] - 160:9, 167:7 Western [1] - 55:23 whatsoever [3] - 14:18, 43:20, 52:7 Whelton [1] - 54:12 whereas [1] - 46:6 whereby [5] - 56:18, 58:14, 63:19, 95:2, 152:6 whichever [2] - 102:18, 102:19 white [1] - 71:1 whole [3] - 81:28, 153:2, 153:3 wife [5] - 93:5, 93:20, 94:23, 160:8, 164:8 William [1] - 154:21 wish [18] - 12:4, 13:6, 14:16, 42:26, 88:10,
	U ultimately [1] - 135:17 unable [3] - 93:5, 145:16, 156:25 unavailable [1] - 41:1 unbelievably [1] - 73:12 unclear [2] - 95:2, 110:16 under [30] - 20:17, 21:28, 29:8, 29:11, 38:21, 38:23, 57:5, 98:19, 98:29, 100:11, 104:12, 105:21, 106:1, 111:9, 114:10, 117:1, 118:20, 123:9, 130:8, 134:5, 134:13, 136:10, 136:11, 138:7, 140:2, 156:20, 158:13, 158:28, 168:17, 169:28 undermined [1] - 26:20 underneath [4] - 109:24, 109:27, 112:22, 114:7 understandable [1] - 115:22 understood [5] - 8:26, 29:28, 70:14, 75:25, 143:21			W wait [3] - 48:11, 129:18, 129:21 waiting [1] - 14:24 wall [2] - 16:17, 17:3 Wall [8] - 16:5, 16:19, 17:14, 56:2, 66:8, 66:10, 96:15 wants [5] - 31:29, 32:1, 88:22, 102:15, 154:15 Ward [6] - 54:12, 96:15, 104:16, 106:17, 107:8, 109:2 warrants [2] - 149:9, 149:13 WAS [5] - 5:12, 133:1, 148:20, 150:11, 154:6 washing [1] - 81:5 Watergrasshill [3] - 97:1, 159:24,	

<p>91:26, 91:29, 97:7, 97:17, 98:14, 106:8, 111:28, 112:10, 112:13, 128:22, 131:28, 140:21, 154:16 wishes [2] - 10:18, 144:22 withdrawn [1] - 13:27 WITHDREW [1] - 153:21 witness [11] - 26:28, 27:2, 69:4, 69:12, 82:5, 105:14, 109:6, 140:23, 148:6, 148:18, 153:23 WITNESS [8] - 4:2, 132:25, 153:15, 153:18, 153:21, 154:11, 154:14, 154:19 witnessing [1] - 109:8 wonder [1] - 95:26 wondering [1] - 90:22 word [18] - 17:7, 17:22, 18:2, 18:3, 46:7, 46:8, 69:19, 87:1, 93:4, 99:27, 103:6, 103:9, 107:15, 109:5, 124:8, 125:8, 142:23 words [10] - 9:27, 26:4, 26:25, 27:27, 45:18, 47:27, 74:27, 74:28, 75:23, 115:1 work-related [11] - 18:15, 18:28, 19:16, 20:18, 20:25, 21:29, 155:21, 155:25, 157:2, 159:10, 163:21 workable [1] - 62:10 workplace [1] - 23:26 works [2] - 78:10, 152:25 world [1] - 36:5 worried [1] - 101:28</p>	<p>worry [1] - 78:7 wrap [1] - 138:9 wrap-up [1] - 138:9 write [6] - 43:3, 62:6, 81:29, 125:1, 125:2, 142:22 writes [1] - 85:24 writing [8] - 60:23, 102:13, 103:14, 106:6, 117:8, 117:10, 117:29, 118:4 written [20] - 42:18, 54:24, 78:5, 86:7, 89:18, 108:1, 111:15, 112:22, 117:4, 117:26, 118:11, 118:18, 121:8, 125:26, 126:1, 134:24, 157:3, 161:3, 162:2, 162:5 wrongdoing [1] - 6:6 wrongs [2] - 24:13, 146:29 wrote [21] - 17:27, 17:29, 18:1, 33:13, 40:21, 42:23, 42:24, 42:25, 59:21, 89:12, 90:1, 93:28, 125:17, 144:29, 159:22, 159:23, 160:1, 160:22, 160:29, 161:4, 171:19</p>	<p>16:29, 18:21, 24:5, 24:21, 25:18, 26:2, 27:13, 29:22, 30:17, 31:18, 31:20, 33:15, 33:19, 45:19, 46:4, 47:2, 48:27, 56:27, 57:1, 57:6, 59:1, 61:9, 75:21, 76:29, 96:22, 97:4, 98:27, 99:21, 99:23, 102:23, 126:26, 148:25 yesterday's [1] - 10:23 yourself [16] - 8:10, 10:1, 27:24, 48:23, 51:19, 63:24, 92:18, 98:1, 102:26, 102:27, 111:10, 125:9, 126:15, 131:1, 147:1, 161:6</p>
Y		
	<p>yeah.. [1] - 72:7 year [8] - 48:9, 48:17, 48:19, 64:16, 124:5, 165:12, 167:27 years [6] - 21:19, 61:19, 62:17, 132:3, 155:1, 155:15 yesterday [45] - 5:7, 5:16, 5:22, 5:28, 7:15, 7:16, 7:24, 7:25, 8:8, 10:10, 10:23, 11:9, 16:16,</p>	