

TRIBUNAL OF INQUIRY INTO PROTECTED DISCLOSURES MADE UNDER  
THE PROTECTED DISCLOSURES ACT 2014 AND CERTAIN OTHER  
MATTERS FOLLOWING RESOLUTIONS PASSED BY DÁIL ÉIREANN AND  
SEANAD ÉIREANN ON 16 FEBRUARY 2017

ESTABLISHED BY INSTRUMENT MADE BY THE MINISTER FOR JUSTICE  
AND EQUALITY UNDER THE TRIBUNALS OF INQUIRY (EVIDENCE) ACT  
1921, ON 17 FEBRUARY 2017, AS AMENDED ON 7 DECEMBER 2018

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

HEARING HELD IN DUBLIN CASTLE  
ON THURSDAY, 2ND JUNE 2022 - DAY 184

184

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

GWEN MALONE STENOGRAPHY  
SERVICES

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FORMER PRESIDENT OF THE COURT OF  
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1           THE HEARING RESUMED, AS FOLLOWS, ON THURSDAY,  
2           2ND JUNE 2022:

3  
4           MR. GERARD DILLANE CONTINUED TO BE DIRECTLY-EXAMINED BY  
5           MR. MARRINAN, AS FOLLOWS:

10:49

6  
7       1   Q.   MR. MARRINAN:   Good morning.

8           A.   Good morning, Mr. Marrinan.   Good morning, Chairman.

9       2   Q.   I think yesterday we left off at a point in time on the  
10           7th February 2013, when you had received an e-mail from  
11           Assistant Commissioner Quilter that contained an e-mail  
12           that had been sent by Sergeant Barry to Chief  
13           Superintendent John Grogan in HRM, isn't that right?

11:02

14           A.   That's correct.

15       3   Q.   And Assistant Commissioner Quilter had asked you for  
16           your views in relation to the contents of the e-mail  
17           that had been sent by Sergeant Barry, isn't that right?

11:02

18           A.   That's correct.

19       4   Q.   I think on the 8th February of 2013, the following day,  
20           you replied to the assistant commissioner and your  
21           reply is to be found at page 380 of the material, if we  
22           could have that up on the screen, please.   You see  
23           there you open it by saying:

11:03

24  
25           "I wish to report that Sergeant Paul Barry reported  
26           non-effective for duty on the 6th August 2012.   I  
27           became aware at a divisional PAF meeting some time  
28           later that his alleged illness was due to an incident  
29           where Superintendent Michael Comyns had issued a

11:03

1 Regulation 10 to Sergeant Barry. I became a little  
2 concerned and decided that would I meet with Sergeant  
3 Barry in person to discuss any issues."  
4

5 Is that your recollection now, that in fact this matter 11:04  
6 was discussed at a divisional PAF meeting?

7 A. That's correct.

8 5 Q. A divisional PAF meeting is obviously different than a  
9 district PAF meeting, isn't that right?

10 A. That's correct. 11:04

11 6 Q. Who would normally attend a divisional PAF meeting?

12 A. The superintendents or somebody acting on their behalf.

13 7 Q. So it would appear that this information was relayed to  
14 you by Superintendent Comyns, isn't that right?

15 A. That's correct. 11:04

16 8 Q. Again, at this point in time, in February of 2013,  
17 you're again highlighting this issue in relation to the  
18 Regulation 10 as being a possible cause for Sergeant  
19 Barry's absence from work, isn't that right?

20 A. That's correct. 11:05

21 9 Q. Then you go on to say on the 13th October 2012, at 2pm  
22 that you met with Sergeant Barry at Rushbrook,  
23 Glanmire, and then you go on to recount the meeting  
24 that you had with him. There's no reference there to  
25 an earlier meeting a month earlier on the 13th  
26 September of 2012, is there? 11:05

27 A. No, there's not.

28 10 Q. Right. In the last paragraph there you said:  
29

1 "I had in mind at the time to facilitate Sergeant Barry  
2 at Glanmire Garda Station, which is in the Cobh  
3 district."

4  
5 And then you say where he's residing. 11:05

6  
7 "A move to Glanmire would have made his commuting time  
8 to work much shorter. I was also aware of where he was  
9 originally from and a move to Glanmire station would  
10 not have been in breach of Code 8.30." 11:05

11  
12 So that was the report that you sent in. I think on  
13 the 14th February 2013 you received a sick report from  
14 Ms. Monica Carr, at the Garda Sick Section, Navan,  
15 dated the 7th February, stating that Sergeant Barry was 11:06  
16 temporarily unfit to attend regularly and render  
17 effective service, isn't that right

18 A. That's correct

19 11 Q. That's at page 381. I don't require it on the screen,  
20 Mr. Kavanagh. Now, I think on the 14th February 2013, 11:06  
21 at ten o'clock in the morning, did you have a  
22 conversation with Sergeant Barry?

23 A. I believe I did.

24 12 Q. And did you enquire about his welfare and express a  
25 concern that he was at that stage on half pay? 11:06

26 A. It would have been -- that would have been his first  
27 week going on half pay.

28 13 Q. Did you discuss again the issue of the possibility of a  
29 transfer?

1 A. My recollection is that I had spoken to Superintendent  
2 Pat Lehane the day before, who said he could facilitate  
3 him on, now my recollection could be wrong, unit E and  
4 D, I think, in Glanmire.

5 14 Q. Yes. 11:07

6 A. And I told Paul Barry he could be facilitated there if  
7 he chose to go there.

8 15 Q. And did you express a concern for the wellbeing of his  
9 family and the fact that he was on half pay?

10 A. I did, Mr. Marrinan. 11:07

11 16 Q. And was there an indication that this transfer would be  
12 permanent or would it be just temporary?

13 A. This was a temporary allocation, just to get him over  
14 the time while the investigation was being carried out.

15 17 Q. Right. Did you make that clear to him? 11:07

16 A. That's correct.

17 18 Q. And did he then seek some time to --

18 A. He told me he would be back to me in a day or two, I  
19 think is what he said, two or three days or something  
20 like that. 11:08

21 19 Q. And that was with a view to considering the offer --

22 A. Correct.

23 20 Q. -- that you had made, is that right? Now, I think on  
24 the same day, the 14th February, you receive  
25 correspondence by e-mail from Séan Costello & Company 11:08  
26 Solicitors. This is at page 382 of the material, if we  
27 could have that up on the screen. The letter is dated  
28 the 14th February. We'll see that it's addressed to  
29 you. This is the first letter that you have received



1 from his solicitor, isn't that right?

2 A. That's right.

3 21 Q. He says that he is acting on behalf of Paul Barry and  
4 that his client has made certain complaints and that  
5 Assistant Commissioner Nolan had been appointed to  
6 investigate these. He points out that in his view  
7 there had been an inordinate delay in progressing that  
8 investigation. And then in the second paragraph he  
9 says:

11:09

10

11:09

11 "In the meantime, my client remains as certified by the  
12 CMO, unfit to work, but, as he has set out in  
13 correspondence, would agree to return to work if that  
14 were to be in a safe environment which would not  
15 exasperate his ongoing issues. "

11:09

16

17 He then refers to the earlier conversation that morning  
18 that you had with Sergeant Barry. He says:

19

20 "In your telephone conversation with him this morning,  
21 you indicated that you would transfer him to Glanmire  
22 Garda Station. With due respect and having regard to  
23 the circumstances of this matter, it would not be  
24 proper or appropriate to have our client transferred.

11:09

25

11:10

26 As a compromise and so that our client may return to  
27 work, he would accept such return on the basis that he  
28 would not come under the direct command of the party  
29 whose identity is known to you, about whom such

1 complaints have been made by him.

2

3 In this respect, therefore, my client wishes to return  
4 to work under the direct management of Inspector  
5 O'Sullivan. 11:10

6

7 I would be obliged if you would confirm that this is in  
8 order and represents a without prejudice compromise on  
9 his part. "

10

11:10

11 Did you give much consideration to that suggestion of  
12 supervision by Inspector O'Sullivan?

13 A. I gave some, some consideration, but not too much,  
14 because when I thought it through, it wasn't practical.

15 22 Q. Did you discuss it at all with Superintendent Comyns? 11:11

16 A. No, I did not.

17 23 Q. Why not?

18 A. Because this was a matter of the solicitor writing to  
19 me. What I did was, I acknowledged the letter and I  
20 wrote to HRM for advice. 11:11

21 24 Q. Yes.

22 A. Because I felt they were the experts and I gave them my  
23 view and I wrote to them for advice.

24 25 Q. Yes, we will come to that now. But the view that you  
25 formed was that this wasn't workable? 11:11

26 A. That's correct.

27 26 Q. Is that right? And because he wouldn't -- could you  
28 explain why you thought it wasn't workable?

29 A. I had worked as a district officer, I was a

1 superintendent for 12 years.

2 27 Q. Yes.

3 A. And I knew the implications of a person working under  
4 me in a district and not -- and I not being responsible  
5 for what they were doing. 11:12

6 28 Q. Right.

7 A. So from experience.

8 29 Q. So, I mean, would it be fair to say that your view at  
9 this juncture was that you had offered a transfer to  
10 Sergeant Barry and he hadn't accepted it and it's clear 11:12  
11 from the solicitor's letter that he's not going to  
12 accept it at that stage and the compromise is being  
13 offered but that's not workable. So, at that point in  
14 time, if Sergeant Barry is to return to work, he can  
15 only return to work in circumstances where he is 11:12  
16 serving in a different station or, sorry, in a  
17 different district to Fermoy or else he serves within  
18 that district and comes into contact with  
19 Superintendent Comyns, isn't that right?

20 A. That's correct. 11:12

21 30 Q. And then if we have page 383 up on the screen. This is  
22 the same date you wrote to HRM in a fairly lengthy  
23 letter that we've all seen, outlining your history of  
24 your interactions with Sergeant Barry, isn't that  
25 right? 11:13

26 A. That's correct.

27 31 Q. And we see in the second paragraph there, you do make  
28 reference to your meeting with Sergeant Barry, which  
29 you say was by appointment, isn't that right?

1 A. That's correct.

2 32 Q. And you set out the history of it and you say that  
3 you'd arranged to meet him again on the 21st September.  
4 However, he cancelled the meeting. You say that on the  
5 13th September you met him again. And if we scroll 11:13  
6 over then to page 384. You point out in the third  
7 paragraph that you'd attended a case conference  
8 regarding Sergeant Barry at Garda Headquarters. And  
9 then, that you'd spoken again with Garda Barry on the  
10 14th February. And here you say: 11:14

11  
12 "I spoke with Sergeant Barry, I enquired about his  
13 welfare and expressed my concern that he was now  
14 reduced to half pay. I informed him that I had met  
15 with Superintendent Patrick Lehane, Cobh district, on 11:14  
16 the 13th February 2013 and we had agreed that if  
17 Sergeant Barry was agreeable that he would be  
18 facilitated on either unit D or unit F at Glanmire  
19 Garda Station. I stressed that this offer was made for  
20 the wellbeing of his family, as I felt there was no 11:14  
21 need for him to be on half pay when he could be  
22 facilitated in a station much closer to him."

23  
24 Then in the second last paragraph you say:

25 11:15  
26 "On this date I have received a sick report from  
27 Ms. Monica Carr on your behalf, stating that Sergeant  
28 Barry is temporarily unfit to attend regularly and  
29 render effective service."

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28  
29

And then finally you say:

"I believe that Sergeant Barry is fit to work and carry out his duties."

11:15

How did you form that view at that time, when he was being certified out sick?

A. Having spoken to him on the phone that morning, I felt that he was in a good space to come back. He was looking for -- you know, the way he told me he would consider what I was saying, I felt he was eager to come back. And then, I suppose, I was taking the welfare side of it as well. Here we had a man, he was going on half pay and his family were going to suffer as well. And then I suppose I took into account that Séan Costello's letter had said, yes, my client is willing to come back into work. So taking all them together.

11:15

11:15

33 Q. You then go on to say:

"I feel that it would be inappropriate to have him stationed in Mitchelstown pending the outcome of the investigation which is currently carried out by Assistant Commissioner Jack Nolan."

11:16

11:16

So, before a medical certificate was ever produced by the doctor, you had formed that view, that it wouldn't be appropriate for him to serve in the district?

A. From what he had told me in the 13th October, that he

1 wanted the superintendent to be moved, that he couldn't  
2 move. He had acknowledged that he had an issue with  
3 the superintendent and I suppose we're all human beings  
4 and I didn't expect them both to work together. If he  
5 had an issue, I was willing to facilitate him. So I 11:16  
6 felt that this would be the best way forward to try and  
7 ensure a proper policing service to the people.

8 34 Q. Yes. Then you conclude by saying:

9  
10 "I consider the offer made by Sergeant Barry through 11:17  
11 Séan Costello & Company is not practicable at this  
12 time."

13  
14 Then it is:

15 11:17  
16 "Forwarded for your direction on the matter, please."

17  
18 So you're highlighting the issues there, you're giving  
19 a fair summary of the history of the matter, you're  
20 expressing your view that Sergeant Barry shouldn't 11:17  
21 serve within the district whilst the investigation is  
22 ongoing, and you're also asking for directions in  
23 circumstances where he's refusing to be transferred,  
24 isn't that right?

25 A. That's correct. 11:17

26 35 Q. Right. Now, I think on the 4th March you were notified  
27 by the assistant commissioner HRM that Sergeant Barry  
28 was due for review at the Garda Occupational Health  
29 Service, Garda Headquarters, on the 11th March of 2013.

1 And then on Friday, the 29th March, you became aware of  
2 the fact that Sergeant Barry returned to work having  
3 been absent for a period of 239 days in total, isn't  
4 that right?

5 A. That's correct. 11:18

6 36 Q. And I think that you became aware of that on Saturday,  
7 the 30th March, when Superintendent Comyns phoned you  
8 and informed you that Sergeant Barry had returned to  
9 work the previous night?

10 A. That's correct. 11:18

11 37 Q. I think he was expressing concern, we've heard from him  
12 in relation to this, that he was still being certified  
13 by the CMO as unfit for duty and yet he had returned  
14 for work. I think that you then contacted Assistant  
15 Commissioner Fanning, is that right? 11:19

16 A. That's correct.

17 38 Q. And will you just tell us the conversation that you had  
18 with him at that time?

19 A. My recollection of it, I just -- when I spoke to the  
20 assistant commissioner I said, Sergeant Barry had 11:19  
21 returned to work, he is at present certified by the CMO  
22 as unfit and certified by his own doctor as unfit for  
23 work. I'm asking for a direction as, is it okay for  
24 him to work?

25 39 Q. I think you communicated that then to Superintendent 11:19  
26 Comyns, isn't that right?

27 A. Well, I communicated the answer he gave me, which was  
28 that it is okay, we can get the paperwork sorted on  
29 Tuesday. This was the bank holiday weekend. It was

1 the Easter weekend.

2 40 Q. Okay. Now, if we can just then move to the statement  
3 that you made to the Tribunal in relation to the next  
4 event, this is at page 337 of the material. Now, it  
5 appears that there may be an error here? 11:20

6 A. Yeah, I think so, yeah. Reading it last night, just  
7 the sequence, what happened is correct.

8 41 Q. Yes. We will just clear that up, if you wouldn't mind?

9 A. Yeah. What actually happened was, on return to work on  
10 Tuesday the 2nd, and that afternoon we received an 11:20  
11 e-mail from HRM Sick Section, Navan, saying that  
12 Mr. Barry required a certificate from his doctor to  
13 certify that he was fit to return to work. That e-mail  
14 was sent to my office and cc'd to me and I think to  
15 Inspector O'Sullivan, and it was forwarded to the 11:20  
16 district office by the staff in my office.

17 42 Q. Okay.

18 A. That was on the 2nd. Now, on the 3rd, at -- I'm sorry  
19 now. On the 4th, at 4pm Inspector O'Sullivan sent a  
20 certificate to my office from Dr. Kiely. When he did, 11:21  
21 I saw the certificate and I suppose I was taken aback,  
22 would be the words I would say, by what was written on  
23 the certificate, and I -- first of all I was concerned  
24 with the date on it, because the 4th April was written  
25 on it but it was crossed out and the 28th March was 11:21  
26 inserted in handwriting. Now, I was trying to work out  
27 was the certificate from the 28th or was it from the  
28 4th or when did it say he was fit to resume duty. I  
29 then was concerned with some non-medical things that



1 were written on it, that he couldn't come in contact  
2 with Superintendent Comyns and one more particular one,  
3 that he couldn't attend at Fermoy Garda Station. And I  
4 said to my own mind: Does the doctor genuinely mean  
5 that Fermoy is an unsafe place to work? So I directed, 11:21  
6 I suppose, Inspector O'Sullivan to call to the doctor  
7 and just make enquiries first about the date and then  
8 about the contents of the certificate. On the  
9 following morning, the 5th --

10 43 Q. Just before you move on to that -- 11:22  
11 A. Yeah, sure.

12 44 Q. -- just so that we clear this up, it's at page 337 of  
13 the material, your statement. If you just scroll up  
14 there. Now in fairness to you, I mean there is an  
15 inconsistency within the statement? 11:22  
16 A. Yeah, yeah. I put up my two hands.

17 45 Q. No, I am not blaming you in any way. But it does  
18 appear that you start off here, if we look ten lines  
19 down:  
20 11:22  
21 "On my return to work on the 2nd April, I was informed  
22 that Sergeant Barry had resumed duty and had produced a  
23 medical certificate."  
24  
25 And that clearly couldn't be right? 11:22  
26 A. Couldn't be right.

27 46 Q. Because we know that the medical certificate wasn't  
28 dated until the 4th April?  
29 A. The 4th.

1 47 Q. Now, further down, if we scroll down the page,  
2 Mr. Kavanagh, we see there it says ten lines up, you  
3 start off by saying, and you repeat a lot of what's  
4 said earlier:  
5  
6 "On the 4th April 2013, I received a copy of Paul  
7 Barry's medical certificate from Inspector O'Sullivan."  
8  
9 And then you go on to deal with it. So, there's that  
10 inconsistency within the statement and it appears that 11:23  
11 it's an error.  
12 A. Yes.  
13 48 Q. But can I just ask you about what you say there about  
14 meeting Inspector O'Sullivan, who is on his way to see  
15 Dr. Kiely. That appears to be incorrect. We have a 11:23  
16 statement from Inspector O'Sullivan that says, no, that  
17 that is not right, that he wasn't on his way, that he  
18 went on your directions?  
19 A. Yes.  
20 49 Q. Is that right? 11:23  
21 A. He went on my directions and he went -- this was at 4pm  
22 or after 4pm on the Thursday, he was due to go to court  
23 the following morning and he was going to call before  
24 he went to court. So it was I directed him to go to  
25 the doctor. 11:24  
26 50 Q. Now, again there seems to be some confusion in relation  
27 to this. You got the certificate, were you concerned  
28 about the authenticity of the certificate?  
29 A. I wasn't concerned it was a forgery, but I was

1 concerned did the doctor genuinely mean that the person  
2 couldn't come to Fermoy Garda Station, or did the  
3 doctor mean that this person was fit for work but  
4 couldn't go to his place of work. Because that's what  
5 it meant, because Paul Barry's place of work on an 11:24  
6 early morning, on a night shift, was Fermoy Garda  
7 Station. When he was overseeing investigations, say  
8 for a section 30, the prisoners were held in Fermoy.  
9 So she was saying that he was fit to work but he  
10 couldn't go to his place of work. 11:24

11 51 Q. Right.

12 A. That's what I was saying: Did she genuinely mean this?

13 52 Q. So there wasn't a question then about the authenticity  
14 of it?

15 A. No. 11:25

16 53 Q. I mean, there wasn't a suggestion here that Sergeant  
17 Barry had in some way forged the documents?

18 A. Not at all.

19 54 Q. So it was really the contents of what was in the  
20 document rather than the document? 11:25

21 A. That's correct, Mr. Marrinan.

22 55 Q. But you refer to the fact that the date had been  
23 crossed out and issues such as that. But that is  
24 really irrelevant to the content of the document.  
25 You're concerned about the declaration in the statement 11:25  
26 that Sergeant Barry shouldn't attend Fermoy and come in  
27 contact with the superintendent, that was your concern  
28 at the time, is that right?

29 A. No, my first concern was when was the certificate from.

1 And the doctor retrospectively wrote a second  
2 certificate, which clarified that matter. Because, was  
3 it a certificate from the 28th March or was it from the  
4 4th April? That was my first issue, because Paul Barry  
5 had worked on the 29th and 30th and the 1st and 2nd, if 11:25  
6 it was from the 4th, well then he had worked days that  
7 he was certified as sick. Now, I couldn't -- and this  
8 is partly to do with payroll as well, we couldn't draw  
9 his bank holiday allowances that he was entitled to,  
10 his Saturday allowance, his Sunday allowance, if he was 11:26  
11 out sick. There was implications for the payroll here  
12 as well. So I needed clarification on the date of the  
13 issue of the certificate. Secondly then, I had major  
14 issues with the content of it.

15 56 Q. The content, I mean it wasn't a million miles away from 11:26  
16 your own personal view as to whether it was appropriate  
17 for Sergeant Barry to work under Superintendent Comyns  
18 in the circumstances?

19 A. No, it wasn't. But there was other implications here,  
20 because could this start a trend? Other people come in 11:26  
21 with a certificate, I can't attend at Fermoy Garda  
22 Station. That was one of the concerns I had.

23 57 Q. Okay. But in any event, and this is just what I want  
24 to ask you about, is that you immediately sent an  
25 e-mail to HRM in relation to the matter. This is at 11:26  
26 page 387 of the material.

27 A. Within minutes of receiving the certificate.

28 58 Q. Yes.

29 A. Yes, within minutes.

1 59 Q. And I just want you to clear up just this one matter.  
2 If you could scroll down there, Mr. Kavanagh, please,  
3 to the end. You address it to the assistant  
4 commissioner HRM, to Assistant Commissioner Quilter as  
5 well, and also to the chief medical officer, isn't that 11:27  
6 right?

7 A. That's correct.

8 60 Q. You refer in the first paragraph to the medical  
9 certificate from Dr. Kiely.  
10  
11 "This medical certificate confirms that Sergeant Barry  
12 is fit to return to work but states that 'he should not  
13 work or attend at Fermoy Garda Station and should not  
14 come into contact with Superintendent Michael Comyns'."  
15

11:27

11:27

16 And then in the next paragraph you say:

17  
18 "Superintendent Comyns is the district officer in  
19 charge of Fermoy Garda Station and it is totally  
20 unacceptable and completely unfeasible that the member 11:28  
21 can return to work under the conditions set out in this  
22 medical certificate. The member is either fit to  
23 resume duties in Fermoy or is not."  
24

25 And then over the page: 11:28

26  
27 "I would request that the chief medical officer contact  
28 Dr. Margaret Anne Kiely to clarify this matter as a  
29 matter of urgency."

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You see there?

A. That's correct.

61 Q. So you are asking at a very early stage and before, it appears, that you gave the instruction to Inspector O'Sullivan, to --

11:28

A. I wouldn't say that, Mr. Marrinan.

62 Q. All right.

A. I would say I had spoken to Inspector O'Sullivan at four o'clock and I'd say if you look at the time of that, I'd say that would be within 30 or 40 minutes of speaking to him.

11:28

63 Q. And do you recall having any conversation with Assistant Commissioner Fanning in relation to the matter?

11:29

A. No.

64 Q. I just want to draw your attention to another e-mail, it's at page 3855 of the material. This is sent the following morning and we will see it's sent on the 5th April at 8.51 and it's to the Cork North division, which is you, isn't that right?

11:29

A. That's correct.

65 Q. And we see there it's copied, it's sent by Alan Mulligan and is copied to Assistant Commissioner Fanning and to Monica Carr and to Commissioner Quilter, that would be, south. It says:

11:29

"I am directed by Assistant Commissioner Fanning to acknowledge receipt of your e-mail.

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He understands that a case conference has been  
conceived for Monday morning to discuss this matter,  
can you please confirm?

1           Assistant Commissioner Fanning has directed that  
2           arrangements should be made to have an inspector  
3           establish the non-medical nature of this certificate  
4           with the person who issued same.

11:30

5  
6           The non-medical issues are those which concern local  
7           management.

8  
9           Medical issues cannot be discussed."

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11:30

So that seems to be a direction that an inspector  
should call to Dr. Kiely. Do you recall receiving that  
direction?

A. But I had already -- I had already that in train before  
I got that e-mail.

11:31

66 Q. Right, okay. So the direction came from you?

A. Yes.

67 Q. But it also came from assistant commissioner --

A. Yes.

68 Q. Okay. So then if we move on to the 8th April, I think  
that you attended a case conference at Garda  
Headquarters, isn't that right?

