

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

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

HEARING HELD IN DUBLIN CASTLE
ON TUESDAY, 14TH JUNE 2022 - DAY 186

186

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

GWEN MALONE STENOGRAPHY
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I N D E X

WITNESS	PAGE
MS. CATHERINE KEHOE	
DIRECTLY-EXAMINED BY MS. MCGRATH	5
CROSS-EXAMINED BY MR. PERRY	67
CROSS-EXAMINED BY MR. O'HIGGINS	122
INSPECTOR ANTHONY O'SULLIVAN	
DIRECTLY-EXAMINED BY MS. MCGRATH	135

1 THE HEARING RESUMED, AS FOLLOWS, ON TUESDAY, 14TH JUNE
2 2022:

3
4 MS. MCGRATH: Now, good morning, Chairman.

5 CHAIRMAN: Good morning. 11:04

6 MS. MCGRATH: Chairman, the first witness this morning
7 is retired Chief Superintendent Catherine Kehoe.

8 CHAIRMAN: Thanks very much.

9
10 MS. CATHERINE KEHOE, HAVING BEEN SWORN, WAS 11:05
11 DIRECTLY-EXAMINED BY MS. McGRATH, AS FOLLOWS:

12
13 CHAIRMAN: Thanks very much. Sit down, chief
14 superintendent. Thank you very much. Good morning.

15 THE WITNESS: Good morning. 11:05

16 Q. MS. McGRATH: Good morning, chief superintendent. And
17 I think you have very kindly agreed that in ease of
18 everyone we will refer to you as chief superintendent,
19 is that okay?

20 11:05
21 Now, Chairman, the chief superintendent's statement is
22 at page 929 of the book and there's an additional
23 statement at page 5667. Also, Chairman, just by way of
24 housekeeping, on Day 181 of the hearings, you'll recall
25 that counsel for Mr. Barry withdrew issues 6B to F in 11:05
26 respect of the chief superintendent, and the only issue
27 remaining for us to interrogate this morning is issue
28 6A.
29

1 Chief superintendent, 6A on the issue paper is:

2
3 "Did Chief Superintendent Catherine Kehoe target or
4 discredit Sergeant Barry as he alleges, A: By taking
5 an inordinate time to complete her investigation." 11:06

6
7 So, chief superintendent, that is effectively what we
8 will be looking at this morning.

9 A. Thank you, counsel.

10 1 Q. Now, I think in relation to -- you just outline there 11:06
11 at the start of your statement, and it's a very
12 comprehensive statement that you provided to the
13 tribunal, you say that you were in the force for 36
14 years, is that right?

15 A. That's correct. 11:06

16 2 Q. And you tell us that you were allocated to Tipperary at
17 the rank of chief superintendent on the 25th February
18 2010, isn't that right?

19 A. That's correct.

20 3 Q. And you say that you were at various ranks and 11:06
21 positions but you retired on the 4th May 2019, isn't
22 that right?

23 A. That's correct.

24 4 Q. Okay. Now, for our purposes, chief superintendent, I 11:06
25 think we start the process really effectively where you
26 start it in your statement, on the 7th February 2013.
27 And I think this was the day that you met with
28 Assistant Commissioner Jack Nolan, isn't that right?

29 A. That's correct.

1 5 Q. Now, you have a note of that meeting on the 7th
2 February and it's in your statement at CK1 and it's at
3 page 947. So if we can just open that note there at
4 947. Now, you say there, you spoke with assistant
5 commissioner -- this is your own note, isn't it? 11:07
6 A. That's right.
7 6 Q. That's right. You spoke with Assistant Commissioner
8 Nolan, asked me to conduct investigation into alleged
9 bullying and harassment and sexual harassment complaint
10 under the policy. Complainant, Sergeant Paul Barry, 11:07
11 Mitchelstown, complaint against his district officer,
12 Superintendent Michael Comyns, Fermoy. There's some
13 further details there. Just in relation to that, did
14 you know either of the parties --
15 A. No. 11:07
16 7 Q. -- in any capacity?
17 A. No, I did not.
18 8 Q. Okay. Skipping down to the next paragraph, you say
19 that you asked to be formally appointed and that your
20 terms of reference be clearly identified, isn't that 11:08
21 right?
22 A. That's correct.
23 9 Q. You were told by the assistant commissioner that
24 Superintendent Lordan had already done probative
25 enquiries and we know at this stage that on the 21st 11:08
26 November 2012 he took a very detailed statement from
27 Sergeant Barry at the time, isn't that right?
28 A. That's correct.
29 10 Q. Now you also note, finally, for a particular date, the

1 assistant commissioner told you that he did not have
2 time to fully investigate the case himself, is that
3 right?

4 A. That's correct.

5 11 Q. And is that really the essence of the conversation that 11:08
6 day? Is there anything further that you can assist in
7 relation to that meeting with the assistant
8 commissioner?

9 A. No, that was the essence of the conversation on that
10 day. 11:08

11 12 Q. Okay. As you say there, you asked for your terms of
12 reference to be clearly identified and that came in to
13 you effectively on the 18th February 2013, isn't that
14 right?

15 A. That's correct. 11:09

16 13 Q. Again, if we can just please open that up, at 949.
17 This is the letter, well, we'll call it the appointment
18 effectively you got in respect of the issue from the
19 assistant commissioner, isn't that right?

20 A. That's correct. 11:09

21 14 Q. Now, this has already been opened, so we won't dwell
22 too long on it. But you are told that by the assistant
23 commissioner that he had been appointed on the 9th
24 October 2012, would you have been aware that the
25 complaint from Mr. Barry had come in on the 2nd October 11:09
26 2012 at that stage, originally?

27 A. No, I wasn't aware until I got the papers exactly when
28 Sergeant Barry made his initial complaint.

29 15 Q. Okay. He outlined then that he had appointed

1 Superintendent Lordan. Going down again, just flicking
2 through it, we see there, a couple of paragraphs down,
3 Mr. Kavanagh, if you can just scroll slowly, that, as
4 we say, Superintendent Lordan took Sergeant Barry's
5 statement. You're also told that he had sought advices 11:10
6 on the 4th January in relation to the remit of the
7 investigation, isn't that right?

8 A. That's correct.

9 16 Q. And if we move on to the next page, this is where we
10 just might stop for a moment at the first paragraph. 11:10
11 He also tells you that on the 4th January 2013, that he
12 had asked Mr. Barry for an extension of time and
13 Superintendent Comyns, isn't that right?

14 A. That's correct.

15 17 Q. And he was looking for an extension of time to the 1st 11:10
16 March. We don't need to open it, that's at page 962 of
17 the papers. And he tells you on the next paragraph:

18
19 "You will note from the file that Sergeant Barry has
20 not agreed to this request." 11:10

21
22 Isn't that right

23 A. That's correct

24 18 Q. Now, if we can just open there, we will be coming back
25 to this letter, but if we can just open by way of 11:10
26 context, you got some papers with this letter, isn't
27 that right?

28 A. Yes, I got a number of papers with it.

29 19 Q. Right. You got some e-mails and correspondence, is

1 that right?

2 A. That's correct.

3 20 Q. So, if we could just look at 957, please. Now, this
4 was one of the e-mails that the assistant commissioner
5 gave you. And you will see there on the 14/1/2013 he 11:11
6 gives you the e-mail response from Mr. Barry in
7 relation to the extension of time, isn't that right?

8 A. That's right.

9 21 Q. And if we just go down to the bottom of that page,
10 Mr. Barry is saying there, just there at that last 11:11
11 paragraph:

12
13 "I am aware that you have been appointed by assistant
14 commissioner HRM as I received a letter from him dated
15 9th October 2012, stating that he had forwarded my 11:11
16 correspondence to you. That was three months ago and
17 it is almost two months since I made my statement to
18 Superintendent Pat Lordan, therefore I do not agree to
19 your proposed extension of time."

20
21 If we can just keep going on to the next page. He 11:11
22 says:

23
24 "I am currently on sick leave due to the unacceptable
25 behaviour of Superintendent Michael Comyns and as such, 11:11
26 to agree to your proposed extension of time would mean
27 that I am willing to agree to have my pay cut in half.
28 I am under considerable stress at the moment due to
29 this investigation and the fact that my illness has not

1 been classified as work related. My ability to provide
2 for my family has been limited with the loss of my
3 allowances and now you want me to sanction having my
4 pay cut in half." He says:

5
6 "There is no reason given for seeking this delay but I
7 assume it is the allegation of criminal behaviour by me
8 against Superintendent Michael Comyns which is causing
9 you to seek more time. This is unacceptable if this is
10 so." He goes on to say:

11
12 "I want this investigation to be done within the
13 timeframe set out in the Garda policy."

14
15 And we will come to the policy separately. So, you get 11:12
16 this e-mail, isn't that right, from the assistant
17 commissioner? And if you can also then look at a
18 further e-mail that I believe you were provided, at
19 954. Sorry, it's the next page, it's 955. So, two
20 days later, Mr. Barry is writing to HRM in relation to 11:13
21 this extension of time. And if we just go midway
22 through the paragraph, if can you see, chief
23 superintendent, where I am starting "I am suffering
24 severe anxiety" do you see that?

25 A. Yes, I do. 11:13

26 22 Q. He says: "I am suffering severe anxiety and stress due
27 to this delay and as of today's date my illness has not
28 been designated as work related. I face the prospect
29 of having my pay reduced to half if this matter is not

1 resolved by early February 2013. I feel I am being
2 treated unfairly in this process and I am sending this
3 e-mail as I contacted your office by phone yesterday."
4

5 He goes on to say the call had not been returned. So, 11:13
6 I think it is fair to say that the assistant
7 commissioner put this on your table effectively. You
8 knew at that stage that there was an issue with regard
9 to an extension of time and you saw that the
10 complainant effectively wasn't happy with what had 11:13
11 happened to date, is that right?

12 A. That's correct.

13 23 Q. Okay. And if we go back then to your letter at 950,
14 the letter that had been sent to you. So, we know
15 there he's telling you about the extension of time, 11:14
16 he's telling you that it has been refused, he encloses
17 the e-mails and then he appoints you, he appoints you
18 to investigate Sergeant Barry's complaint under the
19 Garda policy and procedures on harassment, sexual
20 harassment and bullying, and any criminal offences 11:14
21 identified in Sergeant Barry's complaint, isn't that
22 right?

23 A. Correct.

24 24 Q. He goes on, if we are scrolling slowly down, and we
25 stop there. You see the last paragraph: 11:14
26

27 "Your attention is drawn to the provision of the Garda
28 policy procedures on harassment, sexual harassment and
29 bullying document and the timelines for the conduct of

1 the investigation."

2

3 Now, would you have noted this at the time, that there
4 was an issue with regard to time, that it was already
5 outside the policy timeframe? Can you help the
6 Chairman? What was your view taken about this at the
7 time, when you saw all of this?

11:14

8 A. At the time I received it the clock was starting again,
9 Mr. Chairman, because I was getting it as a fresh
10 appointment. So I received the appointment on the 18th
11 February 2013. And I immediately was aware, as you
12 correctly say, that Sergeant Barry was concerned for
13 the fact that it hadn't been dealt with more swiftly at
14 that time. So that formed my opinion to take the
15 bullying and harassment aspect first.

11:15

16 25 Q. Okay. And as you say, you saw the clock starting?

17 A. Yes.

18 26 Q. And I think there's notes of a meeting you subsequently
19 had, we will be seeing them later, where you saw the
20 clock starting for you in any event?

11:15

21 A. Yes.

22 27 Q. On the 18th, is that right?

23 A. That's correct.

24 28 Q. And 28 days running from the 18th?

25 A. That's correct.

11:15

26 29 Q. Okay. Again, we will come back to that, we will be
27 looking at the policy shortly. But he continues there,
28 if we go down a little bit more, he's looking for, he
29 says, an expeditious investigation, isn't that right?

1 A. That's correct.

2 30 Q. Now, he goes on then to appoint you under Regulation 14
3 of the Garda Síochána Discipline Regulations 2007,
4 isn't that right?

5 A. That's correct. 11:16

6 31 Q. Now, can I ask you in relation to this letter,
7 effectively it became three separate investigations
8 effectively, is that right?

9 A. That's correct. When I received it, I was very
10 conscious, as I said, in relation to the bullying and 11:16
11 harassment and the timeframe, 28-day timeframe, which
12 is a very ambitious timeframe to meet. And I also was
13 aware of item number 9 of Sergeant Barry's complaint of
14 the 21st November 2012, that he made a very serious
15 allegation against his senior officer, and then there 11:16
16 was a the discipline aspect of it. So you are correct
17 in saying, yes, I saw three component parts of an
18 investigation.

19 32 Q. Okay. As you say there, there were eight complaints
20 which effectively fell under the policy and you saw the 11:16
21 ninth complaint, that's where you saw coming under "any
22 other criminal offence"?

23 A. Yes, indeed.

24 33 Q. Okay. Now, before we move on then, so we have your
25 appointment and in fact attached to that letter, we've 11:17
26 already seen it, at page 951, that was your appointment
27 under Regulation 14, is that right, of the discipline
28 regulations. Sorry, that is at 951. It's on the next
29 page actually, if you just scroll down, Mr. Kavanagh,

1 keep going. And effectively you will see there:

2

3 "Details of the conduct alleged: Superintendent Comyns
4 interfered with the investigation into alleged sexual
5 abuse which was reported at Mitchelstown Garda station 11:17
6 on 2nd February 2012."

7

8 And it is signed on the 11th February 2013?

9 A. That's correct.

10 34 Q. Okay. Now, you do make the point in your statement 11:17
11 that even though it's dated the 11th February, you saw
12 yourself starting on the 18th, isn't that right?

13 A. That's the date I received it.

14 35 Q. Okay. Now, if we can look briefly then at the policy 11:17
15 document first and we take the B & H investigation
16 first. The policy document is in the papers,
17 Mr. Kavanagh, at 3498. And effectively it's a very
18 long document and I am going to cherry-pick to some
19 extent, I just want to ask you about a couple of
20 sections of it. If you look at 3506, and if you go 11:18
21 down to the last, the black box, it says:

22

23 "Instances of bullying and harassment and sexual
24 harassment will be treated seriously and will be dealt
25 with in accordance with disciplinary or criminal 11:18
26 procedures, where appropriate."

27

28 And I think that's what was happening in this
29 situation, is that right?

1 A. That's correct.

2 36 Q. Okay. And if you go to 3519, and this is something
3 that I want to ask you about, because it's something
4 that Mr. Barry raises in the context of what he's
5 calling inordinate delay. If we are at 3519, under 11:18
6 paragraph 8.2, can I ask you to look at the second
7 black box there? It's not that one, Mr. Kavanagh, keep
8 going.

9
10 "Where a complaint amounts to a crime, the matter 11:19
11 should be the subject of a criminal investigation.
12 This will take precedence over these procedures."

13
14 what is effectively intended by that?

15 A. As it says there, that the criminal will take 11:19
16 precedent, and that's what I understood it to be. In
17 those circumstances, Chairman, I appointed an officer
18 to run a parallel investigation at the time of the
19 appointment to my bullying and harassment. I was
20 acutely aware that criminal would take precedent over 11:19
21 the bullying and harassment and I saw number 9, as I
22 correctly identified, was the criminal aspect of it and
23 I appointed a detective inspector to commence the
24 enquiries into the criminal matters while I dealt with
25 the bullying and harassment matters. 11:20

26 37 Q. It is one of Mr. Barry's complaints in the context of
27 inordinate delay, that the criminal should have started
28 first effectively?

29 A. He was appointed at the same time as I appointed

1 members to the bullying and harassment, both of them
2 commenced at the same time.

3 38 Q. Okay. If I can ask you then to move on to 3523. The
4 Chairman will have seen this before in other modules,
5 it's in relation to the timeframes for these bullying 11:20
6 and harassment investigations, and if you look at the
7 paragraph there "suitable investigator will be chosen",
8 and in particular it says, midway down:
9

10 "The investigation should be conducted thoroughly, 11:21
11 objectively, with sensitivity, utmost confidentiality
12 and with due respect for the rights of both the
13 complainant and the person complained of."
14

15 It says: 11:21
16

17 "The investigator will report their findings within 28
18 days of the complaint being received at the divisional
19 office."
20 11:21

21 And I suppose that's just what I wanted to ask you
22 about, just in the context of what you said you saw
23 your clock starting when you were appointed, but the
24 policy may suggest or could plainly suggest there that
25 it's when the complaint is received? 11:21

26 A. I received the complaint on the 18th February 2013.

27 39 Q. Okay. So that's how you read the obligation there?

28 A. Yes.

29 40 Q. As opposed to running from the 2nd October 2012?

1 A. I had no knowledge of the report on the 2nd October
2 '12. I only got knowledge when I received the
3 documentation on the 18th February 2013 and that was
4 the date I commenced my investigation.

5 41 Q. Okay. Now, I think that it uses that language a couple 11:21
6 of times, "28 days from the complaint being received
7 that the divisional office" could it be read as the
8 initial date of the receipt of the complaint?

9 A. I'm sorry, I just don't understand the question there,
10 could you repeat? 11:22

11 42 Q. So it's your evidence that you are reading it as from
12 your receipt of the complaint?

13 A. That's correct.

14 43 Q. Or your appointment effectively?

15 A. Yes. 11:22

16 44 Q. Okay. Now, the final section of the policy that
17 applies for the purposes of today is at 3525, and it
18 deals with the extensions of time. And I think we've
19 seen already there was one application for an extension
20 of time, which Mr. Barry refused, and I think you 11:22
21 subsequently did have to use this section, didn't you,
22 and we will come to it in due course, but it's
23 paragraph 8.5 and it says:
24

25 "Extensions to the time limits outlined are acceptable 11:22
26 once there is a clear justification and both the
27 complainant and the person complained of have indicated
28 that they have no objection to the extension. It is
29 important to maintain a record with reasons for the

1 delay in time limits."

2

3 So I think you would have been aware of that and, as
4 you say, you did subsequently use that --

5 A. Yes, that's correct.

11:23

6 45 Q. -- provision?

7 A. Yes, I did.

8 46 Q. Okay. And if we can come back to your statement then.
9 We're still really at the time of your appointment and
10 as you just briefly mentioned there, you say that you
11 went on to make a number of appointments very quickly
12 after you were put in place. You say that you
13 appointed Superintendent Patrick Lordan to continue
14 with the bullying and harassment complaint, is that
15 right?

11:23

11:23

16 A. That's correct.

17 47 Q. Then you also appointed Detective Inspector William
18 Leahy, Detective Garda Mary Gilmartin, Sergeant Susan
19 O'Brien and Detective Sergeant James White, is that
20 right?

11:23

21 A. That's correct.

22 48 Q. Now, you had a meeting with some of that team on the
23 26th February 2013. And again, if we can just have a
24 look at the notes of that meeting, they are at 5682.
25 And there's your meeting. You outline who you met
26 with. Matters arising, you note the timeframe, 28
27 days. And as I say, it's your evidence that your 28
28 days was running from the 18th February to the 17th
29 March, is that right?

11:24

1 A. That's correct.

2 49 Q. Okay. Now, you task Superintendent Lordan, you say, to
3 address other exhibits and take additional statements
4 from members associated with the bullying complaint
5 only, is that right? 11:24

6 A. That's correct.

7 50 Q. And then the D/Inspector, which is D/Inspector Leahy,
8 and yourself, you were going to investigate discipline,
9 is that right?

10 A. Yes, the criminal and discipline aspect of it, yes. 11:24

11 51 Q. The jobs book was given to D/Sergeant white, is that
12 right?

13 A. That's right.

14 52 Q. And the compilation of the file, is that the bullying
15 and harassment file? 11:24

16 A. The bullying and harassment, Sergeant O'Brien.

17 53 Q. Was opened with Sergeant O'Brien, is that right?

18 A. That's correct.

19 54 Q. Now, you say later, at 5684, you then spoke with
20 Mr. Barry, is that right? 11:25

21 A. Yes, I think I spoke with him on the phone initially
22 and then I had a meeting with him after that.

23 55 Q. So it's 5684, you take a note of that meeting. And, if
24 you just keep going down. Now, you note there, there's
25 just some things there noted at the outset, 11:25
26 appointments with the CMO; for example, he would not be
27 returning to work until the investigation complete.
28 There's a mention there of a medical certificate. Is
29 this where you are getting a fuller picture of what the

1 background to all of this is and what has been going on
2 since the bullying and harassment complaint was made?
3 A. This was a conversation I had with Sergeant Barry at
4 the time and he gave me an outline of what was
5 occurring. 11:25

6 56 Q. Okay. And did all come up that he had been on sick
7 leave?
8 A. Yes, I was aware he was on sick leave.

9 57 Q. Okay. And what was the nature of the discussion you
10 had with him? Is it reflected there or was there more 11:26
11 said?
12 A. No, it was reflected as I say it there in those notes.
13 It wasn't a lengthy conversation, but, as I say in the
14 notes there, he just informed me in relation to the
15 fact that he was on sick leave and that he wasn't 11:26
16 inclined to give an extension of time, because he would
17 be on half pay. And I was conscious of that fact.

18 58 Q. Okay. And you note there at the bullet points, you
19 say:
20 11:26
21 "At last this investigation has started and someone is
22 going to do something for me."
23
24 That's Mr. Barry, is it?
25 A. That's Mr. Barry. 11:26

26 59 Q. You told Sergeant Barry that "I will do my utmost to
27 adhere to the timeframe for such investigations under
28 policy of harassment, sexual harassment and bullying
29 which will expire around the 17th March 2013."

1 However, you said you would "not compromise the
2 thoroughness of the investigation process to expedite
3 matters prematurely."
4

5 Is that right? 11:27

6 A. That's correct.

7 60 Q. Then he said he could not give an extension of time
8 because he was reduced to half pay. Did you fully take
9 all of that on board? were you fully cognisant of what
10 was going on with him financially in relation to all of 11:27
11 this?

12 A. No, this was my first time speaking with Sergeant
13 Barry. I wouldn't have known any in-depth information
14 in relation to his sickness absence.

15 61 Q. Okay. And you indicate at the outset that the matter 11:27
16 did not arise at that stage?

17 A. At that stage.

18 62 Q. In relation to an extension?

19 A. That's correct.

20 63 Q. Okay. Now, at around this time, as well, subsequent to 11:27
21 your appointment, there's two letters I just want you
22 to look at, one is at page 305. Now, this is where you
23 write to Sergeant Barry after you'd just been
24 appointed. And you're very much confining it to -- we
25 don't have to open it, but you very much confine your 11:28
26 correspondence with him in relation to the bullying and
27 harassment, is that right?

28 A. That's correct.

29 64 Q. Okay. And you tell him you've appointed Superintendent

1 Lordan to continue with the investigation and you tell
2 him about the other appointments as well. But you
3 don't go into any other aspect of it, criminal or
4 discipline, is that right?

5 A. That's correct, not in that correspondence, no. 11:28

6 65 Q. Okay. But there's a letter of the same date that goes
7 to Superintendent Michael Comyns, it's at 654. And I
8 just want to ask you about it, chief superintendent,
9 because it is very different in its context, because
10 this is sent to him in the context of the discipline. 11:28
11 You say that you have been appointed as deciding
12 officer in respect of the discipline and you're asking
13 him if, if you look down the third paragraph, for all
14 official documentation touching on the matter. You're
15 looking for a detailed report. And you say at the very 11:28
16 end of that page that it's possible he could be called
17 for interview. And then you say on the next page that
18 you're looking for a response to this before the 11th
19 March and you're anxious to bring this matter to a
20 conclusion with reasonable expedition. 11:29

21
22 Now there's very different focuses, your contact with
23 Sergeant Barry, it would seem, at this stage, that the
24 discipline is being effectively kicked off straightaway
25 by you, is that right? 11:29

26 A. Part of the discipline regulations, you have to put the
27 officer on notice at the earliest opportunity. That's
28 under the regulations, so that is the reason that
29 minute went out. But I also sent him out a second

1 minute in relation to the bullying and harassment and I
2 outlined the allegations 1-8 and asked him for a
3 response within one week, I think.

4 66 Q. Okay. We know that it's a part of Sergeant Barry's
5 complaint in this inordinate delay category that in 11:29
6 fact the discipline didn't start effectively, it was
7 quite late, the end of 2015 --

8 A. Yeah.

9 67 Q. -- into 2016, when this effectively became any way
10 substantive. What do you say to that? 11:29

11 A. That's correct, number one. Number two, the fact is
12 that criminal will always take precedent over
13 discipline and this was a standard letter that would go
14 out to notify people, notify an officer that he was --
15 that discipline regulations were being invoked. It was 11:30
16 just a standard letter.

17 68 Q. What would you say that the discipline effectively
18 hadn't started at that stage, in reality?

19 A. No, it hadn't started other than the fact I was -- it
20 was started in the context of an appointment but the 11:30
21 criminal discipline was running parallel to each other.
22 So the matters that I was investigating under criminal
23 were going to be relied on for my discipline
24 investigation. So it was a parallel investigation.

25 69 Q. Okay. Now, if we go back to your statement, you say 11:30
26 that you had meetings during that month and into early
27 March with your team, we've seen one of them there, the
28 26th February. You also met on the 6th March. You
29 make a point in your statement, you say that "The

1 investigation team was not designated solely to this
2 investigation, they were drawn from the division of
3 Tipperary and continued to hold a significant number of
4 responsibilities or portfolios in addition to this
5 investigation as I did." Is that right?

11:31

6 A. That's correct. They weren't a designated team. I
7 didn't have the luxury of a designated team, I had to
8 pull people from across Tipperary division in order to
9 conduct this investigation. They had, all of them had
10 a very heavy workload and portfolios themselves and
11 they only could prioritise this as the need arose in
12 relation to it. We kept it always on the agenda but
13 also they had their own roles and responsibilities.
14 The superintendent and the district officer and
15 inspector had his own portfolios as well.

11:31

11:31

16 70 Q. I think this is then during, effectively, March where
17 you start your correspondence with Superintendent
18 Michael Comyns in relation to the bullying and
19 harassment. This has already been opened previously by
20 counsel for the Garda Síochána, Mr. Murphy. But you
21 effectively engaged in correspondence with the
22 superintendent, you put the eight complaints to him, he
23 comes back to you, I think you look for clarification,
24 and again he comes back to you, is that right?

11:31

25 A. That's correct.

11:32

26 71 Q. And that's during the March period?

27 A. That's correct.

28 72 Q. But also during March, on the 12th March, now you
29 trigger paragraph 8.5 we looked at in the policy and

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Isn't that right?

A. That's correct.

77 Q. And you tell him you've appointed Detective Inspector William Leahy to assist you, isn't that right?

11:33

A. That's correct. I don't have it in front of me.

78 Q. Now, this is where you say:

"As you will appreciate, this is a complex investigation that requires parallel investigation under both the Garda policy and procedures harassment, sexual harassment and bullying, working together to create a positive working environment and the Garda Síochána discipline regulations 2007."

11:33

Now, we know from Mr. Barry's direct evidence and cross-examination, he puts some emphasis on the use of your language of "parallel investigations". It's his view that in fact they were effectively sequential and went on for three years but you say here they are parallel. Can you just tell the Chairman what you mean by that?

11:34

A. Chairman, at the time, as I said earlier, when I received those documentation I appointed Detective Inspector Leahy in relation to the criminal discipline aspect of it, and I appointed Superintendent Lordan and Sergeant O'Brien in relation to the bullying and harassment aspect of it, and that sincerely as per my notes that have just been opened to the tribunal. So

11:34

1 that was the parallel investigation that I was
2 referring to.