A. That's correct.

69 Q. And if we could just have page 390 up on the screen,  
please. These are the notes of the case conference.  
If we look at the left-hand paragraph there, we will  
see that a medical certificate from GP: "Member should  
not work with superintendent. Recommendations of GP  
not considered reasonable and practicable by local

11:31



1 management. There's no medical issue to preclude him  
2 from work. Once --" and then it is quote 'mutually  
3 agreed safe supporting work environment' provided as  
4 recommended by the independent specialist. Member has  
5 declined offer of a work location by divisional chief 11:32  
6 that will preclude him from working with the  
7 superintendent in question."  
8

9 Then we see in the second paragraph there, if we scroll  
10 back up: 11:32

11  
12 "Management actions: Meet with member to put in place  
13 suitable arrangements - inform that GP's  
14 recommendations cannot be met on the basis of  
15 reasonability and practicability." 11:33

16  
17 "Meet with member to put in place suitable  
18 arrangements" - this refers to the mutually agreed safe  
19 supporting working environment that is referred to. I  
20 mean, was that thrashed out at that meeting? Did you 11:33  
21 understand what that meant?

22 A. I did understand what that meant.

23 70 Q. What did you think it meant?

24 A. Well I had, I had -- I suppose, when we discussed it, I  
25 had outlined that if he was to work in Fermoy district 11:33  
26 he had to be under the responsibility of the  
27 superintendent and agree with the directions. And that  
28 was quite clear from the Garda Code, from the Morris  
29 Tribunal, from many other documents. So, the way it

1 was put to me, or the way I was directed, Paul Barry  
2 had a choice: If he wanted to stay in Mitchelstown he  
3 had to work under the directions of the district  
4 officer, or else he could be facilitated outside it.

5 71 Q. Yes. And that really remained your view throughout? 11:33

6 A. My view, it was in black and white.

7 72 Q. Yes.

8 A. Because there was no compromise there. Because if you  
9 worked in a district, you had to work under the  
10 directions of the superintendent. If you didn't, and 11:34  
11 if you -- like we're all human beings, if you don't get  
12 on with someone you can be facilitated to go outside  
13 it.

14 73 Q. Then we see:

15 11:34

16 "All communications with member should be in writing."

17

18 I mean, what was meant by that?

19 A. What was meant by that was, there was a direction 11:34  
20 issued from this, with these points outlining, and I  
21 was to ensure that he got that in writing. There was  
22 to be no ambiguity about anything. That the document  
23 was to be handed to him and make sure he got it in  
24 writing.

25 74 Q. And then it says: 11:34

26

27 "If member rejects offers made - follow organisational  
28 management procedures to manage situation."

29

1 what does that mean?

2 A. I am still trying to find out.

3 75 Q. Well, would you hazard a guess at it?

4 A. Well, I looked for directions after this, I went  
5 through the steps and you will see there's other 11:35  
6 e-mails where I asked what more can be done, because,  
7 you know, it was black and white in my thing, if you  
8 wanted to work with the superintendent, you followed  
9 the directions, or otherwise, I will facilitate him or  
10 HRM would facilitate him. 11:35

11 76 Q. And then it says:  
12  
13 "Check transfer rules - can the member be transferred  
14 without applying for same?"

15 A. Do you see, sorry now, these weren't all my 11:35  
16 responsibilities. These were HRM. There was a number  
17 of people around the table.

18 77 Q. I understand that.

19 A. This was directed at somebody in HRM I believe at the  
20 time. My one was to meet him and to make sure he got 11:35  
21 the thing in writing.

22 78 Q. Right. I mean, did you consider at the time that there  
23 was a prohibition on transferring Sergeant Barry? If  
24 he didn't consent and if he couldn't work under the  
25 directions of Superintendent Comyns and attend at 11:36  
26 Fermoy Garda Station, I mean what were the options  
27 available? You would either have to suspend the  
28 member, presumably, discipline him for not complying  
29 with directions, was that an option?

1 A. It was an option, but it was not an option I considered  
2 because I would be the type of person who would try and  
3 coax the person and bring them along. And like this  
4 was one of, I think, five HR issues I had at the time.  
5 And most people, you know, if you give a bit, they'll 11:36  
6 come a bit, and we will come to a compromise but...

7 79 Q. Or the other option then was to transfer him against  
8 his will?

9 A. Not an option here, at this stage.

10 80 Q. Yes. 11:36

11 A. Because he had invoked the bullying and harassment  
12 legislation.

13 81 Q. Right. So it only became an option later when --  
14 A. That's correct.

15 82 Q. -- that had been reported on and hadn't been upheld? 11:37

16 A. It was also an option to me before I knew about the  
17 bullying and harassment.

18 83 Q. Yes.

19 A. When I had offered to facilitate him, was the word I  
20 used. I never actually offered to transfer him; I 11:37  
21 offered to facilitate him in Glanmire whilst this was  
22 going on.

23 84 Q. Yes. Then just the paragraph on the far side:  
24  
25 "Make appointment for member if new medical issues 11:37  
26 emerge."  
27  
28 I don't think any new medical issues did in fact  
29 emerge. So anyway, then if we just move on, the

1 following day, I think at nine o'clock, yourself and  
2 Inspector O'Sullivan met Sergeant Barry at Mitchelstown  
3 Garda Station, isn't that right?  
4 A. That's correct.  
5 85 Q. Now, we just might have your notes of that at page 2078 11:37  
6 up on the screen, just to assist you as to what took  
7 place. They're your notes of this meeting. First of  
8 all to deal with some of the matters that Sergeant  
9 Barry has highlighted, if I can put it that way, in  
10 terms of supporting a suggestion that in fact he was 11:38  
11 intimidated by you and by Inspector O'Sullivan at this  
12 meeting. He says that you were in full uniform, is  
13 that correct?  
14 A. That's totally incorrect.  
15 86 Q. Right. Well now, he's suggesting in full uniform, 11:38  
16 meaning the ceremonial uniform?  
17 A. That's correct.  
18 87 Q. Which would include the Sam Browne belt, is that right?  
19 A. That's correct, that's what he was saying.  
20 88 Q. But were you in your ordinary uniform? 11:39  
21 A. That's correct.  
22 89 Q. You were, yes. So the difference is that you weren't  
23 bearing a Sam Browne belt?  
24 A. Or a tunic or what comes with the ceremonial uniform.  
25 90 Q. But otherwise you were in uniform? 11:39  
26 A. That's correct.  
27 91 Q. CHAIRMAN: Sorry, Mr. Marrinan. Chief superintendent,  
28 what do you mean by not wearing a tunic?  
29 A. You see, the cloth tunic comes with the ceremonial --

1           you have a jacket or something else. The tunic is only  
2           worn with the ceremonial uniform. The garda tunic that  
3           we used to wear years ago has been done away with for  
4           years. So you've a tunic with the buttons down and the  
5           lapels, is only part of the ceremonial uniform now. We 11:39  
6           wear it going to court or when a minister appears or a  
7           member of government Government, there is certain  
8           criteria.

9    92   Q.   CHAIRMAN: Is this the light blue uniform that officers  
10           used to wear, inspectors and upwards used to wear? 11:39

11           A.   That's correct.

12   93   Q.   CHAIRMAN: So, am I understanding that that was no  
13           longer the regular routine uniform?

14           A.   That's right.

15   94   Q.   CHAIRMAN: For officers? 11:40

16           A.   That's correct.

17   95   Q.   CHAIRMAN: But it was available for ceremonial use?

18           A.   That's correct.

19   96   Q.   CHAIRMAN: And if you wore that ceremonial uniform, you  
20           also wore your Sam Browne? 11:40

21           A.   That's correct, Chairman.

22   97   Q.   CHAIRMAN: So the other uniform then, the normal  
23           uniform, is that the one you say you were wearing?

24           A.   That's correct.

25   98   Q.   CHAIRMAN: would it be appropriate to wear a Sam Browne 11:40  
26           with that in any circumstances?

27           A.   No, it wouldn't, Mr. Chairman. And it wouldn't fit on  
28           it either, you know.

29   99   Q.   CHAIRMAN: But it wouldn't be -- okay. Thank you. So

1 this other uniform, is that effectively the same as the  
2 Garda uniform?

3 A. There's a bomber jacket there, or sometimes you have a  
4 jumper or you have the shirt and the pants, you know.

5 100 Q. CHAIRMAN: And which one were you wearing at the time? 11:40

6 A. My everyday uniform, I'll call it, the one you wore --  
7 I was obliged under the Code.

8 101 Q. CHAIRMAN: Was that a bomber jacket or a pullover or  
9 what?

10 A. No, I had a pants -- now, my memory on it. 11:41

11 102 Q. CHAIRMAN: I am not really concerned about the bottom  
12 half, I am concerned about the top half more  
13 particularly?

14 A. No, no, I meant, I would normally have worn my --

15 103 Q. CHAIRMAN: If you can't remember, you can't remember? 11:41

16 A. I can't remember, being honest, but that was the  
17 uniform that I wore every day at work.

18 104 Q. CHAIRMAN: But what uniform did you wear every day?

19 A. Normally my jumper, the blue jumper with the things for  
20 keeping the -- 11:41

21 105 Q. CHAIRMAN: Official jumper?

22 A. Official, with Garda written across it.

23 106 Q. MR. MARRINAN: And shirt and tie?

24 A. Shirt and tie, yeah.

25 CHAIRMAN: Thank you. 11:41

26 107 Q. MR. MARRINAN: Where did you come from, do you recall,  
27 that evening?

28 A. I came from my office because I had -- now, my  
29 recollection again, I had come back to the office that

1 day, that afternoon and I was waiting for Monica Carr  
2 to e-mail me the correspondence.

3 108 Q. Yes.

4 A. Which is referred to under D5, whatever that is there.

5 109 Q. Yes. 11:41

6 A. And then I was due to finish work at five o'clock, but  
7 I had enquired when Paul Barry was working again.

8 110 Q. Right.

9 A. And I was told he was working at nine o'clock. Now, I  
10 can't honestly say, but you see, the roster at the 11:42  
11 time, when you worked two nights in a row, you were on  
12 a -- you were on, what do they call it, a recovery day  
13 and then you had two rest days. So it was either he  
14 was working that night and following night or else that  
15 night and off for three days. So it was my option that 11:42  
16 night or the following day or he was off for a few  
17 days. So it was my chance -- my first opportunity to  
18 meet him was that night. So I said, when I found out  
19 that evening that he was working, I said, I'll stay and  
20 I will meet him at nine o'clock. 11:42

21 111 Q. Inspector O'Sullivan, was he in uniform?

22 A. He was, I think, yeah. He would have again, the  
23 working day uniform. But sometimes some people wore a  
24 jacket, an ordinary plain jacket like this, over the  
25 uniform. 11:42

26 112 Q. But with a shirt and tie?

27 A. Yes, that's correct.

28 113 Q. Why did you ask him to attend the meeting?

29 A. I just felt it was -- I wanted to have someone with me.



1 114 Q. Well, you had met previously with Paul Barry and you  
2 didn't have anybody with you?

3 A. I know.

4 115 Q. Why on this occasion did you think --

5 A. I just wanted -- I just felt I wanted to have someone 11:43  
6 with me. There's no particular reason.

7 116 Q. Right. And were you waiting in the car park?

8 A. Yeah, I think we arrived shortly before Paul Barry  
9 arrived. We arrived around five to nine or so. Then  
10 he arrived and we got out of the car. We said, hello, 11:43  
11 Paul, how are you. I said, I need to have a word with  
12 you. And we went in, sat down inside in the sergeant's  
13 office.

14 117 Q. In the sergeant's office. Okay. Was there any reason  
15 why you didn't notify him in advance that you'd be 11:43  
16 calling?

17 A. I didn't see any reason. I knew that Paul Barry would  
18 be in Mitchelstown and that his unit would be in Fermoy  
19 parading because at the time he was refusing to go to  
20 Fermoy to parade with the unit. So he'd be there 11:43  
21 without his unit. So it was an opportune time to talk  
22 to him without the unit being present.

23 118 Q. All right. It's just, you'll appreciate from his  
24 evidence --

25 A. Yeah. 11:43

26 119 Q. -- that he's suggesting that in some way this was done  
27 to intimidate him and he feels targeted by it. And the  
28 points he made in relation to the matter: First of  
29 all, you didn't phone him up to say that you were

1 coming. And I suppose previously, when you met him,  
2 you'd phoned or you'd contacted him --

3 A. I did.

4 120 Q. -- to arrange a mutually agreed time, isn't that right?  
5 A. That's correct, when he was out sick. 11:44

6 121 Q. And the second point is, that when you met him  
7 previously you'd done so in circumstances where it was  
8 somewhat of a casual meeting --

9 A. Yes.

10 122 Q. -- if I can put it that way, or an unofficial meeting, 11:44  
11 and you had discussed matters with him, and you  
12 departed from that in this instance, isn't that right?  
13 A. You see, Paul Barry had just returned to work, he was  
14 due in at nine o'clock, I was told at whatever time in  
15 the afternoon, he's working at nine o'clock tonight. I 11:45  
16 said, that'll be my opportunity to meet him so...

17 123 Q. There isn't any sense that at this meeting you were  
18 going to draw the line in the sand as far as Sergeant  
19 Barry was concerned?

20 A. No. I was directed the day before to meet him and this 11:45  
21 was the first opportunity I had to meet him. I was  
22 doing my job, that's how I felt.

23 124 Q. I am just putting what his case is in relation to this?  
24 A. Yeah, I can see that. There was no animosity on my  
25 behalf at all going there. It's just I had a message 11:45  
26 to deliver, I was told to deliver in person and give it  
27 to him in writing and that's what I was carrying out.

28 125 Q. So will you just tell us then what you recall being  
29 discussed at the meeting and what you said to him?

1 A. First of all, I welcomed him back to work and I  
2 explained about the meeting the day before. I read out  
3 the contents of Monica Carr's minute to him  
4 word-for-word from top to bottom, to make sure there  
5 was no ambiguity about what was in it. Then, I am 11:45  
6 trying to remember now next. I spoke to him about,  
7 look, if you wanted to work -- the content of the  
8 document was that the conditions on his doctor's cert  
9 could not be met and that they were not reasonable or  
10 not practicable. I then said to him that if he wanted 11:46  
11 to work in Mitchelstown and Fermoy district, he had to  
12 obey the directions of Superintendent Comyns.

13 126 Q. Yes.

14 A. I then went on to say that it was -- the responsibility  
15 of the superintendent was clearly outlined in the Code 11:46  
16 and I also mentioned, referenced the Morris Tribunal to  
17 him, which would have been a thing I had used myself  
18 for I suppose safety purposes, and --

19 127 Q. That refers to a superintendent can't, as it were,  
20 delegate his responsibilities to somebody else? 11:47

21 A. That's correct.

22 128 Q. And that he has to be held accountable for all his  
23 responsibilities within his district, isn't that right?

24 A. That's correct. And that nobody can take the  
25 responsibility from him. And I explained that to Paul 11:47  
26 Barry, that neither myself, Paul Barry, the doctor or  
27 anyone can take the responsibility from Superintendent  
28 Comyns for everything that happens or that is carried  
29 out in the district. And then he kept saying to me,

1 well, I have a doctor's cert. And I said, Paul -- and  
2 I am carrying out my duties. And I said, well, are you  
3 coming in the mornings at 9.30 on the early tours and  
4 going into -- or 7.30 and 9.30 in the evening, and he  
5 said but my doctor's cert said I can't do that. Then 11:47  
6 he went on to further say, I don't agree with that  
7 system, that the members in Mitchelstown should be  
8 brought into Fermoy to brief, be briefed and detailed.  
9 I went on to explain to him then that this was the  
10 directions of the district officer and that if he 11:47  
11 wanted to say there he had to obey them. I then said  
12 to him that he had invoked or made a complaint under  
13 the bullying and harassment and that under section 8.8  
14 he could apply for a transfer, which would be  
15 considered. 11:48

16  
17 I went on to further say then that it was he invoked  
18 the bullying and harassment and that if he felt he  
19 couldn't work with him, he a responsibility, I said, to  
20 the people of Mitchelstown, the people of Fermoy, to 11:48  
21 deliver a service and that, look, the option was in his  
22 court. What I was saying in a nutshell was, that you  
23 can stay here if you obey the directions. It's in  
24 black and white what the responsibilities of a  
25 superintendent are, and if you feel that you can't work 11:48  
26 with this person, well then there are options there,  
27 let's explore the options. His words were to me that  
28 he was going nowhere.

29

1           Then he asked to consult with his AGSI representative,  
2           Inspector Michael Gallagher from Clare, and I said no  
3           problem, we will arrange a meeting and we adjourned and  
4           we left it like that.

5   129   Q.   Did you offer him then also the opportunity to transfer   11:49  
6           to Cobh or Mallow?

7           A.   No, what I said to him is that, you see I couldn't  
8           transfer him and I said we also had other vacancies in  
9           the division and we had a vacancy in Mallow and we had  
10          a vacancy in Cobh at the time. Now, I couldn't tell   11:49  
11          him I was going to transfer him, but I just informed  
12          him that the vacancies were there. The option was in  
13          his court at this stage, he had the choice: Do you  
14          want to apply to go to one of these places, or do you  
15          want to stay and work with Superintendent Comyns?   11:49

16   130   Q.   Mallow was mentioned during the course of that meeting?

17          A.   Oh yes.

18   131   Q.   Again, I asked you this yesterday and I am getting the  
19          impression that there was never any discussion in  
20          relation to at whose expense a transfer --   11:50

21          A.   Never.

22   132   Q.   All right, okay. Now, did you leave on friendly terms?

23          A.   Yes.

24   133   Q.   Yes?

25          A.   I thought we did.   11:50

26   134   Q.   Now, if we --

27          A.   Sorry, Mr. Marrinan, I was trying to help him, I felt.  
28          I was there to try and help him. I wasn't trying to be  
29          awkward with him but the rules were down in black and

1 white.

2 135 Q. Okay. Now, that same evening, as it turned out,  
3 shortly afterwards Sergeant Barry was called to a fire  
4 that resulted unfortunately in a fatality. And I think  
5 that had you been advised of this fire, isn't that 11:51  
6 right?

7 A. I think the following morning, I was advised by  
8 Superintendent Comyns of the fire.

9 136 Q. Superintendent Comyns. I think that you became  
10 concerned that it hadn't been reported to the regional 11:51  
11 office in accordance with a direction that had been  
12 given in 2012, isn't that right?

13 A. That's correct.

14 137 Q. And I think that you wrote to Superintendent Comyns in  
15 this regard. If we just could have the letter up on 11:51  
16 the screen, page 398. It should be 392. Yes, we see  
17 there the letter that you sent, you referred to the  
18 incident. Now, the Pulse incident summary report, I  
19 think that you were aware of the fact that Sergeant  
20 Barry had attended this incident, isn't that right, 11:52  
21 from the Pulse report?

22 A. I would have seen that he had attended, that one  
23 sergeant and five guards attended.

24 138 Q. And you note then:  
25  
26 "Communication from this office dated 3rd August 2012  
27 (copy attached) clearly states that a report on all  
28 critical incidents should be reported to the regional  
29 office within 30 minutes of the incident occurring,

1 with a follow up report submitted to the regional  
2 office by 8.15am the following morning. "

3  
4 And you point out that this was not adhered to in this  
5 case and you require a full explanation as to why this 11:53  
6 direction was not complied with in relation to that  
7 incident.

8  
9 Now, Superintendent Comyns took this as a, I won't say  
10 a criticism but this was a complaint made to him, that 11:53  
11 he had failed to comply with the requirement of the  
12 direction, isn't that right?

13 A. That's correct.

14 139 Q. You don't mention there anything in relation to  
15 Sergeant Barry at all, isn't that right? 11:54

16 A. That's correct.

17 140 Q. So the suggestion is that this was in some way  
18 deliberately directed at Sergeant Barry and it amounted  
19 to some form of targeting of him, by giving him a  
20 responsibility that he didn't have at the time, what do 11:54  
21 you say to that?

22 A. Well, it was up to the superintendent to have the  
23 system in place, to have the report.

24 141 Q. Yes.

25 A. That was my reading of it. 11:54

26 142 Q. Right?

27 A. The superintendent had to have a system in place to  
28 have these matters reported, it was up to him to have  
29 that in place.

1 143 Q. Yes. Subsequently you got a report, isn't that  
2 right --

3 A. That's correct.

4 144 Q. -- from Superintendent Comyns in relation to the  
5 matter? 11:55

6 A. That's correct.

7 145 Q. And you gave a direction, I am not going to go into  
8 this or open the documents, we saw them with  
9 Superintendent Comyns, but you gave a direction that in  
10 future sergeants were to be aware of their 11:55  
11 responsibility in reporting these incidents, isn't that  
12 right?

13 A. That's correct.

14 146 Q. But you determined that you wouldn't take any action in  
15 relation to the matter? 11:55

16 A. That's correct.

17 147 Q. Isn't that right?

18 A. Yes.

19 148 Q. Did you decide not to take any action in relation to  
20 the matter because it was Sergeant Barry or was that 11:55  
21 just a decision that you made in --

22 A. It is just a decision, you know, that's the way I would  
23 deal with things.

24 149 Q. Okay, if we move on then, on the 12th April, you sent  
25 an e-mail to Dr. Oghuvbu outlining the full details of 11:55  
26 your meeting with Sergeant Barry. In that e-mail you  
27 requested clarification on the situation as Sergeant  
28 Barry kept referring to Dr. Kiely's medical certificate  
29 for not carrying out his duties as directed by the



1 district officer, isn't that right?

2 A. That's correct.

3 150 Q. If we just have page 393 up on the screen. This is a  
4 detailed e-mail that you sent to Dr. Oghuvbu. If we  
5 scroll down. scroll down further to the end of the  
6 page, we see you say:

11:56

7

8 "I then requested Sergeant Barry to reflect on the  
9 situation but he replied that he was not going  
10 anywhere. He continued to refer to Dr. Kiely's  
11 certificate, which he claimed does not allow him to  
12 work in Fermoy Garda Station or have any contact with  
13 Superintendent Comyns."

11:56

14

15 And then, if we scroll over the next page, you conclude  
16 the letter by saying:

11:56

17

18 "I am now requesting clarification of this situation as  
19 a matter of urgency."

20

11:57

21 I think that you got a reply from Dr. Oghuvbu in  
22 relation to the matter. We might just look at it, I  
23 think it's page 155 of the material. It may not be.  
24 No, I'm sorry. We will just pass from that. But in  
25 any event, you got a reply and I'll dig up the letter  
26 in due course, it's just the reply actually appears on  
27 page 395 but it's too faint to read it. But he replied  
28 to you, stating that he was not in a position to offer  
29 any further medical advice in the case and he went on

11:57

1 to say that based on the information that was available  
2 to him, that there was no compelling medical issues  
3 that preclude the member attending at work and  
4 undertaking assigned policing duties in a safe  
5 supportive environment. He also stated that the member 11:58  
6 appears to be refusing to agree or cooperate with Garda  
7 management's effort to progress his return to work in  
8 what appears to be fraught circumstances, is referred  
9 to Dr. Oghuvbu. He felt that the matter was best  
10 addressed by Garda management utilising relevant Garda 11:58  
11 Code, Garda Directive or employee contractual  
12 processes.

13

14 what did you believe that he meant by that?

15 A. I didn't know, because I believe I immediately wrote to 11:59  
16 HRM and asked the question.

17 151 Q. Yes. We will come to that in due course. Just for  
18 reference, that letter is at page 1560 of the material  
19 but I don't need to open it because we have effectively  
20 gone through the contents of it. Now, on the 19th 12:00  
21 April you receive some correspondence from  
22 Superintendent Comyns in relation to Sergeant Barry's  
23 medical certificate, isn't that right?

24 A. That's correct.

25 152 Q. If we could have page 397 up on the screen, please. 12:00  
26 Again, I went through this letter with Superintendent  
27 Comyns, but he clearly states that in his opinion  
28 Sergeant Barry cannot perform the duties which he as  
29 district officer require him to perform whilst the

1 conditions on the medical certificate are accepted as  
2 part of his medical fitness to return to work.

3  
4 Then at the end of the second paragraph, he said:

5  
6 "This certificate, if it is taken at face value, means  
7 that I cannot call to Mitchelstown Garda Station at any  
8 time while Sergeant Barry is on duty. It also means  
9 that Sergeant Barry cannot work or attend at Fermoy  
10 Garda Station, even in the middle of the night when he 12:01  
11 is on duty."

12  
13 He says:

14  
15 "A number of issues have arisen since Sergeant Barry's 12:01  
16 return to work and I have not been able to deal with  
17 them because of his medical certificate."

18  
19 Now, I think that you were aware of some of those  
20 issues, I think was one of those issues Sergeant 12:01  
21 Barry's non-attendance at PAF meetings?

22 A. That's correct.

23 153 Q. And another issue that you raised with Sergeant Barry  
24 in your meeting on the 9th April, was that he wasn't  
25 attending the briefings in Fermoy Garda Station at 7.30 12:02  
26 or 9.30pm, isn't that right?

27 A. That's correct.

28 154 Q. There was also the fact that when Superintendent Comyns  
29 wrote to you in relation to the fatal fire, he

1 concluded his letter by stating that because of the  
2 situation with Sergeant Barry he wasn't going to make  
3 any recommendation in the case, isn't that right?

4 A. That's correct.

5 155 Q. So that these were matters that arose fairly early 12:02  
6 on --

7 A. That's correct.

8 156 Q. -- after the medical certificate had issued and been  
9 supplied. On the same day then you received a report  
10 from Superintendent Comyns in relation to Sergeant 12:03  
11 Barry's force majeure leave, isn't that right?

12 A. That's correct.

13 157 Q. That letter is at page 398 of the material. Again,  
14 there's no need to go through this, we went through it  
15 with Superintendent Comyns and you're familiar with it, 12:03  
16 isn't that right?

17 A. That's correct.

18 158 Q. In it he gives the history of it and how this arose,  
19 his original application for annual leave on those  
20 dates, the 15th, the 16th, the 17th April, and other 12:03  
21 dates. What was your view of this as this landed on  
22 your desk?

23 A. Well, the part I was concerned with is that  
24 Superintendent Comyns or Inspector O'Sullivan had not  
25 been contacted. That was the part that I was concerned 12:04  
26 with, because I believe that in an organisation like An  
27 Garda Síochána, if you're not going to turn up for a  
28 tour of duty you have an obligation to contact your  
29 first line supervisor to inform them that you are not

1 going to be turning up for duty.

2 159 Q. And did you decide that this was a matter that should  
3 be investigated further?

4 A. Well, yes. Well, I decided that it was a matter that  
5 should be looked into. And then, after some 12:04  
6 consideration, I decided to make an enquiry, to appoint  
7 Superintendent Lehane to make an enquiry into it.

8 160 Q. Yes. And the enquiries were to be made in the  
9 disciplinary context, isn't that right?

10 A. That's correct, because when I looked into it, I'm a 12:05  
11 great believer that if I get the process right, I can  
12 always stand over the outcome. And I felt this was the  
13 correct process to enquire into this incident or event  
14 and that when the outcome came we could all stand over  
15 it because it was done correctly. 12:05

16 161 Q. Now, I think on the 21st May 2013, you had a  
17 conversation with Superintendent Comyns and he advised  
18 you that he was experiencing serious difficulties in  
19 the administration of the Fermoy district due to work  
20 practices of Sergeant Barry, is that right? 12:06

21 A. That's correct.

22 162 Q. He highlighted the matter that I referred to, namely  
23 the briefing and detailing of units at 7.30am and  
24 9.30pm, and that Sergeant Barry was not complying with  
25 his instruction, isn't that right? 12:06

26 A. That's correct.

27 163 Q. Did that cause you concern at the time?

28 A. It did, yeah. But the bullying and harassment  
29 investigation was still ongoing, so I knew I couldn't

1 transfer him or do anything about it.

2 164 Q. I think you reported this to the assistant commissioner  
3 HRM, on the 1st May of 2013, isn't that right?

4 A. That's correct.

5 165 Q. And if we could have page 399 up on the screen, please. 12:06  
6 Now, if we could scroll down, Mr. Kavanagh. This is  
7 addressed to the assistant commissioner HRM, it's:  
8  
9 "Re: Sergeant Paul Barry."  
10 12:07  
11 And we can just scroll through to page 400. Again you  
12 give a detailed history of your interactions with  
13 Sergeant Barry, the history of the medical certificate.  
14 And if we scroll down, the last paragraph there, you  
15 say: 12:07  
16  
17 "On this date --"  
18  
19 Yes, scroll down:  
20 12:07  
21 "On this date, I spoke with Superintendent Michael  
22 Comyns, who informed me he was experiencing serious  
23 difficulties in the administration of Fermoy district  
24 due to the work practices of Sergeant Barry.  
25 12:08  
26 Superintendent Comyns has a practice in place whereby  
27 all members working in Fermoy district at 7.30am and  
28 9.30pm come to Fermoy Garda Station for briefing and  
29 detailing.

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The present situation where Sergeant Barry as a supervisory member is going on duty being properly briefed places both Superintendent Comyns and me in a position of corporate liability as his employer if anything were to happen to him.

12:08

This situation is likely to be a protracted one, as when the bullying and harassment investigation is completed a disciplinary investigation is due to commence arising from Sergeant Barry's complaint.

12:08

As divisional officer for the Cork North division, I cannot allow this situation to continue. I am not in a position to override the doctor's certificate, which in my view is both impractical and unreasonable. I am now seeking your direction as to the correct course of action to be taken."

12:08

And then you send correspondence with that. Again, that sets out fairly clearly your view at that time, is that right?

12:09

A. That's correct.

166 Q. I think it was the 8th May that you received the report from Superintendent Comyns in relation to the fatal fire incident and already indicated after some consideration, you decided not to take any action against Sergeant Barry, isn't that right?

12:09

A. That's correct.

1 167 Q. Now, on the 24th May, I think that you sent an e-mail  
2 to Dr. Oghuvbu. If we could have this, it's at page  
3 414 of the material. Sorry, if we can just scroll  
4 over, Mr. Kavanagh, to page 415 and we will just get  
5 this in the proper sequence. Yes, we see here, if we 12:10  
6 scroll over to page 414, the initial e-mail is sent on  
7 the 24/5/2013 at 14.19. You say:

8  
9 "With reference to the above member, please see minute  
10 below which I sent to HRM on the 1st May 2013 for 12:11  
11 directions and I am still waiting a reply."  
12

13 That's the e-mail that we looked at just a moment ago.  
14

15 "As this situation is now dragging on, and in the 12:11  
16 interest of the running of this organisation, I wish to  
17 seek your directions on the following matter: If I  
18 direct Sergeant Barry to attend at Fermoy Garda Station  
19 and to deal with Superintendent Comyns, will it  
20 adversely affect his health? 12:12  
21  
22  
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29



1 Forwarded for your professional advices, please. "

2

3 So that was the query. The response, if we go to page

4 414 of the material, the response came at 15:35 from

5 Dr. Oghuvbu to you. He notes in the second paragraph: 12:12

6

7 "As I previously advised, the management of the

8 member's return to the workplace and the arrangement to

9 facilitate these are the responsibility of Garda

10 management in the context of workplace accommodations 12:12

11 that are reasonable and practicable.

12

13 In the light of what appears to be an impasse at this

14 stage, further relevant processes available to Garda

15 management should be deployed to resolve the matter in 12:13

16 a timely and constructive manner that both preserve the

17 member's wellbeing and Garda operational integrity. "

18

19 Then he says he copied the letter to other interested

20 persons. That doesn't really address the problem. You 12:13

21 followed it up with an e-mail, if we go over to page

22 415, and we scroll down, Mr. Kavanagh, at 17:05 then,

23 we see your response:

24

25 "Thank you for your quick response. 12:13

26

27 However, I still seek your professional medical opinion

28 on this matter.

29

1 Please clarify if I direct Garda Barry to attend Fermoy  
2 Garda Station and to deal with Superintendent Comyns,  
3 will it adversely affect his health?"  
4

5 And then if we look at the top of his page is his 12:14  
6 response, that's at 17:41 to you, he says:

7  
8 "In my opinion is as indicated in the last sentence of  
9 paragraph 2 of my e-mail in response to your original  
10 enquiry. I have no further opinion from a medical 12:14  
11 perspective in this matter."  
12

13 I suppose you were asking a direct question in relation  
14 to the matter: That if you were ordered Sergeant Barry  
15 to attend, whether it would adversely affect his 12:14  
16 health. Was that a matter that you were considering at  
17 the time?

18 A. No, this was a part of a bigger picture, from my  
19 recollection. At the time I had vacancies in Fermoy,  
20 Midleton, Mallow and I needed -- I had been, I suppose, 12:15  
21 told by HRM that I had what I had in numbers of  
22 sergeants and I needed to start filling district  
23 headquarters because in the Code it directs me that I  
24 have to ensure that district headquarters are filled  
25 ahead of larger stations. And I suppose I was planning 12:15  
26 down the road, is it possible in time to bring Paul  
27 Barry in, or I was looking at the likes of Charleville,  
28 I also had one sergeant in charge and two unit  
29 sergeants, and I needed to move someone from there in.

1 I was downsizing some stations to beef up the district  
2 headquarters. I think this was a part -- I was looking  
3 ahead for myself as well and this was a part of my  
4 plan. That look, is it an option? If I was told he  
5 couldn't, well then he's not an option for me to look 12:15  
6 at.

7 168 Q. Now, I think you sent an e-mail to assistant  
8 commissioner HRM, informing him of the correspondence  
9 we've just gone through, isn't that right?

10 A. Correct. 12:16

11 169 Q. You wanted to be advised of the relevant processes that  
12 were available to you, as you were intended on meeting  
13 Sergeant Barry the following week, isn't that right?

14 A. That's correct.

15 170 Q. Now, I think shortly afterwards you rang the office of 12:16  
16 the assistant commissioner HRM, indicating that you  
17 were awaiting a reply and also a reply to the e-mail  
18 that you sent on the 1st May that we looked at, isn't  
19 that right?

20 A. That's correct. 12:16

21 171 Q. And I think you were advised that perhaps it had been  
22 sent to the wrong e-mail address and they gave you the  
23 direct e-mail address and I think that you then sent on  
24 both e-mails on the 24th May, isn't that right?

25 A. That's correct. 12:17

26 172 Q. To the correct e-mail address. Now, I think the 27th  
27 May was the date that you appointed Superintendent  
28 Patrick Lehane from the Cobh garda district as a  
29 deciding officer to look into the force majeure leave,

1            isn't that right?

2            A.    That's correct.

3 173 Q.    Now, I think you became aware in June that the  
4            allegations that were made against Superintendent  
5            Comyns of bullying and harassment were not upheld,            12:18  
6            isn't that right?

7            A.    That's correct.

8 174 Q.    And as far as that was concerned, did that alter the  
9            situation as far as you were concerned?

10          A.    Well, it slightly did, it meant that if the            12:18  
11          commissioner was agreeable, we could transfer Paul  
12          Barry, but I suppose I had to look at the bigger  
13          picture, I didn't want to lose a sergeant either out of  
14          my division. So, you know... But it did alter it  
15          slightly.            12:18

16 175 Q.    Now, I think that on the 17th June, correspondence from  
17          Sergeant Barry was found on the floor of the divisional  
18          office, and you noted that it had been pushed under the  
19          door some time since the office had been vacated on the  
20          Friday, the previous Friday, and that the application,            12:19  
21          it was an application from Sergeant Barry addressed  
22          directly to you, appealing a decision to refuse annual  
23          leave, isn't that right?

24          A.    That's correct.

25 176 Q.    You took a view as to the way it had been communicated            12:19  
26          to you, is that right?

27          A.    That's correct.

28 177 Q.    And you decided to send it back?

29          A.    That's correct.

1 178 Q. And ask for it to be sent through the correct channels,  
2 is that right?

3 A. That's correct.

4 179 Q. Page 424 of the material. You sent the report on that  
5 to the superintendent, Superintendent Comyns. You 12:19  
6 note:  
7  
8 "The attached correspondence from Sergeant Barry,  
9 Mitchelstown, in connection with the above was found on  
10 the floor of the divisional office, Fermoy, on the 12:20  
11 morning of Monday, 17th June 2013, apparently having  
12 been left under the door the previous night.  
13  
14 Sergeant Barry should be informed that appropriate  
15 channels should be utilised to forward such 12:20  
16 correspondence to this office.  
17  
18 For your information and that of the member concerned."  
19  
20 I mean, could you not just have dealt with it or was 12:20  
21 this a very firm view that you had at the time, that it  
22 should have gone through the appropriate channels?  
23 A. I feel that everything should go through the proper  
24 channels and the channels are there for a purpose.

25 180 Q. In any event, it came to you through the proper 12:20  
26 channels, isn't that right?

27 A. That's correct.

28 181 Q. And I think that you decided to allow Sergeant Barry's  
29 appeal, isn't that right?

1 A. Well, I agreed with the superintendent, that once there  
2 was cover provided, he could take his annual leave.

3 182 Q. So effectively it was on the same condition --

4 A. That's correct.

5 183 Q. -- that Superintendent Comyns had applied. Now, if we 12:21  
6 move forward in time to October, an issue in relation  
7 to staffing and units arose, isn't that right?

8 A. Well, it arose, it was always on my agenda from earlier  
9 in the year, but we were coming closer to November when  
10 the district amalgamation was in the programme for the 12:22  
11 fourth quarter and then a date had been set for the  
12 10th November. So, I needed to take action around the  
13 division, you know, to make sure that the staffing  
14 levels were correct in the district headquarters when  
15 this came into place. 12:22

16 184 Q. And was it in your mind at that point in time that you  
17 were going to transfer Sergeant Barry?

18 A. Not at that time.

19 185 Q. Right. You note in your statement that on the 15th  
20 October you rang assistant commissioner HRM to try and 12:22  
21 find out how far the investigation into Sergeant  
22 Barry's discipline complaint had progressed and you  
23 note:

24

25 "As Sergeant Barry was one of the sergeants I was 12:23  
26 considering moving to Fermoy. "

27

28 And you note:

29

1 "I was aware that the bullying and harassment parts of  
2 his complaint had been completed and that they were not  
3 upheld. I spoke with one of the office staff, who told  
4 me that this part of the investigation was  
5 progressing."

12:23

6  
7 So, it appears it was in your mind at the time that --

8 A. Sorry.

9 186 Q. -- that Sergeant Barry would be somebody that you would  
10 transfer into Fermoy?

12:23

11 A. He was in the picture. He was under consideration. I  
12 had to look at my options. Who was available, who I  
13 could move, who I couldn't move. That was from Fermoy.  
14 I had others from Charleville, Kanturk. You know, it  
15 wasn't just Paul Barry and Fermoy, it was a divisional  
16 picture I was looking at.

12:23

17 187 Q. Right. But if it was a transfer within the district,  
18 it appears, and we heard from Superintendent Comyns in  
19 relation to this, that if it was to be a transfer  
20 within the district, it was either going to be Sergeant  
21 Barry or Sergeant Quinn. We heard from Superintendent  
22 Comyns that his preference would be that it would be  
23 Sergeant Quinn. Do you recall having any conversation  
24 with him along those lines?

12:24

25 A. I recall something about for the units and it would be  
26 easier to move the sergeant from unit D over in that  
27 respect. But as I am saying, this was within the  
28 district of Fermoy, I was having the same conversation  
29 in Mallow, the same conversation in Middleton, you know.

12:24

1 I had to look at what options I had, and the option I  
2 had in Fermoy was two sergeants in Mitchelstown to move  
3 to Fermoy. But I would need it from HRM, I was trying  
4 to find out, is Paul Barry available to me to consider,  
5 because he would have been one of the people I was 12:24  
6 considering at the time.

7 188 Q. Now, on the 17th October you received a report from  
8 Superintendent Lehane. The report stated that Sergeant  
9 Barry had not been in breach of the act of conduct  
10 alleged? 12:25

11 A. That's correct.

12 189 Q. You immediately forwarded that decision to the district  
13 office in Fermoy for transmission to Sergeant Barry,  
14 isn't that right?

15 A. That's correct. 12:25

16 190 Q. That report is at page 426 of the material. I don't  
17 intend to open it, unless you wish to look at it  
18 yourself?

19 A. No, thanks.

20 191 Q. But Sergeant Barry or Mr. Barry dealt with it when he 12:25  
21 was giving himself, and we're familiar with the basis  
22 on which the decision was arrived at. Perhaps we could  
23 look at page 429 on the screen then. This is the  
24 issue, if you scroll down, it's a letter from  
25 Superintendent Comyns to you, dated 7th November 2013. 12:26  
26 And this deals with the issue of the transfer of a  
27 sergeant and the issue of resources, you see that?

28 A. That's correct.

29 192 Q. And he concludes his report to you by saying:



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

12:26

Do you see that?

A. That's correct.

193 Q. So that was his application to you. I think that you considered that and you decided that in actual fact that Sergeant Barry was the most suitable person for the job, isn't that right?

12:27

A. Correct.

194 Q. We just might have a look at the report that you sent HRM, it's at page 430 of the material. And we see there, it's addressed to the assistant commissioner, dated 10th December 2013.

12:27

"Proposed transfer of Sergeant Barry: I wish to have Sergeant Barry transferred to Fermoy Garda Station. The reason for this transfer is to try to ensure the delivery of an efficient policing service in the new Fermoy district, which has been expanded in the recent district amalgamations."

12:28

Then you go on to say the rationale for your application or your thinking at the time. And then you say:

12:28

"Sergeant Barry is residing --"

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And you give the address.

-- and the distance he has to travel to work will be reduced by 30 kilometres each day."

12:28

Then you refer to an earlier proposal in 2004 and an appeal that was made by Sergeant Barry, successfully, on the basis of relatives living within the district. And you point out that:

12:29

"On the 11th November 2013, Glanmire sub-district became a part of Cork City division and these grounds should now no longer be valid as it is a different division and Cork City division is exempt from the terms of Code 8.3. I wish to make an application for an exemption to the terms of 8.3 as Sergeant Barry is a native of --"

12:29

And you give his address.

12:29

-- which is only 42 kilometres from Fermoy."

So I suppose, I mean I have to ask you, the medical certificate was still valid at this point in time, isn't that right?

12:29

A. It is.

195 Q. And it was effectively the condition on which Sergeant Barry was back at work and it hadn't been overridden by

1           anybody, isn't that right?

2           A.    That's correct.

3 196 Q.    And you make an application to transfer Sergeant Barry

4           from Mitchelstown into Fermoy?

5           A.    That's correct. 12:30

6 197 Q.    Where he would be in daily contact with Superintendent

7           Comyns, isn't that right?

8           A.    That's correct.

9 198 Q.    And that flew in the face of the medical certificate,

10          isn't that right? 12:30

11          A.    That's correct.

12 199 Q.    And also flew in the face of your own view, that it

13          wasn't really ideal that Sergeant Barry would be

14          working in close proximity to Superintendent Comyns.

15          Why did you do it? 12:30

16          A.    Well, first of all, I had to take into consideration I

17          was told by the CMO this was a management problem, not

18          a medical problem. I had asked would it affect his

19          health if I brought him in and I was told he could give

20          me no further advice. And I had also delivered a 12:30

21          message to him, that we could not accede to the

22          conditions on his medical certificate when I met him on

23          the 9th April 2013. Now, this message wasn't from me.

24          This message, as far as I was concerned, was from the

25          commissioner HRM, who had put it together, and I had 12:31

26          delivered the message. So, as far as I was concerned,

27          he had been informed that the conditions on his medical

28          cert couldn't be adhered to, the CMO says it's a

29          management problem, not a medical problem and I needed

1 a sergeant badly in Fermoy.

2 200 Q. why didn't you, in the circumstances, just transfer  
3 Sergeant Quinn?

4 A. well, I considered it and deeply considered it. And I  
5 didn't really want to transfer Sergeant Barry there, 12:31  
6 but why should Sergeant Quinn and his family suffer  
7 because Sergeant Barry had a complaint made against a  
8 superintendent? Sergeant Quinn was living in  
9 Mitchelstown, was a part of the community. Now I was  
10 going to discommode him and his family because Sergeant 12:31  
11 Barry had made a complaint. To me, that didn't add up.  
12 Sergeant Barry was travelling, passing Fermoy on the  
13 way to Mitchelstown, so I was making his journey  
14 shorter and I would have been discommoding Sergeant  
15 Quinn. And I just had to balance it myself. That was 12:32  
16 my decision I had to make. But I felt I shouldn't  
17 discommode one sergeant because another sergeant had  
18 made a complaint.

19 201 Q. You consulted with Superintendent Comyns?

20 A. Not on this. No, not on this. 12:32

21 202 Q. Well, he indicated that he --

22 A. Yes, that he would have preferred Sergeant Quinn.

23 203 Q. That he had a preference for Sergeant Quinn?

24 A. That's correct.

25 204 Q. Did you consult with Sergeant Quinn? 12:32

26 A. No, I didn't.

27 205 Q. Did you consult with Sergeant Barry?

28 A. No, I did not.

29 206 Q. why didn't you?

1 A. The only consultation I would have done -- sorry, why  
2 didn't I?

3 207 Q. Yes.

4 A. Because I knew that at the time Sergeant Barry was not  
5 doing his duty and I felt, well -- I needed somebody to 12:32  
6 come into Fermoy and I felt that I was doing this,  
7 applying it through HRM, who were fully aware of  
8 everything that was happening. Now, if they -- they  
9 knew everything and probably a lot more than I did and  
10 if they felt it wasn't right well then they wouldn't 12:33  
11 allow the transfer.

12 208 Q. Okay. Then, I think on the 19th January 2014, you met  
13 with Sergeant Barry in your office, isn't that right?

14 A. That's correct.

15 209 Q. And you outlined your plans to him in relation to the 12:33  
16 transfer, isn't that right?

17 A. That's correct.

18 210 Q. Now, your notes of that I think are on page 431 of the  
19 material. No, sorry, we will look at your typed notes  
20 - 2083. Okay, then just using your note, can you just 12:33  
21 tell us what you discussed at that meeting with him?

22 A. Yeah, I explained, first of all, the reasoning, my  
23 reasoning behind my proposed transfer for him to  
24 Fermoy, about the exigencies of the service and that to  
25 provide a proper service I required and I was obliged 12:34  
26 to have each unit in a district headquarters filled if  
27 it was possible. He indicated immediately that he  
28 didn't want to come to Fermoy and then I told him I  
29 had -- there was two vacancies in Mallow at present and

1 that he could be facilitated there if he wanted to. He  
2 contended that there was one part of his bullying and  
3 harassment still in place and I told him that I  
4 believed it wasn't. And I said look, give me time and  
5 I'll go away and try and check it out. But you know, I 12:34  
6 explained that I had vacancies in district  
7 headquarters, and I mentioned Mallow there, I also had  
8 Midleton and I wanted -- I needed to fill these  
9 vacancies and I had my allocation of sergeants. Now,  
10 HRM were telling me, you have your allocation of 12:35  
11 sergeants, you need to move them around the chess board  
12 to give the proper service to the public. It was my  
13 responsibility to ensure that these vacancies were  
14 filled and I adduced, it was my decision, that he was  
15 the most suitable person to fill that vacancy at that 12:35  
16 time.

17 211 Q. Now, I think that you wrote on the same day -- no, on  
18 the 28th, sorry on the 28th January you wrote to  
19 Superintendent Comyns. Can we have that up on the  
20 screen - page 432 of the material, please. We see 12:35  
21 there in the first paragraph you refer to the fact that  
22 you had met with Sergeant Barry in your office and you  
23 then go through the conversation that you had. And if  
24 we scroll down. And then you note in the last  
25 paragraph on that page: 12:36  
26

27 "I further told him that if he did not wish to come to  
28 Fermoy Garda Station, I could facilitate him in Mallow  
29 Garda Station, where at present there are two unit

1 sergeant vacancies, which I hope to fill in the near  
2 future. I informed him that this would be a matter  
3 completely up to himself. I have since been informed  
4 by Human Resources Management at Garda Headquarters  
5 that the bullying and harassment part of Sergeant  
6 Barry's complaints have been fully completed. "

12:36

7  
8 Then you note:

9  
10 "The present working situation of Sergeant Barry cannot  
11 continue and in order to run the Cork North division in  
12 a cohesive manner, I intend to advise commissioner,  
13 Human Resources Management, that I wish to have  
14 Sergeant Barry transferred to Fermoy Garda Station  
15 immediately. "

12:36

12:37

16  
17 So you had actually put in the application already.  
18 But in any event, you refer to again facilitating a  
19 transfer to Mallow in that letter that you wrote?

20 A. That's correct.

12:37

21 212 Q. Is that your recollection?

22 A. That's correct.

23 213 Q. All right. And could I just ask you this: I mean, I  
24 suppose in one way the transfer to Fermoy might be  
25 regarded, I underline the words might be regarded, as a  
26 little bit provocative in terms of Sergeant Barry and  
27 the predicament that he found himself in. It's  
28 accompanied by an offer of a transfer to Mallow,  
29 perhaps the lesser of two evils, maybe, I don't know,

12:37

1 but did you set up this transfer to Fermoy with a view  
2 to bringing this matter to a head?