3 79 Q. Okay. So is it your evidence to the Chairman that you
4 always saw them as running parallel from the outset?
5 A. That was my hope and aspiration at that time. 11:35

6 80 Q. Okay. And also, in fairness, chief superintendent,
7 could it be aspirational, the last paragraph you say?
8
9 "As you are aware, the matters subject to the
10 discipline regulations are not governed by the same 11:35
11 timeframes. However, it is mine intension to ensure
12 this aspect will also be expeditiously investigated."
13

14 A. It was always my intention to ensure that all aspects
15 of the investigation would be dealt with as 11:35
16 expeditiously as possible.

17 81 Q. Okay. Now, you had notes then of the meeting two days
18 later with Mr. Barry and we'll look at the typed ones
19 please, at 1086. Now, at 1086, you have notes, you're
20 telling Mr. Barry -- you explain your appointment. 11:35
21 We've gone through a lot of this, if you go down, your
22 appointment under Regulation 14. Details of
23 Superintendent Lordan. You say you outline the process
24 of the two investigations and the progress being made."
25 11:36

26 Can I just ask you, yes at this stage you had been
27 corresponding with Superintendent Comyns in relation to
28 the bullying and harassment, but in reality what
29 progress was being made in respect of the other

1 investigations?

2 A. Detective Inspector Leahy was taking statements in
3 relation to the criminal investigation.

4 82 Q. Okay, and that's the progress. Was that outlined to
5 Mr. Barry, do you recall? 11:36

6 A. I don't recall. I can't say with any degree of
7 certainty. But if I've said it there, the possibility
8 is that, yes, it would have been outlined.

9 83 Q. Okay. Now, if you go down a couple of lines, there.
10 This is Sergeant Barry: 11:36

11

12 "...indicated that he was not satisfied with the delay
13 brought by an Assistant Commissioner Nolan."

14

15 And you informed him that there were avenues for this 11:37
16 but it does not form part of this investigation. Can
17 you just tell the Chairman what you meant by that?

18 A. Sergeant Barry at that point in time was quite annoyed
19 by the fact that there was a delay of four months in
20 relation to the investigation and I wanted to make it 11:37
21 clear to him that, you know, if he making a complaint
22 in that nature, he would have to make a separately to
23 the fact that I wasn't investigating that, I was
24 investigating the complaint as per my appointment from
25 Assistant Commissioner Nolan. 11:37

26 84 Q. Is it your evidence that Sergeant Barry understood that
27 you were proposing to do the bullying and harassment
28 investigation and then move on to the others? Would
29 that have been made clear at this meeting?

1 A. I made it clear at the meeting that there was a
2 parallel investigation. At that point in time that was
3 what was actually happening. There was a detective
4 inspector appointed and, as I say, Superintendent
5 Lordan was appointed for the bullying and harassment, 11:37
6 that would have been made clear at that meeting.

7 85 Q. Okay. You go on to say you explained to him that you
8 required an extension of two weeks, would ask him to
9 confirm consent for the same or otherwise. "I require
10 this additional time in furtherance of the 11:38
11 investigation and to ensure its thoroughness", isn't
12 that right?

13 A. That's correct.

14 86 Q. "Asked if he was satisfied with the content of his
15 statement of complaint. He said he was satisfied. 11:38
16 Additional amendment is in order."
17

18 Okay. So that was your meeting on the 14th March with
19 him. He comes back to you on the 15th March and I
20 think he agrees to the extension of time, the following 11:38
21 day, is that right?

22 A. That's correct.

23 87 Q. Page 1246, please, Mr. Kavanagh. I think he e-mails,
24 at the very bottom there, he e-mails a colleague of
25 yours, that's Sergeant O'Brien at the end. If you just 11:38
26 scroll down the page, please. Now, again he's
27 outlining a lot of personal circumstances there and I
28 think at this stage, would you say you were acutely
29 aware that there was this extenuating background with

1 regard to Sergeant Barry?

2 A. Yes, I was aware that Sergeant Barry was out sick at
3 that particular time.

4 88 Q. And he says midway down, he says:

5
6 "As you only received your appointment on 18/2/2013 and
7 you are seeking a two-week extension, I hereby agree to
8 your request. This extension will bring the combined
9 delay to the 1st April, which is exactly six months
10 since A/C Nolan was appointed to deal with this
11 matter." 11:39

12
13 Do you believe that is a legitimate statement on his
14 part?

15 A. Yes, I do believe it is a legitimate statement on his
16 part. 11:39

17 89 Q. "My wife wanted me to object to your extension and has
18 given me and my authorities an ultimatum that if this
19 matter is not fully resolved by 1st April 2013, Fool's
20 Day, he she will be making a formal complaint to the
21 Garda Síochána Ombudsman Commission on that date." 11:39

22
23 I think Sergeant O'Brien sent that on to you, isn't
24 that right?

25 A. That's correct. 11:39

26 90 Q. Okay. So you got the extension and you proceeded to
27 continue with your work. In accordance with the
28 policy, I think you met with Sergeant Barry on the 8th
29 April, you put everything to him, all the material you

1 had, isn't that right?

2 A. That's correct.

3 91 Q. Now, I omitted to say that it was after he agreed to
4 the extension of time you interviewed Superintendent
5 Comyns in relation to the bullying and harassment, is 11:40
6 that right?

7 A. That's right.

8 92 Q. And that was on the 22nd March?

9 A. That's correct.

10 93 Q. And as I said, you then sat down with Mr. Barry, put 11:40
11 everything to him and then you put your file together
12 on the bullying and harassment complaint on the 30th
13 May 2013, isn't that right?

14 A. On the 30th May.

15 94 Q. 30th May? 11:40

16 A. Yes, that's right.

17 95 Q. That file, again, it's at 1085, we don't need to open
18 it. But it was an extensive file, I'd say, chief
19 superintendent and you did not uphold any of the 1-8
20 complaints, is that right? 11:40

21 A. That's correct.

22 96 Q. So at this stage, chief superintendent, the bullying
23 and harassment matter, do you effectively see that
24 that's off your desk, is that right?

25 A. Yes, it was off my desk at that point in time. I sent 11:40
26 it back to the appointing officer.

27 97 Q. Okay. Then you turn your attention, it seems, then to
28 the discipline and criminal matter, isn't that right?

29 A. That's correct.

1 98 Q. Okay. In particular, you notice, you're aware that
2 Inspector Leahy had moved on and you were looking for a
3 replacement for him, is that right?

4 A. That's correct.

5 99 Q. Okay. In July, you submit your report in May, but in 11:41
6 July I think we have seen in the papers that Chief
7 Superintendent McLoughlin at Internal Affairs, he's
8 looking for updates now as to the status of your
9 investigation, isn't that right?

10 A. That's correct. 11:41

11 100 Q. We don't need to open it but he looks for an update and
12 he effectively corresponds with HRM plus Assistant
13 Commissioner Nolan, and he's looking for an update on
14 the status of the investigation, that comes in in July,
15 but also in July you are looking for an update yourself 11:41
16 from Superintendent Leahy, is that right?

17 A. That's correct.

18 101 Q. Okay. He comes back to you on the 9th August with an
19 update and we will open this one, it's at 1093. Now,
20 at 1093 you will see, this is his response to you, as I 11:42
21 say, you had looked for an update on progress and he
22 tells you a number of jobs were identified where
23 persons including members of An Garda Síochána had to
24 be interviewed. A number of these persons, members of
25 An Garda Síochána have been interviewed to date. And 11:42
26 he outlines effectively five statements that he had
27 taken, isn't that right?

28 A. That's correct.

29 102 Q. Would you accept that he's still at a very preliminary

1 stage at this juncture?

2 A. I would accept that at the time I received that report
3 I was disappointed with the level of progress that had
4 been made.

5 103 Q. Okay. He tells you about the connection, now we have 11:43
6 been using this word in relation to the 2012, the ninth
7 complaint, if we call it that, and he tells that he's
8 had difficulties in securing cooperation from the
9 connection, isn't that right?

10 A. That's correct. 11:43

11 104 Q. So he's telling you this on the 9th August 2013, is
12 that right?

13 A. That's correct.

14 105 Q. Now, we'll mention this briefly later on, because you
15 may have heard from Mr. Barry's evidence that he is 11:43
16 expressing frustration in relation to this, that this
17 was identified as a problem in August 2013 and we know
18 it's some time before, shall we say, communications are
19 established with the connection, is that right?

20 A. I'm sorry, can you repeat that question, I'm not 11:43
21 following your...?

22 106 Q. So I suppose what I am asking you is: The problem in
23 relation to the connection is highlighted here in
24 August 2013?

25 A. That's right that's right. 11:43

26 107 Q. Okay. Now, that was the update that you had but what
27 happens then is things slow down effectively, would you
28 agree, because at this stage you are asked by Assistant
29 Commissioner Twomey do you have any views in relation

1 to the appeal that's been lodged in the bullying and
2 harassment claim, isn't that right?

3 A. Yes, I received that on the 12th August, just days
4 after I received the updated report.

5 108 Q. Now, you come back on the 9th October to him. Now you 11:44
6 had been on annual leave, isn't that right?

7 A. That's correct.

8 109 Q. But you say that it's your view that that wasn't
9 appropriate, for you to be giving your views on the
10 grounds of appeal, isn't that right? 11:44

11 A. Yes, I sought advices in relation to it, because I
12 hadn't ever received a report of that nature
13 previously. I sought advices and I was told that I
14 shouldn't have viewed that report. And I returned it
15 to the assistant commissioner indicating same and I put 11:44
16 no advices on it.

17 110 Q. Okay. But on the same day there's another problem that
18 has arisen on the 9th October 2013, because this is
19 where you have the concern under Regulation 14(5) of
20 the discipline regulations, isn't that right? 11:45

21 A. That's correct.

22 111 Q. And you write to Assistant Commissioner Nolan. We will
23 open page 1108. We've already come across the issue
24 here, 14(5), as to what it is. And just in ease, it
25 says at subsection (5): 11:45
26

27 "The appointing officer shall ensure that the deciding
28 officer.." which is you "...has not been involved in
29 in any capacity in relation to an earlier aspect of the

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case. "

Isn't that right?

A. That's right.

112 Q. That is an issue that has arisen as far as you are 11:45
concerned. And at page 1108, if we just look at it,
and this is you writing to your appointing officer,
you're outlining that you have been appointed, both
under the discipline and under the B & H, you are
saying that you have submitted your completed file. 11:46
Sorry, do I have the right page? Sorry, it's my fault,
chief superintendent. Sorry, it is 1101. Sorry,
that's my fault. And that's the 9th October 2013. And
that's your letter, just by way of background you tell
him you have submitted your report on bullying and 11:47
harassment. You say that you became aware -- "In
correspondence received from Assistant Commissioner
Twomey dated 13th August 2013, I have become aware that
an appeal has been lodged and the views sought under
the specific grounds put forward by Sergeant Barry. 11:47
Having reviewed the content of this document which --"

Sorry, the next page.

" -- I have addressed under separate cover of 9th 11:47
October 2013, I am firmly of the view that to continue
with the criminal investigation as directed by you
would be prejudicial to any findings of the case. "

1 Now, do you just want to tell the Chairman a little bit
2 more about that?

3 A. I believed for the fact that I received this
4 documentation, having spoken with Ms. Hassett in HR,
5 that it may be perceived, this was a view I had, that 11:47
6 it may be perceived that I shouldn't continue with the
7 investigation as I had -- I was relying on 14(5) in any
8 capacity in area aspect of the case, I had made an
9 adjudication on the bullying and harassment, I had
10 received the grounds of appeal and I asked for advices 11:48
11 in relation to that.

12 113 Q. Now, and you say you're firmly of the view, so that is
13 very strong language, isn't that right?

14 A. Well that was my view at the time.

15 114 Q. Okay. And I think there's some correspondence back and 11:48
16 forth between you and Assistant Commissioner Nolan?

17 A. Yes.

18 115 Q. You write to him again on the 31st October, at 1106,
19 because he looked for specific reasons, isn't that
20 right? 11:48

21 A. That's correct.

22 116 Q. And at 1106, you outline these. You outline what you
23 called your rationale there in the letter. And
24 essentially your rationale was, if you go on to the
25 next page, really it's number 5, that "as part of the 11:48
26 appeal process I was supplied with Sergeant Barry's
27 grounds of appeal. It was evident from examining this
28 document that Sergeant Barry had access to my
29 findings. "

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You say:

"To continue my investigation into the disciplinary matters and any criminal matters arising could in my view compromise the investigation as I am now fully aware of Sergeant Barry's views in respect of my investigation into the bullying and harassment aspect of the case and hence my impartiality could be brought into question."

11:48
11:49

Isn't that right?

A. That was my view.

117 Q. I think you're told effectively to press on, is that right?

11:49

A. That's correct.

118 Q. At that stage.

A. I think on the 18th November, I was written to by the appointing officer and asked to press on.

119 Q. Okay. But you go back, you're still uncomfortable I think with the situation because you go with on the 21st November, it's page 1111, is that right? We will just open that up. So, you go back on the 21st November. Now, as you say, you have been told to press on, isn't that right?

11:49

A. That's correct.

120 Q. You say:

"I note that you have requested that I continue with

1 this investigation and while I have no difficulty in
2 doing so, I must bring to your attention the provisions
3 of Regulation 14(5) of the discipline regulations 2007,
4 which I believe has a barring on my appointment under
5 discipline regulations.

11:50

6
7 In seeking my exclusion from this investigation of the
8 31st October 2013, I omitted the reference to the
9 regulations that I was relying on."

11:50

10
11 So, was it effectively -- so, I mean, I think it's
12 there in black and white, you believed that it wasn't
13 appropriate for you to continue, that was your
14 position?

15 A. That was my position.

11:50

16 121 Q. Okay. Again, you were told again to press on on the
17 23rd November 2013, isn't that right, by the assistant
18 commissioner?

19 A. 23rd December.

20 122 Q. 23rd December?

11:50

21 A. Yeah.

22 123 Q. Okay. So, at this stage now I suppose Sergeant Barry
23 is here, the bullying and harassment file was submitted
24 in May and now it's six months later and effectively,
25 would you agree, everything has stalled because of this
26 issue at this stage?

11:50

27 A. Well, this clarification was required in order for me
28 to continue with the investigation and that was my
29 view.

1 124 Q. Now, I think Mr. Barry accepted when he was being
2 cross-examined on Day 179, he said it was reasonable
3 for you to check this, I think in fairness to
4 Mr. Barry. But as we say, effectively you're looking
5 at a six-month period now has passed and nothing has 11:51
6 effectively happened substantively, would that be fair
7 to say?

8 A. That would be correct.

9 125 Q. Okay. Now, Mr. Barry is coming back to you, he writes
10 to you on the 8th December, 2681. So, at 2681, if you 11:51
11 just go down there, he writes again to your colleague.
12 If you just keep going down, please. He writes to
13 Sergeant O'Brien. He's referring to an e-mail, saying:
14

15 "In relation to the criminal investigation this 11:51
16 continues and is progressing."
17

18 That's an e-mail that he had received in May. And then
19 he says at the very end, he said:
20

21 "I would appreciate a response from Chief 11:52
22 Superintendent Kehoe to clarify whether it is a
23 disciplinary or criminal matter that she is
24 investigating and to account for her delay in dealing
25 with same before I complain directly to Commissioner 11:52
26 Martin Callinan."
27

28 And you reply to him with your clarification on page
29 3150, a couple of days later. So, a couple of days

1 later you come back to him and really, again you set
2 out a background that you've submitted the bullying and
3 harassment report. But if we could look at the next
4 page, 3151, you say:

5
6 "The disciplinary and criminal investigations is
7 continuing but I wish to advise you that I have sought
8 clarification from assistant commissioner, Southeastern
9 Region, in respect of finalising the
10 discipline/criminal investigation as the provisions of 11:52
11 Regulation 14(5) of the Garda discipline regulations
12 2007 may have a bearing on my appointment under the
13 discipline regulations.

14
15 I will keep you informed of any developments in this 11:53
16 regard."

17
18 So, I think is the word "finalising" somewhat
19 premature, I suppose, at that stage?

20 A. I would accept that. 11:53

21 126 Q. Okay. And so, you are telling him that you're going to
22 again be pressing on. This now has brought us in to
23 effectively January of 2014. I suppose here we can see
24 where Mr. Barry's complaints are building up with
25 regard to delay, do you accept that that's the reality 11:53
26 of the situation?

27 A. I'm sorry?

28 127 Q. That by December 2013 he is complaining about delay to
29 you?

1 A. Yes, he is complaining about delay.

2 128 Q. Okay. Now, in January 2014, you appoint Inspector Paul
3 O'Driscoll to come on board from Clonmel Garda Station,
4 isn't that right?

5 A. That's correct. 11:53

6 129 Q. You appointed him under the disciplinary regulations
7 and I think it is not really until the 15th January
8 where you're effectively told that you are to press on
9 with the criminal and discipline investigation by
10 Assistant Commissioner Nolan, isn't that right? 11:54

11 A. Sorry, on the 15th January?

12 130 Q. On the 15th January 2014. So we're now in January
13 2014?

14 A. I don't believe on the 15th January '14 that -- if I
15 could see that document, I don't believe -- 11:54

16 131 Q. We will open it, 1117, please.

17 CHAIRMAN: Could we see the date of that letter?

18 MS. McGRATH: It's 15th January.

19 CHAIRMAN: If you scroll down. 15th January. Is it
20 25th January? 15th January. Thanks very much. 11:54

21 132 Q. MS. McGRATH: Sorry, that is my error, that is not a
22 letter to you?

23 A. No.

24 133 Q. You were copied on this letter, I think?

25 A. That's correct, yeah. 11:55

26 134 Q. This is a letter from your appointing officer to HRM
27 and it says there in the middle paragraph:
28
29 "Chief Superintendent Kehoe has queried whether or not

1 she is compromised in continuing the
2 criminal/discipline investigation which is almost two
3 thirds complete..."

4
5 Again, would you accept, chief superintendent, is that 11:55
6 a generous description of where the stage of the
7 criminal/discipline investigation was at at that stage?

8 A. I would accept that it probably wasn't as advanced as
9 suggested there.

10 135 Q. He seeks advice "as to whether Chief Superintendent 11:55
11 Kehoe should be replaced in this discipline/criminal
12 investigation at this time based on the original advice
13 I sought in this regard on the 4th January 2013." So
14 it does seem to suggest that by the beginning of 2014
15 the issue continues to rumble on, is that right? 11:55

16 A. That's correct.

17 136 Q. In relation to you. And, in fact, you say in your
18 statement that it wasn't until the 2nd April 2014 that
19 you were notified by the assistant commissioner to
20 continue with the criminal investigation, is that 11:56
21 right? Now, I know you pressed on in the interim, but
22 effectively when it came back from the appointing
23 officer, it was April, is that right?

24 A. If I could say on the 2nd April was my formal
25 notification, but I had spoken with the appointing 11:56
26 officer earlier than that, I spoke to him on the 19th
27 February 2014 in respect of the matter.

28 137 Q. Okay. I think you have journal notes for that meeting
29 at 1119, if we can look at those. Again, during his

1 evidence -- if we can look at this in a little bit of
2 detail because Mr. Barry took issue with some language
3 in these notes. Effectively we'll start with the first
4 one, the first note of the 19th February 2014, you say:

5
6 "At 7pm I spoke to assistant commissioner, Southeastern
7 Region, and advised that I was pressing on with the
8 investigation of Sergeant Paul Barry despite not
9 receiving any clarity of my query concerning
10 appointment. "

11
12 Were you experiencing some frustration at this stage?

13 A. Well, I was conscious of the fact that I had already
14 made an appointment during the month of January with
15 Sergeant Barry and I was anxious to meet that
16 appointment and I wanted clarity in relation to the
17 matter. So I spoke to the appointing officer on the
18 19th February 2014, and he advised me to check it with
19 HR to see what the position was. Not being able to get
20 to get Chief Superintendent McLoughlin, I then phoned
21 A/C Nolan that evening and I spoke to him again in
22 relation to the matter. I asked him had I authority to
23 continue on, notwithstanding we hadn't got the advices
24 back. And he agreed for to allow me to continue.

25 138 Q. So effectively, you had raised the issue first on the
26 9th October 2013, isn't that right?

27 A. Yes.

28 139 Q. And is it effectively then correct to say what you say
29 in your next note, is that everything had been parked

1 during all of that period, is that right, you used the
2 word parked?

3 A. I used the word parked in the context that it hadn't
4 progressed pending the outcome of the query, the
5 clarification that was sought in relation to 14(5). 11:58

6 140 Q. Okay. So by February 2024 [sic], notwithstanding that
7 you had submitted the bullying and harassment, your
8 report in May 2013, nothing substantively really has
9 happened to this date effectively, is that right?

10 A. That would be fair. 11:58

11 141 Q. You say in the next note, on 20th February, the
12 following day, you met with Sergeant Barry by
13 appointment, isn't that right?

14 A. That's correct.

15 142 Q. And he had his AGSI representative with him, isn't that 11:58
16 correct?

17 A. That's correct.

18 143 Q. Okay. You explained that you had "...parked the
19 criminal investigation, discipline investigation for
20 advice under the regulations, as I was concerned that 11:59
21 in view of the fact that I conducted and made findings
22 in the investigation into the alleged bullying and
23 harassment, sexual harassment policy, that a question
24 may arise by him or other party, Superintendent Comyns,
25 that I was not impartial." 11:59

26

27 And then you said:

28

29 "I asked him, Sergeant Barry, if he had any --"

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Sorry, I am paraphrasing, I should don't that.

"Any difficulty with me continuing the investigation under the criminal /discipline aspect."

11:59

Okay. So, to be fair to you, you said on the 19th to the appointing officer you were pressing on, you meet Mr. Barry, you tell him you had parked it but now you were continuing, is that right?

11:59

A. That's correct.

144 Q. You use the word continuing?

A. Yes.

145 Q. You said then, and let's just stay with that note:

"He said that he had not --"

11:59

So this is he had no objection to you continuing, is that right?

A. That's correct.

12:00

146 Q. Okay "but was annoyed that I had parked the investigation for some months without informing him of my decision to do so."

Now, what do you say to that?

12:00

A. I accept the fact that I didn't speak or didn't consult with him until maybe the end of that year in relation to the matter, but at all times I was expecting an earlier response to the query that I placed in relation

1 to 14(5).

2 147 Q. And he said to you, he said:

3

4 "He always understood that I was running both
5 investigations in tandem. I said I did not."

12:00

6

7 Now, this may seem to conflict with your earlier
8 evidence, that you always saw yourself as carrying out
9 parallel investigations. So what do you say to that?

10 A. That was my initial -- as I said, when I initially got 12:00

11 this investigation to do, it was my intention that it
12 would run as a parallel investigation. In other words,

13 the bullying and harassment would have to take

14 precedence in the context of the timeframe and,

15 therefore, Detective Inspector Leahy was appointed at 12:01

16 the outset to conduct enquiries. And my thinking was

17 then, that as soon as the bullying and harassment was

18 completed, that all the personnel that were appointed

19 could concentrate on the criminal/discipline aspect of
20 it. Therefore, it would be continuing in that 12:01

21 sequential order. But, as I say, the bullying and

22 harassment was always going to have to take precedent

23 over the my criminal/discipline, for my functionality

24 in relation to it.

25 148 Q. His statement there, that he always understood they 12:01

26 were running in tandem, was that a fair understanding
27 of the position by him?

28 A. Yes, it was.

29 149 Q. But you say in your notes "I said I did not"?

1 A. No, I didn't -- I wasn't able to bring both of them to
2 a conclusion at the one time, obviously. As I say, one
3 had to take precedent over the other from a
4 decision-making process.

5 150 Q. Okay. You say "I informed him that I investigated the 12:02
6 bullying and harassment complaint under the policy
7 initially as it concerned eight grounds and the policy
8 governing the same imposed a strict timeframe from
9 instigation of proceedings. It was my intention to
10 complete the criminal/discipline aspect and to this end 12:02
11 I did appoint D/Inspector William Leahy to carry out
12 investigations and obtain statements from witnesses."
13

14 And you explained "I was not at the juncture of dealing
15 with the substantive parties, i.e. Superintendent 12:02
16 Comyns and the connection, however the latter was
17 spoken to by D/Inspector and apparently not cooperating
18 presently."
19

20 Now, that was what we opened earlier, that was the 12:02
21 previous August you knew that, is that right?

22 A. That's correct.

23 151 Q. So again at this stage you're saying that there's no
24 contact with substantive parties by this stage?

25 A. No, there wasn't. 12:02

26 152 Q. February 2014?

27 A. That's correct.

28 153 Q. You say at the end, you say:
29

1 "We concluded the meeting cordially and he said he
2 could contact me if he had any issues. I said I would
3 endeavour to expedite the investigation without
4 compromising on its thoroughness."

12:02

5
6 And in fairness to you, I think repeatedly that was
7 something that you made very clear to him, is that
8 right?

9 A. That's correct.

10 154 Q. Okay. Now, in relation to that then, I think there are
11 letters which I just might ask you to have a quick look
12 at. He writes to you after this meeting at page 1207,
13 on the 20th March, so this is a month later. Now, this
14 has already been opened by Mr. McGuinness to Mr. Barry,
15 but this is him saying still, he's maintaining the
16 position on the 20th March, if you go down to the
17 second paragraph, he says, he's referring to your
18 meeting. Midway down:

12:03

12:03

19
20 "I expressed my surprise that you would not investigate
21 the sexual complaint at the same time as the bullying
22 complaint due to the serious nature of the sexual
23 complaint. Chief Superintendent Kehoe made it clear
24 once again that you never intended to deal with the
25 sexual complaint until the bullying complaint and its
26 appeal were finalised and you apologised for not making
27 this clear to me at the outset."

12:03

12:04

28
29 Is that a correct reflection of your conversation?

1 A. Yes, it would have been a correct reflection of the
2 conversation in the context, as I explained already,
3 that I couldn't deal with both of them at the same
4 time, one had to take precedent over the over. The
5 bullying and harassment was taking precedent over the 12:04
6 criminal for the purpose of decision-making.

7 155 Q. I think he brings it up again in the next paragraph
8 that you had told him that it was a complex
9 investigation that required parallel investigation
10 under the Garda policy and procedures, the bullying and 12:04
11 harassment policy effectively, is that right?

12 A. That's correct.

13 156 Q. Now, he goes on to say in the next page, the second
14 paragraph, he says:
15
16 "Your investigation to date under the Garda Síochána
17 discipline regulations 2007 has not been parallel or
18 expeditious and is contrary to what you promised me on
19 the 12th March 2013. It is exactly one year later now
20 and I would appreciate an explanation as to why you did 12:05
21 not conduct this investigation in the manner which you
22 alluded to in your letter to me of the 12th March
23 2013."
24

25 Now, what do you say to the Chairman about that? 12:05

26 A. I don't accept the full content of that last
27 correspondence. I certainly set out to conduct a
28 parallel investigation at the outset. I appointed the
29 detective inspector to do so in the context of the

1 criminal. I dealt with the bullying and harassment
2 given the sensitive timeframe. And that's how I went
3 about my business at that time. Unfortunately I
4 couldn't have anticipated the other difficulties that
5 arose as a consequence of that.