3 A. No, I didn't. It was the circumstances that were  
4 evolving, the Government decided they were doing away  
5 with certain districts, the district amalgamation was 12:38  
6 happening, and I needed to have the district  
7 headquarters filled. And it's in the Garda Code that  
8 the chief superintendent is obliged with the resources  
9 to fill the district headquarters and then larger  
10 towns. 12:38

11  
12 At the time sergeants were hard to get and could I just  
13 say that, I had looked to HRM for a sergeant for  
14 Fermoy, I had looked around my division to see would it  
15 suit somebody that was living in one place and working 12:38  
16 in another place and maybe passing Fermoy. So, I  
17 looked and I searched and there was nobody available to  
18 me at the time. So I said, I needed to fill it. If  
19 something happened on a night and there wasn't a  
20 sergeant working, I would be the person who would be 12:39  
21 negligent because there was no sergeant in place.  
22 So... I didn't want to move Sergeant Barry deep down,  
23 but I had no choice. My choice was, I had a choice  
24 between two sergeants to move and I felt it would have  
25 been wrong on me -- it would have been easier to move 12:39  
26 Sergeant Quinn but it wouldn't have been the right  
27 thing to do.

28 214 Q. Okay. Then I think on the 29th January, you wrote to  
29 the assistant commissioner HRM. If we have page 434 up



1 on the screen, please, Mr. Kavanagh. And again you  
2 refer to the meeting with Sergeant Barry. There's no  
3 need to go through all this, but you conclude in the  
4 last paragraph to say:

5  
6 "The present working situation of Sergeant Barry cannot  
7 continue and in order to run the Cork North division in  
8 an effective and cohesive manner, I intend to transfer  
9 Sergeant Barry to Fermoy Garda Station with immediate  
10 effect. 12:40

11  
12 Forwarded for inclusion in the next personal bulletin,  
13 please. "

14  
15 Can you just help me with this? 12:40

16 A. There was a requirement under the Code that I fully  
17 explained to him, when I was transferring a person  
18 against their will.

19 215 Q. Yes.

20 A. And I was complying with the Code requirements. I 12:40  
21 can't give you the exact code, but there is a  
22 requirement on me to explain fully to the person before  
23 I transfer him, and that's what I was complying with.

24 216 Q. Had HRM directed his transfer?

25 A. I am not sure. I'm not sure. I can't honestly say. 12:40  
26 No, they hadn't, I'd say, at this stage.

27 217 Q. Do you have the powers as the divisional officer to  
28 transfer somebody?

29 A. No, I don't.

1 218 Q. It's just that that paragraph suggests that you're the  
2 person who's transferring Sergeant Barry to Fermoy  
3 Garda Station with immediate effect. But do you need  
4 the authorisation of HRM to do that?

5 A. I can only recommend to HRM what I want to do within my 12:41  
6 division.

7 219 Q. Yes.

8 A. HRM have the final decision. And they have the bigger  
9 picture, they know what happens everywhere, and they  
10 decide yes, is this the right thing to do or not. So I 12:41  
11 make the recommendations.

12 220 Q. Now, I think on the 30th January you again spoke with  
13 Sergeant Barry, isn't that right?

14 A. That's correct.

15 221 Q. And you clarified some of the issues regarding the 12:42  
16 meeting that you had with him on the 19th January?

17 A. That's correct.

18 222 Q. I think in your statement you note that you informed  
19 him that as per Code regulation 8.1(3), you were  
20 obliged to give him reasons for the proposed transfer, 12:42  
21 isn't that right?

22 A. That's correct.

23 223 Q. Now, on the 21st February, Sergeant Barry's transfer  
24 from Mitchelstown to Fermoy appeared on personnel  
25 bulletin 03/14, and Sergeant Barry immediately appealed 12:42  
26 the transfer and it was put on hold pending Sergeant  
27 Barry's appeal, isn't that right?

28 A. That's correct.

29 224 Q. Now, on the 24th February, I think you spoke with

1 Sergeant Ronan Murphy, who is attached to HRM, in  
2 relation to Sergeant Barry's transfer and you  
3 emphasised how important it was to have a sergeant  
4 allocated to each unit in Fermoy, isn't that right?

5 A. That's correct. 12:43

6 225 Q. And then I think on the same date you received an  
7 e-mail from Sergeant Murphy, outlining that Sergeant  
8 Barry had phoned his office that morning to say that  
9 his proposed transfer was in breach of Code 8.33, isn't  
10 that right? 12:44

11 A. That's correct.

12 226 Q. And apparently Sergeant Barry had indicated that he had  
13 not applied for an exemption from the code and that it  
14 was in fact pointed out to him that he can't apply for  
15 such an exemption, isn't that right? 12:44

16 A. That's correct.

17 227 Q. Who can?

18 A. The divisional officer.

19 228 Q. Now, I think on Wednesday, the 19th March, you spoke  
20 with Assistant Commissioner Fanning about several HR 12:44  
21 matters in the Cork North division and one of the cases  
22 that you discussed was the case of Paul Barry, isn't  
23 that right?

24 A. That's correct.

25 229 Q. Can you just tell us about that conversation? 12:44

26 A. My recollection of that was, at the time I had five HR  
27 issues, I will say, on my plate, and Paul Barry's one  
28 actually would have been down the list a little bit.  
29 But when we came to it about, I just asked, you know,

1           how can we get him to do his work. And he said, well,  
2           would you not consider -- if he's not doing what he's  
3           told or directions, would you not consider discipline.  
4           You know, it was just -- we didn't talk a lot about  
5           Paul Barry, it was other more serious issues at the           12:45  
6           time I thought, I think I was dealing with.

7   230   Q.    If we could just look at page 4152 up on the screen,  
8           please. If you go to 4151, if we just scroll up. Yes.  
9           That is a notice of appeal and the reference to the  
10          relatives. But we can move on from that. But if we           12:46  
11          look at page 2055 of the material, please. This is --  
12          no, I beg your pardon, it's 2085, I'm sorry,  
13          Mr. Kavanagh. Yes. If we scroll down to Wednesday,  
14          19th March of 2014. This refers to a conversation that  
15          you had with Assistant Commissioner Fanning. This has           12:47  
16          been referred to earlier. And will you see there,  
17          there's a note:  
18  
19          "Paul Barry - discussed the case - I explained  
20          developments since I requested his transfer - told me           12:47  
21          to discipline him."  
22  
23          Do you see that?

24          A.    I do, yeah.

25   231   Q.    That wasn't a direction?           12:47  
26          A.    No, it wasn't.

27   232   Q.    It was perhaps -- were you expressing concern during  
28          the course of that meeting in relation to how your  
29          hands were tied?

1 A. A lot of frustration, I would say.

2 233 Q. Frustration in what regard? would you like to just  
3 expand on that a little bit.

4 A. well, I felt the public weren't getting the service  
5 they were paying for and that I needed to move things 12:48  
6 on. I was doing my best and I was trying to do my best  
7 for Paul Barry as well because, you know, he a wife and  
8 family, but I just felt that HRM, I needed them to take  
9 -- to be decisive can something and I was the person  
10 trying to deal with it on the ground. But I think my 12:48  
11 frustration could be coming from other cases I was  
12 dealing with earlier on with him, that were probably, I  
13 would say, more serious than this one.

14 234 Q. I think on the 19th March you sent an e-mail to  
15 Assistant Commissioner Quilter, isn't that right? Can 12:48  
16 we have page 349 up on the screen. And again, we can  
17 scroll down in relation to this, but it's again  
18 expressing your frustration with the situation. In the  
19 second last paragraph you say:

20 12:49

21 "I believe that Fermoy Garda district and station is a  
22 safe working environment but that this fact will never  
23 be mutually agreed with Sergeant Barry.

24

25 Sergeant Barry is constantly failing to carry out his 12:49  
26 duties as directed by Superintendent Comyns and is  
27 quoting the doctor's certificate each time he is  
28 challenged.

29

1 I wish to seek advice as to what courses of action are  
2 open to me, bearing in mind is he not performing his  
3 duties and is undermining Superintendent Comyns' s  
4 authority. "

12:49

6 Did you receive any directions or help from Assistant  
7 Commissioner Quilter at that time?

8 A. Not that I can remember from it.

9 235 Q. I think on the 21st March you went to Mitchelstown  
10 Garda Station to talk to Sergeant Barry about his  
11 transfer, but he was off sick, isn't that right?

12:50

12 A. That's correct.

13 236 Q. And I think then on the 2nd April of 2014, you received  
14 a report from Superintendent Comyns in relation to the  
15 non-attendance of Sergeant Barry at a district  
16 performance accountability framework meeting, which  
17 took place, was to take place on Monday, the 3rd March,  
18 isn't that right?

12:50

19 A. That's correct.

20 237 Q. That letter is at page 441 of the material. Again, I  
21 don't intend to open it, but it again refers to a  
22 concern that he has in relation to the medical  
23 certificate and the non-performance of duties. If we  
24 look at the last paragraph on that page, he says --  
25 441, scroll down. He says:

12:51

26  
27 "As a result of Sergeant Barry's medical certificate,  
28 he cannot perform his duties as a sergeant and I cannot  
29 perform my duties as a superintendent. For the past 12

1 months my authority as district officer has been  
2 undermined by his 'medical certificate' --"

3

4

which is in quotation.

5

12:51

6

-- and in my opinion the Garda organisation for  
7 failing to contest the validity of this medical  
8 certificate.

9

10

I request that Sergeant Barry's failure to attend at a  
11 PAF meeting and the validity of the attached medical  
12 certificate be dealt with without delay."

12:52

11

12

13

14

So it appears that matters are to some extent being  
15 brought to a head at this time, isn't that right?

12:52

16

A. That's correct.

17

238

Q. The following day, I think that you attended a meeting  
18 in Garda Headquarters and during the lunch hour you  
19 called in to see Dr. Donal Collins, the chief medical  
20 officer, is that right?

12:52

21

A. That's correct.

22

239

Q. Your notes of that meeting are at 2086 of the material.  
23 So, with the assistance of those notes, first of all,  
24 will you tell us why you decided to call in to see  
25 Dr. Donal Collins?

12:53

26

A. I wasn't happy with everything that was going on.

27

240

Q. Yes.

28

A. I had Superintendent Comyns knocking on my door every  
29 single day, saying, the service that the public are

1 getting is not proper because of what Sergeant Barry is  
2 doing. I had spoken to Sergeant Barry and his attitude  
3 was, well, I have a doctor's cert here saying I can't  
4 do this and I can't do that. I had given him the  
5 options of taking himself out of it but he had refused 12:53  
6 to do that. So I just -- I had asked for clarification  
7 from the CMO a few times and I kept getting back, it's  
8 a management problem, not a medical problem.

9 241 Q. Yes.

10 A. So it was over to me. So, Dr. Collins would be the 12:53  
11 CMO, Dr. Oghuvbu was a doctor working in the same area,  
12 and I was passing the door and I saw it open and I  
13 said, look, this is my chance in the door to doorstep  
14 him. And I sat down with Dr. Collins inside and I  
15 said, look, can I talk to you about something? I was 12:54  
16 probably looking for counselling myself at the time.  
17 And I said, look, this is the situation, I have a  
18 sergeant who has a medical cert saying he can't work in  
19 his place of work, he can't work with his  
20 superintendent, the superintendent can't carry out his 12:54  
21 jobs. So then he called in Dr. Oghuvbu. Dr. Oghuvbu  
22 came in and I said, doctor, right, I have a lot of  
23 correspondence with you, you keep telling me it's a  
24 management problem, not a medical problem. I said, I  
25 want clarification or -- what I was hoping to do is to 12:54  
26 ring the doctor and work something out. But next thing  
27 Dr. Oghuvbu said that he felt it could be detrimental  
28 to Paul Barry's health, and then they mentioned  
29 something about a health and safety issue for the



1 organisation. They were the two things that kind of  
2 stuck in my mind at that time. And I said whoa, whoa,  
3 in my own mind, stop here, like you know, what am I  
4 after doing. So I asked the doctor then for kind of --  
5 I needed clarification of the medical certificate and I 12:55  
6 left.

7 242 Q. So it was the mention of a health and safety issue  
8 that --

9 A. Well, as well that it would be detrimental to Paul  
10 Barry's health, because that's the last thing I was 12:55  
11 going to do, is cause grief to somebody's health by an  
12 action I was taking.

13 243 Q. I think on the 4th April you sent an e-mail then to  
14 Assistant Commissioner Quilter in relation to the  
15 matter, and that's at page 445 of the material. 12:55

16 A. That's correct.

17 244 Q. And it refers to this meeting. We will just have a  
18 look at this. If we scroll down there a little bit.  
19 That's fine. You say:

20 12:56  
21 "I wish to inform you that on the 3rd April 2014, I  
22 attended a meeting at Garda Headquarters with Dr. Donal  
23 Collins and Dr. Oghuvbu in relation to Sergeant Paul  
24 Barry. On 29th January 2014, I submitted an  
25 application to commissioner HRM to transfer Sergeant 12:56  
26 Barry to Fermoy Garda Station with immediate effect in  
27 accordance with Garda Code 8.1(3). During the meeting  
28 Dr. Oghuvbu brought a matter to my notice, which in my  
29 view throws a different light on my application to

1 transfer the member to Fermoy. It may be prudent to  
2 discuss this matter further with HRM."

3  
4 So, obviously you were flagging a change of mind in  
5 relation to this and that you regarded it as dealing 12:56  
6 with an entirely different situation, is that right?

7 A. That's correct.

8 245 Q. Accordingly, a case conference was organised for the  
9 17th April 2014, isn't that right?

10 A. That's correct. 12:57

11 246 Q. And I think that you attended that at Garda  
12 Headquarters. If we have page 447 up on the screen,  
13 please. These are fairly extensive notes of the case  
14 conference and they've already been referred to. But  
15 we'll see that, you know, earlier conferences and what 12:57  
16 was discussed and the concerns are reflected in the  
17 notes, isn't that right?

18 A. That's correct.

19 247 Q. We'll note that in the left column there, if we just  
20 scroll down, there's a reference to the fact that the 12:58  
21 "member will not engage with superintendent at all -  
22 will not attend meetings - report to him", that's to  
23 the superintendent, that it's an organisational risk  
24 and that "member is having detrimental effect on  
25 station and colleagues". What's that a reference to? 12:58

26 A. All the complaints I was getting from Superintendent  
27 Comyns.

28 248 Q. And then we'll look at the management actions and we  
29 see:

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29

"Chief superintendent to meet with member to discuss again transfer options."

Then we see Middleton is mentioned there and Mallow and Glanmire again, isn't that right? 12:58

A. That's correct.

249 Q. And then: "Discuss hazard and risk management issues."

Then finally it says in that options, obviously the superintendent can't be moved. And then there was an issue of mediation to resolve member's perceived difficulties with superintendent and the Labour Relations Commission provide a service for free, but I think it was conditional on both members agreeing, isn't that right? 12:58

A. That's correct.

250 Q. And then: "Move member away from superintendent - health and safety issue." Then 3 points above: "Member can say yes or no - if member decides to remain in current role, must comply with organisational procedures and deal with superintendent, as any sergeant is obliged to deal with their superintendent." 12:59

So that's not just an expression of your input to the meeting, that is everybody's view who is at that meeting, is that right? 12:59

A. That's correct.

251 Q. And do you recall who attended that meeting?

1 A. Specifically, I don't. But every one of the meetings  
2 there would be a representative from the commissioner  
3 HRM, there would be Dr. Oghuvbu or somebody -- and his  
4 secretary, from HRM. There would be people from HRM,  
5 Navan, as I say, the assistant commissioner's office. 13:00  
6 That would be about it, four or five people, you know,  
7 at these meetings. But it would be HRM Navan, HRM at  
8 Garda Headquarters, the CMO, CMO's office and there'd  
9 be an inspector or somebody taking -- a sergeant taking  
10 the notes as well. 13:00

11 252 Q. Anyway, the upshot of the meeting was that you were to  
12 go back to Sergeant Barry and you were to go back to  
13 him with again proposed transfers or to approach him in  
14 relation to the mediation?

15 A. I was. 13:01

16 253 Q. And you were also to approach Superintendent Comyns in  
17 that regard as well, isn't that right?

18 A. That's correct.

19 MR. MARRINAN: I don't know whether that is an  
20 appropriate time? 13:01

21 CHAIRMAN: Yes, it is. Thanks very much.

22

23 THE HEARING THEN ADJOURNED FOR LUNCH AND RESUMED, AS  
24 FOLLOWS:

25

26 254 Q. MR. MARRINAN: Now, following on from the case  
27 conference in Garda Headquarters, I think on Monday,  
28 21st April 2014, you met with Sergeant Barry at Fermoy  
29 Garda Station and he was accompanied by Inspector Eddie 13:55

1 Golden, from AGSI, and you were accompanied by  
2 Inspector Tony O'Sullivan, isn't that right?

3 A. Correct.

4 255 Q. If we just have page 2087 up on the screen, please.  
5 These are your notes of that meeting. And if we scroll 14:01  
6 down a page, you will see there, Monday, 21st April  
7 2014. So with the assistance of those notes, would you  
8 just outline to the Chairman what you recall transpired  
9 at the meeting?

10 A. When I met him first I explained to him that I had 14:02  
11 raised concerns with A/C HRM and the CMO in relation to  
12 his work practices. I enquired from him, was the  
13 problem with Superintendent Comyns or was it with  
14 Fermoy Garda Station or was it with both, the problem  
15 that he had. 14:02

16 256 Q. Yes.

17 A. I told him that the CMO informed me that Paul Barry's  
18 perception was that he had a problem working with  
19 Superintendent Comyns. I told him I didn't believe  
20 there is a problem working with either Superintendent 14:02  
21 Comyns or Fermoy Garda Station. And I informed him  
22 that I would respect his perception but I cannot allow  
23 him to carry on his working in the position that he is  
24 at present. I told him he had to comply with all the  
25 processes and procedures which are encompassed in a 14:03  
26 sergeant's job and this includes the parading of the  
27 members in the morning and evening. And then I offered  
28 him the facilities of the LRC for mediation, to try and  
29 resolve this matter.

1 257 Q. How did he, Sergeant Barry respond to what you were  
2 saying to him?  
3 A. I think now, and it's only a recollection, that he -- I  
4 can't see the rest of my minutes there, unless it's  
5 down further in the page, is it? 14:03

6 258 Q. If you just scroll over the page there.  
7 A. Ah yeah. Yeah, that's what I thought all right. He  
8 said that he wanted to -- he wouldn't discuss the  
9 matter with them, without the presence of Michael  
10 Gallagher, who was on the national executive of the 14:04  
11 AGSI. And then I agreed to speak himself and Inspector  
12 Gallagher on the 24th April at 3pm in Mitchelstown. I  
13 then asked him had he any other suggestions that could  
14 solve the problem and if he had, I was willing to  
15 listen to them. And that's the way the meeting ended. 14:04

16 259 Q. Well, did he have any other suggestions?  
17 A. He didn't. At the time he didn't.

18 260 Q. Now, I think that you agreed to meet, as indicated in  
19 the notes, with Sergeant Barry again on the 24th April,  
20 isn't that right? 14:04  
21 A. That's correct.

22 261 Q. I think on the 24th April, you also offered  
23 Superintendent Comyns the facilities of mediation,  
24 isn't that right?  
25 A. That's correct. 14:04

26 262 Q. And you explained the process to him?  
27 A. That's correct.

28 263 Q. And you met him again on the 6th May 2014, when he  
29 indicated to you that he wasn't consenting to the

1 mediation process, isn't that right?

2 A. That is correct.

3 264 Q. And I think that he gave you that decision in writing,  
4 and we don't need to open it, it's at page 451, he  
5 dealt with it himself during the course of his 14:05  
6 evidence, but I think he had taken legal advice in  
7 relation to the matter, isn't that right?

8 A. That's correct.

9 265 Q. I think on the same day you e-mailed the chief medical  
10 officer, Dr. Donal Collins, isn't that right? 14:05

11 A. That's correct.

12 266 Q. If we could have page 652 up on the screen, please.  
13 Sorry, I beg your pardon, it's 452. My own  
14 handwriting! Again, this is going to the chief medical  
15 officer, who at the time was Dr. Collins and I think 14:06  
16 that Dr. Oghuvbu was the assistant chief medical  
17 officer, isn't that right?

18 A. That's correct.

19 267 Q. You refer to your meeting on the 3rd April, and then  
20 also to the case conference that was had. You then 14:06  
21 note: "At present I am in a position where Sergeant  
22 Barry is not performing his duties as set out by his  
23 district officer. When challenged on it, he quotes his  
24 doctor's certificate, which states that he should have  
25 no contact with Superintendent Comyns and Fermoy Garda 14:07  
26 Station. This scenario is totally unacceptable to me  
27 as the divisional officer."  
28  
29 And then you go on in the next paragraph to say:

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"All members stationed in Fermoy district are subject to the instructions of the district officer and all members stationed in the Cork North division have at some time to interact with the divisional headquarters, which is Fermoy Garda Station. By allowing Sergeant Barry to continue to serve in the Cork North division, it may appear that I am compounding his perceived health and safety issues. I now wish to seek your medical advice on this burning issue."

14:07  
14:07

So again, you're once again highlighting the dilemma that you say you found yourself in at that time, isn't that right?

A. That's correct.

14:08

268 Q. I think on the 16th May, you then sent an e-mail to Sergeant Ronan Murphy, indicating that the mediation process hadn't been consented to by one of the parties, isn't that right?

A. That's correct.

14:08

269 Q. And in that e-mail, it's at page 653 of the material, if we could have that up on the screen. Again, 453. I'm sorry, it's my own handwriting. If we just scroll down there, Mr. Kavanagh. We just see there, in effectively the last paragraph, you say:

14:08

"I believe that in light of the health and safety issue highlighted by Dr. Oghuvbu and Sergeant Barry's doctor, I wish to withdraw my application to transfer Sergeant



1 Barry to Fermoy Garda Station. Furthermore, I would  
2 suggest that Sergeant Barry be transferred immediately  
3 to Glanmire Garda Station, where he will not have to  
4 come into contact with Superintendent Comyns or Fermoy  
5 Garda Station. Glanmire Garda Station is much closer 14:09  
6 to Sergeant Barry's home and it is now in the Cork  
7 North city division. Sergeant Barry would be exempt  
8 from the terms of Code 8.3. I have discussed the  
9 matter with Chief Superintendent Michael Finn, and with  
10 your approval he will be willing to accept Sergeant 14:09  
11 Barry. "  
12

13 So that's a matter you had in fact explored with Chief  
14 Superintendent Michael Finn, isn't that right?

15 A. That's correct. 14:10

16 270 Q. He was in the Cork division, Cork City division?

17 A. Cork City division, yes.

18 271 Q. And he had indicated that he would facilitate --

19 A. That's correct.

20 272 Q. -- Sergeant Barry in Glanmire. So, I think on the 18th 14:10  
21 June you wrote to the assistant commissioner HRM and  
22 outlined the same points that you had raised in your  
23 e-mail that we just opened, and that's to be found at  
24 page 454. I don't need that up on the screen. But on  
25 the 16th July you received an e-mail from Sinéad Power 14:10  
26 from HRM, and that informed you that your original  
27 application to transfer Sergeant Barry to Fermoy  
28 couldn't be withdrawn, is that right?

29 A. That's correct.

1 273 Q. That e-mail is at page 656 of the material. Again, I  
2 don't need it on the screen. I think on the 21st July  
3 you replied to Inspector Power's e-mail and explained  
4 your reasoning for the application, and that's set out  
5 at page 657. And again, there's no need to open it or 14:11  
6 go through it, but it's the same reasoning that you've  
7 already explained extensively to the Chairman in your  
8 evidence, isn't that right?

9 A. That's correct.

10 274 Q. Now, on the 19th September, I think you received a 14:11  
11 phone call from Superintendent Comyns, when he informed  
12 you that he'd had a conversation with Detective Garda  
13 Tom Ryan concerning an interaction that occurred  
14 between Sergeant Barry and another garda, isn't that  
15 right? 14:12

16 A. That's correct.

17 275 Q. That's not a matter that we're going into to any extent  
18 or at all, but would it be fair to say that this was  
19 another matter that gave you concern in relation to  
20 Sergeant Barry -- 14:12

21 A. That's correct.

22 276 Q. -- and his performing his functions in Mitchelstown  
23 Garda Station?

24 A. That's correct.

25 277 Q. Now, I think on the 5th November 2014, you met with 14:12  
26 Chief Superintendent Tony McLoughlin at HRM, isn't that  
27 right?

28 A. That's correct.

29 278 Q. And you raised the issue of seeking clarification from

1 the chief medical officer in relation to Sergeant  
2 Barry's medical certificate, and you were informed that  
3 there was no update to report, isn't that right?