12:05

6 157 Q. But I mean, you're clearly at odds with each other. He
7 has taken a certain position in relation to how they
8 should have been investigated or conducted, isn't that
9 right?

10 A. I'm sorry, I don't understand the question.

12:05

11 158 Q. He has taken the position that they had not been
12 parallel or expeditious and it was contrary to what you
13 had promised him?

14 A. Yes, no, he took that position, but I don't hold with
15 that view. I hold with the view that at the time of
16 appointment I certainly conducted a parallel
17 investigation for a period of time.

12:06

18 159 Q. Okay. Now, in relation then, you reply on the 9th
19 April 2014 and your reply is at 1210. And again, this
20 was previously opened by Mr. McGuinness to Mr. Barry on
21 Day 177. This is where you come back to him with a
22 more detailed report and he does accept in his evidence
23 that this gave him some comfort. You tell him -- you
24 outline in 1 to 10 what has been happening and you say
25 at the bottom of page 1211, the next page, that "It
26 would be incorrect to interpret that a parallel
27 investigation has been inactive. However, it would not
28 have been possible for me to interview Superintendent
29 Comyns on both the human resource policy issue and also

12:06

12:06

1 on the disciplinary issue, as a distinct difference
2 applies in the approach governing both investigations."

3
4 Is that really what the difficulty was in essence?

5 A. Well, as I pointed out, both investigations were 12:07
6 running parallel for a period time and I couldn't make
7 a determination on a criminal investigation that hadn't
8 been fully investigated and send a file to the DPP at
9 the same time I was doing bullying and harassment.

10 160 Q. And in relation then to -- he comes back, at page 1214, 12:07
11 in July. And again he is complaining at the outset of
12 the letter, he is saying to you -- he's referring to
13 your letter of the 9th April, he says:

14
15 "I wish to report that I have not received any progress 12:07
16 report on the current status of this investigation and
17 would like to know how long more this investigation
18 will be delayed for."

19
20 What do you say to that? Do you accept that position 12:07
21 that he is maintaining at that stage in July 2014?

22 A. In relation to what point?

23 161 Q. In relation to the progress report. Would you consider
24 that the progress report was the 9th April?

25 A. Yes, the progress report was definitely the 9th April. 12:08

26 162 Q. And he says at the end:

27
28 "I would appreciate an update on the current
29 investigation and a possible date for my concluding

1 this investigation. It will be two years and two
2 months since I made my initial complaint."

3
4 So what do you say to that?

5 A. Yeah, his point in relation to the lodging of the 12:08
6 complaints is correct, but I would point out that my
7 investigation was queried by the fact that I had to
8 make a query in relation to 14(5), that's what caused
9 what you could call a time gap in relation to the
10 investigation, but it was being progressed in that 12:08
11 context. I don't accept that there was an inordinate
12 delay, I think it was important and I think it was
13 pointed out that it was important to establish that I
14 had proper grounding for the second arm of the
15 investigation. 12:09

16 163 Q. Now, it's during this period of time, I think we have
17 seen in the papers, that there was substantive work
18 started in relation to the criminal investigation in
19 seeking telephonic records, isn't that right?

20 A. That's correct. 12:09

21 164 Q. Around March 2014. If we could look at 2686. This is
22 just an example, I mean we saw a lot of these
23 applications. A number of applications were made under
24 the Communications Retention of Data Act 2011, isn't
25 that right? 12:09

26 A. That's correct.

27 165 Q. And I should say, I should mention that at this stage
28 Sergeant Brian Sheeran has come on board in the
29 investigation?

1 A. That's correct.

2 166 Q. I think he was quite instrumental in relation to this
3 part of the criminal investigation, isn't that right?

4 A. That's correct.

5 167 Q. And I think you were seeking telephone records for a 12:09
6 number of mobile numbers, isn't that right?

7 A. That's correct.

8 168 Q. And I think you had a certain level of cooperation from
9 the persons you requested telephone records from, would
10 that be fair to say? 12:09

11 A. That's correct.

12 169 Q. I think you received telephone records from
13 Superintendent Comyns plus Sergeant Barry, but not
14 every request that you made to what you called persons
15 of interest provided their phone records, is that 12:10
16 right?

17 A. I think both the principals to this investigation
18 provided their phone numbers.

19 170 Q. Both principals?

20 A. Yes. 12:10

21 171 Q. But other parties that you were requesting records from
22 did not, is that right?

23 A. To my knowledge, I don't -- I'm not quite sure if
24 that's correct.

25 172 Q. Okay. But we'll see here at the top of that page, at 12:10
26 this stage the request for the telephone data, you're
27 being told that the data is no longer available in
28 respect of a particular number that a request that had
29 been made?

1 A. That's correct.

2 173 Q. Okay. I think Sergeant Barry observes in some papers
3 that were provided to this tribunal that was one of the
4 aspects of the complaint in relation to delay, that
5 this situation arose, what do you say to that? 12:10

6 A. Well, it was unfortunate that it happened as it did but
7 it is unavoidable in the context the query took as long
8 as it did to come to fruition. But, as I say, we
9 applied for the telephone data, it was outside of time
10 and we quickly corrected that by seeking billing 12:11
11 instead.

12 174 Q. Okay. And what would you say to the fact that should
13 this telephone data have been applied for many months
14 previously?

15 A. It couldn't have been in the context of -- that was the 12:11
16 progress that we made in relation to the investigation.
17 As I say, by the time Detective Sergeant Leahy had
18 left, he had been doing this investigation, he had left
19 the division, I had made strenuous efforts to have him
20 returned to assist in this investigation. Not being 12:11
21 able to do so, I then had the query in relation to the
22 14(5) and by the time that was clarified we were in a
23 situation where once I applied for that data under the
24 Data Act we weren't able to get it and we quickly
25 corrected it by seeking the billing and got the details 12:12
26 from the billing.

27 175 Q. Okay. Now, I think at this stage in relation to the
28 request for billing, we know that a billing request
29 went to Superintendent Comyns. I think Superintendent

1 Comyns at this stage was also raising issues with
2 regard to delay, is that right?

3 A. Well, he was raising issues in relation to status and
4 was concerned about delay.

5 176 Q. We don't have to open that, it's page 796 and 797, I 12:12
6 think you go back to him and you say -- we might look
7 at 797. You go back to him acknowledging his letter
8 where he had raised concerns about the delay in the
9 investigation and this is at 797. So we're still --
10 we're in the middle of 2014 at this stage. You say to 12:12
11 him:

12
13 "I fully accept that these matters have been ongoing
14 for some length of time and I will endeavour to ensure
15 that all matters are dealt with as expeditiously as 12:13
16 possible."

17
18 So, I think again in fairness to you, I think you are
19 acknowledging that there's an issue with the ongoing
20 nature of matters, is that right? 12:13

21 A. That's correct.

22 177 Q. Okay. So then, as you say, you outline in your
23 statement, you say that there was ongoing monitoring,
24 several avenues were explored, and this is in your
25 statement, you say that you got technical data from 12:13
26 phone billing of suspect and persons of interest,
27 fingerprint analysis, interview of witnesses. And I
28 think that's clear from the file that went to the DPP's
29 office, there was an extensive analysis of telephonic

1 records, isn't that right?

2 A. That's correct.

3 178 Q. And again, Mr. Murphy would have gone through a lot of
4 the covering of the DPP report at page 2823, I am not
5 going to do that again, but it was a very extensive 12:13
6 file and I think Sergeant Sheeran had a significant
7 role in helping you collate all that material, isn't
8 that right?

9 A. That's correct.

10 179 Q. Okay. Now, as we move on through 2014, however, it's 12:14
11 not until September 2014 that Superintendent Comyns is
12 interviewed, isn't that right?

13 A. That's correct.

14 180 Q. You say in your statement that this led to several
15 further lines of enquiry, isn't that right? 12:14

16 A. That's correct.

17 181 Q. So, they bring us through then the rest of that year
18 effectively, isn't it, and into 2015?

19 A. That's correct.

20 182 Q. And you outline in your statement, and my colleagues 12:14
21 can look at it in more detail if they wish, but you
22 outline in your statement that you were then dealing
23 with Superintendent Quilter in relation to his phone
24 evidence and interview, isn't that right?

25 A. That's correct. 12:14

26 183 Q. And also fingerprint requests, you're also dealing with
27 the connection in relation to similar requests, isn't
28 that right?

29 A. That's correct.

1 184 Q. And again, on Day 179, it is Mr. Barry's contention, at
2 page 31 of his evidence, that this should have been
3 done at least 12 months, if not more, previously, what
4 do you say to that?

5 A. I don't agree. The process was the process. We dealt 12:15
6 with it as expeditiously as we could. As I say at the
7 outset and I have said it already this morning, that it
8 was unavoidable, that the documentation I received from
9 A/C Twomey was the catalyst for me making an enquiry
10 under 14(5), it took as long as it took. I didn't 12:15
11 delay the investigation, I progressed the investigation
12 at the earliest opportunity when I got clearance to do
13 so.

14 185 Q. Would it be fair to say, you do write a letter, I
15 should have opened this actually, just the previous 12:15
16 October, and it's at page 2729. It's 2nd October 2014.
17 Now, sorry, I had jumped into 2015, but near the end of
18 2014 you're writing to your appointing officer and you
19 say -- you're outlining an update, you're telling him
20 Superintendent Comyns has been interviewed, he's 12:16
21 cooperative, however you're saying a number of further
22 statements must now be obtained by way of corroboration
23 of facts. You go on to say:

24
25 "While my earlier indications are that this matter be 12:16
26 concluded on before 30th September 2014, in the light
27 of the new information I will require an additional
28 period to interview pertinent witnesses."
29

1 And that's effectively what happened in 2015, is that
2 right?

3 A. That's correct.

4 186 Q. You say:

5

12:16

6 "I am acutely aware that this has been a lengthy
7 investigation. Nonetheless it continues to be highly
8 prioritised by me on a weekly basis in an effort to
9 ensure its completion while not compromising on its
10 thoroughness."

12:16

11

12 You say:

13

14 "It is earnestly anticipated the file will be with the
15 DPP within one month."

12:16

16 A. That was an ambitious timeframe, that couldn't have
17 been met.

18 187 Q. Okay, and that was October 2014?

19 A. Yes.

20 188 Q. But I think, I suppose it reflects your approach and
21 frame of mind at that time in 2014?

12:16

22 A. Yes, indeed.

23 189 Q. Now, in relation to, as you say, we go into 2015, you
24 have the interviews, you have the technical data, we
25 should -- I should recall, it was something that came
26 up again during Mr. Barry's evidence, when he was
27 meeting with Inspector O'Driscoll in the latter part of
28 2014, I think Inspector O'Driscoll does notes also that
29 Sergeant Barry is very vocal at this stage about the

12:17

1 delay in relation to matters, isn't that right?

2 A. That's correct.

3 190 Q. I mean, we don't have to accept the inspector's notes,
4 it's at page 5383, just for reference, but he is
5 vocally complaining at this stage in relation to how 12:17
6 long everything is taking, isn't that right?

7 A. No, I accept that.

8 191 Q. Okay. Now, as you say, into 2015 the various
9 interviews are carried out, requests for fingerprints,
10 and I think it culminates in August 2015 with the 12:17
11 submission of the file to the Director of Public
12 Prosecutions, isn't that right?

13 A. That's right, the 28th August.

14 192 Q. 28th August 2015, and that file is at 2823. And again,
15 Mr. Murphy looked at the covering letter, if you look 12:18
16 on the next page, and flick down through the covering
17 report and the subsections, the level of work that went
18 into that file I think is evident on the file?

19 A. That's correct.

20 193 Q. Now, I think you were awaiting DPP directions and you 12:18
21 got those on the 17/11?

22 A. 17th November.

23 194 Q. 2015. Now, what I want to ask you is this, chief
24 superintendent: At this stage at 2015 the file has
25 been submitted to the DPP's office, would it be fair to 12:18
26 say to you that at this stage with regard to the
27 disciplinary matter it has effectively been -- has that
28 been parked, to use the word you used yourself?

29 A. It would be normal practice to allow the criminal

1 aspect of it to be dealt with before you take on the
2 discipline.

3 195 Q. Would Mr. Barry have known that? Would that have been
4 explained to him?

5 A. I can't say. I can't say whether it was explained to 12:19
6 him or not.

7 196 Q. I haven't seen that in the papers?

8 A. I can't say, to be fair.

9 197 Q. Okay. Would it also be, and it's simply an observation
10 which I might ask for your views on for the Chairman, 12:19
11 when the DPP file was submitted in August 2015, in
12 reality was the only matter left the matter of
13 interviewing Superintendent Comyns for the discipline?

14 A. The only matter --

15 198 Q. Only substantive matter, sorry, I should say be clear? 12:19

16 A. -- substantive matter left was the discipline.

17 199 Q. Now, we saw in a letter previously that you had said to
18 Mr. Barry that the interview of Superintendent Comyns
19 for the criminal matter and the disciplinary matter
20 were two entirely different things? 12:19

21 A. That's correct.

22 200 Q. So again, are you telling the Chairman that you accept
23 that the only substantive matter at that stage in
24 August 2015 was to interview the superintendent?

25 A. Well, it was to take statements and interview the 12:20
26 superintendent. There may have been other statements
27 to be taken in the discipline aspect of it that weren't
28 in the criminal aspect of it, but the substantive
29 matter was on the discipline aspect of it was

1 Superintendent Comyns and an interview with him at some
2 stage when we had the discipline file together.

3 201 Q. Okay. And can I ask you this, can I ask you to look at
4 -- just before you got the DPP directions, I think you
5 wrote to Superintendent Comyns on the 29th September in 12:20
6 2015, and you sought to have the discipline matters
7 placed in abeyance, pending the directions of the DPP,
8 is that right?

9 A. That's correct.

10 202 Q. That's at page 847, we don't need to open it. But he 12:20
11 came back to you on the 5th October and we will have a
12 look at that, at 1178. He comes back to you and he
13 says:
14

15 "As I have previously indicated, this investigation has 12:20
16 had a huge effect on my personal and professional life
17 since 2012. I wish to have all matters completed and
18 finalised without any further delay. I would be
19 obliged if you would continue with the disciplinary
20 investigation in order to bring this to a conclusion." 12:21
21

22 And that was his view, is that right?

23 A. That's correct.

24 203 Q. Would Sergeant Barry have been aware that you were
25 seeking to put matters into abeyance? 12:21
26

26 A. I can't say.

27 204 Q. Okay. Now, you say in your statement that after this,
28 late October, you wrote to the assistant commissioner,
29 you updated him on the position on the disciplinary

1 proceedings and this is where you sought an additional
2 appointment under the regulations?

3 A. That's correct.

4 205 Q. Now, can we look at that, at 1181. Sorry, it's 1180.
5 You say that in the light of the response really from 12:21
6 Superintendent Comyns, you said you're going to proceed
7 without any further delay. And you refer to the
8 investigation, just at the very bottom there, and this
9 is the complaint by Mr. Barry, you say:

10
11 "Within that aspect of the complaint, however, Sergeant 12:22
12 Paul Barry has also alleged that having completed his
13 investigation into the alleged sexual assault and
14 submitted it to his district officer."

15
16 Next page 12:22

17
18 "That within two days he was subject to discipline
19 proceedings under Regulation 10 for his failure to be
20 on time for duty despite his explanation to the 12:22
21 contrary."

22
23 And you say:

24
25 "I am to request an additional appointment to allow me 12:22
26 to explore all avenues of the complaint as set out in
27 the ninth ground of Sergeant Barry's complaint."

28
29 But, of course, chief superintendent, would you agree

1 that that's not new, that this was effectively clear
2 from day one when you got the papers?

3 A. Absolutely not new, no.

4 206 Q. Okay. And you were seeking an additional appointment,
5 you got your additional appointment. Moving on then to 12:22
6 the end of the year, you wrote to Sergeant Barry, you
7 went on to -- I will just get the date of the
8 interview. I think there was a slight delay again,
9 whereby you were asked to call a halt again, is that
10 right? 12:23

11 A. That's correct.

12 207 Q. Because civil proceedings had been instituted?

13 A. That's correct. I think it was by the 9th January I
14 was asked not to proceed because civil actions were
15 being taken? 12:23

16 208 Q. Okay. And on the 25th February you were told to press
17 on?

18 A. That's correct.

19 209 Q. Okay. Then you interview the superintendent on the
20 27/4/2016? 12:23

21 A. That's correct.

22 210 Q. Now, if we can just look at that. The interview is at
23 page 3120. And if we go along to 3133. 3133. And
24 there, down by the very end, there is the memo of
25 interview,, you concluded your inquiries there at the 12:24
26 end, you say: That concludes my enquiries into this
27 investigation. 17:25 Superintendent Comyns goes out
28 for a break while you consider the breaches. And at
29 17:40 you have the result of the disciplinary

1 investigation and you found him not in breach in
2 relation to all three, isn't that right?

3 A. That's correct.

4 211 Q. So, it was in one way a very rapid conclusion to a very
5 long process, effectively, would you agree to that? 12:24

6 A. Well, yes and no. I was acutely aware of all elements
7 of the criminal investigation which I was relying on in
8 this discipline investigation.

9 212 Q. Now, you then put in your final report on the 12th May
10 to the appointing officer, isn't that right? 12:24

11 A. That's correct.

12 213 Q. I am going to finish up very quickly, chief
13 superintendent, Mr. Barry wrote to the minister, and
14 you will have seen the letters in the brief, they're at
15 page 96 and 104, we don't have to open them, but he 12:25
16 made very serious allegations in relation to your
17 investigation and he categorised the delay as a
18 perversion of the course of justice, have you seen
19 that?

20 A. Yes, I have. 12:25

21 214 Q. What do you have to say to the Chairman about that?

22 A. I believe I conducted a diligent and very thorough
23 investigation and any elements of delay were justified
24 in the context of making sure that I was properly
25 appointed to conduct all arms of this investigation. 12:25
26 This investigation had three arms to it. It was a very
27 serious investigation, this is a very serious matter
28 against senior officers, it took the time it took. It
29 was very important to me that it was thorough, and it

1 was thorough. And I covered every aspect. Indeed, up
2 to 2015 I was taking statements on the request of
3 Sergeant Barry in relation to this matter.

4 215 Q. Now, the Chairman, on Day 179, directly asked Mr. Barry
5 in what way did she target you in this investigation? 12:26
6 And he answered, one of his answers was:
7
8 "I believe the delay taking three years to investigate
9 the serious allegation was targeting."
10 12:26

11 So what do you say to that?

12 A. I don't believe it was targeting. Under no
13 circumstances did I target Sergeant Barry. All I ever
14 did was to make sure the investigation was thorough at
15 every aspect of it, whether it was the bullying and 12:26
16 harassment, the criminal and the discipline. I
17 certainly did not target Sergeant Barry in any shape or
18 form, nor would I.

19 216 Q. Okay. Thank you chief superintendent.

20 A. Thank you. 12:26

21 217 Q. If you would answer any questions, please?
22
23 END OF EXAMINATION
24

25 CHAIRMAN: Thanks very much. Now, who goes first? 12:26
26
27
28
29

1 MR. PERRY: I'm happy to do so, Chairman.

2 CHAIRMAN: Isn't that the formula we have been
3 appointing?

4 MS. McGRATH: Yes.

5 CHAIRMAN: Very good.

12:27

6

7 MS. CATHERINE KEHOE WAS CROSS-EXAMINED BY MR. PERRY, AS
8 FOLLOWS:

9

10 218 Q. MR. PERRY: Good morning, Chief Superintendent Kehoe, 12:27
11 my name is David Perry I represent retired Sergeant
12 Paul Barry. I just wanted to be clear, it's probably
13 unnecessary for me to do so because I know that
14 Ms. McGrath covered it at the outset of your evidence
15 as well, but just to be clear, Sergeant Barry has 12:27
16 confirmed in his evidence to the tribunal that the only
17 complaint that he is now advancing that relates to you
18 at all is that your investigations took an inordinate
19 amount of time to complaint. So that is issue 6A in
20 the schedule of issues. 12:27

21

22 There were other complaints that formed the balance of
23 the matters in issue 6, he's not proceeding with those,
24 I just wanted to confirm before I ask you any
25 questions, you understand that to be the case? 12:27

26 A. Yes, I do, counsel.

27 219 Q. Yes. And for that reason, the only questions I am
28 going to ask you touch on the length of time that your
29 investigations took and matters that would appear to be

1 delay during the course of those investigations, does
2 that make sense?

3 A. Yes, indeed.

4 220 Q. Can I ask you, I suppose in rapid sequence, just a few
5 questions just to make sure I understand certain 12:28
6 fundamental matters about what you said before I get
7 into the nuts and bolts of each of the investigations.
8 So, just to be clear first of all, am I correct in
9 saying that your evidence is that in effect you
10 conducted three separate investigations; there was the 12:28
11 bullying and harassment investigation, there was a
12 criminal investigation and then there's the
13 disciplinary investigation pursuant to Regulation 14,
14 is that understanding correct?

15 A. That's correct. 12:28

16 221 Q. Yes. And just in terms of how those investigations
17 took place, each of them were separate, but your
18 evidence has been that effectively you were conducting
19 parallel investigations, is that right?

20 A. That's correct. 12:28

21 222 Q. But just in terms of how exactly those parallel
22 investigations took place, am I right in saying that
23 you made a decision to prioritise the bullying and
24 harassment complaint first, is that right?

25 A. That's right. 12:29

26 223 Q. Or that investigation first? And page 3519, an extract
27 from the bullying and harassment policy, that was
28 opened to you, you saw what that said in terms of, if a
29 criminal complaint is made that perhaps that should be

1 prioritised. You made the decision nonetheless in the
2 circumstances to prioritise the bullying and harassment
3 complaint, is that right?

4 A. No, what I said in my direct evidence and I continue to
5 say, at that time I appointed a detective inspector to 12:29
6 conduct the criminal aspect of the investigation.
7 That's where the parallel -- I was dealing with the
8 bullying and harassment because of the time span. But
9 at that time, at the time of the appointment, the 26th
10 February, I appointed Detective Inspector Willy Leahy 12:29
11 to conduct the investigation into the criminal aspect.
12 Hence the parallel investigation that I am alluding to
13 here.

14 224 Q. I will come back to it in terms of what exactly
15 Detective Inspector Leahy did. But, I mean, is this a 12:29
16 fair comment for me to make: You certainly appointed
17 Detective Inspector Leahy to do certain things in
18 relation to the criminal investigation, but the
19 majority of the manpower and certainly your focus were
20 on the bullying and harassment investigation? 12:30

21 A. At the outset my focus was on the bullying and
22 harassment and allowing the detective inspector, who is
23 a qualified senior investigating officer, to conduct
24 the criminal.

25 225 Q. Yes, and in that sense, would you agree with me, that 12:30
26 the bullying and harassment investigation was
27 prioritised over the criminal investigation or over the
28 disciplinary investigation?

29 A. I don't accept it was over it, I accept that it was

1 done as a parallel investigation at that time.

2 226 Q. Yes. Then in terms of the disciplinary investigation
3 and criminal investigation, and again, you can tell me
4 if this is a fair characterisation of the evidence that
5 you have given, I understand from what you have said is 12:30
6 that effectively the disciplinary investigation was
7 parked until such a time that the criminal
8 investigation was concluded. Is that a fair summary of
9 what you said?

10 A. The normal practice is criminal will take precedence 12:31
11 over discipline.

12 227 Q. Yes. Just a final preliminary matter then I want to
13 touch on, just to be clear to make sure I don't have to
14 revisit it again throughout the course of the questions
15 I am going to ask, I think there is probably no 12:31
16 distance between us on this, you probably accept that
17 Mr. Barry, or Sergeant Barry complained to you
18 throughout the process about delays that he saw as
19 taking place in the investigations, is that correct?

20 A. That's correct. 12:31

21 228 Q. Yes. Well, I might just ask you then a series of
22 questions about the bullying and harassment
23 investigation. The first thing I wanted to look at, I
24 just wanted to have a look back at the time limits that
25 are set out in the relevant Garda policy. I know that 12:31
26 Ms. McGrath took you in detail through this, I don't
27 need to go in a huge amount of detail back through it.
28 I am going to ask that we look at page 3532, please,
29 and just bring you down to the paragraph that we were

1 looking at headed -- sorry, Mr. Kavanagh, if you go
2 back up to the paragraph headed "Suitable investigator
3 will be chosen". So, you had discussed this paragraph
4 with Ms. McGrath and your attention had been drawn to
5 the final sentence, which says: 12:32
6
7 "The investigator will report their findings within 28
8 days of the complaint being received at the divisional
9 office."
10 12:32
11 Isn't that right?
12 A. That's correct.
13 229 Q. You had said to the Chairman that essentially the way
14 that you understand that sentence or you understood it
15 at the time, was that that time limit of 28 days 12:32
16 commences essentially on appointment of the
17 investigator, is that right?
18 A. My understanding of it was, the date I got the
19 appointment was the 18th February 2013, and that's the
20 date I commenced, the clock started on that date for 12:32
21 me.
22 230 Q. Yes.
23 A. The day I became aware of it.
24 231 Q. Your reading of the policy is that the time limit of 28
25 days started on your appointment as an investigator, is 12:33
26 that right?
27 A. Yes, when I became aware of it.
28 232 Q. I just wonder and it might not be something that we
29 agree on, but I just wonder if that is the correct

1 interpretation. I wonder if we might read that
2 paragraph. So, you see it starts off saying that the
3 district officer/chief superintendent will select a
4 suitable investigator. It says that that investigator
5 should be of higher rank than the complainant? 12:33

6 A. Yes.

7 233 Q. It deals with possible conflicts of interest, the need
8 for appropriate training and experience, and then the
9 way in which the investigation should be conducted.
10 You see all that, isn't that right? 12:33

11 A. Yes, I do, yeah.

12 234 Q. And that all comes before this sentence then about the
13 investigator needs to report their findings within 28
14 days, isn't that right?

15 A. That's correct. 12:33

16 235 Q. Well, do you agree with me that there seems to be a
17 clear distinction that's being drawn in that paragraph
18 between the complaint as received at the divisional
19 office by the district officer or the chief
20 superintendent, and then the appointment of an 12:33
21 inspector, there's a distinction drawn in that
22 paragraph and those are two separate things, do you
23 agree with me?

24 A. I am not following your thought process, I'm sorry.

25 236 Q. Yes. Well, what the paragraph seems to envisage is 12:34
26 that the complaint will be received at the divisional
27 office, is that correct?

28 A. Yes, the complaint. So I received the complaint at my
29 office on the 18th February 2013.

1 237 Q. Yes. And then it seems to envisage that after the
2 complaint has been received, a suitable investigator
3 will be appointed?
4 A. Yes.

5 238 Q. And just translating that across to what happened in 12:34
6 this case, the complaint, well it wasn't received in
7 the ordinary course by a divisional office, it was
8 received by HRM, isn't that right?
9 A. Back in -- yeah, in October 2012, yes.

10 239 Q. On 2nd October 2012? 12:34
11 A. Yeah, yes.

12 240 Q. Isn't that right? And then you're appointed as an
13 investigator, isn't that right?
14 A. I was appointed in 2013.

15 241 Q. Yes. And just what I am going to suggest to you is 12:34
16 that, what the policy actually means is that that time
17 lit of 28 days in terms of a report being returned,
18 that 28 days starts on the date on which the complaint
19 is actually lodged?
20 A. Are you suggesting it was in October 2012? 12:35

21 242 Q. Yes.
22 A. I had no knowledge of the complaint in October 2012.

23 243 Q. No, and it may be an area where blame does not fall on
24 you, the policy is relating to how complaints are to be
25 handled by the organisation as a whole, by An Garda 12:35
26 Síochána, but what the policy seems to envisage is that
27 the findings of an investigation on a complaint, that
28 they would be made available or would be returned
29 within 28 days of the complaint having been received?

1 A. Yes, in normal circumstances, that's what the policy
2 says.

3 244 Q. Yes.

4 A. But --

5 245 Q. You agree with that interpretation of the policy? 12:35

6 A. Well, yes, the 28 days was an ambitious timeframe for
7 this policy that An Garda Síochána have, it's a very
8 ambitious timeframe. But nonetheless, you can only
9 deal with it from the time you become aware of it. I
10 couldn't possibly have dealt with it in October, when I 12:36
11 wasn't appointed to it. I was appointed to it from a
12 date, the date I received it I interpreted it, and
13 that's from the date I continued with the
14 investigation.

15 246 Q. No, absolutely, there's no possibility obviously that 12:36
16 you could have dealt with it before you had been
17 appointed to deal with it?

18 A. No.

19 247 Q. I think we couldn't possibly disagree with each other
20 on that. But I think you do agree with me then in 12:36
21 terms of what I am saying about the policy, that the
22 policy seems to envisage that 28-day time period would
23 run from the date on which the complaint was actually
24 received and in this case that was the 2nd October
25 2012, is that right? 12:36

26 A. As I say, I can only say how it was interpreted by me
27 in relation to this investigation.

28 248 Q. Yes. Mr. Kavanagh, I wonder if you can go then to page
29 3525. Again, it's something that you already referred

1 to, I don't need to bring you through it in a great
2 amount of detail. That's the provision of the policy
3 dealing with extensions. I think you'll agree with me
4 that it makes clear that if there's going to be -- if
5 the investigation is going to take longer than that 28 12:37
6 days, it's important, an essential fact that the
7 complainant and the person complained of are both
8 canvassed to see if they have objections to that
9 extension, isn't that right?

10 A. That's right. 12:37

11 249 Q. So that is what the policy says in terms of time limits
12 and extensions. I just want to move to talk about
13 something a little bit different, and really it's the
14 overall picture here in relation to how long the
15 bullying and harassment investigation took, how long 12:38
16 that all took. Now, I appreciate that your involvement
17 started in 2013 and I'll talk in a moment about your
18 involvement, about certain things that happened during
19 the course of your involvement in that investigation.
20 But I just want to take a step back for a moment and 12:38
21 just take an overall look at the length of time it took
22 to investigate that bullying and harassment complaint.
23 We touched on this already. The complaint was received
24 by HRM on the 2nd October 2012, isn't that right?

25 A. That's correct. 12:38

26 250 Q. In terms of when findings were made and the
27 investigation was concluded, that was on the 30th May
28 2013, isn't that right?

29 A. That's correct.

1 251 Q. Overall, it took about eight months for the
2 investigation to be concluded following the receipt of
3 that complaint, is that right?
4 A. No, I don't accept that.
5 252 Q. Why don't you accept that? 12:38
6 A. Because I was only appointed on the 18th February --
7 sorry, I was appointed on the 11th under discipline, it
8 was part of the discipline, I received it on the 18th,
9 that's the day the clock started for me in relation to
10 the bullying and harassment. 12:38
11 253 Q. No, no, I fully accept that.
12 A. Yeah.
13 254 Q. But the complaint was received in in October 2012, A/C
14 Nolan is originally appointed to deal with the
15 complaint, isn't that right? 12:39
16 A. That's my understanding, yes.
17 255 Q. And then you're appointed at a later point in time,
18 isn't that right?
19 A. Exactly.
20 256 Q. Between all matters in terms of the organisation 12:39
21 dealing with that complaint as a whole and reaching a
22 situation where an investigation had been carried out
23 and findings had been made under the bullying and
24 harassment complaint, it took eight months?
25 A. When that bullying and harassment complaint came into 12:39
26 headquarters, I don't know what actions were taken in
27 relation to that. All I know is the actions that I
28 took from the time I was appointed.
29 257 Q. All right. Well, I suggest to you it did take eight

1 months from start to finish to deal with it. That's in
2 a context where the policy dictates a period of 28
3 days. I just suggest to you that that is the case?

4 A. Okay.

5 258 Q. And you may agree with me or disagree with me on that. 12:39
6 Now, in terms of your own involvement then in the
7 bullying and harassment investigation, you're appointed
8 in February 2013, on the 12th March 2013 you requested
9 an extension from Sergeant Barry, isn't that right?

10 A. That's correct. 12:40

11 259 Q. We have already seen that document, it's at page 1062,
12 I don't think we need to open it. The request was for
13 an extension of two weeks to 29th March 2013, isn't
14 that right?

15 A. That's correct. 12:40

16 260 Q. I think he consented to that request, he noted that you
17 had been recently appointed and that was the
18 essentially the reason for him providing that consent,
19 isn't that right?

20 A. That's right. 12:40

21 261 Q. Now, I think the investigation was not in fact
22 completed though by the 29th March 2013, is that right?

23 A. The investigation process only was completed by the
24 29th March. The investigation process was completed by
25 then. 12:40

26 262 Q. Your findings had not been generated at that stage?

27 A. No, my findings, I set out -- I met with Sergeant Barry
28 in early April and I gave him the documentation that I
29 was required to under section 8.6 and I awaited a

1 response from him. Sergeant Barry took some time to
2 make his submissions. He made a submission within a
3 month, I think it was the 6th May he returned the
4 documentation to me.

5 263 Q. Yes. But just in terms of that time limit that we 12:41
6 looked at under the policy, I think it is a 28-day time
7 limit in terms of you reporting your findings, is that
8 right?

9 A. That's right.

10 264 Q. So, I appreciate what you say about the investigation 12:41
11 process was complete, but I don't know if you are
12 trying to draw a distinction there, but the obligation
13 was actually to have your findings in, isn't that
14 right?

15 A. That's correct, but I would have no control over the 12:41
16 length of time it would take for any person to make a
17 submission in the matter at that point in time, and was
18 entitled to give -- natural justice and fair procedures
19 would be that they would be entitled to make whatever
20 submissions they wished to make in relation to the 12:41
21 matters and have those considered as part of my
22 decision-making process.

23 265 Q. No, I understand. I think in any event there were no
24 further requests by you for extensions of time?

25 A. No, there was not. 12:41

26 266 Q. So that wasn't something that was canvassed with either
27 Sergeant Barry or Superintendent Comyns, is that right?

28 A. That's correct.

29 267 Q. Can I just ask if you are aware of a certain background

1 factor in matters. I think in fact it's clear already
2 from the evidence that you have given, that you were
3 aware of matters. I think you're aware that Sergeant
4 Barry had been on sick leave for a period of time, that
5 he had reached a point where he was going onto half pay 12:42
6 because his sick leave had not been certified as
7 workplace injury, is that right?

8 A. That's correct. Sergeant Barry made me aware of that.

9 268 Q. I think you're aware that in the ordinary course, if
10 someone was going on sick leave and they were saying 12:42
11 that that was the result of workplace stress caused by
12 bullying and harassment, the outcome of the bullying
13 and harassment investigation would be of importance in
14 terms of certifying that sick leave as a workplace
15 injury or not, is that correct? 12:42

16 A. That's correct.

17 269 Q. So the timely outcome of your investigation was of
18 particular importance to Sergeant Barry, is that
19 correct?

20 A. That's correct. 12:42

21 270 Q. Yes. Can I turn then to the criminal investigation,
22 and again, I might just ask you just certain
23 preliminary matters to see if there is any distance
24 between us on them. I think without getting into the
25 substance of what was alleged, I think you accept that 12:43
26 there was a serious criminal allegation made by
27 Sergeant Barry against Superintendent Comyns, is that
28 right?

29 A. That's correct.

1 271 Q. Would you agree with me that given the seriousness of
2 that allegation, that was an allegation that warranted
3 a speedy investigation by you?
4 A. Absolutely.

5 272 Q. And insofar as there had been a need for prioritisation 12:43
6 of the bullying and harassment investigation, that was
7 no longer a factor by the 30th May 2013, is that right?
8 A. No, yeah, the investigation file for the bullying and
9 harassment went in on the 30th May, that's correct.

10 273 Q. Yes. In terms of the timeline for the investigation, 12:43
11 your appointed to investigate in February 2013, your
12 investigation I think commenced, this is at least how
13 you describe it in your statement, with the appointment
14 of the investigation team on the 21st February 2013, is
15 that right? 12:44
16 A. The 21st and the 26th, yes.

17 274 Q. And then that investigation concluded on the 28th
18 August 2015 with the submission of your file to the DPP
19 via the State solicitor, is that right?
20 A. That's correct. 12:44

21 275 Q. Overall it's an investigation that took two years and
22 six months to conclude, is that right?
23 A. Approximately.

24 276 Q. I just want to see if you accept the proposition that
25 on any analysis that's a very considerable period of 12:44
26 time for the investigation to take, do you accept that?
27 A. Investigations take whatever time they take in the
28 context of what is required of them. This
29 investigation was a very serious investigation, as you

1 correctly say, against a senior officer. Every aspect
2 of the complaint was thoroughly investigated. It took
3 the time it took in the context of having to analyse
4 critical data, which took a considerable period of time
5 to do. It was essential to do it as thoroughly as 12:45
6 possible, to make sure that every aspect of this
7 investigation was done to the highest standard and
8 that's what I set out to do and I did.

9 277 Q. Yes. Now, there are just certain issues arising during
10 the course of the criminal investigation that I wanted 12:45
11 to touch on. I suppose a lot of my focus is going to
12 be on what happened during the course of the first year
13 of the investigation, so from February 2013 up until
14 February 2014. And I just want to deal first of all
15 with issues that arose with Detective Inspector Leahy. 12:45
16 So, just in terms of the timeline here, on the 21st
17 February 2013, I think some members of your
18 investigation team were appointed. So that was
19 Superintendent Pat Lordan, Detective Inspector William
20 Leahy, Detective Garda Mary Gilmartin, they were all 12:45
21 appointed on the 21st February 2013, is that right?

22 A. That's correct.

23 278 Q. And then I think you further appointed two members on
24 the 26th February 2013, so that was Sergeant Susan
25 O'Brien and Detective Sergeant James White, is that 12:46
26 right?

27 A. That's correct.

28 279 Q. On the 26th February 2013 then you had a meeting with
29 your investigation team and I think during the course

1 of that meeting Detective Inspector Leahy was tasked
2 with carrying out enquiries into the criminal matter,
3 is that right?

4 A. That's correct.

5 280 Q. Can I just confirm my understanding, that no one else
6 who was in your investigation team was tasked with
7 carrying out enquiries into the criminal matter or
8 doing anything in relation to it?

12:46

9 A. No, that wouldn't be correct. He was appointed as the
10 lead investigator. He was a senior investigating
11 officer, he was trained in this area. He was my
12 detective inspector for the Tipperary division. I
13 selected people that had good qualifications in order
14 to conduct this investigation. That's the seriousness
15 I took about this investigation. Detective Sergeant
16 White was also available to the detective inspector at
17 the time, as was other members, if the need arose. But
18 he was the lead investigator and that's why he was
19 appointed and he was appointed under 14(7), because he
20 could do criminal and discipline with me.

12:46

12:46

12:47

21 281 Q. Yes. Detective Inspector Leahy was given --

22 A. Yes.

23 282 Q. -- responsibility for that aspect of the investigation?

24 A. Exactly, he was the lead investigator.

25 283 Q. Yes. Now, I think that over the course of 2013 certain
26 issues took place with Detective Inspector Leahy's
27 continued involvement with the investigation. And I
28 think, I am referring to him as Detective Inspector
29 Leahy, I think in fact it's because he became Chief

12:47

1 Superintendent Leahy, isn't that right?

2 A. That's correct, he got promoted on the 20th -- well, he
3 got promoted, I'm not quite sure what date in February,
4 but he got promoted -- sorry, in May, and he was
5 transferred on the 23rd May 2013. 12:47

6 284 Q. Yes.

7 A. I wasn't aware of that at the outset when I appointed
8 him obviously.

9 285 Q. Yes. I just wonder if we could look at some
10 correspondence in relation to that particular issue? 12:47

11 A. Of course.

12 286 Q. Mr. Kavanagh, could we have page 1089 first, please.
13 So this is an e-mail, chief superintendent, it's sent
14 by Susan O'Brien, but I think it's sent on your behalf?

15 A. Yes. 12:48

16 287 Q. Isn't that right?

17 A. That's correct.

18 288 Q. It's an e-mail dated 10th May 2013. It's sent by you
19 to assistant commissioner, Southeastern Region, isn't
20 that right? 12:48

21 A. That's correct.

22 289 Q. And what the e-mail notes, it notes your investigation
23 that's being carried out and in the third paragraph it
24 says:
25 12:48
26 "As part of this investigation Chief Superintendent
27 Kehoe directed Detective Inspector Leahy to undertake
28 enquiries mentioned in Regulation 14(5).
29

1 In light of the fact that Chief Superintendent Leahy,
2 now promoted, is being transferred to Listowel, a new
3 inspector will be required to assist as part of the
4 investigation. "

12:48

5
6 Isn't that right?

7 A. That's correct.

8 290 Q. So that was a matter that you were raising to the
9 attention of the assistant commissioner, you raised
10 this issue in terms of Detective Inspector Leahy having 12:49
11 been promoted to superintendent and having been
12 transferred, isn't that right?

13 A. Well, hadn't been transferred at that point in time, it
14 was 10th May I think I raised that issue.

15 291 Q. Yes. 12:49

16 A. Before his transfer.

17 292 Q. Yes. Mr. Kavanagh, could you just go up a page, to
18 page 1088. Could we just have the bottom of that page
19 please. I think then that's the -- just there is fine.
20 would you mind just scrolling up a bit. This is the 12:49
21 response that you received in any case on the 16th May
22 2013, and essentially what you're being asked is:

23
24 "Is there any reason why Superintendent Leahy cannot
25 complete his investigations commenced in this matter?" 12:49
26

27 Isn't that right?

28 A. Yes, that's correct.

29 293 Q. Mr. Kavanagh, could you scroll up to then the top half

1 of the page. And this is your response, chief
2 superintendent?

3 A. That's correct.

4 294 Q. Where you say that you considered seeking to retain
5 Chief Superintendent Leahy for the completion of the 12:50
6 investigation. You say you are minded, however, to
7 seek an SIO from the region for the following reasons.
8 You set out two reasons there and you say, "Should you
9 be of the view that neither of these grounds bar
10 Superintendent Leahy continuing the criminal 12:50
11 investigation, I kindly ask for permission sought for
12 assistant commissioner, southern region to afford him
13 time to complete this investigation, which is at an
14 early stage." Isn't that right?

15 A. That's correct. 12:50

16 295 Q. Now, I am sure one of the other lawyers here will point
17 out to me if I have missed something in the papers, but
18 I couldn't see a response to that e-mail in the papers
19 that we have received. Did you receive a response to
20 that e-mail? 12:50

21 A. No, I did not, to my knowledge.

22 296 Q. So where was the situation left then at that stage with
23 Superintendent Leahy?

24 A. I continued to make enquiries in relation to the matter
25 and I spoke with the chief superintendent in Tralee, 12:51
26 where he had transferred to, in June of 2013, in an
27 effort to have assistance being given to the
28 investigation. The chief superintendent in Tralee
29 wasn't able to help me further in the matter other than

1 to give me some number of days for the completion of
2 that investigation, completion of his portion of that
3 investigation. In other words, to tidy up any matters
4 there might be outstanding. But he was attached to
5 Tralee at that stage, I had no influence on bringing 12:51
6 him back from a division, a region, at all. The only
7 control I have is in relation to my own division, in
8 relation to personnel.

9 297 Q. So if I just understand what you said correctly, the
10 result of your enquiries is that Superintendent Leahy 12:51
11 was assigned a certain number of limited days to
12 conclude his involvement in your investigation?

13 A. That's correct.

14 298 Q. And there was no allocation of him to your
15 investigation beyond that, is that right? 12:52

16 A. That's correct.

17 299 Q. So, is it the position that from May 2013, is it fair
18 to say something along these lines, that Superintendent
19 Leahy was not a full member of your investigation team
20 or was certainly not in a position to fully participate 12:52
21 in it?

22 A. No, Superintendent Leahy then was still a part of the
23 investigation in the context that he had still seisin
24 of the file, the file hadn't been returned, efforts
25 were being made to endeavour to have him back as part 12:52
26 of the investigation team. That wasn't successful and,
27 therefore, in July I asked him for an updated report in
28 relation to the matter.

29 300 Q. Yes.

1 A. Which I received in August.

2 301 Q. Yes.

3 A. So it wouldn't have been May that he finished, it would
4 have been further than that and, as you know, he did
5 endeavour to make some other enquiries during the 12:52
6 period of time between May and July.

7 302 Q. Yes.

8 A. Before he returned my file.

9 303 Q. Yes. Certainly there are difficulties with his
10 involvement in the investigation from May onwards? 12:52

11 A. I beg your pardon.

12 304 Q. There were difficulties with his involvement in the
13 investigation from May onwards?

14 A. Well, after May he wasn't attached to my division.

15 305 Q. Yes. 12:53

16 A. But nonetheless, as I say, he still had seisin of the
17 file until August.

18 306 Q. Yes. And when did his formal investigation as part of
19 your investigation team, when did that cease?

20 A. In August. 12:53

21 307 Q. In August?

22 A. When he returned the reports and files to me.

23 308 Q. Yes. Now, it seems, and perhaps I am wrong about this,
24 but it seems from the papers and from the evidence that
25 you have given this morning that no replacement for 12:53
26 Detective Inspector or Superintendent Leahy was
27 appointed until January 2014, when Inspector Paul
28 O'Driscoll was appointed?

29 A. Yes, because it coincided with the documentation I

1 received from A/C Twomey, in which I sought clarity in
2 relation to my status within the investigation. So
3 that triggered a series of correspondence, which we've
4 already gone through this morning, in relation to my
5 position as part of the investigation team under 14(5) 12:54
6 and clarity around that.

7 309 Q. I will come to that documentation in a moment, but as I
8 understand it, you saw that documentation and those
9 issues came to light in September 2013, when you
10 returned from annual leave? 12:54

11 A. No, on the 12th May I saw them, before I went on annual
12 leave.

13 310 Q. I am sorry, I thought you were referring to the appeal
14 documentation?

15 A. The appeal documentation, sorry the 12th August, excuse 12:54
16 me. The 12th August, before I went on annual leave.

17 311 Q. Yes. So sorry, you saw it in August at that stage?

18 A. Yes.

19 312 Q. But it was clear from May, it's clear from the e-mails
20 that you were sending to the assistant commissioner 12:54
21 that there are issues in terms of Superintendent
22 Leahy's continued involvement with the investigation?

23 A. That is correct, but he hadn't been dismissed or taken
24 away from the investigation at that time. As I said to
25 you, he still had seisin of the investigation until 12:54
26 August of 2013.

27 313 Q. Would it not have been appropriate, starting in May
28 2013, to try to secure a replacement for Superintendent
29 Leahy?

1 A. I didn't need to secure a replacement until I got a
2 definitive answer in relation to that and that was in
3 July and, as I say, in August I got the correspondence
4 from A/C Twomey.

5 314 Q. Yes. Well, were you satisfied with that situation that 12:55
6 arose, where Superintendent Leahy was essentially being
7 allocated just a certain limited number of days to
8 continue to have an involvement in your investigation?
9 Was that a satisfactory position from your point of
10 view? 12:55

11 A. It would have been fine had I been able to have control
12 -- Detective Inspector Leahy was attached to Tipperary
13 division, he resided there, it would have been an ease
14 to him to conduct this investigation on an interim
15 basis with the assistance of the team. It wouldn't 12:55
16 have been a difficulty. But the difficulty was that he
17 wasn't released to do that.

18 315 Q. Yes. In any event, a replacement was not appointed
19 until January 2014?

20 A. Correct, correct, in view of the fact that other issues 12:55
21 arose that I wasn't aware of until August.

22 316 Q. And just in terms of the date of that appointment of
23 Inspector O'Driscoll, I think that was 30th January
24 2014?

25 A. 30th January, but I met him on the 6th January and on 12:56
26 30th January, before we met Sergeant Barry on the 20th
27 February, he was appointed.

28 317 Q. Yes. I just, and I promise that I won't continue to
29 push it, but I just want to ask you just some further

1 questions about what you are saying about how those
2 legal queries that you had held up appointing a
3 replacement for Superintendent Leahy. Essentially, as
4 I understand it, the way that you presented it was that
5 while those difficulties were ongoing, you didn't think 12:56
6 it was appropriate to appoint a replacement, is that
7 what you are saying?

8 A. Yes, unless I got clarity in relation to those points.

9 318 Q. But do I understand the dates correctly, that you
10 appointed Inspector O'Driscoll on the 30th January 12:56
11 2014, you've told us that you had discussed his
12 appointment with him earlier in the month --

13 A. That's correct.

14 319 Q. -- but, to come back to your evidence from earlier, you
15 told the Chairman that you didn't have clarity on your 12:57
16 legal queries at that stage and that you just simply in
17 February decide to push ahead with matters?

18 A. I had clarity on the legal issues on the 23rd December
19 2013.

20 320 Q. All right. So from that point forward, from the 23rd 12:57
21 December 2013, you were satisfied in your own mind that
22 you had clarity on the legal issues arising and that
23 you could proceed with all matters?

24 A. On the 23rd December I got clearance to go ahead. On
25 the 15th January 2014, I was copied on correspondence. 12:57
26 I wasn't given those directly, I was copied on
27 correspondence where the appointing officer sought a
28 second opinion.

29 321 Q. Yes.

1 A. But I had met with my -- at that point in time I had
2 met with -- excuse me, I just lost my train of thought
3 there. I met with Inspector O'Driscoll and I had met
4 him on the 6th January, I had spoken to him actually
5 before I went on leave for Christmas on the 23rd 12:58
6 December. I met him on the 6th January and we were --
7 he was appointed, as you correctly say, on the 30th
8 January. I had already made arrangements to meet in
9 about that time with Sergeant Barry for the 20th
10 February. That arrangement was in place. And on the 12:58
11 15th January I received a notification, which I was
12 copied on, in relation to that matter. I didn't take
13 any action with it other than the fact this process was
14 already on and I was expecting to hear from the
15 appointing officer in relation to the matter prior to I 12:58
16 meeting with Sergeant Barry. When I hadn't on the 19th
17 February, I made those enquiries, as I set out this
18 morning.

19 322 Q. Yes.

20 A. And that was the chronological order of how it 12:58
21 occurred.

22 323 Q. Yes. Just in terms of the involvement of other
23 personnel in the investigation throughout the course of
24 2013, I think a note that you make in your statement,
25 and it's at page 932 of the materials, we don't need to 12:59
26 bring it up on the screen, but you say that in the
27 course of 2013 other members of your investigation
28 transferred as well, is that right?

29 A. That's correct. Superintendent Lordan transferred and

1 Detective Garda Mary Gilmartin transferred.

2 324 Q. Yes. So they ceased to act in the investigation as
3 well?

4 A. They ceased to act and, therefore, I brought in new
5 people into the investigation: Sergeant Brian Sheeran 12:59
6 and Superintendent O'Driscoll. James White remained
7 part of the investigation.

8 325 Q. Yes. Chairman, I see it is just coming on to one
9 o'clock, I was going to move on to new matters.

10 CHAIRMAN: Thanks, Mr. Perry, if that is convenient for 12:59
11 you, not a problem.

12 MR. PERRY: Yes.

13 CHAIRMAN: Very good, we will say two o'clock.

14

15 THE HEARING THEN ADJOURNED FOR LUNCH AND RESUMED, AS 13:00
16 FOLLOWS:

17

18 CHAIRMAN: Now everybody ready? Now, Mr. Perry.

19 326 Q. MR. PERRY: Good afternoon, Chief Superintendent Kehoe.

20 A. Good afternoon, counsel. 14:00

21 327 Q. Where we left off before lunch, we had been talking
22 about detective inspector, who became Superintendent
23 Leahy. I want to ask you about the update that he
24 provided to you in respect of the things that he had
25 done during the course of the investigation. And I 14:00
26 wonder if we might just look at page 2673, please. And
27 just before we turn to the substance of that document,
28 just in terms of you receiving the document from
29 Superintendent Leahy, the position was that you had

1 wrote to him I think on the 24th July 2013 and the 4th
2 August 2013, asking him for an update in terms of what
3 he had done during the course of the investigation,
4 isn't that right?

5 A. That's correct. That's correct, Chair. 14:01

6 328 Q. And I presume the reason that you were writing those
7 requests was because he hadn't been updating you in
8 terms of what had been taking place during the
9 investigation?

10 A. Well, not necessarily. And it's very hard for me to 14:01
11 recall. It's nine years ago. But, I do believe that
12 he had indicated that he had taken some statements.
13 But I hadn't got the up-to-date position, as you
14 correctly say, until I received that report.

15 329 Q. Yes. And I think just the date at the top of that 14:01
16 document, it's 9th August 2013. I don't think any
17 issue arises in respect of that.

18 A. No, the 9th August, I would have got it maybe a couple
19 of days after that.

20 330 Q. Yes. It seems to be stamped? 14:01

21 A. Yes.

22 331 Q. Mr. Kavanagh, would you mind just scrolling up so we
23 can see the date on the stamp. It seems to be stamped
24 13th August 2013?

25 A. The 13th, that would be the date I received it. 14:01

26 332 Q. That would be the date that you received it?

27 A. So he would have sent it from his offices on the 9th.

28 333 Q. Yes. Just in terms of this document, Superintendent
29 Leahy sets out the things that he did during the course

1 of the investigation. Mr. Kavanagh, would you mind
2 just scrolling down, and you can just pause there, if
3 you didn't mind. He sets out the identity of various
4 different witnesses that he interviewed, is that right?
5 A. That's correct. 14:02
6 334 Q. We can see the date. The dates on which those
7 statements were taken by Superintendent Leahy, they all
8 appear to be dates in March and April 2013, isn't that
9 right?
10 A. That's correct. 14:02
11 335 Q. And the last one in time is the 25th April 2013, that
12 was an interview with Garda Henry Ward, is that right?
13 A. That's correct.
14 336 Q. And I think then in the remainder of the document
15 Superintendent Leahy summarises contact that he had 14:02
16 with the connection on the 29th July 2013 and the 31st
17 July 2013, isn't that right?
18 A. That's correct.
19 337 Q. And he essentially, we can go into the details of it if
20 required, but I think in broad thrust what he said 14:03
21 happened was that he spoke with the connection by phone
22 and he was trying to make arrangements to meet the
23 connection, isn't that right?
24 A. That's correct.
25 338 Q. And he ultimately concluded saying that he could not 14:03
26 progress the voluntary interview with him at this point
27 in time, isn't that right?
28 A. That's correct.
29 339 Q. That was the extent of the update that you got from

1 Superintendent Leahy in terms of the things that he had
2 done during the course of the interview -- or the
3 investigation?

4 A. That's right.

5 340 Q. Isn't that right? 14:03

6 A. That's correct.

7 341 Q. You made a remark earlier in your evidence to
8 Ms. McGrath that you were disappointed in the level of
9 progress that Superintendent Leahy had made during the
10 course of the investigation, is that right? 14:03

11 A. That's correct.

12 342 Q. Had you expected that he would do more within that
13 timeframe that he had to progress the investigation?