4 A. That's correct.

5 279 Q. I think on the 5th December you sent an e-mail to Chief 14:13  
6 Superintendent Tony McLoughlin, again enquiring was  
7 there any response from the CMO regarding an up-to-date  
8 position in relation to Sergeant Barry's medical  
9 certificate, isn't that right?

10 A. Sorry, can I just say, when I met them in April I'd 14:13  
11 asked for clarification.

12 280 Q. Yes.

13 A. And this was a continuation, I was still waiting for  
14 the clarification.

15 281 Q. Yes. And that e-mail is at page 659. Again, it is 14:13  
16 just for reference only, we don't need to go into it.  
17 I think on Sunday, 7th December, you received a reply  
18 from Chief Superintendent McLoughlin and he indicated  
19 that he had not spoken to the chief medical officer but  
20 that he would follow the matter up, isn't that right? 14:14

21 A. That's correct.

22 282 Q. Now, you didn't hear any more then and on the 5th  
23 January of 2015 you sent an e-mail directly to  
24 Dr. Oghuvbu, isn't that right?

25 A. That's correct. 14:14

26 283 Q. And if we could just have that up on the screen,  
27 please, it's 461 of the material. If we scroll down a  
28 page to the last e-mail. Scroll down further,  
29 Mr. Kavanagh, thank you. We see there:

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"I wish to make an enquiry as to the present status of the attached medical certificate, which is still live on Sergeant Barry's file.

14:15

During the last meeting I had with you on the matter, which was in Dr. Collins's office, you advised me that after consulting with Sergeant Barry's GP you were of the belief that if he were to have contact with Superintendent Comyns and Fermoy Garda Station that it may have a detrimental effect on his health. As the certificate was issued on the 28th March 2013, I wish to enquire as to the current status of the medical certificate, as Sergeant Barry is continuing not to engage with Superintendent Comyns and Fermoy Garda Station.

14:15

14:15

Forwarded for your attention, please."

You received a reply from the doctor, and if we scroll up, the reply came at 16.20:

14:15

"I received a report by return on the 18th November to Chief Superintendent Anthony McLoughlin in relation to this matter. He would be in a better position to update you on the current status of things."

14:16

Isn't that right?

A. That's correct.

1 284 Q. And then, if we scroll up again, we see on the same  
2 date you sent an e-mail then to Chief Superintendent  
3 McLoughlin, isn't that right?  
4 A. That's correct.

5 285 Q. And you pointed out that you'd e-mailed the assistant 14:16  
6 chief medical officer and you point out that he  
7 answered your query and he referred you to Chief  
8 Superintendent McLoughlin, and you said:  
9  
10 "Can you please enlighten me as to the current status 14:17  
11 of this sergeant's medical certificate and his working  
12 conditions."  
13  
14 So, did you in fact receive any sort of satisfactory  
15 response to that query that you were raising at that 14:17  
16 time?  
17 A. I believe I got a response, I think around the 15th  
18 January, if my memory is correct. It came in with the  
19 result of the appeal of the transfer to Fermoy. It all  
20 came in one document, as far as I remember. 14:17

21 286 Q. Okay. If we just have a look at that, it's at page 462  
22 of the papers. It's dated 13th January, in fact.  
23 A. Right.

24 287 Q. And it's from Chief Superintendent McLoughlin to you.  
25 He says: 14:18  
26  
27 "In reference to the above, please find attached a  
28 letter from Dr. Oghuvbu."  
29

1 And he enclosed a letter of the 18th November. And  
2 then there's a quote from Dr. Oghuvbu's letter:  
3  
4 "Without prejudice to outcome of any investigations  
5 into the reported workplace interpersonal relationship 14:18  
6 issues, based on the information available to me, it  
7 would be appropriate to facilitate the member with a  
8 safe and supportive workplace environment that  
9 precludes obligatory interactions between parties  
10 concerned as far as reasonably practicable." 14:18  
11  
12 Then he notes:  
13  
14 "Taking into consideration the advice, Sergeant Barry's  
15 transfer to Fermoy Garda Station will be cancelled." 14:19  
16  
17 So that's how matters stood in relation to it. Were  
18 you any the wiser?  
19 A. Oh I was, I was. I was. That was an indication that  
20 there was an obligation on me to preclude interaction 14:19  
21 between both gentlemen.  
22 288 Q. Right, okay. I think on the 15th January 2015, the  
23 cancellation of the Sergeant Barry's transfer to Fermoy  
24 appeared on a personal bulletin, isn't that right?  
25 A. That is correct. 14:19  
26 289 Q. And five days later, on the 20th January, you met again  
27 with Sergeant Barry in your office, isn't that so?  
28 A. That is correct.  
29 290 Q. And if we could just have page 2098 up on the screen,

1 please. Sorry, it's 2092 on the screen, please. Again  
2 you see there, there's a note of your meeting with  
3 Sergeant Barry. Again, with the aid of that note, will  
4 you just tell us what transpired at that meeting?

5 A. Yeah, first of all, when I met him in my office I 14:20  
6 informed him about the transfer to Fermoy being  
7 cancelled and he told me that he had already heard  
8 about it. I told him I requested that -- I was  
9 requested to tell him that the present situation  
10 between himself and Superintendent Comyns could not 14:21  
11 continue and that HRM had advised me that they should  
12 place both of them in a place that would preclude  
13 interaction, that interaction would be precluded  
14 between them. I told him that as he had the problem  
15 working with Superintendent Comyns and that 14:21  
16 Superintendent Comyns continues as the district  
17 officer, and, you know, what I said to him is,  
18 Superintendent Comyns actually has no problem working  
19 with you but you perceive to have the problem working  
20 with him, and, you know, I said that I would be 14:21  
21 applying to or asking HRM to move him out of the  
22 district with Superintendent Comyns. But then I asked  
23 him did he understand it and I told him that HRM would  
24 be intending to move him out but if he wanted to, he  
25 could nominate a station that would suit him. Now, I 14:21  
26 had explained the rationale again. He said he couldn't  
27 work with Superintendent Comyns, Superintendent Comyns  
28 was the district officer, and if I was to preclude  
29 interaction between them, they both couldn't be in the

1 one district. So I then asked him is there anywhere,  
2 you know, if he wanted to nominate a station, I gave  
3 him until 10.30am on Friday, the 11th to get back to  
4 me, otherwise HRM would select one for him.

5 291 Q. Did he appear to understand the problem and the issue? 14:22

6 A. Oh I'd say it was quite clear. It was quite clear what  
7 the problem was. Like, I outlined again that it was he  
8 that had a problem working with Superintendent Comyns.  
9 Superintendent Comyns had always said to me, I have no  
10 problem working with Paul Barry if he'll do his job. 14:22

11 So that was the problem, was that he wasn't doing his  
12 job as required by the district officer and I gave him  
13 until 10.30 on the following Friday morning to contact  
14 my office and indicate if he wanted to go somewhere and  
15 if he didn't, well HRM, that would be their choice 14:22

16 then, I would have no input into it.

17 292 Q. Now, I think that the meeting ended, is that right?

18 A. That's correct.

19 293 Q. And on the same day you became aware of the fact that  
20 Sergeant Barry wrote to the member in charge, isn't 14:23

21 that right? Can we have page 466 up on the screen. If  
22 we scroll down. It's addressed to the sergeant in  
23 charge, but it appears to be also copied to the  
24 superintendent, isn't that right?

25 A. That's correct. 14:23

26 294 Q. Superintendent Comyns. And he says in the second  
27 paragraph:

28

29 "Following receipt of the attached correspondence, I



1 was summoned to attend at Fermoy Garda Station to meet  
2 with Chief Superintendent Dillane. Chief  
3 Superintendent Dillane indicated to me that he had a  
4 meeting with Chief Superintendent McLoughlin in the  
5 past week at Garda Headquarters. Chief Superintendent 14:24  
6 Dillane indicated he could not allow the present  
7 situation between myself and Superintendent Comyns to  
8 continue."

9

10 That's correct, isn't it? 14:24

11 A. That's correct.

12 295 Q. "He then asked that I supply him with a named station  
13 outside the Fermoy district to which I wished to be  
14 transferred and that I was to supply this information  
15 before Friday, 23rd January." 14:24

16

17 That's correct, isn't it?

18 A. That's correct.

19 296 Q. "He indicated that if did I not supply the transfer  
20 request, that he would let HRM deal with me." 14:24

21

22 Did you put it in those terms?

23 A. I don't know. I didn't put it that way. The way I put  
24 it was that, if you don't select a place -- or indicate  
25 a place you want to go to, that HRM will select one for 14:25  
26 you.

27 297 Q. He goes on to say: "This demand has upset and caused  
28 me considerable stress and I am anxious to know is it  
29 HRM who is demanding that I apply to be transferred or

1 is it at Chief Superintendent Dillane's request?

2

3

4

5

I would appreciate that the above matter be clarified before I approach my AGSI representative in relation to same."

14:25

6

7

So, I think that you replied to that, isn't that right?

8

A. I did, that's correct.

9 298

Q. And you again indicated your rationale as to why you were trying to have the transfer go through, isn't that right?

10

11

14:26

12

A. That's correct.

13 299

Q. We'll have that page, 464, up on the screen. The reply is sent to Superintendent Comyns because it came through the sergeant in charge, through Superintendent Comyns to you, isn't that right?

14

15

16

14:26

17

A. That's correct.

18 300

Q. And you refer to your meeting and we don't need to -- sorry, again we seem to have the -- sorry, it's page 467 up on the screen, sorry, Mr. Kavanagh. If we scroll down. It's stamped the 21st January. If we scroll down further, we see, in the second last paragraph you say:

19

20

21

22

23

14:26

24

25

26

27

28

29

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

14:27

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

Is that right?

14:27

A. That's correct.

301 Q. I think on Friday, 23rd January, you received correspondence from Sergeant Barry stating that he was stationed in Mitchelstown for the past 15 years and that he considered it the only safe and supportive workplace environment for him to work in, and that he would not be applying for a transfer. Is that right?

14:27

A. That's correct.

302 Q. Sergeant Barry chose to ignore the fact that the CMO's advice was that the safe and supportive workplace environment should preclude obligatory interaction between himself and Superintendent Comyns. And that was your view?

14:28

A. Yes.

303 Q. That letter that he sent on the 23rd January, we don't appear to have that at the moment, we're looking for it, but you've referred to it --

14:28

A. That's correct.

304 Q. -- in your statement. We've searched our documentation and we don't see it, but we will eventually track --

14:28

A. I looked for it while I was making my statement as well.

305 Q. We will eventually track it down and produce it. But in any event, he makes it very clear in that, that he

1 will not be applying for a transfer under any  
2 circumstances, isn't that right?

3 A. Yes, that's correct.

4 306 Q. Now, I think on the same day you sent an e-mail to  
5 Chief Superintendent McLoughlin concerning your meeting 14:29  
6 with Sergeant Barry. If we could have page 468 up on  
7 the screen, please. That's the e-mail and, in fact,  
8 you followed it on the same day with a letter, isn't  
9 that right?

10 A. That's right. 14:29

11 307 Q. It's perhaps easier to read, it's the next page, 439.  
12 And this, if we scroll down, you detail everything that  
13 occurred at the meeting with Sergeant Barry and there's  
14 no need to rehash it, but you refer to this letter in  
15 the last paragraph there, you see: 14:30

16  
17 "On Friday, 23rd January, I received correspondence  
18 from Sergeant Barry stating that he was stationed in  
19 Mitchelstown for the past 15 years and that he  
20 considered it the only safe and supportive workplace 14:30  
21 environment for him to work in and he would not be  
22 applying for a transfer."

23  
24 And then you highlight the fact that:

25 14:30

26 "Sergeant Barry chose to ignore the fact that the CMO's  
27 advice was that the safe and supportive workplace  
28 environment should preclude obligatory interaction  
29 between himself and Superintendent Comyns, the district

1 officer, Fermoy district. This is not possible if he  
2 is to remain to be stationed in Mitchelstown Garda  
3 Station."

4  
5 And then you say:

14:30

6  
7 "I now wish to have Sergeant Barry transferred to a  
8 division outside of Fermoy --"

9  
10 A. Sorry a district.

14:31

11 308 Q. District, sorry. "...to a district outside of the  
12 Fermoy Garda district." So that is what you indicated  
13 to Sergeant Barry that you would do?

14 A. That's correct.

15 309 Q. And that is what you did?

14:31

16 A. That's correct.

17 310 Q. Now, just on a slightly different issue, and it's  
18 something that you have mentioned in your statement,  
19 you said the following in your statement:

14:31

20  
21 "On the 2nd February 2015, I received a report from  
22 Inspector Joe O'Connor, acting district officer,  
23 Fermoy, in relation to Sergeant Gerry Quinn,  
24 Mitchelstown Garda Station. Sergeant Quinn had  
25 reported non-effective for duty on 20th January 2015  
26 from alleged occupational stress. In the report  
27 Inspector O'Connor stated that Sergeant Quinn claimed  
28 that his stress was caused by an alleged incident which  
29 occurred in 2005, when he was the sergeant in charge of

14:31

1 a drugs unit in Mallow Garda district. He also claimed  
2 that he was 'aware of the unfair treatment of Sergeant  
3 Barry attached to Mitchelstown Garda Station'."

4  
5 why is there a reference to this at all in your  
6 statement?

14:32

7 A. I honestly don't know. I was just going through  
8 anything that was told to me and I wanted to be -- show  
9 everything that I had been told at the time.

10 311 Q. It's just that Sergeant Barry, you know, it's one of  
11 the complaints that he has, is that in some way that  
12 there was an allegation made by you against him, that  
13 he had in some way put Sergeant Quinn up to making a  
14 complaint, isn't that right, you're aware of that?

14:32

15 A. That's correct, yeah. Because I had been dealing with  
16 Sergeant Quinn's complaint. I was actually the  
17 superintendent in Mallow that I think put -- when Gerry  
18 Quinn, when Sergeant Quinn went into the position we  
19 were talking about in Mallow. So I had a lot of inside  
20 information into it and I would have been on good terms  
21 with Sergeant Quinn in relation to how to progress or  
22 how we were progressing that. So I couldn't see how  
23 the allegation that Sergeant Barry was making about,  
24 that I had caused -- that Sergeant Barry had caused  
25 Sergeant Quinn to instigate his complaint, it just  
26 didn't make sense to me.

14:33

14:33

14:33

27 312 Q. All right. But in any event, that is the suggestion?

28 A. Yeah.

29 313 Q. That you were suggesting that --

1 A. Totally deny it.

2 314 Q. -- Sergeant Barry was stirring up trouble?

3 A. Yeah, yeah not --

4 315 Q. CHAIRMAN: Mr. Barry maintains that you accused him,  
5 Sergeant Barry, of putting Sergeant Quinn up to making 14:34  
6 the complaint?

7 A. I totally deny that. Because I --

8 316 Q. CHAIRMAN: I'm not saying it's right or --

9 A. Yeah.

10 317 Q. CHAIRMAN: I am just trying to get it into my own head? 14:34

11 A. Yes, that's correct.

12 318 Q. CHAIRMAN: That the complaint is --

13 A. That's correct, Mr. Chairman.

14 319 Q. CHAIRMAN: -- it's about your alleged accusation to  
15 Mr. Barry -- 14:34

16 A. Correct.

17 320 Q. CHAIRMAN: -- that he was putting up Gerry Quinn to  
18 make the complaint?

19 A. Yeah.

20 321 Q. CHAIRMAN: That's the actual allegation, as I 14:34  
21 understand it?

22 A. That's correct.

23 MR. MARRINAN: Yes.

24 A. I totally deny that.

25 CHAIRMAN: Sorry, Mr. Marrinan, I am sure you were 14:34  
26 getting to that, and I am sure you understood exactly  
27 what it was, but I wasn't entirely clear in my own  
28 mind.

29 MR. MARRINAN: No, that's very helpful.

1 322 Q. I think on the same day you spoke with Superintendent  
2 Comyns and he informed you about a rape conference that  
3 was held at Mitchelstown Garda Station at 12 midday  
4 that day?  
5 A. That's correct. 14:35

6 323 Q. And informed you that Sergeant Barry was in the garda  
7 station but had failed to attend the conference, isn't  
8 that right?  
9 A. That's correct.

10 324 Q. Now, I think he followed that up the following day with 14:35  
11 a report to that effect, and that appears at page 474.  
12 There's no need to open it, we've dealt with it with  
13 Superintendent Comyns, but I think that he reported  
14 that matter to you, isn't that right?  
15 A. That is correct. 14:35

16 325 Q. But at the end of it, and we dealt with this with  
17 Superintendent Comyns, but he outlined at the end of it  
18 that he cannot run a garda station with the conduct of  
19 Sergeant Barry and that he could not challenge this  
20 because the last part of Assistant Commissioner Nolan's 14:36  
21 investigation had not concluded, isn't that right?  
22 A. That's correct.

23 326 Q. I think on the same day you conveyed that information  
24 to Chief Superintendent Tony McLoughlin at HRM, isn't  
25 that right? 14:36  
26 A. That's correct.

27 327 Q. And you did so, we'll just have that on the screen,  
28 it's at page 476, please. If we just scroll up to the  
29 top there. Yes. We see it's from you to Chief



1 Superintendent McLoughlin?

2 A. Sorry, that one is from me to Michael Comyns, I think,  
3 is it? Sorry the one further, I apologise.

4 328 Q. Yes, from you to Chief Superintendent McLoughlin. And  
5 if we just look at the first paragraph there, you 14:37  
6 attach the report from Superintendent Comyns, in  
7 relation to the non-attendance at the conference "in  
8 which he outlines how the present situation where  
9 Sergeant Barry is seriously interfering with the  
10 administration of justice in the Fermoy district". And 14:37  
11 then you go on to deal with the various meetings that  
12 you had with Sergeant Barry and we needn't deal with  
13 those, but if we scroll over to the next page, page  
14 477, we will see that the last line of that is:  
15  
16 "I now wish to have Sergeant Barry transferred to a 14:38  
17 district outside Fermoy Garda district immediately."  
18  
19 I think on the 9th February, you received a  
20 notification from HRM, which was dated the 5th 14:38  
21 February, of the transfer of Sergeant Barry from  
22 Mitchelstown Garda Station to Anglesea Street Garda  
23 Station, effective from the 24th February 2015, isn't  
24 that right?

25 A. That's correct. 14:38

26 329 Q. You will be aware of the fact that one of Mr. Barry's  
27 complaints is that you had arranged this transfer to  
28 Anglesea Street, which was effectively ultimately  
29 putting him in, as he saw it, harm's way again. Had

1           you any input into the station to which Sergeant Barry  
2           was transferred?

3           A.    No hand, act or part.

4 330 Q.    I think on the 9th February, you wrote to Sergeant  
5           Barry notifying him of the transfer and in that letter  
6           you explain the logic behind it, isn't that right?

14:39

7           A.    That's correct.

8 331 Q.    We might just have that up on the screen briefly, page  
9           479. You outline the fact that he's being transferred  
10          and then in the last paragraph there you deal with the  
11          rationale for the transfer. You say:

14:40

12

13           "Your doctor has certified that you should not work or  
14           attend at Fermoy Garda Station and that you should not  
15           come into contact with Superintendent Michael Comyns.

14:40

16

17           The Garda chief medical officer has advised that it  
18           would be appropriate to facilitate you with a safe and  
19           supportive workplace environment that precludes  
20           obligatory interaction between Superintendent Comyns  
21           and yourself as far as reasonably practical. I  
22           explained to you that in order to ensure there was no  
23           obligatory interaction between yourself and  
24           Superintendent Comyns, that you would have to transfer  
25           out of the district."

14:40

14:40

26

27           And that was clear enough then in the letter that you  
28           sent to him.

29

1 On the 27th April, you received a report from the  
2 assistant commissioner Southern Region, who would be  
3 Assistant Commissioner Quilter, isn't that right?  
4 A. That's correct.  
5 332 Q. Informing you that Paul Barry had written to the 14:41  
6 Minister for Justice alleging improper interference by  
7 Superintendent Comyns in the investigation of a sexual  
8 assault and claiming that he was subject of bullying  
9 and harassment after raising his concerns. That report  
10 is at page 484. We don't need it on the screen. But 14:41  
11 you said earlier on this morning that the first you  
12 became aware of the nature of the allegation that was  
13 made by Mr. Barry was when you received the papers from  
14 the Tribunal?  
15 A. No, the details. 14:42  
16 333 Q. The details?  
17 A. The details of them, is what I said.  
18 334 Q. On the 24th June 2015, you sent an e-mail to  
19 Superintendent Nugent enquiring as to the present  
20 situation of the appeal that had been submitted by 14:42  
21 Sergeant Barry against his transfer. That's at page  
22 485, we don't need that. On the 25th June, she replied  
23 and indicated that Mr. Barrett had been appointed by  
24 the commissioner to carry out the review, and she would  
25 check to establish the status and revert back to you. 14:42  
26 I think on the 25th June you received correspondence  
27 from Inspector O'Connor, who is the acting district  
28 officer at Fermoy Garda Station, in relation to a  
29 report he had received from Sergeant Barry on the 24th

1 June 2015. The report related to the proposed transfer  
2 of Garda Shane Hannafin from unit B to unit C.

3

4 Now, before we move on from that, obviously at this  
5 stage Superintendent Comyns has transferred?

14:43

6 A. That's correct.

7 335 Q. I think it was the 7th or the 9th of March that he had  
8 taken up his duty in Mayfield district. Did you regard  
9 the problem then in relation to the transfer of  
10 Sergeant Barry as coming to an end?

14:44

11 A. Would you explain what...?

12 336 Q. Well, did you think, Superintendent Comyns has now  
13 left, did you think of going back to HRM or to the  
14 chief medical officer or the assistant chief medical  
15 officer and say, look, this problem has now gone  
16 insofar as Superintendent Comyns has transferred from  
17 the Fermoy district and, therefore, it doesn't appear  
18 that the medical certificate that issued in relation to  
19 Sergeant Barry is now relevant?

14:44

20 A. What month are we talking about now that I think this?  
21 What month are you speaking about?

14:44

22 337 Q. After the transfer of Superintendent Comyns?

23 A. Not immediately. Not immediately.

24 338 Q. No. Why not?

25 A. Well, an interdivisional transfer, this was HRM's work  
26 and it was outside my -- and also, when Superintendent  
27 Comyns left, Sergeant Barry hadn't started coming in in  
28 the mornings and evenings, he still wasn't coming into  
29 the meetings in the mornings and evenings, even though

14:44

1 Superintendent Comyns was gone.

2 339 Q. Well, that was even more reason, perhaps, why there  
3 should be a review by HRM at that stage. I mean, did  
4 you alert them to the fact that Superintendent Comyns  
5 had in fact transferred from Fermoy to Mayfield? 14:45

6 A. But the certificate was still there saying he couldn't  
7 attend Fermoy Garda Station.

8 340 Q. Yes, but that was linked, surely, to the presence of  
9 Superintendent Comyns at Fermoy Garda Station?

10 A. Well, at this stage he was on a bulletin to go to 14:45  
11 Anglesea Street and I wasn't going to -- you know, I  
12 wasn't going to interfere with it. But what I am  
13 saying is, he still wasn't coming in in the mornings  
14 and evenings to do his duty, even though Superintendent  
15 Comyns was gone. 14:46

16 341 Q. Right. Did you call him in and ask him why?

17 A. No, I didn't.

18 342 Q. Did you write to him --

19 A. No, I didn't.

20 343 Q. -- or indicate, look, could you please explain this -- 14:46

21 A. No, I didn't.

22 344 Q. -- we have a medical certificate?

23 A. No, I didn't.

24 345 Q. At this stage had there been a sort of break down of  
25 communication between you and him? 14:46

26 A. I wouldn't call it a break down in communications but  
27 the transfer was there. He was still in Mitchelstown,  
28 still not performing his duties and, you know, I had  
29 tried my best to do everything for -- this was going on

1 since 2012, this was 2015.

2 346 Q. Yes.

3 A. It was three years later, and I still hadn't got a  
4 sergeant in Fermoy. That was my worry, you know. My  
5 main thing was I still hadn't got a sergeant in Fermoy, 14:46  
6 which I had tried to do in 2013.

7 347 Q. Okay. So anyway, you received this correspondence from  
8 Inspector O'Connor and this concerned the transfer and  
9 we're familiar with the document and the report that  
10 had been submitted by Sergeant Barry. I think that you 14:47  
11 wrote to Superintendent Comyns on the 2nd July of 2015,  
12 and you asked him to give a report on the issues --

13 A. That's correct.

14 348 Q. -- that arose as a result of reading that report. And  
15 on the 6th July, you received a comprehensive report 14:47  
16 from Superintendent Comyns --

17 A. That's correct.

18 349 Q. -- in relation to the matter, isn't that right? You  
19 had no role at all in relation to the transfer --

20 A. No. 14:47

21 350 Q. -- of members in Fermoy district, isn't that right?