14 A. Well, I said it in the context of the seriousness of
15 the investigation, I was hoping that, yes, more would 14:03
16 have been done by the team, not just by the detective
17 inspector, but by the team at that particular time. I
18 hadn't got an update in the previous month, so it was
19 in that context, I was just hoping that there was more
20 had been done in relation to the investigative process. 14:04

21 343 Q. You would have had an expectation that more would have
22 been done to progress the investigation?

23 A. Yes.

24 344 Q. Given the amount of time that was available?

25 A. To be fair, it wasn't going at the same speed as I 14:04
26 would hope. But then, I could understand also, and it
27 has to be justified by the fact that he had moved, he
28 was my detective inspector, before he moved he would
29 have a lot of work to do. These weren't dedicated to

1 this matter, there were other jobs that they had and
2 other portfolios as the detective inspector would have
3 had at that time before he left. So he went on
4 transfer. He had seisin of the file. He was hoping to
5 come back, as I said already, to the division to 14:04
6 continue this investigation, it didn't occur, and
7 therefore I sought the report to see what the status
8 was in relation to how things had been progressed in
9 the interim.

10 345 Q. Yes. There were ultimately a number of steps taken in 14:04
11 the investigation, including obtaining phone evidence,
12 fingerprinting of documents?

13 A. Yes, fingerprint.

14 346 Q. Statements were taken from some further witnesses as
15 well. Steps in relation to all those matters could 14:05
16 have been taken in 2013, is that fair?

17 A. No, I don't think that's fair and I don't think that's
18 correct. Quite a significant number of statements were
19 taken in 2014 and '15 in order to progress this
20 investigation. 14:05

21 347 Q. Yes. Am I correct in saying that just from this point
22 in time, the next substantive step taken in the
23 investigation was when you met with Sergeant Barry on
24 the 20th February 2014?

25 A. That's correct. 14:05

26 348 Q. So is it the situation that a number of statements are
27 taken, the last one in time is taken on the 25th April
28 2013, is that right?

29 A. That's correct.

1 349 Q. There are two phone calls between Superintendent Leahy
2 and the connection in July 2013, and then the next step
3 taken in the investigation is you meeting with Sergeant
4 Barry on the 20th February 2014, is that right?

5 A. Yes. There was an interim period, which I outlined 14:06
6 this morning, in relation to the clarity around my
7 status within that investigation.

8 350 Q. Yes. But there we have it. In terms of what I've
9 outlined, that's a summary of all the investigative
10 steps that were taken in the criminal investigation 14:06
11 between February 2013 and February 2014?

12 A. I can't speak for Detective Inspector Leahy and what
13 steps he took within that investigation, that's the
14 report I am relying on and that's the report I had when
15 I was preparing my statement in this matter. 14:06

16 351 Q. Yes. Well, on getting this report and feeling that
17 disappointment in the level of progress that had been
18 made, did you consider asking anyone who was part of
19 the investigation team to progress matters further, to
20 do that as a matter of priority? 14:06

21 A. As I said, the timeline in relation to all matters, as
22 I outlined this morning, was the fact that from the
23 time I got that report, immediately I also got the
24 report from A/C Twomey, which was the catalyst for
25 causing further enquiries to be done in relation to my 14:07
26 status. That wasn't clarified until the end of
27 December 2013, and I immediately took steps then to
28 meet with Sergeant Barry and, as I spoke this morning,
29 then there was the 15th January report that I was

1 copied on that caused further clarity to be made and on
2 the 20th February I got -- the 19th February actually,
3 I got clearance and I met on the 20th February. I have
4 given this outline already this morning in relation to
5 it.

14:07

6 352 Q. Yes. No, absolutely, you have. I don't mean to --

7 A. Yeah.

8 353 Q. -- be getting you to repeat yourself, that is certainly
9 not my intention?

10 A. No, no.

14:07

11 354 Q. Can I just ask this in relation to the investigation, I
12 am going to come on to ask you about the efforts that
13 you made to clarify your position and matters of that
14 nature. Those matters are ongoing for a period of
15 time, is there anything stopping the members of the
16 investigation team going off and continuing to
17 investigate the matter while you take time to clarify
18 your position and whether you can continue to act?

14:07

19 A. Well, as lead investigator it was either going to -- it
20 was my decision to take this issue and I would have --
21 it would have caused perhaps a difficulty in relation
22 to whether it would have been a new investigation team
23 that were going to do the criminal and discipline.

14:08

24 355 Q. Yes. But say, for example, in August 2013, obviously a
25 number of members have moved on, Detective Sergeant
26 White is still around, is that right?

14:08

27 A. Detective Sergeant White is still around, yeah.

28 356 Q. Is there anything stopping Detective Sergeant White
29 going off and continuing to interview witnesses, trying

1 to set up interviews, obtain phone evidence while
2 you're spending time trying to clarify your position?
3 Is there anything stopping that from happening?

4 A. That didn't occur to me. I took the decision to make
5 these enquiries myself in relation to -- as a lead 14:08
6 investigator, otherwise, I was going to be part and
7 parcel -- Detective Sergeant White would have taken his
8 instruction from me from time to time. So I was still
9 going to be part of an investigation that I might not
10 have been properly before, that I mightn't be properly 14:09
11 appointed to at that particular time. That clarity was
12 required.

13 357 Q. Yes. We really are bleeding over into the next issue I
14 wanted to talk about?

15 A. Yes. 14:09

16 358 Q. Which is this period where you're trying to clarify
17 your position?

18 A. Mm-hmm.

19 359 Q. But I think the way that you characterised it earlier
20 in your evidence was that effectively you had a 14:09
21 situation where between August 2013 and February 2014
22 you had a situation where -- I think the proposition
23 you agreed with was that nothing effectively happened
24 substantively, is that correct?

25 A. Well in relation to -- from the time that I sought the 14:09
26 clarity, I was waiting for that clarity to be obtained
27 to give me clearance to go ahead, properly to go ahead
28 and to deal with this matter, if I could.

29 360 Q. Yes. I just want to ask you about the issues that

1 arose and how they arose. So, just to make sure I
2 understand this correctly, in terms of the first issue
3 that arose, the position was that you receive Sergeant
4 Barry's papers appealing your determination in his
5 bullying and harassment investigation, is that correct? 14:10

6 A. That's correct.

7 361 Q. You read the contents of that and you were concerned
8 that having read that, that you had somehow been
9 compromised then in terms of investigating the criminal
10 or disciplinary matters, is that right? 14:10

11 A. Yes, to a degree, but also I was concerned in relation
12 to 14(5) of the discipline regulations, which says the
13 deciding officer should have no -- in any capacity
14 would be involved in a previous aspect of the case.

15 362 Q. Yes. 14:10

16 A. Therefore, I was concerned that I had already made an
17 adjudication on the bullying and harassment and,
18 therefore, I interpreted that as being a previous
19 aspect of the case and I asked for clarity in relation
20 to that. So yes, to a degree, A/C Twomey was the 14:10
21 catalyst, that report was a catalyst for me asking
22 those questions but it was under 14(5).

23 363 Q. Yes. Well, that's the exact point that I wanted to
24 touch on. So, I wonder could we just look at page
25 1101, please. So, this is your letter of the 9th 14:11
26 October 2013, where you raise certain issues with A/C
27 Nolan, isn't that right?

28 A. That's right.

29 364 Q. But the issue that you raise, could we just go down to

1 the next page, 1102, you say there:
2
3 "Having reviewed the content of this document --"
4
5 You're referring to the appeal grounds. 14:11
6
7 " -- I am firmly of the view that to continue with the
8 criminal investigation as directed by you would be
9 prejudicial to any findings in the case."
10 14:11
11 Isn't that right?
12 A. That's correct.
13 365 Q. What you're referring to there is that you feel you
14 might be compromised by having read the appeal
15 document? 14:11
16 A. That's correct.
17 366 Q. You don't refer to having a concern about --
18 A. 14(5).
19 367 Q. -- that your appointment might not be correct under
20 Regulation 14(5), isn't that right? 14:12
21 A. No, I didn't cite it there. Therefore, later on, when
22 I got the full instruction in November 2013, I realised
23 that that wasn't cited in the report, even though
24 that's what I meant, that it was a previous aspect of
25 the case, and I sent it back for that clarity. 14:12
26 368 Q. Yes. Well, I think you're getting to the point that I
27 intend to get to, but just for completeness, can we
28 look at 1106. This is your letter of the 31st October
29 2013. Essentially you have been asked to provide

1 specific reasons for consideration to be given to the
2 appropriateness of you not continuing with the
3 investigation. We can go through the letter, but do
4 you agree with me that again, the issues that you raise
5 in that letter are all issues in relation to you having 14:12
6 seen the appeal grounds and you don't mention anything
7 about the appropriateness of you deciding on the
8 criminal investigation, having already decided on the
9 bullying and harassment investigation?

10 A. I think I've just addressed that in my last answer. 14:13
11 That I had omitted to say 14(5) and I sent it back very
12 quickly after receiving instructions on the 18th
13 November, I sent it back within a couple of days and
14 said, I omitted to say 14(5) of the regulations and I
15 asked for the clarity and I got the clarity on the 23rd 14:13
16 December.

17 369 Q. Could we just look at page 1111, please. I think this
18 is the letter that you are referring to, 21st November
19 2013, isn't that right?

20 A. Yes. And I said I omitted that. 14:13

21 370 Q. Yes, I appreciate what you say about having omitted it.
22 It appears to be the first occasion in the
23 correspondence on which you raise this issue about your
24 concern about the appointment under Regulation 14(5),
25 isn't that right? 14:13

26 A. No. All of the aspect of -- the appeal file was a part
27 of the decisions that I made under the bullying and
28 harassment guidelines and, therefore, I was concerned
29 in relation to the continuance of the

1 criminal/discipline as a consequence of that. It was
2 14(5) was always in my mind. I realised I didn't say
3 it and I wanted clarity in relation to the fact that I
4 hadn't said it, and therefore I said I omitted it.

5 371 Q. Yes. 14:14

6 A. That was the clarity I brought to bear on that minute.

7 372 Q. All right. I suggest to you, the impressions that you
8 are raising for the first time in this correspondence,
9 you're saying it was always on your mind?

10 A. Yeah. 14:14

11 373 Q. And you feel that you hadn't made it clear in your
12 previous correspondence?

13 A. That's correct.

14 374 Q. Can I ask you about that issue though, wasn't that
15 always going to be an issue? You knew that when you
16 were appointed in February 2013 you were being
17 appointed to conduct three different investigations,
18 isn't that right? 14:14

19 A. That's correct, yes.

20 375 Q. And we had spoke about this when I commenced my
21 cross-examination of you. 14:14

22 A. Yes.

23 376 Q. That your intention was that you were going to
24 prioritise the bullying and harassment matter and then
25 go on to criminal matters and other matters of that
26 nature. Surely you knew in early course after your
27 appointment in February 2013, that by necessity you
28 were going to have decided on one matter and then go on
29 to decide another matter. You knew that in early 14:15

1 course after your appointment?

2 A. That's correct, I did, but I didn't realise I was going
3 to receive the documentation that I received, which was
4 the catalyst for me questioning whether that was
5 appropriate or not, and it was only at that time that I 14:15
6 made that query.

7 377 Q. Yes. In any event, this is the first occasion it
8 appears in which you directly raise that 14(5) issue,
9 do you accept that?

10 A. The first time that I cited it in papers. 14:15

11 378 Q. Yes, yes. Now, we have had an exchange just before
12 lunch about how the correspondence progressed from
13 here, I think if I can just cut to the chase in terms
14 of where we left off: You received a letter from A/C
15 Nolan on the 23rd December 2013 -- 14:16

16 A. That's correct.

17 379 Q. -- telling you to continue the investigation, isn't
18 that right?

19 A. That's correct.

20 380 Q. And what had you said to me before lunch is that from 14:16
21 that point forward you saw no difficulty in terms of
22 progressing the investigation?

23 A. That's correct, Judge.

24 381 Q. The position then is that nothing substantive happened
25 in the investigation until the 20th February 2014, when 14:16
26 you met with Sergeant Barry, isn't that right?

27 A. That's correct.

28 382 Q. So that period of time, that close to two-month period
29 elapsed, is that right?

1 A. Pardon.

2 383 Q. Close to a two-month period elapsed between you being
3 satisfied that it is appropriate to continue and you
4 actually doing anything in the investigation?

5 A. Well, I did the appointment and then I got the minute 14:16
6 from the A/C again, that minute of the 15th January
7 2014 caused me some disquiet in relation to whether --
8 was this investigation going to be stopped again. So I
9 wanted clarity in relation to that. But I was
10 continuing to make efforts to make sure I could meet 14:16
11 with Sergeant Barry to bring him up to speed in
12 relation to the investigation and I felt that was
13 important to do.

14 384 Q. Yes. We discussed a lot there, things that happened
15 during the course of the first year of the criminal 14:17
16 investigation?

17 A. Yes.

18 385 Q. I just wonder if you agree with this as a general
19 proposition that summarises how that first year went:
20 Statements were taken in March and April 2013, correct? 14:17

21 A. Correct.

22 386 Q. Apart from that, very little of substance happened
23 during the course of the criminal investigation up
24 until 20th February 2014?

25 A. I can't speak for the work that the detective inspector 14:17
26 did during the period that he had seisin of the
27 investigation, all I can say is I relied on that report
28 for the purposes of making my statement here today,
29 this is nine years ago, I can't recall what other

1 enquiries he did before he made attempts to meet with
2 the connection, I have no idea.

3 387 Q. Yes.

4 A. But all I can tell you is, as I cited already, that in
5 August, when I received that report, that was the first 14:17
6 time I considered whether it was appropriate or not for
7 me to continue with the investigation and I asked those
8 questions. As I say, I omitted to say 14(5) in
9 relation to my documents, I cited that just very
10 quickly at the end of November and I got clarity on the 14:18
11 23rd December.

12 388 Q. Yes.

13 A. And then I went from there.

14 389 Q. I mean, just in terms of that point that you make about
15 Superintendent Leahy -- 14:18

16 A. Yes.

17 390 Q. -- and not knowing what exactly what he during the
18 course of the investigation. I mean, I hope this
19 doesn't sound unfair as a proposition, but do you
20 accept you had overall responsibility for the 14:18
21 investigation?

22 A. Absolutely, I do accept that, fully. But bearing in
23 mind, I hadn't got Superintendent Leahy, at that point,
24 or Detective Inspector Leahy, as he was when I was
25 dealing with him, I had -- he had transferred, as I 14:18
26 have already cited. So therefore, I wasn't able on a
27 day-to-day basis to talk to him in the context of this
28 matter. He wasn't available to me in the same way as
29 he would have had prior to that. He had transferred.

1 I was making efforts to have him returned, as I said
2 this morning, and that wasn't successful.

3 391 Q. Yes. The responsibility as on with you to check in
4 with Superintendent Leahy?

5 A. Yes. 14:19

6 392 Q. To see if he was progressing with the investigation?

7 A. Of course, yes.

8 393 Q. It appears that perhaps you didn't do that very often?

9 A. Well, I did do it, but, as I say, it's nine years ago,
10 it's very difficult for me to say with any great degree 14:19
11 of conciseness what exactly, how many times I checked
12 in with him on that. But of course I was aware of it.
13 I wouldn't have wanted him back if I hadn't -- that I
14 knew he was a fundamental part of this investigation,
15 and he was. 14:19

16 394 Q. Insofar as there might have been a failure by Detective
17 Inspector Leahy to progress the investigation, that is
18 your responsibility, do you accept that?

19 A. I don't believe there was a failure by Detective
20 Inspector Leahy, and I do accept fully that it was my 14:19
21 responsibility to further this investigation.

22 395 Q. Yes. Now, the investigation obviously did continue
23 then from the 20th February 2014 onwards, it took
24 another year and a half after that to complete I think,
25 is that right? 14:20

26 A. It did. It was a very technical investigation, relying
27 a lot on data and, as you said, fingerprint data,
28 taking additional statements. There was 31 statements
29 altogether I think taken in this investigation and 34

1 exhibits. It was quite a comprehensive investigation.
2 396 Q. Absolutely. We could spend a lot of time with
3 exchanges between us about how certain things could
4 have been done faster or not, I am not sure how
5 valuable it is to use our time in that way. So just 14:20
6 what I intend to do is just put a blanket proposition
7 to you in terms of what happened from February 2014
8 onwards. There were various investigative steps that
9 were taken and I suggest to you that they took an
10 inordinate amount of time to complete and they could 14:20
11 have been done faster?

12 A. I disagree totally with you in relation to that matter.
13 This was a very, very complex investigation, it
14 required time, it required a number of pieces of data
15 to be examined. I think it has been accepted that that 14:20
16 data was very, very useful in this investigation. And
17 it was presented very, very comprehensively.

18 397 Q. Yes.

19 A. That didn't happen just by chance. It took a lot of
20 time and effort to do that, and we did that very, very 14:21
21 thoroughly. And we exhausted every avenue, indeed up
22 to December 2014 we were taking statements for Sergeant
23 Barry on his request, which we took in 2015. That
24 brought it up to February 2015. So I don't accept that
25 there was an inordinate delay at all in this 14:21
26 investigation.

27 398 Q. Yes.

28 A. I think it was very, very thoroughly conducted.

29 399 Q. Just in terms of gathering up the mobile phone

1 evidence, that's something that you present as being
2 something that took a long amount of time?

3 A. It did. It took a length of time to do. It always
4 would have taken a length of time to do and you
5 couldn't do it any faster than having to tediously go 14:21
6 through that.

7 400 Q. Well, I just wanted to -- and this is the final thing I
8 want to ask you about the criminal investigation, but I
9 just want to suggest one way in which it could have
10 been done quicker. You had tried to make a request 14:21
11 here under the Communications Retention of Data Act
12 2011 for the relevant phone records, isn't that right?

13 A. That's correct.

14 401 Q. At the point in time that you made that request you
15 were outside of the time for making it, isn't that 14:22
16 right?

17 A. That's correct.

18 402 Q. Because the records that you sought under the
19 legislation can only be retained for two years, isn't
20 that right? 14:22

21 A. That's correct.

22 403 Q. If that request had been made at an earlier point in
23 time, you would have been successful in securing the
24 records under the 2011 Act, isn't that right?

25 A. That's correct. 14:22

26 404 Q. And I suggest to you that that would have been a far
27 faster way of getting the relevant records than the
28 path that you had to eventually go down in terms of
29 requesting that different parties voluntarily hand over

1 their records?

2 A. I disagree with that assertion. Getting the telephone
3 details through billing was by -- didn't make a
4 difference in relation to the time it would take to
5 analyse that data, regardless of whether it came from 14:22
6 C & S or came from our own internal billing through our
7 finances office, which is the way we did obtain it.
8 You still had to analyse that data regardless of what
9 source it came from.

10 405 Q. Yes. Can I finally then turn to ask you about the 14:23
11 disciplinary investigation. There was a preliminary
12 matter that I wanted to ask you about the disciplinary
13 investigation that you conducted. I should say, in
14 terms of what I am going to ask you about, I'm not
15 saying that necessarily you decided it was going to be 14:23
16 this way or not. You were appointed to conduct a
17 disciplinary investigation under part 2 of the
18 disciplinary regulations, isn't that right?

19 A. That's correct.

20 406 Q. And I think part 2 involves an investigation into 14:23
21 what's termed in the disciplinary regulations as less
22 serious breaches of discipline, is that right?

23 A. That's correct.

24 407 Q. And I think just in terms of how the regulations work,
25 you could also be appointed to conduct an investigation 14:23
26 under part 3 of the regulations into a serious breach,
27 isn't that right?

28 A. That's correct.

29 408 Q. There are different sanctions attached to a finding

1 that you're guilty of a part 3 breach as opposed to a
2 part 2 breach, isn't that right?

3 A. That's correct.

4 409 Q. And obviously for a part 3 breach there are more
5 serious sanctions attached? 14:24

6 A. Yes, up to dismissal.

7 410 Q. Who decided that this was going to be a part 2
8 investigation?

9 A. Pardon?

10 411 Q. Who decided that this was going to be a part 2 14:24
11 investigation?

12 A. Who decided?

13 412 Q. Yes.

14 A. I was appointed by the appointing officer, A/C Nolan.

15 413 Q. So A/C Nolan decided it was going to be a part 2 14:24
16 investigation under the regulations?

17 A. He appointed me under part 2 of the regulations.

18 414 Q. So he would have decided that this should be
19 characterised as being an investigation into less
20 serious alleged breaches of discipline? 14:24

21 A. That was the appointment I received on the 11th
22 February.

23 415 Q. There are ultimately in end three disciplinary
24 allegations here. Obviously the most serious one was
25 effectively an allegation of perverting the course of 14:24
26 justice, isn't that right?

27 A. I'm sorry, I missed what you said.

28 416 Q. I'm sorry. There were ultimately three disciplinary
29 allegations that you were investigating, is that right?

1 A. That's correct.

2 417 Q. One was clearly a very serious one, which was an
3 allegation that Superintendent Comyns had perverted the
4 course of justice, effectively?

5 A. Well, one was in relation to interfering with the 14:25
6 investigation.

7 418 Q. Yes. We already had an exchange earlier in terms of
8 the seriousness of that allegation because it
9 overlapped with the criminal investigation?

10 A. That's correct. 14:25

11 419 Q. I think you accept that was a very serious allegation?

12 A. Absolutely.

13 420 Q. Do you agree that that's something that could be
14 characterised as being a less serious breach of
15 discipline? 14:25

16 A. It was investigated -- it was an allegation of serious
17 misconduct and it was investigated as such and a file
18 went to the DPP.

19 421 Q. Well, can you just explain what you mean, that it was
20 investigated as being an allegation of serious 14:25
21 misconduct? You were appointed under Regulation 14,
22 isn't that right?

23 A. That's correct.

24 422 Q. And under Regulation 14 you're being appointed to
25 conduct a part 2 investigation? 14:25

26 A. That's correct.

27 423 Q. Which is a less --

28 A. It's a less serious.

29 424 Q. An investigation into a less serious alleged breach of

1 discipline?

2 A. Yes, I was referring to the criminal investigation.

3 425 Q. Yes. But your disciplinary investigation was under
4 part 2?

5 A. That's correct. 14:25

6 426 Q. The disciplinary investigation had been characterised
7 or had been constituted as being an investigation into
8 a less serious breach of discipline?

9 A. That's correct. That was the appointment.

10 427 Q. And what I am asking you is: Do you agree with that 14:26
11 characterisation, that what you were investigating as a
12 disciplinary breach constituted a less serious breach
13 of discipline as opposed to being a serious breach of
14 discipline?

15 A. Having sent the file to the DPP and having received the 14:26
16 directions, I felt it was appropriate to remain as a
17 section 2, which is the less serious breach of
18 discipline.

19 428 Q. I see. Can you just explain that to us? So you
20 received a direction and that influenced your view in 14:26
21 terms of whether or not --

22 A. Yes.

23 429 Q. -- this was a serious or non-serious breach?

24 A. Yes. The DPP directions influenced me in the context
25 that I didn't believe that it was necessary to escalate 14:26
26 that with the consent of the appointing officer to
27 regulation 3, which is a serious breach of discipline.

28 430 Q. why not?

29 A. Because I didn't believe that it constituted it,

1 because I didn't believe the evidence was sufficient to
2 escalate it to a part 3.

3 431 Q. So are you saying that at the start of your -- during
4 the course of this the disciplinary investigation,
5 before you had reached your conclusion, you thought 14:27
6 that the evidence wasn't serious enough that this could
7 amount to a serious breach as opposed to a less serious
8 breach?

9 A. Sorry, in relation to --

10 CHAIRMAN: Is this something that is properly before 14:27
11 the tribunal? How is this allegation -- suppose Chief
12 Superintendent Kehoe was wrong, just suppose.

13 MR. PERRY: Yes.

14 CHAIRMAN: How is that within 6A? what notice is she
15 on that this is a matter on which she is likely to be 14:27
16 condemned by the tribunal?

17 MR. PERRY: Yes. I take your point entirely, Chairman.
18 I am going to move off from that issue.

19 CHAIRMAN: Sorry, Mr. Perry, and the other matters have
20 now been dropped, taking an inordinate time to 14:27
21 complete, that's the beginning and the end of the
22 allegation.

23 MR. PERRY: Yes.

24 CHAIRMAN: Isn't that right.

25 MR. PERRY: Yes. 14:28

26 CHAIRMAN: I mean, that's what it is that she is
27 facing. Yes.

28 MR. PERRY: You're absolutely correct, Chairman.

29 432 Q. In terms of the timeline for the investigation, the

1 disciplinary investigation, am I correct in saying you
2 formally commenced that disciplinary investigation on
3 the 21st February 2013?

4 A. Yes, by putting Superintendent Comyns on notice on the
5 21st, but the criminal aspect of it took precedence 14:28
6 over the discipline, as it would.

7 433 Q. Yes.

8 A. Therefore, it was after the criminal was concluded that
9 the discipline commenced in the context of making
10 further investigations. 14:28

11 434 Q. Yes. The disciplinary investigation concluded on the
12 12th May 2016, is that right?

13 A. 12th May 2016, that's correct.

14 435 Q. Yes. I take your point in terms of the time accounted
15 for by the criminal investigation? 14:28

16 A. Was part and parcel.

17 436 Q. The criminal investigation ends at the end of August
18 2015, isn't that right?

19 A. That's correct.

20 437 Q. So essentially you're left with -- it takes nine months 14:29
21 after that then to complete the disciplinary
22 investigation?

23 A. Yes. Well, it took -- yes, approximately I think
24 maybe six, seven months to complete it.

25 438 Q. Yes. In total you're talking about a period of three 14:29
26 years and three months to carry out that disciplinary
27 investigation?

28 A. I wouldn't agree with that assertion, Chairman. It
29 took a period of time of two years, two and a half

1 years to do the criminal investigation and arising out
2 of the criminal investigation the disciplinary
3 investigation was undertaken, relying on documentation
4 from the criminal investigation. So, you know, I don't
5 necessarily take the point that it took three years and 14:29
6 three months to do the discipline investigation,
7 because I was doing three parts of an investigation
8 over that period.

9 439 Q. Yes. Now, Ms. McGrath touched on this already with you
10 in terms of what had to be done during the course of 14:30
11 the disciplinary investigation after you concluded the
12 criminal investigation. You remember that exchange
13 that you had with her on that?

14 A. Yes.

15 440 Q. I think what you said essentially was that statements 14:30
16 had to be taken and then Superintendent Comyns had to
17 be interviewed, is that right?

18 A. Correct.

19 441 Q. I just want to touch on the nature of the statements 14:30
20 that you had to take. Is this a fair characterisation,
21 that by and large, while had you to take additional
22 statements, by and large they were statements from
23 witnesses confirming the correctness or validity of
24 earlier statements that they had given and giving their
25 consent for them to be used as part of the disciplinary 14:30
26 investigation?

27 A. That's correct.

28 442 Q. They were essentially in the nature of formal
29 statements, is that right?

1 A. The majority -- from my recollection, the majority of
2 statements would have been statements that were already
3 part of the criminal investigation with consent, as you
4 correctly say.

5 443 Q. I just want to be fair to you just by referring to one 14:31
6 document, because there's one exception I think to what
7 I am saying there. It's page 3106, please. That's a
8 statement from Garda Wall that was taken during the
9 course of the disciplinary investigation?