22 A. That was a matter for the district officer, yeah.

23 351 Q. Now, I think, having read all the reports that were  
24 available to you, and bearing in mind Sergeant Barry's  
25 allegations, you decided, as you put it in your 14:48  
26 statement, to get an independent set of eyes to look at  
27 the whole matter, isn't that right?

28 A. That's correct.

29 352 Q. And I think that you appointed Inspector Eoghan Healy

1 of Midleton Garda Station to carry out preliminary  
2 enquiries and investigation into the matters that arose  
3 from Sergeant Barry's report of the 24th June 2014?  
4 A. That is correct.  
5 353 Q. I think on the 26th July 2015, you received 14:48  
6 correspondence from Mr. Ken Ruane, head of legal  
7 services, Legal Affairs, which notified you of a  
8 personal injury claim Sergeant Barry had lodged for  
9 alleged harassment, bullying and intimidation while  
10 working in Mitchelstown Garda Station, isn't that 14:49  
11 right?  
12 A. That's correct.  
13 354 Q. Now, on the 4th August 2015, you received a  
14 comprehensive report, stretching to seven pages, it's  
15 from page 501 to 508, I don't need it on the screen, 14:49  
16 but it's a comprehensive report that was carried out by  
17 Inspector Healy, isn't that right?  
18 A. That's correct.  
19 355 Q. And you decided that that was matter that you should  
20 forward on then to Mr. Barrett? 14:49  
21 A. That's correct, yeah.  
22 356 Q. That report that was done by Inspector Healy, you  
23 decided at that juncture that this was a matter that  
24 should be put in with the other complaints that had  
25 been made -- 14:50  
26 A. That's correct.  
27 357 Q. -- by Sergeant Barry, so that they would all be  
28 investigated under the one umbrella, isn't that right?  
29 A. That's correct.

1 358 Q. And you decided that that was a matter that should be  
2 dealt with by HRM and that they would make a decision  
3 in relation to who --

4 A. That's correct.

5 359 Q. -- was the appropriate person to conduct the 14:50  
6 investigation. I think it appears that there matters  
7 stood for quite a considerable period of time, as far  
8 as Sergeant Barry was concerned, and I think on the  
9 18th March of 2016, you were notified by the district  
10 office in Fermoy that Sergeant Barry had applied to 14:51  
11 retire from An Garda Síochána from the 19th June of  
12 2016, isn't that right?

13 A. That is correct.

14 360 Q. I think on the 23rd March 2016, you sent a written 14:51  
15 notification to HRM outlining Sergeant Barry's  
16 intention to retire. And I think in accordance with  
17 Code 12.12, you express an opinion as to the category  
18 of his service, and you certified it as being very  
19 good, isn't that right?

20 A. That is correct. 14:52

21 361 Q. This is one of the complaints that Mr. Barry has and we  
22 may as well deal with it now. From the papers it would  
23 appear, and Mr. Barry when he was giving his evidence  
24 appears to have accepted, that there wasn't a delay as  
25 such in you giving your recommendation of his service, 14:52  
26 but he still complains that you had lowered it from  
27 what would be the normal, which would be exemplary.  
28 Subsequently you reverted to the exemplary because you  
29 reflected on the matter, isn't that right?



1 A. Well, that is correct, yeah.

2 362 Q. You reflected and took advice from other  
3 superintendents and chief superintendents?

4 A. Chief superintendents.

5 363 Q. And you consulted with them as to their experience of 14:53  
6 Sergeant Barry over the years, and as a result of that  
7 you changed it to exemplary?

8 A. That's correct.

9 364 Q. Can you tell us why it was in the first instance that  
10 you decided to certify him as being, you know, very 14:53  
11 good?

12 A. I put a lot of thought into this, into it at the time,  
13 because it wasn't a thing that I would do easy. But I  
14 looked at a number of sergeants that were retiring and  
15 I said, right, I had sergeant X and sergeant Y and 14:54  
16 since I came into contact with sergeant X and Sergeant  
17 Barry in 2012/2013, he hadn't performed his job. Okay,  
18 we'll give him the benefit, he said he had a problem  
19 with Superintendent Comyns. But now this was 12 months  
20 after Superintendent Comyns had left and he still 14:54  
21 hadn't come in to do his duties in the mornings and  
22 evenings. So, Superintendent Comyns is gone and he's  
23 still not coming in to do his duties. So, can I give  
24 him the same grading as I am giving a sergeant who has  
25 done that correctly for his 30 years? I felt I 14:54  
26 couldn't, in my own heart, to be equal to everyone, not  
27 just Sergeant Barry, but I had to be fair to the other  
28 sergeants that I was giving exemplary to as well. And  
29 then, I suppose, I felt that during my dealings with

1 him, and this is my expression, I couldn't lead nor  
2 drive him. I tried my best to help him, I tried my  
3 best to do everything. As I said earlier, I had a  
4 number of serious HR problems, everybody, once I gave a  
5 bit, they gave a bit and we compromised. But there was 14:55  
6 no compromise, I felt, and that is why I gave him very  
7 good. But I did judge it on the four years that I  
8 dealt with him. On reflection, when I spoke to people  
9 he had dealt with earlier, I said, well look, over the  
10 30 years, the four years is a small part. And it's a 14:55  
11 subjective matter, and it's my point of view, the  
12 commissioner doesn't have to issue the certificate, he  
13 only asks me for my point of view. And, you know, that  
14 was my reasoning behind it.

15 365 Q. I am not going to open all the correspondence that went 14:55  
16 back and forth in relation to this issue, but there is  
17 one document just at page 5675. This is a letter sent  
18 by you to the head of directorate, Garda pension  
19 section. I think in the first instance, if you don't  
20 certify somebody in the exemplary classification, you 14:56  
21 have to state your reasons, isn't that right?

22 A. So I have been told since I retired.

23 366 Q. Yes.

24 A. Since.

25 367 Q. You weren't aware of that at the time? 14:56  
26 A. It's not in the Garda Code.

27 368 Q. Right. well, apparently we know that it's a rule that  
28 exists. But anyway, you weren't aware of it. So you  
29 were ultimately asked for your reasons and in this

1 letter, which is date stamped 5th January 2018, you'll  
2 see there, in the last paragraph you say:

3  
4 "My reason for not awarding Sergeant Barry an exemplary  
5 classification is that in my limited dealings with the 14:56  
6 member I found him to be very difficult and  
7 discourteous."

8  
9 So, that's the reason that you stated at the time?

10 A. Well, yes, discourteous towards the people of Cork 14:57  
11 North or the Fermoy district, because he didn't provide  
12 the service he was supposed to be. I found him  
13 difficult to deal with, insofar, as I said earlier, I  
14 could not lead him or drive him.

15 369 Q. But in any event, ultimately you changed the 14:57  
16 classification?

17 A. I did, yeah, which, you know, ultimately I think I'm  
18 entitled to do and I reflected on it and...

19 370 Q. Now, I think on the 5th May of 2016, you heard that the 14:57  
20 transfer appeal board had allowed Sergeant Barry's  
21 appeal from the transfer from Mitchelstown Garda  
22 Station to Anglesea Street Garda Station?

23 A. That's correct.

24 371 Q. And you note that Sergeant Barry's appeal was allowed 14:57  
25 because the appeal board felt that it was not fully  
26 evident that the reasons given for the transfer  
27 remained valid at that time, and that was on the basis  
28 that Superintendent Comyns was no longer stationed at  
29 Fermoy and that everything was back to normal with

1 Sergeant Barry?

2 A. That's correct.

3 372 Q. I think on the 2nd June 2016, you were officially  
4 notified of that decision. You were notified by  
5 Mr. Barrett and you immediately forwarded the decision 14:58  
6 to the superintendent in Fermoy for transmission to  
7 Mitchelstown Garda Station?

8 A. That's correct.

9 373 Q. I think that you also, on the same day, 2nd June 2016,  
10 sent a minute to the superintendent in Fermoy, who was 14:59  
11 then Superintendent Michael Maguire, asking whether or  
12 not Sergeant Barry was attending the evening or morning  
13 briefings in Fermoy Garda Station, isn't that right?

14 A. That's correct.

15 374 Q. I think that on the 7th June you received a reply from 14:59  
16 Superintendent Maguire, informing you that he wasn't  
17 attending. That's at page 523, we don't need it up on  
18 the screen, but that was what you were informed at the  
19 time?

20 A. That's correct. 14:59

21 375 Q. Now, I think on the 19th June 2016, Sergeant Barry  
22 retired from An Garda Síochána, isn't that right?

23 A. That's correct.

24 376 Q. Now, I think that if we could just deal with the  
25 schedule of issues, which are identified as being a 15:01  
26 persons against whom a case of targeting is made by  
27 Mr. Barry. I suppose first of all in terms of the  
28 disclosure that was made by Sergeant Barry of alleged  
29 wrongdoing by Superintendent Comyns, you say you

1           weren't aware of the details of that until you received  
2           papers from this Tribunal?

3           A.     Correct.

4   377   Q.     Is that right?

5           A.     Yes. 15:02

6   378   Q.     Other than that, did you have a view one way or the  
7           other in relation to Sergeant Barry making a complaint  
8           as he did against Superintendent Comyns, be it under  
9           the bullying and harassment regulations, whether it be  
10          a disciplinary matter or a criminal matter, did you 15:02  
11          have any view in relation to that?

12          A.     Well, the view I had is that he's entitled to make  
13          whatever complaint he wants, but if he makes a  
14          complaint he has to live or work by the procedures that  
15          are put in place. 15:02

16   379   Q.     So, looking at the schedule of issues, under issue  
17          number 3, 3A is "By treating his sick leave as ordinary  
18          illness and not work-related illness, resulting in a  
19          loss of pay". Now, as far as issuing an 1137 is  
20          concerned, that can be done by the chief 15:03  
21          superintendent, isn't that right?

22          A.     That's correct.

23   380   Q.     You didn't issue an 11.37 in the case of Sergeant  
24          Barry, isn't that right?

25          A.     I indicated the first day I met him I had no knowledge 15:03  
26          of his issue with Superintendent Comyns. He said he  
27          did not want to discuss his issue with me. And  
28          therefore I was not in a position to do it.

29   381   Q.     The next one is B: "By failing to make proper

1 temporary workplace accommodation for Sergeant Barry,  
2 to which he was entitled."

3

4 what do you say in relation to that?

5 A. I think for the last three or four hours I have showed 15:03  
6 how many times I have offered to facilitate him and I  
7 can't go any further than that. I outlined that he  
8 can't work in the same district, if he wasn't willing  
9 to --

10 CHAIRMAN: I think we have been over most of these 15:04  
11 before, Mr. Marrinan.

12 MR. MARRINAN: Yes, right.

13 CHAIRMAN: I mean, I actually think maybe at the end,  
14 if they haven't been covered by your colleagues who are  
15 examining -- 15:04

16 A. Mr. Marrinan, there's one I think that weren't covered.  
17 I am trying to tick off 17 altogether. I have them in  
18 my head.

19 382 Q. CHAIRMAN: Tell us the one that wasn't covered?

20 A. Fota Island. 15:04

21 CHAIRMAN: Fota Island, that's right. You didn't  
22 mention that.

23 MR. MARRINAN: That is one I was going to come to. We  
24 will leave the others aside, I think we have dealt with  
25 them all. 15:04

26 CHAIRMAN: Mr. Marrinan, you were being quite  
27 comprehensive, I understand, but you better deal with  
28 the Fota Island one.

29 383 Q. MR. MARRINAN: So, you can deal with that and that's

1 the way I had intended to deal with it, as an  
2 allegation that was there in relation to --

3 CHAIRMAN: Okay, what do you say in relation to Fota?

4 384 Q. MR. MARRINAN: what do you say in relation to the  
5 allegation?

15:05

6 A. Fota Island, around the middle or end of January we  
7 were notified that the Irish Golf was coming to Fota  
8 Island. The day were notified I got a phone call from  
9 Chief Superintendent Quilter, who said, I've a holiday  
10 booked for that period, and Superintendent Comyns had  
11 agreed to cover for him. What he means there was, for  
12 legislative purposes, before a superintendent books a  
13 holiday, they will always check to see is there  
14 somebody available to cover for section 4s, for  
15 extension of prisoners, for all that, legislative  
16 purposes. So, that was grand. I said, there's no  
17 problem, we'll work it out. But then in the next  
18 couple of weeks, during one of the PAFs, the divisional  
19 PAFs, Superintendent McCarthy informed me that he had  
20 the Mallow Garden and Home Fair on that weekend, which  
21 is another major event in the division. So, that meant  
22 my choice was Superintendent Comyns or Superintendent  
23 Comyns, and he was the only person that I could  
24 nominate to take over in Midleton for the event. Now,  
25 Superintendent Quilter and Inspector Healy did the  
26 organising of it. They organised about a traffic plan,  
27 they put together a personnel plan. All of this was  
28 done in conjunction with the GRA and AGSI, because you  
29 had hours to be changed, and it was done in a

15:05

15:05

15:05

15:06

1 cost-saving manner, the cheapest way or the most  
2 prudent way to carry out the event. Now, my role in  
3 this was: Right, I was in charge, I was dealing with  
4 the European golf tour, I was dealing with Garda  
5 Headquarters, I was dealing with adjoining division, 15:06  
6 Cork City, who were providing members and facilities  
7 for us as well. When the work plan came out, I signed  
8 off on it but I had no idea, I didn't look through the  
9 100 or 120 names that were on to do this or do that.  
10 It was never brought to my notice of any conflict 15:07  
11 between Superintendent Comyns or Paul Barry, that they  
12 were both working in the area at the time. The units  
13 that were decided was done solely by Superintendent  
14 Quilter and Inspector Healy at the time.

15  
16 So what I am saying is, I hadn't -- where I did sign  
17 off on it and I had responsibility for it, the minute  
18 details of who was doing what and who was filling what  
19 gap, I hadn't -- I had no part in that or no knowledge  
20 of it really. 15:07

21 MR. MARRINAN: Thank you very much. That's all I have  
22 for you for the moment.

23  
24 END OF EXAMINATION

25  
26 CHAIRMAN: Thank you very much.

27 THE WITNESS: Thank you.

28 CHAIRMAN: Now, Mr. Costelloe.  
29



1 MR. GERARD DILLANE WAS CROSS-EXAMINED BY MR. COSTELLOE,  
2 AS FOLLOWS:

3  
4 385 Q. MR. COSTELLOE: Good afternoon, chief superintendent.

5 A. Good afternoon, Mr. Costelloe. 15:07

6 386 Q. You understand that I am instructed for Mr. Barry?

7 A. That's correct.

8 387 Q. Could we please begin with something that you touched  
9 upon yesterday and then twice in the very recent past,  
10 in the last 20 minutes or so you came back to, which, 15:07  
11 if I describe it this day, deals with the extent to  
12 which you had knowledge of the bullying and harassment  
13 complaints being made by my client, okay?

14 A. That's correct.

15 388 Q. Right. In the first instance, there's a discrepancy 15:08  
16 between -- I feel confident in calling it a discrepancy  
17 because it seems to be clear cut that -- you do not  
18 agree about this, but there appears to be a discrepancy  
19 about whether or not you met with my client in person  
20 on the 13th September 2013. He says you did not, you 15:08  
21 say you did, correct?

22 A. Yeah, and I say I'm referring to my notes that was  
23 provided, that's what I say I'm referring to.

24 389 Q. I completely understand.

25 A. Yeah. 15:08

26 390 Q. I will come to it and I will give you an opportunity to  
27 explain it again if you want to, I just want to make  
28 certain that I am not putting something unfairly to  
29 you. There is a discrepancy there, I am not even sure

1           whether or not this is a significant issue, but just to  
2           deal with it head on, he says that you did not meet in  
3           person on that date, you say that based on looking at  
4           the letter you sent four days later, you're of the view  
5           that you did? 15:09

6           A.    That's correct.

7   391   Q.    Okay. I will come back to that letter in a moment, I  
8           am also going to come back to another letter, but could  
9           I suggest to you that this was because you had been  
10          made aware of the fact that there was an issue, a 15:09  
11          management issue, and you wanted to try and resolve it?

12          A.    I don't understand the question.

13   392   Q.    Fair enough. You knew that Mr. Barry was out, he was  
14          out because of what he said was work-related stress and  
15          you had some information to the effect that this may 15:09  
16          have pertained to a Regulation 10 that had been served  
17          on him on the 2nd August 2013. You knew all of that  
18          when you met him?

19          A.    I did, yes.

20   393   Q.    And can we take it then that your intention when you 15:09  
21          either spoke to him by phone or met with him on the  
22          13th September, was with a view to seeing if you could  
23          resolve that issue?

24          A.    Not the Regulation 10, but my issue was, here was a  
25          person who had work-related stress, he indicated that 15:10  
26          he had an issue with the superintendent and that I had  
27          applied to get the matter investigated by a chief  
28          superintendent outside the division, and it was in my  
29          interest to make sure that he made his statement as

1 soon as he could to the person who was going to  
2 investigate it, because there was an obligation on me  
3 to have that investigated. And when it was transferred  
4 to somebody else then, that obligation was off me.

5 394 Q. Why was it necessary for you to meet with him 15:10  
6 face-to-face to express that to him?

7 A. It wasn't necessary, but under welfare you'll always  
8 try and meet people like, we're all human beings, we  
9 work together, we're colleagues, you know. It isn't  
10 that it's him -- that's the way we try and normally 15:10  
11 deal with people, is try and meet them in person and  
12 say, look, can we progress this, if you want someone  
13 from outside. I had already applied to get it  
14 investigated and that's the way I operate and...

15 395 Q. Could I suggest to you, chief superintendent, that 15:11  
16 we're in agreement, this is a welfare issue, you're  
17 taking steps to try and do what's in the best  
18 interests, first of all, for An Garda Síochána but not  
19 to give it a hierarchical or what comes first, what  
20 comes second, but you also are wanting to try and 15:11  
21 resolve the issue from a welfare point of view of  
22 Mr. Barry being out sick on a work-related stress  
23 complaint?

24 A. That's correct.

25 396 Q. I mean, you're a senior manager and you're trying to 15:11  
26 look after your people?

27 A. That's correct.

28 397 Q. Okay. And I did say to you I'd give you an opportunity  
29 to comment upon this, you say that in reference to the

1 letter which we've had open now a number of times, it's  
2 page 370 of the materials, and, indeed, it's  
3 replicated, I suspect by way of a cut and paste,  
4 because the wording is almost identical, in a letter  
5 that's sent to John Barrett at HRM, at page 119, you 15:12  
6 refer to the meeting and it being a meeting in person.  
7 And we all understand that that's what you are basing  
8 your recollection upon?

9 A. That's correct.

10 398 Q. If I could ask you then, please, to direct your 15:12  
11 attention to something that was opened to you earlier  
12 today, I think it was in the early afternoon, by  
13 Mr. Marrinan, at page 380. You have seen this document  
14 already, but to give you an opportunity to take a look  
15 at it there again. Would you mind scrolling down a 15:12  
16 tiny bit, Mr. Kavanagh, for me, please. Keep going,  
17 keep going, okay, perfect. You will see there at the  
18 end of the first paragraph, chief superintendent:

19  
20 "I became a little concerned and decided that I would 15:12  
21 meet with Sergeant Barry in person to discuss any  
22 issues."

23  
24 Next paragraph:

25  
26 "On 13th October 2012, at 2pm, I met with Sergeant 15:12  
27 Barry at Rushbrook Glanmire."  
28

29 Do you see that?

1 A. That's correct.

2 399 Q. wouldn't that suggest that that's the first meeting in  
3 person that you had with him?

4 A. You could read that into it. You could read it into  
5 it, yes. 15:13

6 400 Q. well, can I put it to you this way, superintendent:  
7 You have been, may I suggest to you, very careful and  
8 very, let's say, fair in saying that you're basing your  
9 recollection of this sequence of events from material  
10 that was generated in or about that time and the best 15:13  
11 you can say is, your interpretation from that material  
12 that you met with my client in person on the 13th  
13 September, but he is absolutely adamant, from his own  
14 recollection, that that was not a meeting in person,  
15 that was a meeting by phone? 15:13

16 A. The only thing I would say is that the meeting in  
17 October was the first one that there was some proper --  
18 there was some interaction, if you know what I mean,  
19 something happened at that meeting. The other meeting,  
20 we only agreed to meet on the 21st again. 15:13

21 401 Q. well, the Chairman will decide for himself --

22 A. Yeah.

23 402 Q. -- whether or not anything of substance happened at  
24 that meeting on the 13th, whether it be in person or by  
25 phone. And again, and I want to say this to you, I am 15:14  
26 not entirely sure what turns on it --

27 CHAIRMAN: Does anything turn on it?

28 MR. COSTELLOE: well, I have instructions --

29 CHAIRMAN: I take your point, that you're saying very,

1 very frankly, if I may say so, but I can tell you, I am  
2 puzzled as to whether anything does turn on it. So, if  
3 you think it does, please indicate that it does because  
4 I am completely unaware of how much a difference it  
5 makes whether the meeting in September was on the 15:14  
6 phone -- sorry, whether the engagement, I'm sorry, the  
7 encounter was on the phone or in person. I do not  
8 understand how that could make any difference. If it  
9 does, please let me know. Because at this moment I  
10 have no idea. 15:15

11 MR. COSTELLOE: I am going to move on, Chairman,  
12 because --

13 CHAIRMAN: No, no, sorry, it's not a criticism and it's  
14 not a suggestion to you -- sorry, I just want to make  
15 it clear: If it is to be suggested that it makes any 15:15  
16 difference I hope that people will help me to say why  
17 it makes a difference. Okay. I am just indicating,  
18 because I have no idea why it makes a difference  
19 whether it was on the phone. I am sorry to interrupt  
20 you, but I may as well make that clear in the hope that 15:15  
21 somebody will clarify it for me.

22 MR. COSTELLOE: Thank you, Chairman.

23 403 Q. Chief superintendent, I am going to move on. I merely  
24 wish to put it to you that my client was certain that  
25 the meeting -- 15:15

26 CHAIRMAN: He does say that.

27 404 Q. MR. COSTELLOE: You have your own view based on the  
28 material and I have brought your attention to a  
29 subsequent e-mail and we have heard what you have to

1 say about that. There are undoubtedly going to be  
2 certain things that I am going to put to you by way of  
3 propositions to which you are going to flatly reject, I  
4 am certain of that fact, this was merely to put to you  
5 something that I wanted to suggest to you that perhaps 15:15  
6 you might have been wrong, without perhaps any great  
7 import being drawn to the fact that you might have been  
8 wrong about it. We'll move on.

9  
10 The purpose of you engaging with Mr. Barry on the 13th 15:16  
11 September, attempting to engage with him on the 21st th  
12 September and then again engaging with him on the 13th  
13 October, you have explained to the Chairman and again  
14 just a moment ago you clarified that for us.

15 15:16  
16 You say that during the course of these engagements he  
17 said to you that he would not be the one to move, that  
18 it would be the superintendent who had to move. I am  
19 referring -- I know we all know what I am talking about  
20 but for the record, if nothing else, I am referring to 15:16  
21 him basically saying, Superintendent Comyns can get out  
22 of Fermoy, I am not moving from Mitchelstown. Words to  
23 that effect. You remember giving that evidence and  
24 making note in your journal to the effect that this was  
25 something that was said by him? 15:16

26 A. Correct.

27 405 Q. Your understanding, based on the evidence that I have  
28 heard you give, seems to be that up to this point, this  
29 is all something that kicked off, originated from the

1 service of a form 10 a month prior, isn't that right?

2 A. That's correct.

3 406 Q. That would therefore, and I am talking now about the  
4 comment, it's Superintendent Comyns who can go, I'm not  
5 going anywhere, that would appear to be a gross 15:17  
6 overreaction to what appears to be a relatively minor  
7 disciplinary matter. Would you agree with me?

8 A. I wouldn't, because at this stage, when he said that --

9 407 Q. Excuse me, chief superintendent, and I'm terribly sorry  
10 to interrupt you, I can't hear you, could you speak 15:17  
11 into the microphone for me, please. Just come in a  
12 tiny bit, thank you very much?

13 A. The question again?

14 408 Q. So, what I am suggesting to you is this: You're  
15 attending or engaging with Mr. Barry, it begins on the 15:17  
16 13th September, it goes through to the 13th October and  
17 beyond, but just in that initial period, he is out from  
18 work on what he says is work-related stress and to the  
19 extent to which you're telling us you had any  
20 understanding of what that was all about, it seemed to 15:18  
21 relate to the service of a Regulation 10 on him a month  
22 prior, that being the 2nd August 2013. Are we in  
23 agreement so far?

24 A. Yes.

25 409 Q. Okay. And then you're telling us that you have a 15:18  
26 memory of him saying, when you brought up the issue of  
27 him transferring out of Mitchelstown that his response  
28 was, I'm not going anywhere, the superintendent can go  
29 or the superintendent can move, is that correct?



1 A. That's correct.

2 410 Q. Okay. And what I am suggesting to you is that if that  
3 were the entirety of your state of knowledge at the  
4 time, that this whole thing, this whole affair related  
5 to a form 10, a Regulation 10, pardon me, a Regulation 15:18  
6 10, that that statement by Mr. Barry would appear to be  
7 totally over the top, completely excessive. And I am  
8 asking you, I am giving you an opportunity to comment  
9 on that suggestion?

10 A. My comment to that suggestion is that at this stage, on 15:19  
11 the 13th October, he had his complaint made to HRM.  
12 Now, I did not know what was in the complaint but from  
13 his reaction, it seemed to be more than a Regulation  
14 10, but Regulation 10 was the only thing that I had  
15 knowledge of. 15:19

16 411 Q. Okay.

17 A. And it was my assumption up to that, that it was a  
18 Regulation 10 and when I said to him -- he told me he  
19 an issue working with the superintendent. And I said,  
20 if you have an issue, I can facilitate you while we try 15:19  
21 and resolve the issue. And he said, I've made the  
22 complaint, if anyone is going to move, it's going to be  
23 the superintendent.

24 412 Q. Yes.

25 A. That's the way it happened. 15:19

26 413 Q. Yes. And again, if that is what happened, as you say  
27 it was, you went into this meeting, this engagement  
28 with at most an understanding about the form, the  
29 Regulation 10 and nothing more and then this is said by

1 my client, wouldn't it have been the immediate  
2 response, wouldn't you have then immediately progressed  
3 to say, ah Paul, hang on now a second, what are you  
4 doing, what are you talking about, that's ridiculous.  
5 Or even simply saying to him, could you just explain to 15:20  
6 me just exactly what your complaint is here, because  
7 that seems to be totally nuts, crazy, bonkers,  
8 whatever, that you would expect a superintendent to  
9 move out of the district rather than you move while the  
10 complaint is being investigated? Do you understand my 15:20  
11 question?

12 A. I do. But he had already told Inspector O'Sullivan and  
13 already told me that he didn't want us to know anything  
14 about the complaint and that this was to be dealt with  
15 by HRM. 15:20

16 414 Q. Okay.

17 A. So he didn't want me to know about it, so...

18 415 Q. You felt your hands were tied, is it?

19 A. Oh yeah, totally.

20 416 Q. Again, I am putting to you that Mr. Barry never said 15:20  
21 that it was the superintendent who had to be moved and  
22 not him, and his instructions to me, which I am putting  
23 to you in that question, are that that simply was not  
24 said by him?

25 A. I would categorically say under oath here that that is 15:21  
26 what I was told on that day.

27 417 Q. Okay. One of the consistent refrains, one of the  
28 consistent pieces or themes of Mr. Barry's evidence was  
29 that -- sorry, could you -- before I go any further,

1 let me interrupt myself. I did see you in the room for  
2 some of last week, I think. Were you here for the  
3 entirety of Mr. Barry's evidence?

4 A. No, no, I wasn't.

5 418 Q. Did you have an opportunity to familiarise yourself 15:21  
6 with the transcripts of his evidence?

7 A. Not the whole lot. Some of it. Some of it, yes.

8 419 Q. Okay. During his evidence, I will be corrected if I am  
9 misstating this unfairly, but during his evidence he at  
10 various times said that he was not going to apply for a 15:21  
11 transfer but that if a transfer to Mallow was offered,  
12 he would take it. The difference being, as you agreed  
13 with Mr. Marrinan yesterday, one is effectively at your  
14 own expense and one is at the public expense. You're  
15 nodding your head, you understand that to be... 15:22

16 A. I do. And I thought I told Mr. Marrinan yesterday that  
17 the first I heard of Paul Barry looking for a transfer  
18 to Mallow was when I came into this Tribunal and I read  
19 the transcript.

20 420 Q. Yes. You have anticipated my next question. So to be 15:22  
21 clear: we're certain that your evidence is that he  
22 never said anything to you that he would be willing to  
23 move to Mallow but it wouldn't be at his request?

24 A. That's correct.

25 421 Q. Okay. And again, whether he did or he didn't, leaving 15:22  
26 that aside for one moment, you do agree that there is a  
27 difference between being told you're moving and asking  
28 to move?

29 A. Yes.

1 422 Q. Being told you're being transferred and asking to  
2 transfer, isn't that right?

3 A. Yes. Yes, but at the very start we were looking for  
4 somewhere temporary just for him to go until the  
5 matters were resolved. There was no -- and it's in the 15:22  
6 e-mail from Assistant Commissioner Fanning to  
7 Mr. Costello that your client can be transferred back  
8 when matters -- so it's only a temporary placement  
9 we're looking for.

10 423 Q. Again, again, I understand that that's what you are 15:23  
11 saying, but I just want to deal, first of all, with,  
12 and I think we're all agreeing on this, there is a  
13 difference between, in the context of permanent  
14 transfers, applying for or being told that you're  
15 transferring, yes? 15:23

16 A. That's correct, oh yes.

17 424 Q. I mean, you're a chief superintendent, I am going to  
18 assume, Mr. Dillane, that you didn't start your career  
19 in the one district and finish the entire way through,  
20 you must have been transferred over the course of a 15:23  
21 lengthy career, isn't that right?

22 A. That's correct.

23 425 Q. Did you always apply for those transfers or were they  
24 occasionally done by direction?

25 A. Definitely not. Definitely didn't always apply for 15:23  
26 them.

27 426 Q. So you have personal knowledge of the fact that in  
28 certain circumstances you end up it costing you and in  
29 certain circumstances the public pays for it?

1 A. That's correct.

2 427 Q. And what you are telling the Chairman is that you have,  
3 as far as you're concerned, no knowledge of my client  
4 ever raising this with you, saying, I'll go but not if  
5 I am -- not to ask, but if I am told? 15:24

6 A. That's correct.

7 428 Q. Okay. You would never have raised with him then or had  
8 a conversation with him then about public expense?

9 A. Never.

10 429 Q. The Exchequer taking the hit, if you will? 15:24

11 A. Never mentioned once.

12 430 Q. It's just that I find it curious, I don't know whether  
13 anybody else does or whether I am totally wrong on  
14 this, whatever, the Chairman will make up his own mind,  
15 but when there is a talk much later on of moving him to 15:24  
16 Anglesea Street, if we could just maybe perhaps look at  
17 perhaps page 478. I hope that is correct. We will put  
18 this up, hopefully. Yeah, that's a good example of it  
19 right there. So this is a letter, in fact I think it  
20 was just opened just a moment ago to you by 15:25  
21 Mr. Marrinan. This is a letter that was sent from  
22 Chief Superintendent McLoughlin and it's addressed to  
23 you and it deals with the last in the sequence of  
24 potential transfers for my client and it's talking  
25 about moving him from Mitchelstown to Anglesea Street 15:25  
26 on the 24th February. And it says there in the first  
27 sentence:  
28  
29 "Sergeant Paul Barry will transfer at public expense."

1 A. Correct.

2 431 Q. Why is there reference there to at public expense in  
3 that letter?

4 A. Because Paul Barry didn't look for the transfer.

5 432 Q. Well, obviously he didn't look for the transfer because 15:25  
6 he's being told he's moving to Anglesea Street?

7 A. Yeah.

8 433 Q. And we know from everything that's been opened already  
9 and the Chairman knows that he objected to this  
10 transfer. But what I am asking though is, why was it 15:25  
11 necessary to include in that letter the fact that it's  
12 going to be at public expense?

13 A. I think Superintendent McLoughlin might be the person  
14 to address that to. That would be standard when a  
15 transfer is at public expense. 15:26

16 434 Q. Well, could I suggest to you that this was a document  
17 that would be made known to my client at some point, he  
18 was going to be shown this?

19 A. It would, yeah.

20 435 Q. And it was going to be important to make sure that he 15:26  
21 knew that this transfer was going to be at public  
22 expense, isn't that right?

23 A. It would also be written on the bulletin that was  
24 issued, at own expense or at public expense, on the  
25 right-hand side of the bulletin. 15:26

26 436 Q. Okay.

27 A. Yeah, it's --

28 437 Q. I'll add that therefore to the mix, if you will,  
29 because this isn't the only instance of the reference

1 to public expense around this time. But what I am  
2 suggesting to you is that there must have been some of  
3 conversation between you and other senior management  
4 about moving him out of Mitchelstown and reference  
5 being made to the fact that he would go but only if it 15:26  
6 wasn't at his own expense?

7 A. Never discussed once.

8 438 Q. So that's just something that is included in a letter  
9 like this automatically almost?

10 A. Yeah, that's automatically included. 15:27

11 439 Q. Got nothing to do with anything that's going on around  
12 in the circumstances?

13 A. No, no.

14 440 Q. Okay. Again, I am putting it to you, and again you  
15 must anticipate this, I would imagine, given the 15:27  
16 questions I have already put to you, but I am putting  
17 it to you that Mr. Barry made it clear that to you that  
18 he was willing to move to Mallow but that he wouldn't  
19 apply for it, he wouldn't put it in writing and he  
20 would only go if he was sent, as in, ordered to 15:27  
21 transfer to Mallow, not that he would volunteer or ask  
22 to go there?

23 A. I can't work that out in my head, because when I spoke  
24 to him about going to Anglesea Street, I said, if he  
25 wants to nominate either Mallow or Midleton, I 15:27  
26 mentioned, he could nominate them. If he nominated to  
27 me, I would have got it at public expense. When I  
28 spoke to him on the Sunday morning, I told him I had  
29 two vacancies in Mallow and if he wished to indicate

1 that he wanted to go to one of them, I could have  
2 transferred him there at public expense. He knew, he  
3 knows the regulations, he knew those transfers would be  
4 at public expense.

5 441 Q. I am just a tiny bit confused. It's my fault, not 15:28  
6 yours. But you could help me, please? You say when  
7 you spoke to him on the Sunday --

8 A. I told him which --

9 442 Q. Just let me finish, I beg your pardon, chief  
10 superintendent, which conversation is this that you're 15:28  
11 talking about?

12 A. January 2015.

13 443 Q. Right.

14 A. The Sunday morning where under the Code 8.31 I had to  
15 tell him the reasons I was transferring him to Fermoy. 15:28

16 444 Q. Yes.

17 A. He said he didn't want to move to Fermoy and I said, if  
18 you don't there's also -- I told him where there's  
19 vacancies. If he had indicated to me, yes, I want to  
20 go to Fermoy, there would have been no problem with it. 15:28  
21 Or go to Mallow, there would have been no problem with  
22 it. And would have been at public expense. It was I  
23 was looking for him to transfer, he wasn't looking to  
24 transfer. I was looking for him to transfer. And  
25 that's where the difference is: when I am looking to 15:28  
26 transfer someone, I have to pay at public -- it comes  
27 at public expense; when Paul Barry applies to me, yes,  
28 for reason, I want to go, then it's at his own expense.

29 445 Q. Again, there's no probably about it, it's because of



1 the way I asked the question, so I will come back to it  
2 and rephrase. In this time, as in what we've just been  
3 dealing with, in around September/October of 2013, when  
4 you're having these engagements, these discussions,  
5 these meetings with Mr. Barry, my instructions, which I 15:29  
6 am now putting to you, are that Mallow was discussed  
7 but he made it clear that he wouldn't go to Mallow at  
8 his own behest, he would have to be directed to go  
9 there so that he would not be out-of-pocket, that it  
10 would be at the public expense. And I am giving you an 15:29  
11 opportunity to comment on that before I move on. I'm  
12 not talking about 2015, if you follow me?

13 A. I am commenting: That discussion never happened.

14 446 Q. Okay. Fair enough. Now, to come back then to what you  
15 said yesterday. I use the word developed, I don't mean 15:30  
16 that pejoratively, but as it transpired in your  
17 evidence today, you gave us more information about it.  
18 You said yesterday that the first time you had sight of  
19 the complaints, the bullying and harassment complaints  
20 1-8, was when you saw the papers for the Tribunal, is 15:30  
21 that right?

22 A. That's correct.

23 447 Q. Okay. And this afternoon it was touched upon on two  
24 occasions by Mr. Marrinan, once you volunteered it, in  
25 fact, and then he came around to it himself and you 15:30  
26 repeated your answer and you said it was the detail of  
27 the complaints, the details of the complaints as  
28 opposed to the fact of the complaints that you didn't  
29 have knowledge of?

1 A. Put it this way: I knew there was a number of bullying  
2 and harassment complaints and I knew there was a  
3 criminal/discipline complaint, but as for what the  
4 complaint was, I had no knowledge until I saw this.

5 448 Q. Okay. Well, can we first of all agree then that it was 15:31  
6 more than one bullying and harassment complaint and you  
7 knew that?

8 A. Yes, I think I was told, I was informed I think at one  
9 of the meetings in HRM, the second one in January, I  
10 think, that, yes, there are a number or something. 15:31

11 449 Q. I think that is exactly right, chief superintendent?

12 A. Yeah.

13 450 Q. You were and there was reference made to it and if  
14 necessary we can go to those documents, but it seems  
15 that you agree. My point being that it seems to be 15:31  
16 something more than just a one-off incident in relation  
17 to the service of a Regulation 10 form?

18 A. Well, this was in January or February 2013, at the  
19 meeting in HRM that I was told that it was bullying and  
20 harassment. 15:31

21 451 Q. Yes.

22 A. I hadn't known back in -- you're asking me about back  
23 in October 2013.

24 452 Q. I am not trying to trick you, chief superintendent?

25 A. I feel you are. 15:32

26 453 Q. Okay, well, sorry about that. There is an engagement  
27 with my client in September and October of 2012 and at  
28 that stage, you've told us now a number of times, the  
29 extent to which you had any knowledge or foreknowledge

1 of the reason of that incident, that work-related  
2 stress issue, was because of the fact that there had  
3 been a Regulation 10 form served on my client a month  
4 previous, yes?

5 A. Yes, that's before I started anything, that's what I 15:32  
6 believed.

7 454 Q. Yes.

8 A. That was connected to it.

9 455 Q. And you went further, in saying that insofar as there 15:32  
10 was any prospect of getting further information out of  
11 Mr. Barry to do with what was going on, you felt you  
12 had been shutdown because he had said to Inspector  
13 O'Sullivan, I don't want to discuss this with you, I  
14 don't want to discuss it with Chief Superintendent  
15 Dillane, this is between me and HRM, isn't that right? 15:32

16 A. That's correct.

17 456 Q. Now we progress. So, we're absolutely clear, we're now  
18 talking about the meetings you're having with HRM, the  
19 fact that information is coming to you and you're aware  
20 of the fact that there are bullying and harassment 15:33  
21 complaints, plural, being made by Mr. Barry against  
22 Superintendent Comyns, isn't that correct?

23 A. That's correct.

24 457 Q. And it seems to be, I think we just agreed a moment 15:33  
25 ago, you said it yourself, in fact, you didn't agree,  
26 you volunteered it, this was in or about January 2013,  
27 correct?

28 A. Probably the end of January I think, yeah, the second  
29 meeting.

1 458 Q. I think it's the 26th?  
2 A. 27th.  
3 459 Q. I will get the exact date in a moment. But in any  
4 event, you're at this meeting and reference is made at  
5 this meeting to the fact that it is multiple 15:33  
6 complaints, 1-8, correct?  
7 A. Correct.  
8 460 Q. Okay. So my question to you was that at this stage you  
9 now know that it's to do with more than the service of  
10 the Regulation 10 form back on the 2nd August 2012, 15:33  
11 correct?  
12 A. That's correct.  
13 461 Q. Okay. And, indeed, shortly thereafter you're aware of  
14 the fact that there's also a potential criminal  
15 allegation component to the complaints being made, to 15:34  
16 the allegations being made by Mr. Barry, isn't that  
17 correct?  
18 A. That's correct.  
19 462 Q. Okay. And again, by the way, Chief Superintendent 15:34  
20 Dillane, this is not new, you said this yesterday as  
21 well, you haven't -- you know, I want to be absolutely  
22 frank with you, as I said to you, I am not trying to  
23 trick you, you did say this yesterday also, it's in the  
24 transcript from yesterday at page 165, you accepted all  
25 of this when Mr. Marrinan was putting it to you. You 15:34  
26 agree, I think, because again you referenced it  
27 yesterday in your evidence, that you became aware that  
28 Chief Superintendent Kehoe had become involved, she now  
29 had a role in relation to the investigation of these

1 complaints, isn't that correct?

2 A. I wrote that in my statement in a general way because I  
3 can't say when I became -- I had knowledge of Chief  
4 Superintendent Kehoe but it is recorded in my diary  
5 that the second meeting in January, 25th or 26th or 15:35  
6 27th, that I was informed that A/C Nolan was  
7 investigating. That was the first person I knew was  
8 investigating.

9 463 Q. And to be fair to you, yesterday you were equally  
10 uncertain, by which I mean you weren't pinning your 15:35  
11 colours to the mast in respect of a particular date  
12 because again yesterday, when you were dealing with  
13 this, you said that sometime in January or February  
14 2013 you became aware of the involvement of Chief  
15 Superintendent Kehoe. Do you remember saying that 15:35  
16 yesterday? It's in the transcript.

17 A. No, I thought I said I became aware it was Assistant  
18 Commissioner Nolan, because that's what's in my diary  
19 and it was some time after that then that Chief  
20 Superintendent Kehoe's name came into it. 15:35

21 464 Q. Well again, it may be that this is just the way it  
22 transpired because a paragraph was read to you by  
23 Mr. Marrinan, this is yesterday's transcript, page 167  
24 and Mr. Marrinan was reading from your statement at  
25 page 335, and the part that he quoted to you was that: 15:36  
26

27 "When Sergeant Barry submitted his complaint directly  
28 to assistant commissioner HRM, Assistant Commissioner  
29 Nolan was appointed to investigate all matters

1 complained. Assistant Commissioner Nolan procured the  
2 assistance of Chief Superintendent Kehoe, who assisted  
3 him throughout. I believe that Sergeant Barry made a  
4 full and comprehensive statement of complaint to Chief  
5 Superintendent Kehoe sometime at the end of 2012." 15:36

6  
7 That was read to you yesterday by Mr. Marrinan from  
8 your statement. The question that followed was: Do  
9 you recall when you became aware of the complaint? And  
10 the answer you gave was: 15:36

11  
12 "I became aware of that some time in January or  
13 February the following year."

14  
15 which we know is 2013. Is that different to what 15:37  
16 you're saying now? Or have I...

17 A. No, you see, I am saying that I believe the statement  
18 was taken at a certain time but I only became aware of  
19 it the following January or February, that it had been  
20 taken. I didn't know at the time when the statement 15:37  
21 was taken. I wasn't aware of it at the time. But I  
22 did become aware afterwards that it had been taken.

23 465 Q. Yes. I am asking you about whether or not it was, you  
24 know, in around January/February that you became aware  
25 of the fact that Chief Superintendent Kehoe had become 15:37  
26 involved, and you were saying --

27 A. No.

28 466 Q. Sorry?

29 A. Sorry, go on.

1 467 Q. No?  
2 A. No, no.  
3 468 Q. Okay. well, I'll give you the rest your answer, if  
4 it's of any use, this is the completion of your answer  
5 from yesterday, the part I just read was: 15:37  
6  
7 "I became aware of that some time in January/February  
8 the following year because I have a note in my journal  
9 and I think it was at one of the first case conferences  
10 was the first time that I was told by Assistant 15:37  
11 Commissioner Nolan and it was subsequent to that then I  
12 was told by Chief Superintendent Kehoe."  
13 A. By Chief Superintendent Kehoe, no, I never --  
14 469 Q. was told about Chief Superintendent Kehoe.  
15 A. Oh, okay. 15:38  
16 470 Q. Not by, about?  
17 A. It was after -- at first I was told A/C Nolan was and  
18 then sometime later I came to -- someone said to me --  
19 CHAIRMAN: Isn't that what he is saying on each  
20 occasion. 15:38  
21 A. Yeah.  
22 CHAIRMAN: There's no difference.  
23 MR. COSTELLOE: I think we're agreeing.  
24 CHAIRMAN: Sorry, you've been suggesting that there was  
25 something different, it transpires there wasn't 15:38  
26 something different.  
27 MR. COSTELLOE: I don't think I have been suggesting  
28 that.  
29 CHAIRMAN: You suggested that he knew about Chief

1 Superintendent Kehoe at an earlier time, when he has  
2 said, the witness has said that he first knew about  
3 Assistant Commissioner Nolan and he later discovered it  
4 was Chief Superintendent Kehoe. You have been  
5 suggesting something different to him. And what's 15:38  
6 more, that he said something different yesterday.  
7 That's where we're going at this moment.  
8 MR. COSTELLOE: I will take --  
9 CHAIRMAN: Sorry, am I going mad or am I listening  
10 to -- am I trying to follow what's going on? But you 15:39  
11 were legitimately trying to suggest -- I mean, there's  
12 nothing wrong with this, Mr. Costelloe, I have no  
13 criticism, but you were legitimately trying to explore  
14 a difference. But I think there was not a difference  
15 as between what he said yesterday and what he's been 15:39  
16 saying today. Am I wrong about that?  
17 MR. COSTELLOE: Chairman, what I would like to do is I  
18 would like to go back over this evening the transcript  
19 of that before I answer that question.  
20 CHAIRMAN: But sorry, I am not concerned about that, I 15:39  
21 am simply concerned about the questions that you have  
22 been asking, Mr. Costelloe.  
23 MR. COSTELLOE: Yes.  
24 CHAIRMAN: And where we are at the moment, on the basis  
25 of the questions you've been asking and the transcript 15:39  
26 that you've been referring to, I don't know objectively  
27 what the situation is, that there appears not to be a  
28 difference which you were seeking to establish. Now,  
29 maybe -- look it, if I am wrong, please tell me I am



1 wrong, there's nothing magical about what I think about  
2 it, but I am not seeing that.

3 MR. COSTELLOE: well, can I deal with it this way --

4 CHAIRMAN: Yes, do you understand.

5 MR. COSTELLOE: I do, Chairman. 15:40

6 CHAIRMAN: It's not in any way a criticism, I am trying  
7 to clarify. Sorry. Now, Mr. Costelloe.

8 MR. COSTELLOE: Yes, Chairman. I completely understand  
9 your interjection, but before I deal with it, I would  
10 like to read the transcript, because I am not sure I 15:40  
11 agree with your interjection, Chairman. If it turns  
12 out that I do agree with you, I will tell you straight  
13 up that I think you're right.

14 CHAIRMAN: And if I am wrong, please point out to me.

15 MR. COSTELLOE: Okay. 15:40

16 CHAIRMAN: No, no, don't worry in the slightest.  
17 Please do point if I am wrong, but that's is where I am  
18 standing at the moment.

19 471 Q. MR. COSTELLOE: Chief superintendent, we have a  
20 sequence of events where some time after the HR meeting 15:40  
21 in late January you became aware of the fact that Chief  
22 Superintendent Kehoe had been brought in to assist in  
23 the investigation, is that right.

24 A. Yeah, I came -- at some stage, when I can't say.

25 472 Q. Mr. Perry corrects me, I thought it was the conference, 15:41  
26 the Human Resources Management meeting, that the first  
27 one in January that we're talking about was on the 26th  
28 January, apparently, according to your own statement,  
29 it was the 22nd January. I seem to have it wrong?

1 A. We won't argue over that.

2 473 Q. Thank you very much. Late January, in any event.  
3 Okay. Now, you said yesterday that -- well, rather  
4 than putting back to you what you said yesterday, I  
5 will give you an opportunity to comment on it now. At 15:41  
6 this time, so after you've had this HRM meeting and  
7 after you -- sorry, I beg your pardon, and before you  
8 become aware of the fact that Chief Superintendent  
9 Kehoe is going to conduct her own investigation, what  
10 engagement or interaction had you had with 15:42  
11 Superintendent Comyns to find out what was going on or  
12 to ascertain what the problem was or the complaints  
13 were?

14 A. I would say I had very little interaction with regards  
15 that. We had a lot of interaction with our work. We 15:42  
16 were two busy men and we interacted on a daily basis.  
17 But as regards that, I had no interaction, I'd say.

18 474 Q. You're his direct line manager at this time, isn't that  
19 right?