10 A. Yes. 14:31

11 444 Q. And this isn't simply a confirmation of something he
12 had said earlier, that effectively appears to be a new
13 statement taken during the course of the disciplinary
14 investigation, isn't that right?

15 A. That's correct. 14:31

16 445 Q. But do you agree with me that beyond that, the rest of
17 the statements that were taken were these kind of
18 formal statements where witnesses were adopting earlier
19 accounts that they had given?

20 A. I accept that. 14:31

21 446 Q. Yes. So those are the statements needed to be taken.
22 There was then an interview with Superintendent Comyns.
23 And just my suggestion to you is that it took nine
24 months to do all that and that that was an inordinate
25 amount of time? 14:31

26 A. I don't accept it was an inordinate amount of time.

27 447 Q. Thank you very much.

28 A. Thank you, counsel. Thank you, chair.

29

1 END OF EXAMINATION

2
3 CHAIRMAN: So basically, just to clarify that,
4 Mr. Perry, what you are saying, what you're querying is
5 the work that had to be done in the discipline 14:32
6 investigation over and above what had already been
7 achieved being investigated. Is that essentially the
8 point you're making?

9 MR. PERRY: Yes.

10 CHAIRMAN: Okay. Now, Mr. O'Higgins, yes. 14:32

11 MR. O'HIGGINS: Thank you, Chairman. Before I commence
12 my questions, can I seek one matter, seek to have it
13 clarified? My request is of Mr. Perry. You're aware,
14 Chairman, that on Day 181, the 27th May last, the bulk
15 of the allegations were abandoned. 14:32

16 CHAIRMAN: Yes.

17 MR. O'HIGGINS: Bar 6A, with respect to Chief
18 Superintendent Kehoe.

19 CHAIRMAN: Yes.

20 MR. O'HIGGINS: Mr. Perry has maintained on his 14:33
21 client's behalf, in fairness, he's acting within his
22 client's instructions.

23 CHAIRMAN: Of course, yes.

24 MR. O'HIGGINS: Has maintained stoutly the criticism of
25 the delay as alleged. 14:33

26 CHAIRMAN: Yes.

27 MR. O'HIGGINS: However, 6A is not just delay and what
28 I am seeking to have clarified is, because it hasn't
29 been put certainly to the witness: Is it being

1 abandoned that she deliberately targeted and
2 discredited Mr. Barry by reason of the delay?
3 CHAIRMAN: I hear what you are saying, Mr. O'Higgins,
4 and surely it's a matter for me to draw such inferences
5 as I think are appropriate from a failure to allege 14:33
6 straight up to the witness that she deliberately
7 targeted Sergeant Barry. If Mr. Perry wants to make an
8 addition, but I am not interrogating Mr. Perry, I am
9 taking his cross-examination to be what it is, but I
10 have noticed, I have to say, I have observed that there 14:34
11 has been no allegation put to Chief Superintendent
12 Kehoe that she deliberately victimised Mr. Barry by
13 delaying her investigation. I have noted that.
14 MR. O'HIGGINS: May it please you, Chairman.
15 CHAIRMAN: So if that is any comfort to anybody, or if 14:34
16 there's any suggestion or, indeed, if -- but now that
17 you have raised it, Mr. O'Higgins, you could have
18 assumed that I would have noticed that, but that's --
19 sorry, this is not a criticism of you, but I don't want
20 to be challenging Mr. Perry or putting him in a 14:34
21 difficult situation, but if Mr. Perry chose to make an
22 application to return to the matter, I would entertain
23 such an application. And if he's going to do -- but I
24 don't want to put him in a position where it looks as
25 if he's avoiding the situation. So, I am simply going 14:35
26 to say what I said to you, Mr. O'Higgins, I think
27 that's the best to do and to leave it at that.
28 MR. PERRY: I wonder, Chairman, if I can provide this
29 clarification: Just in terms of whether aspects of the

1 issue are being abandoned or not --

2 CHAIRMAN: If you want to come back on that, Mr. Perry,
3 if you want to come back on that, feel free to do so.
4 But I am just keen, I don't want to put you on the spot
5 to feel that you must respond and make some specific 14:35
6 allegation that in your judgment you have not chosen
7 to -- I don't want to put you in that situation.

8 MR. PERRY: No, absolutely. I just want to explain
9 Sergeant Barry's position, explain the position --

10 CHAIRMAN: I don't need you to. Sorry. 14:35

11 MR. PERRY: Absolutely.

12 CHAIRMAN: Mr. Perry, sorry, you heard what
13 Mr. O'Higgins said. I don't need an explanation. We
14 will come to a time in due course when people can make
15 submissions and arguments. Simple as this: 14:36

16 Mr. O'Higgins says, Mr. Barry's counsel did not put
17 straight up to the witness that she had deliberately
18 victimised his client by delaying her investigation.
19 That's what he said. I said to him, I will draw such
20 inferences as seem appropriate and proper and in light 14:36
21 of the evidence and the submissions. But since it
22 happened, since he raised it, in case it was
23 something -- it's not something that I am sure that
24 responsible counsel would have forgotten, but we have
25 all made mistakes in our day, myself as much or more 14:36
26 than anybody else.

27

28 So I am not looking for an explanation. I am not
29 looking for anything else. All that can be done later.

1 But if there was a question that you felt you wanted to
2 put or a suggestion that you wanted to make, I said I
3 would give you an opportunity of doing that.
4 MR. PERRY: Yes. I will just say this: The reason
5 that proposition wasn't put -- 14:37
6 CHAIRMAN: I am not asking for a reason why it wasn't
7 put. I'm sorry, I am not. I am trying to be fair to
8 everybody here. Mr. Perry, have a think -- Mr. Perry,
9 I'm sorry, you're taking instructions. Have a think
10 about this, Mr. Perry. 14:37
11 MR. PERRY: Yes.
12 CHAIRMAN: Have a think about this.
13 MR. PERRY: Yes.
14 CHAIRMAN: Can you see my position?
15 MR. PERRY: No, I can. 14:37
16 CHAIRMAN: I am not asking you to make the decision for
17 me, but I just want to say, I am not looking for
18 explanations, I am responding to Mr. O'Higgins's
19 comment and I don't want to be unfair to anybody. So
20 at the end of the questioning, if you want to say 14:37
21 please, may I say something else, not an explanation,
22 but ask a question or put a suggestion, I will be
23 sympathetic to it, and obviously that would mean that
24 anybody else could have another go themselves.
25 MR. PERRY: Yes. 14:38
26 CHAIRMAN: So, Mr. O'Higgins, proceed. Have a think.
27 MR. PERRY: May it please you, Chairman.
28 CHAIRMAN: I don't want to, as I say, put you in the
29 situation where you have a to decide instantly, so take

1 your time and some back to me, if necessary.

2 MR. PERRY: I am obliged.

3 CHAIRMAN: If no application is made, nothing will
4 happen. But submissions can of course be made in due
5 course.

14:38

6 MR. PERRY: Yes.

7 CHAIRMAN: All right.

8 MR. PERRY: Thank you.

9 CHAIRMAN: Now, Mr. O'Higgins.

10

14:38

11 MS. CATHERINE KEHOE WAS CROSS-EXAMINED BY MR.

12 O' H I G G I N S, AS FOLLOWS:

13

14 448 Q. MR. O' H I G G I N S: Thank you, Chairman. Dealing then with
15 the question of delay, the allegation of delay, chief 14:38
16 superintendent, can you give to the Chairman please, as
17 succinctly as you can, your outline of the breadth and
18 complexity of the investigations, plural, that you were
19 tasked with carrying out?

20 A. Mr. Chairman, I was appointed, as I have already gone 14:38
21 through this morning, a very complex investigation,
22 involving three arms of an investigation, requiring
23 different approaches to different aspects of it. There
24 was the bullying and harassment, which was under, as
25 you know, the internal Garda policy, which had a very 14:39
26 ambitious timeframe of 28 days, very difficult to
27 achieve that and conduct a number of allegations, 1-8,
28 within that timeframe. I did so to the very best of my
29 ability. I certainly did not sit on that investigation

1 at any point in time. I think the timeline in relation
2 to it, it speaks for itself. I moved it as swiftly as
3 I possibly could and I submitted a file by the 30th
4 May, some three months after the appointment. As I
5 said already this morning, from the time the 14:39
6 investigation is finished from an investigative point
7 of view, that report goes out to the complainant and
8 Sergeant Barry had it for just a period of one month,
9 which fed into the timeline. And I had it for three
10 weeks then, making the submissions on it. So all of 14:40
11 those things fed into it, but at no time was it
12 purposefully or inadvertently delayed by me or the
13 team.

14
15 In relation to the criminal aspect of it, this was a 14:40
16 very, very serious allegation made about a senior
17 investigating officer, which had implications for a
18 second senior investigating officer. I took the time
19 it took in relation to making sure that every aspect of
20 Sergeant Paul Barry's complaint was thoroughly 14:40
21 investigated. It was very, very important. I never
22 suggested for one minute that this would take a
23 backseat or put to one side at no time through that
24 investigation. And if you look through the timeline,
25 Chairman, you will see find that at all stages there 14:40
26 was paperwork going one place or another in relation to
27 keeping people informed, including my own authorities
28 and also dealing with a series of matters that Sergeant
29 Barry raised during it, or Superintendent Comyns or

1 indeed, Superintendent Quilter. I dealt with the legal
2 teams and I dealt with the members concerned. All of
3 that paperwork had to be done. It took time. It took
4 effort. We gave it that effort, despite the fact I had
5 a very busy workload myself. This was not the only 14:41
6 investigation I had. I had a number of investigations
7 during that period of time and I conducted them all to
8 the very best of my ability.

9
10 The discipline aspect of it came after because of the 14:41
11 fact that that's the course of action that normally
12 that would take in the context of the allowing the
13 criminal to be determined before you take on the
14 discipline. There's a number of reasons for that and
15 it is a part of the discipline regulations, section 8. 14:41
16 I did that to the best of my ability and I made my
17 determination at the conclusion on the 27th April 2016,
18 and I submitted my file in very early stages, by the
19 12th May 2016.

20 449 Q. Chief superintendent, in terms of the necessity to 14:42
21 interview the various protagonists, what methodology
22 did you follow in relation to that process in preparing
23 for interviews and deciding on what questions to ask
24 and so forth?

25 A. In relation to the methodology I used, counsel, I 14:42
26 relied heavily on the data that we had, particularly
27 the telephone data, which was really important to this
28 investigation, and I received briefing documents from
29 Sergeant Sheeran in respect of that, because he had

1 done excellent work in preparing those details. And
2 also, as I say, we relied on the statements of
3 witnesses and we conducted the interview in that
4 manner, through a briefing document and from my
5 knowledge of the investigation.

14:43

6 450 Q. Yes. You've mentioned from time to time the necessity
7 to comply with fair procedures, that was something
8 uppermost in your mind in relation to not just Sergeant
9 Barry, but also the other parties to the investigation?

10 A. Yes. Natural justice and fair procedures was at the
11 foremost of my concerns in relation to this matter.
12 These were very, very serious allegations, as I said,
13 and I was at pains to ensure that everybody in this
14 investigation were dealt with in a fair and humane
15 manner, sensitive to the investigation and with the
16 utmost confidentiality given to the parties that were
17 involved.

14:43

14:43

18 451 Q. You have mentioned already to the Chairman that in the
19 course of 2013, I think you lost three members of your
20 team, whether it was promotion or being allocated a
21 role elsewhere outside of the division?

14:43

22 A. That's correct, counsel.

23 452 Q. Superintendent Lordan you mentioned, is that right? He
24 was transferred and also Detective Inspector Leahy?

25 A. That's correct, counsel.

14:44

26 453 Q. And I think also Detective Garda Gilmartin also
27 transferred to Abbeylaxey in April of 2013?

28 A. That's correct, Chair.

29 454 Q. Now, in terms of keeping Sergeant Barry updated and its

1 relevance to the passage of time, did you meet with --
2 obviously the file speaks for itself, there was a the
3 love correspondence to and from Sergeant Barry, but in
4 terms of physically meeting him, over the course of
5 your investigation did you meet with him? 14:44

6 A. Oh yes, I did meet with Sergeant Barry on a number of
7 occasions. Off the top of my head, I would say I met
8 him maybe three or four times during the investigation.

9 455 Q. Yes.

10 A. And possibly more, but I just haven't counted them. 14:44

11 456 Q. I think just broadly speaking, I see from my own
12 timeline there's dates of the 3rd April 2013, a phone
13 conversation; the 8th April 2013 in person; 20th
14 February 2014; and also December 2014 at Mitchelstown
15 Garda Station. Does that assist in jogging your 14:45
16 memory?

17 A. Yeah, that's correct, all of those times would I have
18 met with Sergeant Barry.

19 457 Q. All right. Were you aware at any stage that Sergeant
20 Barry had made a protected disclosure? 14:45

21 A. I was not aware until I received the documents in
22 November 2020 that Sergeant Barry had made a protected
23 disclosure.

24 458 Q. Okay.

25 A. I want to correct myself. It was in November 2020 when 14:45
26 I received the documents from Sergeant Barry. It was
27 correspondence dated 4th September 2020, Chairman, when
28 I was first notified that there was a tribunal of
29 inquiry.

1 459 Q. Yes. In terms of --

2 CHAIRMAN: Sorry, I am not entirely following that.

3 Sorry, Mr. O'Higgins says when did you become aware

4 that Sergeant Barry had made a protected disclosure?

5 A. Sorry. That would have been the 4th November, when I 14:45

6 received the documentation from Sergeant Barry, from

7 the tribunal. Thank you, Chairman.

8 CHAIRMAN: Thank you.

9 460 Q. MR. O'HIGGINS: Thank you. Just in terms of headline

10 dates and many of these will already be noted by the 14:46

11 Chairman, but just to frame my question in this way:

12 we know that you completed your investigation into the

13 bullying and harassment and forwarded your adjudication

14 to the appointing officer, that was 30th May 2013, is

15 that right. 14:46

16 A. That's correct, Chairman.

17 461 Q. You forwarded the file in terms of the second phase,

18 the criminal phase, you forwarded your file to the

19 State solicitor for onward transmission to the DPP, I

20 think that was 28th August 2015? 14:46

21 A. That's correct, Chairman.

22 462 Q. And as to when you received back the directions from

23 the DPP directing no prosecution?

24 A. 17th November.

25 463 Q. Of? 14:47

26 A. 2015.

27 464 Q. 2015, thank you. Just in relation to that then and the

28 next phase, the disciplinary, can I ask you just to

29 deal with that timeline at that stage. There is a

1 process, is there not, of notifying a complainant of
2 the outcome of the DPP's deliberations and there's a
3 right of review, isn't that so?

4 A. That's correct.

5 465 Q. Was that something you notified the sergeant about? 14:47

6 A. Yes, I notified them when I received the directions on
7 the 17th November, I think shortly after that I
8 notified all the parties of the outcome of the DPP
9 directions.

10 466 Q. So you wrote to Superintendent Comyns, you wrote to 14:47
11 Superintendent Quilter and you wrote to Mr. Barry?

12 A. That's correct.

13 467 Q. Around about this time as well, in October of '15, you 14:48
14 spoke and raised a concern with Superintendent Nyland
15 regarding your continuing involvement in the
16 disciplinary process, is that right?

17 A. That's correct, Chairman.

18 468 Q. And you received the DPP's directions via the State 14:48
19 solicitor in November 2015, I think you've told us.
20 After that then, I think you've already said in
21 evidence to Ms. McGrath, in December of '15 you wrote
22 to Sergeant Barry in furtherance of the discipline
23 proceedings. Can you just explain that to me. What
24 was the necessity for that at that stage? I am
25 speaking now about December '15. 14:48

26 A. I am sorry, could you just repeat the question,
27 counsel?

28 469 Q. Certainly. So you have now received the outcome from
29 the DPP, there is to be no prosecution, you've written

1 to the various parties and you told Mr. Barry of his
2 right of review of that decision?

3 A. That's correct.

4 470 Q. You then takes steps in relation to the disciplinary
5 process? 14:49

6 A. That's correct.

7 471 Q. Isn't that right? And you corresponded with various
8 parties, isn't that so?

9 A. Sorry, yes. That's correct.

10 472 Q. All right. what was your thinking at that stage? what 14:49
11 was the purpose of your corresponding with the various
12 parties at that point?

13 A. I was putting all the parties on notice that I was
14 continuing with the discipline aspect of the
15 investigation and if they wished to add any statements, 14:49
16 additional statements, or they wanted to interview any
17 further witnesses, which they're entitled to request, I
18 would take those statements.

19 473 Q. Yes.

20 A. So I gave them a list of statements and I asked them 14:49
21 was that the entirety of them or did they want to add
22 more to them.

23 474 Q. And as we moved into 2016, I think it's the case that
24 you sought advice as to the appropriateness of your
25 continuance of the disciplinary investigation in light 14:49
26 of your involvement in the earlier phases and also the
27 issue about seeing the appeal?

28 A. I raised the issue again because of an unreported case
29 of Gavin v. Newman, which had connotations or issues in

1 relation to an earlier aspect of the case, and I
2 brought it up. But at that point in time, Chairman, I
3 was already after being, I think, advised in relation
4 to the fact that there was a civil aspect to this.
5 Sergeant Barry had raised a matter that -- or sorry, my 14:50
6 authorities had raised a matter that Sergeant Barry had
7 instigated a civil action and they asked me to stop the
8 investigation to allow time for them to consider that
9 matter.

10 475 Q. Yes. Moving the timeline on then into later in 2016, I 14:50
11 think you entered into correspondence with the
12 appointing officer regarding issues and you also made
13 preparations for interviewing of the protagonists in
14 the context of the disciplinary process?

15 A. That's correct, Chairman. 14:51

16 476 Q. And I think you conducted an interview with Inspector
17 O'Driscoll of Superintendent Comyns in April of 2016,
18 is that so?

19 A. That's correct, Chairman.

20 477 Q. And there was also a process of involving the return of 14:51
21 exhibits and tidy up matters such as that?

22 A. That's correct, Chairman.

23 478 Q. And I think in terms of the submission of your final
24 report to the appointing officer, that was on the 12th
25 May 2016? 14:51

26 A. That's correct, Chairman.

27 479 Q. As to the sequencing of matters, chief superintendent,
28 could I ask you this: As far as you're concerned, why
29 would the disciplinary process have had to await the

1 outcome of the criminal process?

2 A. Because there's a number of reasons, it's provided for
3 in the regulations in relation to the matter, once --
4 had the DPP directed a prosecution in this matter, it
5 may have been of -- 14:51

6 CHAIRMAN: I would have thought criminal preceded
7 discipline in most circumstances, Mr. O'Higgins. Am I
8 out of date on that?

9 MR. O'HIGGINS: Certainly, Judge, sorry, the way I
10 phrased the question and I hope reasonably -- 14:52

11 CHAIRMAN: No, there is nothing wrong with the way you
12 phrased the question. But I just thought, maybe I am
13 wrong, I would have thought that a criminal
14 investigation took precedence over a discipline
15 investigation. 14:52

16 MR. O'HIGGINS: Undoubtedly.

17 CHAIRMAN: I would have thought.

18 A. That's correct.

19 MR. O'HIGGINS: I would respectfully agree.

20 480 Q. CHAIRMAN: Is that your understanding? 14:52

21 A. That's correct.

22 481 Q. CHAIRMAN: And apparently the regulations, I'm sure
23 they do, I just don't remember specifically which.

24 A. Oh, they do.

25 482 Q. CHAIRMAN: But I thought they specifically provided for 14:52
26 that.

27 A. Section 8.

28 483 Q. CHAIRMAN: But even if they hadn't specifically
29 provided for that, I would have thought you would be in

1 trouble if you proceeded with the disciplinary
2 investigation.

3 A. Yes.

4 484 Q. CHAIRMAN: And sent to the file to the DPP, I think
5 there would be questions in the house. 14:52

6 A. There would be.

7 CHAIRMAN: And people would end up being red faced.

8 MR. O'HIGGINS: Yes, I will move on from that.

9 485 Q. Now, can I ask you to look at one or two documents,
10 please, Chief Superintendent Kehoe. The first of these 14:53
11 is at page 109, Mr. Kavanagh, please. And this is I
12 think a letter written by Mr. Barry to the Minister for
13 Justice or to the department at least of the 20th, we
14 see it there on the top right, 20th January 2016.
15 Sorry, it's page 109. If we go back up to the -- 14:53
16 that's it there, it commences "Dear Chris" 20th January
17 2016. If Mr. Kavanagh might scroll down to the last
18 paragraph on this page, please. So this is what it
19 says:

20 14:54
21 "I wish to formally make an allegation to the Minister
22 for Justice that Chief Superintendent Kehoe has
23 perverted the course of justice by deliberately
24 delaying her investigation and by conducting a biased
25 investigation devoid of the morality, sentiment and 14:54
26 conscience and she has conducted this sham
27 investigation without informing the injured party."
28

29 First of all, can I ask you this: were you notified or

1 alerted to the fact that this letter would be sent
2 making this allegation against you?

3 A. No, I was not, Chair.

4 486 Q. You weren't copied on the correspondence, we can take
5 it?

14:54

6 A. No, I wasn't, Chairman.

7 487 Q. Does it follow from that, you weren't given an
8 opportunity to respond or rebut the allegation?

9 A. I wasn't notified in any form and I wasn't given an
10 opportunity to respond, Chairman.

14:54

11 488 Q. If we might briefly have page 46, please. This is the
12 interview Mr. Barry gave to the tribunal in July and
13 August of this year. Sorry, not this year, recently in
14 any event. And we see here that he accuses you of
15 deliberately targeting him but not treating his
16 complaint properly or promptly, is the gist of the
17 allegation. And similarly, on page 48 there's an
18 allegation of a deliberate cover up. We needn't
19 perhaps open them up, but they're there. When was the
20 first time that you were made aware that those serious
21 allegations were being levied against you?

14:55

22 A. I became aware of it on the 4th November 2020, when I
23 received the documentation from the tribunal.

24 489 Q. We know that in the course of this tribunal, on Day
25 181, allegation 6B to 6F were abandon, formally,
26 through counsel. Have you ever received a letter from
27 Mr. Barry notifying you of that or providing you with
28 an apology in relation to that withdrawal?

14:55

29 A. No, I haven't, Chairman.

1 490 Q. Lastly then, chief superintendent, can I ask you, can
2 you, perhaps as succinctly as you might, can you tell
3 the Chairman what effect he is serious allegations had,
4 the making of these serious allegations upon you, chief
5 superintendent?

14:56

6 A. Mr. Chairman, I have 36 years loyal and dedicated
7 service to An Garda Síochána and I retired on the 4th
8 May 2019. As I said, I only became aware of these very
9 serious allegations, some of a criminal nature, when I
10 received the documentation, I had no idea prior to
11 that. I was very disturbed and hurt by the allegations
12 that are totally unfounded and I totally deny. I
13 worked hard and diligently all of my career, from the
14 time I joined the gardaí and from the time I became a
15 sergeant, I never worked nine to five, I worked nine
16 until I finished work, I made sure that everything
17 under my control was dealt with in an expeditious and
18 very well presented files to the DPP on many, many
19 occasions, which I was complimented for.

14:56

14:57

20
21 So this allegation was very, very upsetting and
22 disturbing for me, particularly that I had no knowledge
23 of and particularly at a time when I note that the
24 allegations were made in 2015, while I was continuing
25 to investigate Sergeant Barry's complaints for him. I
26 found that extremely disturbing indeed.

14:57

14:57

27 491 Q. Thank you very much.

28

29 END OF EXAMINATION

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CHAIRMAN: Now, who else?

MR. O'BRIEN: I have no questions.

CHAIRMAN: Anybody over there?

MR. GORDON: Chairman, Breffni Gordon for Superintendent Quilter, just to say, I have no questions either.

14:58

CHAIRMAN: Thanks, Mr. Gordon. And thanks for saying hello, Mr. Gordon.

MS. McGRATH: Nothing arises, Chairman. Thank you chief, superintendent.

14:58

CHAIRMAN: Thank you very much. No questions, no questions, no questions, no applications, very good. Thank you very much, chief superintendent. Thank you for coming to help us and you're now finished, thank you very much.

14:58

THE WITNESS: Thank you very much, Chairman.

CHAIRMAN: You're free to go, thank you.

THE WITNESS THEN WITHDREW

14:58

MS. McGRATH: Now, Chairman, the next witness this afternoon is Inspector Anthony O'Sullivan.

CHAIRMAN: Thanks very much.

14:58

INSPECTOR ANTHONY O' SULLIVAN, HAVING BEEN SWORN, WAS DIRECTLY-EXAMINED BY MS. McGRATH, AS FOLLOWS:

CHAIRMAN: Thanks very much, sit down, Inspector

1 O'Sullivan.

2 A. Thanks. Good afternoon, Chairman.

3 MS. McGRATH: Good afternoon, inspector. Chairman, the
4 statement of the inspector is at page 1308 of the brief
5 and the inspector was also interviewed by the tribunal 14:59
6 investigators and that interview is at page 5304 of the
7 brief?

8 CHAIRMAN: 5304 of the brief.

9 MS. McGRATH: Yes, Chairman.

10 CHAIRMAN: Thanks very much. 14:59

11 492 Q. MS. McGRATH: Now, inspector, just starting, as it
12 were, at the very beginning, I think you outline in
13 your interview that you joined An Garda Síochána in
14 1987, is that right?

15 A. That's correct, Chairman. 14:59

16 493 Q. And you do say, just taking things chronologically, you
17 do say that you worked with Paul Barry since 1990, is
18 that correct?

19 A. I think that was a typographical error.

20 494 Q. Okay. 14:59

21 A. I went to Mitchelstown in 1999.

22 495 Q. Oh, okay.

23 A. As the sergeant in charge and Mr. Barry would have
24 joined me the following year, I don't know what month,
25 I think it might have been May 2000. 15:00

26 496 Q. Let's go back then and again stay chronological. You
27 started with the force in 1987. You went to Fermoy
28 district in 1994 and you say that you have always
29 worked within that district, is that right?

1 A. That's correct. I have given 28 years in Fermoy
2 district, I moved around the stations but I have never
3 left the district.

4 497 Q. Okay. You came to Mitchelstown in January 1999 as
5 sergeant in charge, is that right? 15:00

6 A. That's correct.

7 498 Q. As we know, as you've just clarified, you started
8 working with Paul Barry at around that time, is that
9 right?

10 A. That's correct. I think Paul Barry, Mr. Barry would 15:00
11 have been the third sergeant I got. Paul would have
12 been in Dublin, I was in Dublin as well for seven
13 years, from '87 to '94, and I think Paul Barry
14 transferred on promotion, maybe very early 2000.

15 499 Q. Okay. So you were working in that capacity as sergeant 15:00
16 in charge until you took over as inspector in
17 Mitchelstown in 2007, is that right?

18 A. That's correct. Me and Mr. Barry shared the one office
19 for seven years.

20 500 Q. Okay. And I think initially you would have been the 15:01
21 only inspector, is that right, before you were joined
22 by Inspector Joseph O'Connor, have I got that right?

23 A. I would have been the first inspector. Well, when I
24 went there in 2007 I would have replaced Inspector Pat
25 McCarthy, who got promoted to super. It was later 15:01
26 Inspector O'Connor would have joined, maybe 2013 or
27 '14.