20 A. That's correct. 15:42

21 475 Q. And there is a subordinate whom you know has made  
22 allegations, plural, of bullying and harassment against  
23 him, isn't that correct?

24 A. That's correct.

25 476 Q. Would it not have been appropriate to approach him to 15:42  
26 try and get some understanding of what was going on or  
27 at least to ascertain what his state of knowledge was  
28 about what was the problem?

29 A. Under the bullying and harassment legislation I'm not

1 entitled to know or I'm not entitled to ask or I'm not  
2 entitled to interfere.

3 477 Q. You're saying under the legislation you couldn't ask  
4 Superintendent Comyns if he knew what was going on?

5 A. I don't think I am entitled to. It's between the 15:43  
6 investigating officer and the person being investigated  
7 and under that legislation I don't think I am entitled  
8 to do it and I didn't.

9 478 Q. Sorry, that's your answer on that. That's why you  
10 didn't do it, because you felt you couldn't do it under 15:43  
11 the legislation?

12 A. I didn't --

13 479 Q. Sorry, superintendent, is that your answer on that  
14 question; you didn't go back to Superintendent Comyns  
15 because you felt you couldn't do it under the 15:43  
16 legislation? Now that's a straightforward question,  
17 really the answer should be yes or no?

18 A. Yes.

19 480 Q. Thank you. At what point did you begin to have any  
20 engagement with -- sorry, excuse me. Did you have any 15:43  
21 engagement with Chief Superintendent Kehoe?

22 A. None at all.

23 481 Q. Did she at any stage, through any of her subordinates,  
24 any of her investigators, attempt to make contact with  
25 you to see if you had any information to give to her in 15:43  
26 relation to her investigation?

27 A. No. No.

28 482 Q. Okay. Again, we know your answer is that you didn't  
29 see the document with the substance of the complaints

1 1-8 until you got the material from the Tribunal, is it  
2 your evidence to the Tribunal that you had no further  
3 information except for the fact that there were eight  
4 bullying and harassment complaints and one potential  
5 criminal allegation until you got the documents from 15:44  
6 the Tribunal?

7 A. That's correct.

8 483 Q. So you had absolutely no knowledge of the content of  
9 them, is that what you are saying?

10 A. I didn't know anything. When I read them, about 15:44  
11 financial, about annual leave, I didn't know anything  
12 about any of them until I got it from the Tribunal.

13 484 Q. In relation to the criminal allegation, is it your  
14 evidence to say that until you got the documents from  
15 the Tribunal you had no knowledge whatsoever about what 15:44  
16 that was about?

17 A. I didn't know what the allegation made in the complaint  
18 was until I got it from the Tribunal.

19 485 Q. You obviously knew that the complaints related to  
20 Superintendent Comyns, we can agree on that much? 15:45

21 A. That's correct.

22 486 Q. And when I say complaints there, I am including the  
23 allegation of a criminal act, that's alternatively --  
24 it's been referred to as the number 9 issue because it  
25 comes ninth in the document that Mr. Barry submitted, 15:45  
26 you knew that that was in relation to an allegation  
27 against Superintendent Comyns, isn't that correct?

28 A. Yes, I think what I was informed was, there was a  
29 criminal -- or discipline/criminal, it could be either.

1 487 Q. And to be fair to you, that's how you describe it in  
2 your own documents, criminal/discipline,  
3 discipline/criminal. But again, before I move on, is  
4 it your evidence to the Chairman that the extent to  
5 which you had any knowledge before you received 15:45  
6 material for this Tribunal about those complaints 1-9,  
7 was that they were, first of all, originating from  
8 Sergeant Barry; secondly, that they may or may not be  
9 something to do with the service of a Regulation 10  
10 form on the 2nd August; and thirdly, that they were 15:46  
11 against, if I can use that word, Superintendent Comyns  
12 - is that the entirety of your knowledge before you got  
13 documents from the Tribunal?  
14 A. I would have -- I would have had some, I would say,  
15 indication that the criminal/discipline had to do with 15:46  
16 an investigation, but as regards what the details of  
17 the allegation was, I did not know.  
18 488 Q. How did that information come to you?  
19 A. It was generally known, after a few months it was  
20 generally known around the place, that that's what it's 15:46  
21 about. Now, I don't know and I can't answer the  
22 question who told me, but I'm saying it became  
23 generally known that that's what that one was about.  
24 489 Q. Are you familiar with the word scuttlebutt?  
25 A. No. 15:46  
26 490 Q. Rumour?  
27 A. Yes.  
28 491 Q. Gossip?  
29 A. Yes.

1 492 Q. water cooler talk, if you know what I mean?  
2 A. Yeah, yeah.  
3 493 Q. Is that what you're saying?  
4 A. Ah, a bit more than that, that this was, you know, from  
5 talking to people -- my own staff or people like that 15:47  
6 in the office, that, yes, the last one was to do with  
7 an investigation that they were both involved in.  
8 Just, I'd say, it happened the week before I came or  
9 two weeks before I came.  
10 494 Q. And that's the criminal/discipline investigation? 15:47  
11 A. Yeah.  
12 495 Q. But there was no similar rumour, gossip, chat or  
13 elevating it higher conversation, in your presence or  
14 with you about the other complaints, the 1-8?  
15 A. No, there wasn't. 15:47  
16 496 Q. Okay. So if we go back then to splitting them into  
17 two, let's take number 9, the criminal one out of it,  
18 will you accept that your evidence to the Tribunal is  
19 that before you got the documents disclosed by the  
20 Tribunal, the extent to which you had any knowledge 15:47  
21 whatsoever about the content of those bullying and  
22 harassment complaints is that; one, they were made by  
23 Sergeant Barry; two, that they may or may not have been  
24 something to do with the service of a Regulation 10  
25 form on the 2nd August 2012; and three, that they were 15:48  
26 against Superintendent Comyns, is that it?  
27 A. That's correct, yeah.  
28 497 Q. Nothing else?  
29 A. No.

1 498 Q. You're sure?  
2 A. But how do you mean? Can you ask -- how do you mean  
3 nothing else? What are you...?  
4 499 Q. Did you have any other information about the content,  
5 detail, anything to do with them other than -- 15:48  
6 A. Not that I can recollect.  
7 500 Q. Sorry?  
8 A. Not that I can recollect.  
9 501 Q. Well, you would recollect something like that, wouldn't  
10 you? 15:48  
11 A. Yeah, but I'm saying I can't recollect having any other  
12 information about it.  
13 502 Q. There was something that was in one of your journal  
14 entries that I wasn't certain about and it may very  
15 well be that it may not even have anything to do with 15:49  
16 the subject-matter of this Tribunal, but because it's  
17 been disclosed to us and it's not apparent to me what  
18 its relevance is, could I just ask you please to take a  
19 look at page 2079 and look for the entry for Friday,  
20 27th September 2013. It's down towards the latter part 15:49  
21 of the page, Mr. Kavanagh. If you just scroll down.  
22 There you go.  
23  
24 "September 27th, 2013. 9am, meeting with A/C Quilter  
25 re corruption allegations." 15:49  
26  
27 And the rest is redacted. Now, this has been disclosed  
28 to us and it's interspersed, if you will. In fact  
29 Mr. Kavanagh, will you scroll up a little bit, to go to

1 the 9am entry for Tuesday, the 9th, which is part of  
2 your journal entries which was opened to you by  
3 Mr. Marrinan, and you will see that it very much  
4 relates to Mr. Barry. Keep going. Keep going. Right,  
5 this paragraph here, this has already been opened to 15:50  
6 you and you have looked at it. So that other line, the  
7 one that I showed you a moment ago about the corruption  
8 allegations and discussing them with A/C Quilter, it  
9 seems to be in the context of what's going on in  
10 relation to Mr. Barry? 15:50

11 A. No. There's no connection at all.

12 503 Q. Okay. So it's just a mistake that that's --

13 A. I didn't redact or -- you know, I didn't --

14 504 Q. Sorry, I know you didn't redact it, I'm not criticising  
15 you, and I don't even know if there is a criticism to 15:50  
16 be made here. But first of all, are you certain that  
17 that entry has got nothing to do with Sergeant Barry?

18 A. Correct.

19 505 Q. Okay. And if you were to go back and look at your own  
20 journal entries unredacted, it wouldn't assist you, it 15:50  
21 wouldn't give you more information that might help you  
22 come to that conclusion? You can do it without  
23 looking at the unredacted part of it?

24 A. Yeah, there was other issues going on at the time,  
25 so... 15:51

26 506 Q. Okay. The use of the word "corruption allegations"  
27 there has got nothing whatsoever to do with the  
28 potential criminal/discipline investigation, number 9?

29 A. No, no, no, no.



1 507 Q. Nothing at all to do with it?  
2 A. Different parties.  
3 508 Q. Okay, thank you. I think this has already been put to  
4 you, I am just going to make certain, we can go very  
5 quickly through it, page 335. Midway down the page, 15:51  
6 you should see a line that begins "When the matters  
7 were fully examined, it was adjudged..."  
8  
9 Do you see that there?  
10 A. Yeah, yeah. 15:52  
11 509 Q. "It was adjudged that eight matters came under the  
12 Garda Síochána harassment, sexual harassment and  
13 bullying policy and one other matter was seemed to a be  
14 criminal /discipline matter."  
15 15:52  
16 That is what you were telling us earlier, this is your  
17 state of knowledge at the time?  
18 A. I wrote that in general when I was making my statement,  
19 you know.  
20 510 Q. Sure. 15:52  
21 A. It's not at that particular date. I'm not saying a  
22 particular date. I'm saying that's what I believed.  
23 511 Q. Yes, but it seems to be exactly what you're telling us  
24 now though, that this is how things unfolded?  
25 A. Yeah, but what I am saying is that it was one of the 15:52  
26 meetings in Dublin that I was told, yes, there had been  
27 -- by someone in HRM, there had been bullying and  
28 harassment, that the investigation has been adjudged to  
29 be bullying and harassment.

1 512 Q. I think we're agreeing?  
2 A. Yeah, yeah.  
3 513 Q. I honestly don't know if we are or not, but I am going  
4 to move on. I thought there was no controversy here,  
5 because those words crime correspondent effectively cut 15:53  
6 and paste into a letter that you sent to John Barrett  
7 shortly thereafter, when again you say that -- this is  
8 at page 119, we don't need to open it. But it's a  
9 letter that you sent to John Barrett at Human Resources  
10 Management, where effectively you say the exact same 15:53  
11 thing, that in referencing what's been going on, you  
12 understand that a complaint was made to the assistant  
13 commissioner, you understand that Chief Superintendent  
14 Kehoe has been brought in to assist him, and then you  
15 go on to say that you're led to believe that Sergeant 15:53  
16 Barry made a full and comprehensive statement of  
17 complaint to Chief Superintendent Kehoe some time at  
18 the end of 2012, and then you use the exact same words  
19 "when the matters were fully examined it was adjudged  
20 that eight matters came under the Garda Síochána 15:53  
21 harassment, sexual harassment and bullying policy and  
22 one another matter was deemed to be a  
23 criminal /discipline matter." - that seems to be exactly  
24 what are you saying to us this afternoon, correct?  
25 A. Yeah. 15:54  
26 514 Q. Okay. I am conscious of the time of the day, I am just  
27 going to very, very briefly move on to the next area,  
28 if you will, just to kind of set the scene and then we  
29 will come back to it tomorrow, subject obviously to the

1 Chairman. Chief superintendent, the next thing that I  
2 want to deal with is, well it's in relation to the  
3 medical certificate that was presented to Inspector  
4 O'Sullivan and yourself by Mr. Barry via his doctor,  
5 Dr. Kiely, okay. That's where we're moving to now.

15:54

6  
7 It seems to be the case, could I suggest to you, that  
8 that was a document which you took umbrage with, you  
9 were unhappy about and you felt that it transgressed  
10 the normal role of a medical certificate and moved into  
11 areas that a medical certificate should not be  
12 concerned with. Would that be a fair categorisation of  
13 how you felt about it?

15:55

14 A. I would say what I felt about it, I had 34 years  
15 service at the time, I had never seen a medical  
16 certificate written like it, and I was trying to get my  
17 head around how this was going to work and I was  
18 wondering did this -- is this really what the doctor  
19 meant when she wrote it?

15:55

20 515 Q. Well again, we don't need to spend a great deal of time  
21 on this, Mr. Marrinan has already covered it, you told  
22 the Chairman that you weren't questioning whether it  
23 was a forgery or not, it was just that you couldn't --  
24 effectively you couldn't believe your eyes, that a  
25 doctor would say this on what was purportedly a medical  
26 certificate?

15:55

27 A. That's correct.

28 516 Q. And you give that answer despite the fact that when you  
29 were dealing with it in your own correspondence, you

1 referred to asking whether or not it was genuine, you  
2 remember using the word genuine?

3 A. I did, yeah. I clarified that, I thought I said, did  
4 she genuinely mean that a person could come to work and  
5 not attend their place of work, or did she genuinely 15:56  
6 mean -- and I was interpreting that Fermoy Garda  
7 Station was an unsafe place to work.

8 517 Q. It's just that in respect of that particular answer,  
9 which again is what you said to Mr. Marrinan and the  
10 Chairman earlier, you explain the use of the word 15:56  
11 genuine by, not conflating it but by joining it to the  
12 second part of your explanation, which was that is she  
13 genuinely saying that he can't come to work at Fermoy.  
14 But when you wrote your statement, and again it's been  
15 opened a number of times now, it's at page 337, you 15:56  
16 phrase it somewhat differently, I am going to suggest  
17 to you. If we could go to that, 337. And you should  
18 see on the 2nd April, so go down the page a little bit  
19 please, Mr. Kavanagh. Keep going. I am trying to find  
20 the words myself. I will go to my own copy? 15:57

21 CHAIRMAN: "I asked Inspector O'Sullivan", is that it?

22 518 Q. MR. COSTELLOE: Yes, indeed, thank you, Chairman, you  
23 have it there yourself, do you? Yes. "I asked  
24 Inspector O'Sullivan to find out from Dr. Kiely if the  
25 certificate was genuine --" 15:57  
26

27 And now I am going to put emphasis on a word that's in  
28 your statement.  
29

1 " -- and also --"  
2  
3 CHAIRMAN: Go back up, Peter.  
4 MR. COSTELLOE: Excuse me, Chairman?  
5 CHAIRMAN: Sorry, Mr. Kavanagh inadvertently scrolled 15:57  
6 down to take us away from the bit that we want. I'm  
7 sorry, Mr. Kavanagh.  
8 MR. COSTELLOE: I wasn't looking at the screen.  
9 CHAIRMAN: I am sorry for being irritable and  
10 impatient, forgive me. 15:58  
11 MR. COSTELLOE: I thought you were talking --  
12 CHAIRMAN: You have it there, exactly, Mr. Costelloe.  
13 Please proceed again. "I asked Inspector or  
14 O' Sullivan..."  
15 MR. COSTELLOE: So, have you found where I am reading 15:58  
16 from?  
17 A. Yeah, yeah, I'm reading it.  
18 519 Q. Okay. And do you see there that when you write that in  
19 your statement " I then spoke with Inspector  
20 O' Sullivan, who was on his way to visit Dr. Kiely at 15:58  
21 her surgery", skipping forward "I asked Inspector  
22 O' Sullivan to find out from Dr. Kiely if the  
23 certificate was genuine and also --"  
24  
25 My emphasis if you will 15:58  
26  
27 " -- to explain how she could that a member of An Garda  
28 Síochána could not work at Fermoy Garda Station."  
29

1 I mean, that's clearly two things, not one, isn't it?

2 A. That's the way I was thinking when I, when I asked

3 Inspector O'Sullivan, I said can she genuinely mean

4 this. That's the way --

5 520 Q. I know that's what you're telling us now, chief 15:58

6 superintendent?

7 A. Yeah.

8 521 Q. We've heard that answer. I get that. But that's not

9 my question. It's my last question of the day and if

10 we can get an answer to this, we'll leave it then to 15:59

11 tomorrow if the Chairman permits us. I am suggesting

12 to you that when you wrote that statement, you inserted

13 in the statement the words "and also", which clearly

14 means on any ordinary usage of the English language

15 that there's two different things going on there. One, 15:59

16 is it genuine, and two, how could she say that a member

17 of An Garda Síochána could not work at Fermoy Garda

18 Station? Not that they are the same --

19 522 Q. CHAIRMAN: Hold on a second. what do you say to that?

20 I am sorry to cut off. 15:59

21 MR. COSTELLOE: No, no.

22 CHAIRMAN: That's your question.

23 A. what I was pointing to at the time, I was concerned

24 that did the doctor genuinely mean this, that's the way

25 I was trying to express it. Did she genuinely mean 15:59

26 that a person couldn't come to Fermoy Garda Station to

27 work, and I interpreted that as saying it was an unsafe

28 place to come.

29 523 Q. CHAIRMAN: And what would you say to the suggestion

1 that the words as they look, if it was genuine, suggest  
2 is it a fraudulent document or is it a true document?

3 A. Well, that was not my intention, Mr. Chairman. I never  
4 questioned the authenticity of the document.

5 MR. COSTELLOE: Is it convenient, Chairman. 16:00

6 524 Q. CHAIRMAN: Yes, certainly. Just one more thing. I  
7 thought you said this morning about the date, that you  
8 weren't --

9 A. That was a separate issue, the date.

10 525 Q. CHAIRMAN: Yes, I know that. 16:00

11 A. The is crossed out on it.

12 526 Q. CHAIRMAN: Yes, I know, there's a date written in in  
13 handwriting?

14 A. I needed to clarify, when did it commence from, was he  
15 sickness commencing from the 28th or from the 4th 16:00  
16 April, that was the other matter I needed to clarify.

17 527 Q. CHAIRMAN: I understand. You accept, I take it, that  
18 if you say, I asked him to find out if the certificate  
19 was genuine, that does suggest to check out whether  
20 it's an honest document, whether it is a true document 16:00  
21 or not a true, do you agree that that's what it looks  
22 like?

23 A. It looks like -- well, using that word, yes,  
24 Mr. Chairman, but I am saying I never questioned that  
25 this didn't come from the doctor. 16:01

26 MR. COSTELLOE: Chairman, if you don't mind continuing  
27 for five more minutes.

28 CHAIRMAN: Certainly. No, absolutely, if that is  
29 convenient for you, Mr. Costelloe.

1 528 Q. MR. COSTELLOE: I have no problem doing it and I also  
2 want to do it because I don't want the witness to feel  
3 like I am just dropping something on him in the  
4 morning. But I am going to put to you something that  
5 Inspector O'Sullivan told the Tribunal about all of 16:01  
6 this. Okay. And again, it's in the context now of why  
7 he is going to see Dr. Kiely. You understand? You  
8 agreed with Mr. Marrinan that there's an inherent  
9 contradiction in your statement here because the dates  
10 couldn't be right? 16:01  
11 A. That's correct.  
12 529 Q. There's the 2nd and there's the 4th. In those words,  
13 you say "I then spoke with Inspector Tony O'Sullivan,  
14 who was on his way to visit Dr. Kiely". Do you see  
15 that there on the screen in front of you? 16:02  
16 A. That's correct, I do, yeah.  
17 530 Q. Would you agree with me that that gives the impression  
18 that Inspector O'Sullivan was going to see Dr. Kiely  
19 entirely independent of yourself, that was not  
20 something that you had caused to happen, he was on his 16:02  
21 way to see Dr. Kiely irrespective, would you agree with  
22 me?  
23 A. That's what it reads like, yes.  
24 531 Q. But I think you would also agree with me right now that  
25 that's erroneous, or however it might read or however 16:02  
26 it might look --  
27 A. Yes.  
28 532 Q. -- the reality is that you did direct him to go, yes?  
29 A. Yes.



1 533 Q. Okay. I can then jettison a lot of stuff about what I  
2 was going to put to you about Inspector O'Sullivan,  
3 because he says absolutely adamantly, I was told to go  
4 there, I was instructed, is the word that he uses. So  
5 I want instead to ask you this: He is asked about 16:02  
6 going to see Dr. Kiely and he has quite a bit to say  
7 about the certificate, but at page 5324 he's asked a  
8 question by the Tribunal investigator and what he says  
9 is:

10

16:02

11 "First of all, I have never seen a cert with a date  
12 changed. In any event, Chief Superintendent Dillane  
13 asked me would I call to Dr. Kiely to ask if it was a  
14 valid cert."

15

16:03

16 I mean, that's clearly Inspector O'Sullivan saying that  
17 as far as he's concerned he's instructions were to go  
18 to Dr. Kiely to check out if this was a fraudulent,  
19 invalid, fake certificate, isn't it?

20 A. Well, the way I would read it, from where I was sitting 16:03  
21 was, did she really mean what she wrote in this, that's  
22 the way we were interpreting it.

23 534 Q. Well, we can ask Inspector O'Sullivan what he  
24 understood you to be meaning when you told him, but I  
25 wanted to give you an opportunity to comment upon it, 16:03  
26 because I have to put it to you, chief superintendent,  
27 that your own statement to the Tribunal and the  
28 evidence of Inspector O'Sullivan both seem to suggest  
29 that you, upon receipt of that certificate, had a

1 concern that it was a forgery, invalid, fake, whatever  
2 way you want to describe it, and that you sent  
3 Inspector O'Sullivan off to check out to make sure that  
4 it wasn't?

5 A. I would categorically say I never questioned or it came 16:04  
6 into my head that it was a forgery. Never ever did it  
7 come into my head that it was a forgery. But I was  
8 concerned: Did the doctor really mean what she wrote?

9 535 Q. Okay. Let's leave aside the word forgery, because  
10 maybe that has -- you're a man of experience in An 16:04  
11 Garda Síochána, obviously --

12 MR. O'HIGGINS: Chairman, I wonder could I request --

13 CHAIRMAN: Sorry, who is that?

14 MR. O'HIGGINS: Micheál O'Higgins for An Garda  
15 Síochána. 16:04

16 CHAIRMAN: Mr. O'Higgins, I am sorry, I just didn't  
17 know where the voice was coming from.

18 MR. O'HIGGINS: Sorry. I wonder, just in fairness to  
19 the witness and in fairness, I am sure Mr. Costelloe is  
20 endeavouring to be fair, could the balance of the 16:04  
21 sentence in the statement of Inspector O'Sullivan be  
22 put, because I think it does fill out the context of  
23 the issue?

24 MR. COSTELLOE: I don't have a problem with that.

25 CHAIRMAN: Yes, he says there was a reference to the 16:05  
26 date being changed and there may have been an issue  
27 that the date was changed. So, depending on what  
28 Inspector O'Sullivan says, he may or may not explain  
29 the reference to valid but Mr. Costelloe's point is,

1 valid and genuine are the same thing. That's my  
2 understanding of Mr. Costelloe's question. And he says  
3 that those words mean the same thing. That's his point  
4 to the --

5 MR. O'HIGGINS: Sorry, Chairman, I'm not objecting to 16:05  
6 the legitimacy of the question or to the issue being  
7 explored. What I am suggesting is the final few words  
8 from the statement of Inspector O'Sullivan --

9 CHAIRMAN: I'm sorry, I see what you mean.

10 MR. O'HIGGINS: "These were the concerns of the chief 16:05  
11 superintendent."

12  
13 These, being the date point.

14 CHAIRMAN: Maybe you would ask that, Mr. Costello.

15 MR. COSTELLOE: Absolutely, Chairman. Thank you, 16:06  
16 Mr. O'Higgins.

17 536 Q. The last part of the answer I didn't put to you, I  
18 had -- I didn't put to you. And what Inspector  
19 O'Sullivan says in completion of his answer is:

20  
21 "From my recollection there was reference to the date 16:06  
22 being changed and there may have been an issue if the  
23 date was changed, then why it wasn't initialed. These  
24 are the concerns of the chief superintendent."

25  
26 Does that in any way change any of the answer you've 16:06  
27 given about this issue?

28 A. No, it doesn't, but it shows that, why would I be  
29 asking her about the date if I thought it was a

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forgery, you know, because I really believed that the doctor issued it but I was -- the part of the date was to do with when he was -- when the certificate was due to start, because this had to do with pay matters.

CHAIRMAN: Okay. I see your point about that.

16:06

Anything else, Mr. Costello?

MR. COSTELLOE: Excuse, me Chairman.

CHAIRMAN: Yes, of course, take your time.

MR. COSTELLOE: Thank you, Chairman. I would propose to leave it there, if that's okay with you.

16:07

CHAIRMAN: Yes, absolutely. You can come back to that matter or proceed to another matter, as you see fit, in the morning. Thanks very much, chief superintendent.

THE WITNESS: Thank you.

CHAIRMAN: Thank you. Very good.

16:07

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AT 11 A.M.

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