28 501 Q. Okay. So, for the period under consideration by the
29 tribunal you were the inspector in Mitchelstown, isn't

1 that right, effectively?

2 A. I was the inspector in Fermoy, which covered the
3 Mitchelstown sub-district.

4 502 Q. Okay. I think we know also from the papers that
5 Superintendent Comyns came to the Fermoy district as
6 the district officer in July 2010, is that right? 15:01

7 A. That's correct, Superintendent Comyns joined us in
8 2010, replacing Superintendent Myers.

9 503 Q. Okay. So again you worked with him for a substantial
10 period, is that right? 15:01

11 A. That's correct. I worked with Mr. Comyns, I wouldn't
12 have known him before that, but I worked with him for
13 five years.

14 504 Q. Okay. And you were the acting district officer at
15 times, isn't that right? 15:02

16 A. I would be the acting district officer if
17 Superintendent Comyns was doing something else or
18 wasn't in Fermoy Garda Station.

19 505 Q. Okay. Just to be clear, when you are, when that duty
20 is triggered, precisely, I mean I know it seems clear
21 that if he's on annual leave or on any type of leave? 15:02

22 A. Yeah.

23 506 Q. You are the acting district officer?

24 A. And Superintendent Comyns would let me know in advance,
25 I'm not available Thursday, I'm doing something else on
26 Friday, and I had a portacabin in the backyard of 15:02
27 Fermoy Garda Station, but when I would be made aware
28 that I was acting superintendent, I would go straight
29 to Superintendent Comyns' office in the morning.

1 507 Q. Okay. So it's simply when he's out of the Fermoy
2 district, you're acting district officer?
3 A. Yeah. That's correct, Chairman. You only become
4 acting district officer if the district officer is
5 unavailable. 15:02

6 508 Q. Is absent?
7 A. Is absent.

8 509 Q. Is that the clearest way to put it?
9 A. That's correct.

10 510 Q. Okay. Now, you say in your interview with the 15:02
11 investigators, you say that you were based out of
12 Fermoy Garda Station and you also tell the investigator
13 that "I wouldn't be in Mitchelstown that much" is that
14 that right?
15 A. Well, that would be correct. I think if we were coming 15:03
16 back from some place, we could call into Mitchelstown
17 Garda Station, our boss people would tell us if we saw
18 a garda station, if we were passing en route we may
19 call in, but other than that my job was Fermoy, I would
20 go straight to Fermoy every morning, unless there was 15:03
21 some reason not to.

22 511 Q. Okay. You were asked also about the relationship to
23 your knowledge between Sergeant Barry and
24 Superintendent Comyns, and your response was "Obviously
25 the matters between Sergeant Barry and Superintendent 15:03
26 Comyns caused difficulties, there was no doubt that
27 there were tensions because of that". Now, that's at
28 page 5314, we don't have to open it up, but that's what
29 you said in your interview. Can you tell the Chairman

1 a little bit more about that?

2 A. Yes. I suppose, Mr. Barry wouldn't be communicating
3 with the district officer. It was his job to run his
4 district and sometimes I might be trying to sort
5 documentation and whatever. There was. It did cause 15:04
6 difficulties because I could be in court two days a
7 week.

8 512 Q. Yes, but what timeframe are we talking about here? Was
9 this from the very outset? You had shared an office
10 with Sergeant Barry for seven years, Superintendent 15:04
11 Comyns comes in July 2010, can you put a timeframe on
12 this, what you are talking about there?

13 A. Yes. Sorry, I shared an office with Mr. Barry from
14 2000 to 2007, that's in Mitchelstown, some 16
15 kilometres from Fermoy. 15:04

16 513 Q. Okay.

17 A. But in 2007 I was promoted to inspector, in May 2007.
18 I then went the 16 kilometres to Fermoy district,
19 Fermoy station, and I had a new office, it was a
20 portacabin in the backyard. 15:04

21 514 Q. Okay.

22 A. So I was in Fermoy. So Superintendent Comyns didn't
23 arrive to Fermoy, I think it might have been July 2010.
24 It was 2010 in any event.

25 515 Q. Okay. But, inspector, what I am asking you to do is, 15:04
26 if you can, put a finger on when exactly you say these
27 difficulties or tensions were there?

28 A. Oh yeah. In August 2012, Superintendent Comyns did
29 tell me one day in the superintendent's office that he

1 had given Mr. Barry a Regulation 10 for being late for
2 work. He did say it was the second occasion that he
3 had gone to the garda station in Mitchelstown and that
4 unit had come in late on both occasions. And he as
5 much as said he had to do something about it, he 15:05
6 couldn't go to stations and ignore units coming in 20
7 minutes late. He said it was the second occasion and
8 he gave him a Regulation 10. Other than that, I saw no
9 difficulties -- I saw no difficulties prior to August
10 2012. 15:05

11 516 Q. Okay. So prior to August 2012, no difficulties. But,
12 as I say, to use your exact language, you say there was
13 no doubt that there were tensions because of that. And
14 you are saying --

15 A. Because of that, but I didn't say in 2010 there was 15:05
16 tensions. I don't believe there was any issue between
17 Mr. Comyns and Mr. Barry.

18 517 Q. So you are putting it around August 2012, is that
19 right?

20 A. To my knowledge. 15:06

21 518 Q. Okay?

22 A. Correct.

23 519 Q. You also say that you knew that Sergeant Barry had made
24 a complaint against Superintendent Comyns under the
25 bullying and harassment policy, is that right? 15:06

26 A. I think if I went on then, it was the 4th September --
27 Mr. Barry went sick on the 2nd August 2012, that's my
28 understanding. And the sick form would have been sent
29 in by Garda Clifford and it mentioned work-related

1 stress. I think on the 4th September 2012, I met
2 Mr. Barry by appointment in Watergrasshill because I
3 had been appointed under HQ 139/10 to investigate that.
4 And I did meet Mr. Barry there on that day.

5 520 Q. Okay. We will go through that in a moment, the 15:06
6 work-related stress issue. But you were aware that a
7 complaint had been made against the superintendent,
8 isn't that right?

9 A. At the time? No.

10 521 Q. Well, I am asking you when you were aware of that? 15:07

11 A. Oh no. Oh it was -- it could have been the following
12 year. You're saying that in August 2012 I knew there
13 was a complaint of bullying and harassment? No.

14 522 Q. No. You say that you knew that a complaint had been 15:07
15 made against the superintendent, I am just asking you
16 when you got that knowledge?

17 A. Sorry, that would be the following year, probably.
18 2013.

19 523 Q. Okay.

20 A. Or late 2012. It certainly wasn't August or September. 15:07

21 524 Q. Okay. Now, you also were asked about your relationship
22 with Paul Barry in your interview and again, you say:

23

24 "I never had a cross word with him. However,
25 circumstances changed and I would say his attitude 15:07
26 changed towards me."

27

28 Is that right?

29 A. I think that happened in 2013.

1 525 Q. Okay, so around 2013.

2 A. March he returned to work, after his return to work,
3 and then there was a visit to the station by the chief
4 superintendent, and yes, I can say to the tribunal --
5 and the man, I shook hands with him today as soon as I 15:08
6 arrived in here, he was my best friend or one of my
7 friends, and that was the first time I saw Mr. Barry
8 having an issue with me.

9 526 Q. Okay. So you're saying that's around March 2013. We
10 have looked at a letter here, this was a letter from 15:08
11 Séan Costello solicitor on behalf of Mr. Barry and it's
12 14th February 2013, so the month previously. At page
13 4082, if that can be opened. And this is where the
14 proposal is put that Mr. Barry would be happy to work
15 under your direct supervision. So this is February 15:08
16 2013, do you see that?

17 A. I do.

18 527 Q. Again, we have opened this a number of times. And it
19 says, just the third last line in:
20
21 "In this respect therefore my client wishes to return
22 to work under the direct management of Inspector
23 O' Sullivan."
24

25 So, just given what you've just said in your direct 15:08
26 evidence and that attitudes didn't really change until
27 following month, at this time in February 2013 your
28 relationship with Sergeant Barry, would you describe it
29 as cordial and as normal as before?

1 A. A hundred percent.

2 528 Q. In relation to this, did this ever come to your
3 knowledge, looking now at February 2013, when this
4 letter comes in?

5 A. I was aware of that letter but what I would say in 15:09
6 relation to letter, that Superintendent Comyns was
7 running Fermoy district, I could be off the air five or
8 six hours in the day and it would be totally
9 impracticable to have that letter be produced. So if I
10 was doing Mallow court on a Tuesday and there was a 15:09
11 fatal collision in Mitchelstown at two o'clock, by that
12 letter I would have to wait for a phone call from
13 Mr. Barry at five o'clock to ring my superintendent at
14 5.05. I think it would be totally impractical.

15 529 Q. Can I ask you, this letter came in, came in from the 15:09
16 solicitor, it was directed to Chief Superintendent
17 Dillane, did this make its way to you then? Was there
18 a discussion with you about this letter?

19 A. There was a discussion.

20 530 Q. By whom? 15:10

21 A. Chief Superintendent Dillane, I would say.

22 531 Q. Okay.

23 A. But what I will say, I was aware of that letter or I
24 was aware that there was an offer in that letter. I
25 think actually I didn't see that letter until maybe the 15:10
26 disclosures. But I was aware that there was a proposal
27 by Mr. Barry to have I supervise him. And I just say
28 to the tribunal, it would be totally impractical. It
29 couldn't be done.

1 532 Q. Is that what you told Chief Superintendent Dillane? Is
2 that your view or is that what you said?

3 A. I had a discussion with him at some stage. I cannot
4 give you the date of it.

5 533 Q. But was it in around this time? 15:10

6 A. It would have been.

7 534 Q. Okay. And again, specifically what you exactly said to
8 Chief Superintendent Dillane about this letter?

9 A. The same as I would have probably said to you now. It
10 would be a totally impractical situation. 15:10

11 535 Q. Okay. Now, moving on then, we're in the period of
12 around -- we've stepped a little bit forward, we're
13 just talking about the general background and
14 relationships you had with Sergeant Barry. You'll see
15 that there's a number of issues on the issue paper that 15:11
16 you may be in a position to help the tribunal with.
17 The first one I am going to ask you to look at is issue
18 3C and this is an allegation in respect of the
19 work-related stress investigation. You'll be aware of
20 that, that it's on the issue paper and that you were 15:11
21 centrally involved, at least at the beginning, in
22 relation to this issue, is that right?

23 A. That's correct.

24 536 Q. Okay. Now, we know on the 9th August 2012,
25 Superintendent Comyns appointed you under the HQ 15:11
26 Directive 139/10, isn't that right?

27 A. I'm not sure of the exact date now.

28 537 Q. Well, the letter is at page 5366, we can open it,
29 inspector.

1 A. Thanks.

2 538 Q. If you go down there?

3 A. Sorry, yeah, 9th August, I wasn't sure of the date of
4 it. Yeah.

5 539 Q. He attaches the SR1 form and he says: 15:12

6

7 "Sergeant Barry's work-related stress should be
8 investigated in accordance with HQ Directive 139/10. A
9 full file to be submitted for forwarding to assistant
10 commissioner, HRM, for the attention of the CMO." 15:12

11

12 Now, did you have any conversations with Superintendent
13 Comyns at around this date or was it just the letter of
14 instruction that you got?

15 A. I have no recollection of having a conversation with 15:12
16 him, but what Superintendent Comyns would do, if I came
17 back from doing other stuff during the day, there could
18 be three or four things in my tray for me to do and I
19 certainly got that document and I made an appointment
20 to -- I don't believe I discussed it with 15:12
21 Superintendent Comyns.

22 540 Q. Okay. He attaches the SR1 form, which is just on the
23 next page, and you will see that he --

24 A. I was aware of what he reported to Mr. Clifford, or
25 Garda Clifford. 15:12

26 541 Q. Okay. That it was work-related stress, is that right?

27 A. That's correct.

28 542 Q. As you say, you knew that he had been off sick at that
29 stage, isn't that right? You would have been aware of

1 that in any event?

2 A. I would have been aware of that, yes.

3 543 Q. Now, you referenced it briefly a moment ago, on the 4th
4 September 2012 you met with Mr. Barry by appointment,
5 is that right? 15:13

6 A. That's correct, in Watergrasshill.

7 544 Q. That's right. You say in your statement it was at 4pm
8 in Watergrasshill. And in your statement you refer to
9 yourself having been appointed in accordance with the
10 Directive. You say, and just to use the precise words 15:13
11 you say:

12

13 "Sergeant Paul Barry declined to discuss these issues
14 with me."

15 15:13

16 Isn't that right?

17 A. That's correct, Chairman. I met Mr. Barry that day and
18 I told him why I was there, that I had got a report to
19 investigate his work-related stress. He said he did
20 not want to discuss -- didn't wish to discuss it with 15:13
21 me, and he said because he had some issue with the
22 superintendent and he wanted somebody outside of Fermoy
23 Garda Station, outside of that building to investigate
24 it.

25 545 Q. Okay. And was this a long discussion? 15:13

26 A. No, a couple of minutes, but Mr. Barry was not
27 forthcoming with what the issue was about and I headed
28 back to Fermoy Garda Station.

29 546 Q. You were asked in your interview did he understand your

1 role and why you were there, and you said you explained
2 the role to him but he just wished for someone outside
3 of Fermoy district to investigate it?

4 A. I did say, quoted HQ 139/10, I think most members of An
5 Garda Síochána would be well aware of what that HQ is, 15:14
6 and I explained that I was appointed under HQ 139/10
7 and Mr. Barry said he was not discussing the issue with
8 me and he wanted somebody from outside Fermoy Garda
9 Station to investigate it, because we all worked
10 together. 15:14

11 547 Q. Now, when the superintendent was being cross-examined
12 on Day 183 here, at page 23, he was asked had he ever
13 discussed the Regulation 10 with you during this week,
14 so this timeframe, and he says he had no doubt but that
15 you knew about it before you went to Paul Barry, is 15:14
16 that right?

17 A. I was aware of that. Superintendent Comyns would have
18 told me in the district office, just inside the door of
19 the district office one evening when I came back from
20 somewhere. And it's a small district. I would have 15:15
21 been well aware. Even if Mr. Comyns hadn't told me,
22 but I can assure you Superintendent Comyns did tell me.

23 548 Q. Okay. Did you discuss that with Mr. Barry? Did it
24 come up?

25 A. Is it didn't, because I was sent to there investigate 15:15
26 under HQ 139/10. Mr. Barry was not forthcoming with
27 any information to me. So we said good-bye and parted
28 our ways and I headed back to Fermoy Garda Station.

29 549 Q. Okay. Now, you made a report to Superintendent Comyns,

1 it's 10th September 2012, and this is at 5368, if we
2 can open that one. You see there that's your report,
3 is that right, inspector?

4 A. That's correct.

5 550 Q. You say you met him on the 4th September 2012. You 15:15
6 say:

7

8 "He declined to discuss any issues in relation to his
9 non-effectiveness."

10

15:15

11 So, is that very broad? Is that effectively why you're
12 not turning up to work or is that why you're citing
13 work-related stress?

14 A. What he said was he wasn't prepared to discuss --
15 Mr. Barry will tell you why, he wasn't prepared to
16 discuss with me what the issues were. 15:16

17 551 Q. Okay. You say:

18

19 "He informed me he had some issue with Superintendent
20 Comyns but declined to discuss the matter further." 15:16

21 A. That did come up. My report is a hundred percent
22 accurate.

23 552 Q. Okay. And were you completely at a loss as to what
24 that issue was or not?

25 A. Regulation 10 is a very minor, trivial thing. I think 15:16
26 it's just a verbal warning. It goes into your
27 discipline file, a loose page, and it's pulled out of
28 it after three years. But I didn't know what the issue
29 was. If he wasn't going to tell me, I didn't ask any

1 more questions.

2 553 Q. Now, in his documentation to the tribunal and also
3 during his direct examination on day 175, Mr. Barry
4 took the view that the reason for this meeting was that
5 you were sent to find out exactly what his complaint in 15:17
6 respect of Superintendent Comyns was. Now, first of
7 all, did you ask him about his complaint?

8 A. No, I did not. I told Mr. Barry -- you see, Garda
9 Clifford took a report from Mr. Barry that he was
10 suffering from work-related stress, and I think it is 15:17
11 the duty then, the file has to be created under HQ
12 139/10 that goes up to HRM. And that paperwork came to
13 me. I went to Mr. Barry on the 4th September 2012 and
14 I told him why I was there, under HQ 139/10, and he
15 told me that he wasn't going to discuss it with me. 15:17
16 And I couldn't do any more. But he did say he had an
17 issue with Superintendent Comyns. He wasn't discussing
18 it with me any further, he wanted somebody else outside
19 of Fermoy Garda Station to investigate it, because we
20 all worked in the one building. 15:17

21 554 Q. Just to put it to you in very blunt terms, inspector,
22 on Day 175, at page 145, line 14, there is no need to
23 open it, he is asked about this and he says:

24
25 "He asked me what my complaint was and I told him I 15:18
26 wasn't telling it to him."

27
28 Do you recall that?

29 A. I didn't. I well recollect in my report in relation to

1 my meeting with Mr. Barry, he declined to discuss any
2 issues with me.

3 555 Q. Okay. Now, also in relation to that meeting, Mr. Barry
4 -- there's a note taken by his GP on the 10th
5 September, and we'll just bring that up, it's at page 15:18
6 4771. If you just go down there, for the 10th
7 September. If you keep scrolling, please,
8 Mr. Kavanagh. If you just keep going there. Now, if
9 you see that, you see about midway through he says:
10
11 "It's recorded there by the GP:
12
13 "He met inspector on an off the record basis, who Paul
14 says advised him to remain out of work until case
15 further advanced. Solicitor advised him of similar." 15:19
16
17 Is that right, an off the record basis? Is any of this
18 familiar to you?

19 A. That's incorrect.

20 556 Q. Did you advise him to stay out of work? 15:19
21 A. I'm 35 years in the Garda Síochána, I don't believe
22 that I would advise anybody to stay out of work. I
23 have never disciplined anyone myself or I have never
24 been disciplined. Never initiated discipline
25 proceedings to any member or I have never been 15:19
26 disciplined myself and I would not be encouraging
27 anybody to stay out of work. And that statement to the
28 doctor -- or the doctor, whoever wrote it, is totally
29 incorrect. I would never tell someone off or on the

1 record. I have great admiration for the Garda
2 Síochána. And that is incorrect, never said it.

3 557 Q. Okay. Now, we have also noted in the papers that on
4 that same date, on 10th December 2012, there was an
5 Employee Assistance Committee meeting, and if we can 15:20
6 just bring up the minutes for that, at page 3278. If
7 we just scroll down. The Employee Assistance
8 Committee. You see there:

9

10 "Meeting - 10/9/2012." 15:20

11

12 Can you see that, inspector?

13 A. Yes.

14 558 Q. Can you just tell the Chairman first, what is the
15 Employee Assistance Committee? 15:20

16 A. Well, it's basically meetings that were held every
17 month. It's for the welfare of members on duty and off
18 duty, people who have sickness or injured. It's
19 basically the welfare of all concerned. And retired
20 members as well. 15:20

21 559 Q. We see there the attendees, and you're one of the
22 attendees, is that right? Are they the normal
23 attendees?

24 A. They are. It's always chaired by the chief, and you
25 have Superintendent Comyns, the inspector. I had 15:21
26 responsibility for that, that's why I would be there,
27 Morgan Landy is the welfare officer and John Conway
28 would have been a detective in Fermoy, who is retired,
29 he would be on behalf of the retired members, if some

1 retired member had a problem, he would bring it to the
2 table for us to try and help.

3 560 Q. If you just scroll down there, please, Mr. Kavanagh.
4 It says:
5
6 "Sick members: Discuss membered members on long-term
7 sick."
8
9 And one of them is Sergeant Paul Barry.

10 A. Yeah, I see the name there. 15:21

11 561 Q. Can you tell the Chairman a little bit about that
12 meeting. I mean, you had just met him a couple of days
13 previously and he had said he wouldn't discuss his sick
14 leave with you. He was obviously discussed at this
15 meeting? 15:21

16 A. I wouldn't remember exactly what was said at that
17 meeting, but if his name is mentioned there, it
18 obviously came up and it would come up, because anybody
19 who was out sick, it would be discussed.

20 562 Q. But can you tell us anything about the discussion? 15:21

21 A. No.

22 563 Q. I mean, he had obviously just said a couple of days
23 earlier he wouldn't discuss --

24 A. I would probably have said the same thing at the
25 meeting, that he had declined to discuss the issues 15:22
26 with me. And I would have been none the wiser, so I
27 couldn't bring any more information to that meeting.

28 564 Q. Okay. With regard to outcomes of meetings such as
29 this, was there any outcome, any plan, any decision

1 made in relation to Sergeant Paul Barry at that stage?
2 A. I would say not, because nobody knew what -- nobody
3 knew what was going on and what was going to happen.
4 Mr. Barry had not discussed his issues with anybody at
5 the time. So I don't think they could preempt the 15:22
6 issues.

7 565 Q. Okay. But I think just on the basis of your direct
8 evidence there, you really are not in a position to
9 assist the tribunal as to what exactly what was
10 discussed in relation to Sergeant Barry? 15:22

11 A. Oh no, I wouldn't. But I would say it wouldn't have
12 been discussed that long, he's not that long out sick
13 at the time and he has declined to discuss the issues
14 with me. So I don't think I could have brought too
15 much information to the meeting. 15:22

16 566 Q. Okay. Now, you go on to say, after you have given that
17 report on the 10th September, you say in your interview
18 to the tribunal investigators, at page 5333, that you
19 received no further instructions from Superintendent
20 Comyns or Chief Superintendent Dillane with regard to 15:23
21 progressing the investigation into the cause of
22 Mr. Barry's work-related stress, is that right?

23 A. That's correct. I suppose I couldn't do any more. I
24 went to meet him on the 4th September 2012, he said he
25 didn't want me to have anything to do with it, he 15:23
26 wanted to discuss it with somebody else outside of
27 Fermoy Garda Station. So I didn't expect to be doing
28 any more with it.

29 567 Q. So in relation to the HQ Directive 139/10, that's where

1 it stopped, is that right, as far as you were
2 concerned, is that your evidence?

3 A. As far as I am concerned, yes. But I complied with HQ
4 139/10. I met had man in Watergrasshill. And again I
5 say to the tribunal, he said he didn't want anything to 15:23
6 do -- he didn't disclose his issue. He said he had
7 some issue with Superintendent Comyns. He wanted
8 somebody outside of Fermoy district Garda to
9 investigate it because all three of us were in the one
10 building, the chief super and the inspector. 15:24

11 568 Q. Now, we know from the papers that after this date you
12 would have met Paul Barry on a number of occasions, is
13 that right?

14 A. Sorry, I missed that.

15 569 Q. After the 10th September, you would met Mr. Barry on a 15:24
16 number of occasions?

17 A. Yes, I would have delivered documentation. If there
18 was something to be delivered to Mr. Barry, I would
19 ring him and I'd meet him and deliver the documents to
20 him. And there was never any issue. 15:24

21 570 Q. Okay. Now, we have dates of the 30th September 2012,
22 the 7th November 2012, the 5th December 2012, and these
23 are all meetings where, as you say, you were updating
24 him or delivering documents, is that right?

25 A. Something that had -- I would ring Mr. Barry, there was 15:24
26 no issue at the time with, I'd ring Mr. Barry, say to
27 him I had such a thing, and I would meet him wherever
28 we met.

29 571 Q. Okay. So did you see your role as simply keeping him

1 updated? I mean, would you accept Mr. Barry's
2 proposition that this wasn't a work-related stress
3 investigation that was going on or anything to that
4 effect?

5 A. You see, I can't comment on that at the moment, because 15:25
6 my answer is: The HQ 139/10 asked me to investigate
7 Mr. Barry's work-related stress. I believe I did every
8 effort to do that. I met him in Watergrasshill on the
9 4th September 2012, and he told me he wasn't discussing
10 the issue with me. 15:25

11 572 Q. But I suppose what I am asking you to clarify,
12 inspector, is that whilst you were meeting him, it was
13 more in the nature of updating him from time to time?

14 A. Oh yeah, I was delivering documents, I was updating
15 him, I accept, I had nothing more to do with the 15:25
16 investigation into his alleged stress.

17 573 Q. Okay. Now, on the 8th January 2013 you met him, this
18 would have been before he returned to work. If we can
19 just open this, at 5374. Now, this is a report, it's
20 dated 9th January 2013, and it's to the chief 15:26
21 superintendent, Cork North, and this is from you, isn't
22 that right?

23 A. Yes.

24 574 Q. And you say --

25 A. Yeah. 15:26

26 575 Q. Second line there: "I wish to report that I met
27 Sergeant Paul Barry on 8/1/2013 by appointment. I
28 advised him of the content of this report."
29

1 That was a report from HRM, isn't that right?

2 A. That's correct. And Mr. Barry would have told me to
3 make sure to include that and anything he asked me to
4 do, I did it

5 576 Q. Okay. You say: 15:26
6
7 "In relation to non-medical issues, Sergeant Barry
8 requested me to include the following: The delay in
9 the investigation and the prospect of half pay from
10 February 2013 is causing me considerable stress and 15:26
11 anxiety, my illness is still not classified despite my
12 full cooperation with chief medical officer, Human
13 Resource Management and the investigation team."
14

15 So, would you accept that on the 8th January he is 15:26
16 telling you that he is under considerable stress?
17 A. That's what he told me, to include it in the report,
18 and I did.

19 577 Q. I assume there were more Employee Assistance Committee 15:27
20 meetings after this, would that not be normal course?
21 A. They would be, there would have been meetings on a
22 regular basis but Mr. Barry asked me to include that
23 and I included it.

24 578 Q. Okay. Did you see your role in any respect as bringing 15:27
25 this to the attention of anybody else, the Employee
26 Assistance Committee or welfare officers, did you see
27 your role in that regard?
28 A. I suppose again, I find myself a very independent
29 person, I was appointed to investigate it, Mr. Barry

1 did not give me any information. From the outset he
2 didn't want me investigating it. So I suppose there's
3 little more I could do.

4 579 Q. But I am asking you, did you do anything with this
5 information? 15:27

6 A. Oh.

7 580 Q. Other than report it up?

8 A. Mr. Barry asked me to include that in my report, that's
9 what he asked me and that's what I did.

10 581 Q. Okay. So just from a local management perspective, had 15:27
11 you been appointed before on previous occasions for
12 other members --

13 A. Yeah. Well a few times, yeah.

14 582 Q. Okay. Had you ever come against this problem, where it
15 just ran into the sand? 15:28

16 A. No.

17 583 Q. This was the first time?

18 A. First time. And I would have probably did four or five
19 of them in the division.

20 584 Q. Okay. Would you agree but from a local management 15:28
21 perspective, the work-related stress investigation
22 never got off the ground effectively?

23 A. Well, I can't comment where it went then, but all I can
24 say in relation to myself, I tried my best. Mr. Barry
25 would be a friend of mine, he wouldn't cooperate with 15:28
26 me. And he had his reasons, he said the chief, the
27 super and you work in the one building, and he wanted
28 somebody outside of Fermoy to investigate it.

29 585 Q. Okay. Now, if we can move on to the next issue, it's

1 issue 3E. This is an allegation of targeting. I will
2 just read out the wording of it. It's an allegation
3 against Superintendent Comyns and Chief Superintendent
4 Dillane on the issue paper and issue 3E says:

5
6 "By causing Inspector O' Sullivan to attend at
7 Mitchelstown Garda Station in full uniform at
8 approximately 9pm on a date between 29th March 2013 and
9 9th April 2013 and request Sergeant Barry to provide a
10 return to work certificate."

15:28

15:29

11
12 Okay. So, inspector, that's the next issue I want to
13 ask you some questions about.

14 A. Yes.

15 586 Q. Yes. In your statement to the tribunal at page 5335,
16 you give the date as being 29th March 2013, is that
17 your recollection?

15:29

18 A. It is.

19 587 Q. Okay. And that was the date that he returned to work
20 at half past eight that evening?

15:29

21 A. I believe that's the date he returned to work.

22 588 Q. Do you know what time you were there that evening?

23 A. I would have said it was -- I thought it was earlier,
24 but if he says it was half past eight. I did adult
25 cautions in Charleville, it was a bank holiday, it was
26 Good Friday, I did adult cautions in Charleville first,
27 because there was no inspector attached to Mallow, I
28 went to Mallow garda station then and cutting across
29 country for me, I accidentally bumped into Mr. Barry in

15:29

1 Mitchelstown Garda Station that evening.

2 589 Q. Okay. And you say in your statement you were not in
3 full uniform, you were without the Garda cap, with an
4 ordinary anorak over your garda shirt, is that right?

5 A. I was never in full uniform. And I will say this: I 15:30
6 was seven years in Dublin prior to going down to the
7 country, we never wore a uniform in the car. For
8 obvious reasons, someone may make a complaint, and any
9 time I get into a car, my epaulettes and my tie will
10 go into the dash and I will either have a hoodie, a 15:30
11 light anorak on me, and when I went in to Mr. Barry
12 that evening, I was not in full uniform with a cap or
13 jumper or jacket. I was doing adult cautions, I
14 wouldn't even have a cap with me.

15 590 Q. Now, we know that he came back to work at 8.30 that 15:30
16 evening, so it must have been after that, is that
17 right?

18 A. It was around that time, so we'll say nine o'clock.

19 591 Q. You said yourself at the outset of your evidence you're
20 very rarely in Mitchelstown but you happened to be 15:30
21 there that evening, is that right?

22 A. It would be a route home from me from Mallow to where I
23 live. So if I come back from Mallow, come through
24 Kildarby, the next town would be Mitchelstown, I'll go
25 straight across the road and head for home. 15:31

26 592 Q. Well, you see, it is Mr. Barry's position that you came
27 there to ask him for a medical certificate?

28 A. I didn't. But I would have known when Mr. Barry was
29 back that he would need a certificate to come back,

1 because I knew he had been off sick. And I did say to
2 him, you will require a medical certificate.

3 593 Q. Now, he accepts there's nothing improper in you asking
4 for a medical cert and he has accepted that in his
5 evidence. But, as I say, he is of the position that 15:31
6 you came there for that purpose. And is it your
7 evidence to the Chairman that you did not, it was
8 happenstance?

9 A. Chairman, I accidentally bumped into Mr. Barry that
10 evening in Mitchelstown Garda Station. Nobody told me 15:31
11 to go there.

12 594 Q. Now, in his direct evidence he says he had a
13 conversation with you, and this is at Day 176, and it's
14 at page 57-58, just for the transcript, he says that he
15 had a conversation with you and you said to -- this is 15:32
16 his statement, that "He said, you're going to have to
17 have a certificate if you want to go back to work on
18 full pay because you will stay on half pay otherwise."
19 Do you accept or reject that?

20 A. Sorry, could you repeat that again for me, please? 15:32

21 595 Q. He said, as in you, "You are going to have to have a
22 certificate if you want to go back to full pay because
23 you will stay on half pay otherwise." Do you remember
24 saying that?

25 A. No, I did not. I told him he would require a 15:32
26 certificate, a medical certificate. And I would be
27 aware of that in my service, if somebody had been out,
28 you cannot arrive back without a medical certificate.
29 And there was no discussion about half pay. I was glad

1 to see Mr. Barry back because I knew there was an issue
2 about half pay.

3 596 Q. He also says that he told you that the general
4 practitioner wouldn't give him a certificate unless
5 what she wants is in it. I am going to quote this, he 15:32
6 said, and he attributes this to you, that you said:
7
8 "Whatever conditions she wants she can put in her
9 cert."
10 15:33

11 Do you remember that?

12 A. That didn't happen. That is similar to the last one
13 you asked me about giving advice on an off the record,
14 that the inspector said stay out as long as -- whatever
15 you say said earlier, stay out as long as -- until it's 15:33
16 sorted. Mr. Barry never discussed conditions with me
17 that evening and I certainly would not be one advising
18 anybody to put in conditions. I don't think I ever saw
19 conditions on a medical certificate, unless light
20 duties. But I certainly didn't advise him to put in 15:33
21 any conditions in that medical certificate.

22 597 Q. Now, one thing I should have asked you just a moment
23 ago is, the terms of the ground at issue E is that you
24 were caused to attend at Mitchelstown Garda Station in
25 full uniform. I think Mr. Barry accepted on Day 180 15:33
26 that Superintendent Comyns had no role in directing you
27 to attend. Did anybody else have any role in directing
28 you to attend that night?

29 A. What date? The 29th March, is it?

1 598 Q. Yes.

2 A. No, nobody. I accidentally bumped into Mr. Barry that
3 evening. And I was delighted to see him back.

4 599 Q. Now, Mr. Barry says that there was nothing improper in
5 your request for a medical cert, but he does call it an 15:34
6 inspection that night. What do you say to that?

7 A. I shared an office with Mr. Barry for seven years,
8 seven and a half years, he knows well it wasn't an
9 inspection. I did not inspect Mr. Barry.

10 600 Q. In particular, he said in his direct examination on Day 15:34
11 176, and also in his cross-examination on Day 178, that
12 it was because it was at the commencement of his tour
13 of duty you arrived unannounced, that you could have
14 phoned him and it was in the manner in which all of
15 that happened that he sees it as an inspection, what do 15:34
16 you say to that?

17 A. That's for 29th March?

18 601 Q. On the 29th March, yes?

19 A. I didn't know Mr. Barry was there, so I couldn't have
20 rang him, sorry. 15:34

21 602 Q. He also says in his documentation to the tribunal, he
22 said "I was never inspected by a chief superintendent
23 or an inspector" in his career until that night, so
24 what do you say to that?

25 A. No, I think that relates to the 9th April 2013. 15:35

26 603 Q. Well I think he also attributes an inspection to this
27 encounter with you?

28 A. Okay. But on the 29th March I was on my own, not in
29 uniform, accidentally meeting, wasn't aware that

1 Mr. Barry was back at work.

2 604 Q. Okay.

3 A. That's the 9th March. That's the Good Friday.

4 605 Q. The 29th March?

5 A. Bank holiday. 15:35

6 606 Q. Okay. Now, the next issue that I'd like to ask you
7 some questions about is issue 3F. And again it's an
8 allegation of targeting or discrediting against
9 Superintendent Comyns and/or Chief Superintendent
10 Dillane. And the language of the issue is: 15:35

11

12 "By causing Inspector O' Sullivan to make inappropriate
13 enquiries from Sergeant Barry's general practitioner
14 Dr. Margaret Kiely on the 5th April 2013."

15 15:35

16 Okay, inspector, so I just want to ask you about that
17 particular issue. Now, as you've just said, on the
18 29th March you met Mr. Barry and you asked him for a
19 certificate?

20 A. That's correct. 15:36

21 607 Q. Okay. In your statement you say you also phoned him on
22 the 3rd April looking for a medical certificate?

23 A. I did, because I think the certificate hadn't come in
24 and Chief Dillane may have asked me, and I know where I
25 was, I was in Funderland in Cork when I rang him, with 15:36
26 my kids.

27 608 Q. Okay. On the 4th April it comes in and I think it's
28 Sergeant Barry's position that Garda Ward took it up to
29 the district office in Fermoy on the 4th April, and

1 that you got it around four o'clock, is that right?

2 A. I would say it was left in my tray in the public
3 office, that's my recollection of it, and I opened it
4 and brought it up to the chief.

5 609 Q. Okay.

15:36

6 A. That's my recollection. In any event, a medical
7 certificate arrived in Fermoy Garda Station on the 4th
8 April 2013, of a Thursday.

9 610 Q. Okay. Now, we do have details in your documentation
10 about your discussions with Chief Superintendent
11 Dillane, but can I ask you this: When Superintendent
12 Comyns was giving his evidence on Day 182, he said he
13 spoke to you on the 4th April about the medical cert
14 that had come in and he spoke to you on the 5th April
15 about the medical cert that this come in, do you
16 remember those conversations?

15:36

15:37

17 A. I missed that, sorry.

18 611 Q. This is Superintendent Comyns. So, you are saying that
19 you took it to straight to the chief superintendent.
20 Do you remember having conversations with
21 Superintendent Comyns about the medical certificate?

15:37

22 A. On the Thursday evening, maybe I did. I thought I got
23 the certificate in my post in the public office, I had
24 a post locker there, and I certainly got -- I certainly
25 had the certificate in my hands on the 4th April, the
26 Thursday. And maybe Superintendent Comyns was there.
27 I know I spoke to Chief Superintendent Dillane, and if
28 Superintendent Comyns says he spoke to me about it, I
29 accept that.

15:37

1 612 Q. Okay. Can you help the tribunal as to the nature of
2 the conversation? Now we're saying with Superintendent
3 Comyns.

4 A. It was my understanding from the certificate, it was my
5 understanding from the certificate, it was Chief 15:38
6 Superintendent Dillane had the discussion with the
7 about the certificate and it was he told me to go to
8 Dr. Kiely.

9 613 Q. Yes, but, inspector, I am asking you, can you assist us
10 in the conversations you had with Superintendent Comyns 15:38
11 about the cert?

12 A. I have no recollection of that.

13 614 Q. Okay. So you spoke with the chief superintendent that
14 evening, isn't that right?

15 A. Yeah. 15:38

16 615 Q. So you're on the 4th April at this stage?

17 A. That's correct.

18 616 Q. It's your position in your statement to the tribunal
19 that you were asked or instructed to go to the general
20 practitioner the following morning, is that right? 15:38

21 A. That's correct.

22 617 Q. Okay. I think on Day 180, Mr. Barry accepted that
23 Superintendent Comyns had no role in directing you to
24 visit the GP, is that right?

25 A. That is correct. I have no recollection of speaking to 15:38
26 Superintendent Comyns. It was Chief Superintendent
27 Dillane I spoke to in relation to the certificate, and
28 he asked me to call to the doctor. And I did.

29 618 Q. Okay. So you'll agree, if you have been listening to

1 the evidence you'll realise there is an issue as to
2 what you were directed to go to her about. Do you
3 accept that?

4 A. Yeah, there is, yeah, maybe --

5 619 Q. Effectively what you were directed to check? 15:39

6 A. Well, the chief would have said -- number one, the
7 certificate was dated 4th April 2013, that was crossed
8 out with a biro and changed to the 28th March.

9 620 Q. Well, if we can just take it step-by-step, inspector.
10 Can we look at the medical certificate of the 4th 15:39
11 April, at 5345. Okay. Do you see there at the top
12 left-hand corner, 1, 2 and 3, signature, amendment,
13 receptionist, is that your writing?

14 A. Yeah, that's my writing.

15 621 Q. Okay. So start at the beginning. Why did you write 15:39
16 those three comments on the medical certificate?

17 A. Well, the signature, I suppose I just see the
18 signature, most doctors you cannot read the signature,
19 but for some reason I put signature on it as well.

20 622 Q. Okay. Can we look at the signature. I think this 15:40
21 wasn't the first medical certificate from this doctor
22 from Mr. Barry. Was there a particular reason why this
23 particular signature was in issue?

24 A. I think that's -- no, that's my own writing. That's
25 what I say, maybe I said something about the signature. 15:40
26 There was never any issue about the signature being a
27 forgery.

28 623 Q. Well now, can we just start at the beginning, you wrote
29 signature, why did you writing signature, question

1 mark?

2 A. I'd say because I had never seen a doctor's certificate
3 that the date was changed without it being initialed
4 and I was looking down at the signature then and I
5 couldn't make Kiely out of the signature. 15:40

6 624 Q. But do you accept -- are you telling the Chairman you
7 questioned the bona fide of the signature, is that what
8 it meant?

9 A. No, not the bona fide. There was no issue with that
10 when I called to the doctor. I think it was the 15:40
11 wording of the certificate. There was no issue about
12 the signature being a forgery.

13 625 Q. If we just stay with the signature, it's number 1, you
14 have written it down, do you have a difficulty with the
15 signature on the document, or is it somebody else who 15:41
16 has a difficulty? Is it you?

17 A. No, no, it's not. That is my writing and if I wrote
18 down signature, that is me. And I see it does probably
19 go -- if you look at it now, it is i-e-l-y at the end
20 of it, but I think that I would have expected maybe 15:41
21 initials below the date which was changed. That is my
22 writing, that's what I put in myself. Maybe when I got
23 the job to do I wrote that on it myself before I headed
24 up there.

25 626 Q. You write at number 2, amendment? 15:41

26 A. Yeah.

27 627 Q. Why did you write that?

28 A. Because the date was changed.

29 628 Q. Okay. And then you write at number 3, receptionist,

1 what does that mean?

2 A. Maybe I was gathering that the receptionist changed the
3 date on it, I don't know. But that is my writing.

4 629 Q. Okay. Did you see these as the three things you wanted
5 to query? 15:41

6 A. No. I think I had never seen a certificate saying that
7 somebody couldn't -- is fit for work, he can attend
8 work but he cannot enter the workplace, which was
9 Fermoy Garda Station.

10 630 Q. I am just asking you, sorry now, inspector, I am just 15:42
11 asking you about the three things you have noted, are
12 these your queries, yes or no?

13 A. Oh they are, but I think you could probably add number
14 4, that I said as well. But the chief superintendent
15 would have asked me to check out was that certificate 15:42
16 issued by the doctor and what she meant by it, and
17 that's what I done.

18 631 Q. Okay. But again, just to be clear on your evidence,
19 those three issues you have noted are your issues, has
20 anybody told you to write them down? 15:42

21 A. No.

22 632 Q. Did this come from anyone else or just from yourself?

23 A. No, I think would I have jotted them down before I went
24 into the doctor's myself, because I was the one making
25 the query. 15:42

26 633 Q. Okay.

27 A. And that's my writing. Nobody asked me to do it. That
28 is my own writing.

29 634 Q. Okay. Now, if we can just look at your statement. If

1 you wouldn't mind opening this up please, Mr. Kavanagh,
2 5335. If I have the right -- sorry, if you just go
3 back up there, please. All right. You see there in
4 that paragraph in the middle there:

5
6 "I was instructed by Chief Superintendent Dillane to
7 call to Dr. Margaret Kiely at the Glanmire Medical
8 Centre to check the validity of the medical
9 certificate."

10 A. Yeah.

11 635 Q. Do you see that?

12 A. Yeah.

13 636 Q. You go on to say "The doctor's signature wasn't legible
14 and the date of issue had been amended by biro from
15 4/4/13 to 28th March 2013".

16 A. That's correct.

17 637 Q. So you were directed to check the validity of the
18 medical certificate. Can you just tell the Chairman
19 what you meant by that or what you understood was meant
20 by that?

21 A. It was always my understanding that it wasn't a forged
22 certificate and Mr. Barry would not do that. I know
23 Mr. Barry, he would not do something like that. But I
24 think the certificate arrived into the garda -- I had
25 never seen a certificate like that, and I'm 35 years in
26 the guards now, even at that time I had never seen a
27 certificate like it and I think that the chief was
28 trying to find out what are we going to do with this.
29 We have a sergeant who is deemed fit for work by his

1 doctor, he can attend work but he cannot enter his
2 workplace. I think that was the reason the chief
3 decided to check out the certificate.

4 638 Q. But essentially were you checking was the certificate
5 issued by her? Is that what you were checking?

15:44

6 A. I think the issue, and I go back again to -- I never
7 saw, and a lot has passed through my hands, I never saw
8 a medical certificate with the dates changed on it with
9 biro without being initialed by somebody, just left
10 blank. That's like I getting a certificate, changing
11 it to the week before, just for argument's sake. I had
12 never seen one, and that's my writing in relation to
13 the signature and I must have been deemed -- why wasn't
14 it initialed, is that the same signature. But as
15 regards a forgery, no, that never came into my head.

15:45

15:45

16 639 Q. Okay, to be clear to the Chairman, were you instructed
17 to go out and see was the significant issued by the
18 doctor?

19 A. I suppose Chief Superintendent Dillane, I can't speak
20 for him, didn't know what to do with a certificate that
21 arrived to him, that I believe I showed him on the
22 Thursday evening, he didn't know what to do with it,
23 this man is fit for work but he can't enter the
24 workplace. And I suppose he said to go and check the
25 certificate. But it was never an issue about it being
26 a forged certificate, if that's what you mean, it was
27 never an issue.

15:45

15:45

28 640 Q. But the question I asked you is, were you directed --
29 you were directed to check the validity of the medical

1 certificate and I am asking you, were you instructed to
2 ask was the certificate issued by her?

3 A. I suppose along the lines that basically you cannot
4 enter the work, you're fit to work and you cannot enter
5 the workplace. And I asked Dr. Kiely was that the 15:46
6 certificate and I suppose when I brought it back to the
7 chief, at least he knows this certificate says this man
8 can't come into the building.

9 641 Q. Well, look, if we can just move down a little bit
10 there, and if you go down there to "I informed her at 15:46
11 the outset", this is when you go to visit the doctor.
12

13 "I informed her at the outset I wasn't there to discuss
14 any matters of patient confidentiality, just to clarify
15 the contents of the medical certificate were correct." 15:46

16 A. Yeah, that the person couldn't enter the building.

17 642 Q. "Dr. Kiely informed me it was a valid certificate
18 issued by her."
19

20 Is that right? 15:46

21 A. That's correct.

22 643 Q. "On the 4/4/2013, albeit it was dated 28th March 2013."
23

24 You say you thanked her and you went back and advised
25 Chief Superintendent Dillane the medical certificate 15:46
26 was valid.

27 A. Correct.

28 644 Q. So again I am asking you, do you mean that the medical
29 certificate was issued by her?

1 A. It's the content of the certificate.

2 645 Q. Now, can I ask you to look at your interview with the
3 tribunal investigators, and in particular you're asked
4 about this issue by the investigators, 5326, please.
5 And you're asked there in the middle, I mean, we will 15:47
6 be coming back to this again, but you're asked there in
7 the middle of the page:
8
9 "I have been asked to detail my interactions with
10 Dr. Kiely on this matter." 15:47
11
12 And you say:
13
14 "I was there for ten to 15 minutes and I told Dr. Kiely
15 I was asked to make an inquiry as to whether the 15:47
16 certificate was valid or not. I asked was it issued by
17 Dr. Kiely, as the date had been changed and she had no
18 issued, she confirmed it was valid."
19 A. That's correct.

20 646 Q. So can we agree that that seems to suggest that you 15:48
21 were asking was this certificate issued by her?
22 A. The contents of the certificate. But she said, I
23 issued that certificate and it's valid. But I think it
24 was the contents of the certificate, and also the date
25 was changed in the certificate and it wasn't initialed. 15:48

26 647 Q. I think in plain -- inspector, we can move on from
27 this, but "I asked was it issued by Dr. Kiely, as the
28 date was changed", is that right?
29 A. Yeah, and she clarified, yeah, I did issue that

1 certificate.

2 648 Q. Now, if we can look at the doctor's own records in
3 relation to your meeting on the 5th April, it's at
4 4773. There's a note there for the 5th April, if you
5 just go down, she says:

15:49

6

7 "Inspector Anthony O'Sullivan called to surgery to
8 speak with me, wanted to check medical letter stating
9 fit to work was from me as had not put the date of
10 return to work on it."

15:49

11

12 Do you see that?

13 A. Yeah, I do.

14 649 Q. So again, you're asking was it from her, as the date of
15 return to work had not been put on it. That's a little
16 bit different to what we said so far.

15:49

17 A. That's what Dr. Kiely said.

18 650 Q. Okay. This is her note, that you asked, was it from
19 her, as she had not put the date on it. "Aware I
20 cannot speak about the patient. He said, I am just the
21 middleman, I am friends " that should I think read I'm
22 friends with Paul, "Said the chief medical officer will
23 phone me as he feels the letter will not be accepted."
24 Is that an accurate account of the conversation with
25 the doctor?

15:49

26 A. I had no recollection of saying that I'm friends with
27 -- I never would have been friends with Paul and I
28 still am friends with Paul, I hope. As being saying
29 I'm the middleman, I've no recollection of saying that.

1 651 Q. Do you think you could have said that?
2 A. I possibly could, because I was delivering documents to
3 Paul.
4 652 Q. Now, can I look at the report you did next after this
5 meeting with Dr. Kiely, it's the 5th April 2013, that's 15:50
6 5353, please. Okay. So you say:
7
8 "With reference to the above and your instructions on
9 4/4/2013, I called to Dr. Margaret Kiely at Glanmire
10 Medical Centre on 5/4/2013 in relation to the medical 15:50
11 certificate submitted by Sergeant Paul Barry on
12 4/4/2013. I informed Dr. Kiely that I wasn't there to
13 discuss any matters of patient confidentiality and only
14 to discuss the validity of the medical certificate.
15 Dr. Kiely informed me that it was a valid certificate 15:51
16 issued by herself on the 4/4/2013, albeit it was dated
17 28th March 2013. "
18
19 Now, you seem to then go on and deal separately:
20
21 "I queried the work related conditions attached to the 15:51
22 medical certificate but she declined to discuss them."
23
24 Is that right?
25 A. I think the content of the certificate was pointed by 15:51
26 me.
27 653 Q. Okay. So would you agree that there are two separate
28 issues there in your report: the validity of the
29 certificate and then the conditions? would you accept

1 that that is a fair reading of your report?

2 A. I would, I would accept that, that definitely there was
3 a reference to the contents of the medical certificate.

4 654 Q. Now can I ask you that, you will have seen the
5 statement that came in there just during the course of 15:51
6 the hearings from Dr. Kiely, she describes herself as
7 being slightly unnerved by the formal visit in full
8 uniform. Did you see that, inspector?

9 A. I did. However, on the 4th April, just the notes that
10 you showed me, when I went to Dr. Kiely that day, it 15:52
11 was a Friday, I had court in Fermoy and I knew I had to
12 be back for 10.30. I arrived at the reception in the
13 doctor's. I wasn't in full uniform. Again I was
14 dressed up like the adult cautions and I went over to
15 the receptionist and I asked her, I said I'm a guard, 15:52
16 I'm checking about a medical certificate. And maybe
17 ten or 15 minutes had gone on and basically I hadn't
18 seen Dr. Kiely and I went over again to the
19 receptionist and I said, look, if she can't see me, I
20 am going to come back again because I have to be in 15:52
21 Fermoy by half past ten. And in fairness to Dr. Kiely
22 she came over to me about three or four minutes after
23 that and called me in.

24 655 Q. Can we just open her statement at 5671. I am sure
25 Dr. Kiely will be asked about this in due course. So 15:52
26 this is the second page, 5671, if you just go down a
27 little bit further Mr. Kavanagh. So you see there, you
28 say that you present in full uniform at the reception,
29 she took you into her office? Do you see that?

1 A. Yeah.

2 656 Q. If you just go on to the next paragraph?

3 A. I do, I see it.

4 657 Q. Mr. Kavanagh, if you just go on to the next paragraph?

5 A. Yeah. 15:53

6 658 Q. It says:

7

8 "On that day I remember being slightly unnerved by the

9 visit as it was highly unusual to receive what seemed

10 to be a formal visit by a member of An Garda Síochána 15:53

11 to query the validity of a medical certificate."

12

13 Is that what it was in effect, inspector?

14 A. I don't believe it was. I wasn't in full uniform.

15 And, as I said to the tribunal, if I was in full 15:53

16 uniform I wouldn't be going over to a receptionist and

17 saying I'm a guard. I wasn't in full uniform, and that

18 can be put to Dr. Kiely, and I am not a person that

19 would go into any doctor's surgery in full uniform,

20 while patients would be looking at what is he here for. 15:54

21 I was not in full uniform that day and I don't

22 believe -- now, Dr. Kiely has said this in May of this

23 year, that I was unnerved or that she seemed unnerved.

24 Certainly she swept onto the next patient, she didn't

25 seem unnerved to me. 15:54

26 659 Q. She said:

27

28 "I remember feeling annoyed as in my opinion the visit

29 seemed inappropriate."

1 A. She didn't show any annoyance to me, I'd be very sure
2 of that.

3 660 Q. I think you were asked by the investigators for the
4 tribunal had you any concerns about the appropriateness
5 of your enquiries and you said "I hadn't really". Can 15:54
6 I ask you this: Had you ever made similar enquiries in
7 respect of any other member, any other medical
8 certificate in the course of your career?

9 A. I hadn't, but I suppose I would reiterate again, that
10 was 2013, so I had 26 years in the guards at that time, 15:54
11 I had never seen a medical certificate like it, I have
12 never seen one since that or before that, and I suppose
13 I didn't see an issue about what I asked Dr. Kiely, I
14 said about patient confidentiality, I didn't see an
15 issue. And actually, Dr. Kiely had no issue on that 15:55
16 day with me. That's my understanding.

17 661 Q. So is it your evidence to the Chairman that this
18 situation which arose was very unique to Mr. Barry?

19 A. Well, I certainly had never seen one before anyway.

20 662 Q. Okay. 15:55

21 A. I genuinely had never seen one.

22 663 Q. No, what I am asking you, inspector, is your role and
23 your instructions to visit the general practitioner,
24 was that unique to this particular case?

25 CHAIRMAN: Absolutely. 15:55

26 A. Yeah, I hadn't seen it, Chairman.

27 CHAIRMAN: He says it never happened before in
28 20-something years.

29 A. It didn't, Chairman. And I think the chief

1 superintendent asked me because he couldn't ask
2 obviously Superintendent Comyns to go up to the doctor.
3 He had a case with a certificate in front of him: This
4 man is fit to come to work, however he can't come into
5 your building.

15:55

6 CHAIRMAN: Don't tell me again. As a judge used to
7 say, I got that the second time.

8 THE WITNESS: Sorry, Chairman.

9 664 Q. MS. McGRATH: If we can move on to the next issue, it's
10 issue 3G. And again this is an allegation of targeting
11 or discrediting by Superintendent Comyns or Chief
12 Superintendent Dillane, and it's "by confronting
13 Sergeant Barry in the car park of Mitchelstown Garda
14 Station on the 9th April 2013". Now, you have
15 outlined the details of this in your statement and in
16 your interview with the investigators, and you said you
17 came from your home that night and that you were in the
18 car park in Mitchelstown Garda Station in Chief
19 Superintendent Dillane's car, is that right, when
20 Mr. Barry arrived?

15:56

15:56

15:56

21 A. That's correct.

22 665 Q. Okay. And you say you came from your own house and you
23 say that he had asked you to be there with him, is that
24 right?

25 A. That's correct.

15:56

26 666 Q. Can you remember why he outlined that you were
27 required?

28 A. He had said to me that he had been at a case conference
29 in relation to Mr. Barry, or Sergeant Barry, and he

1 asked me would I attend Mitchelstown Garda Station with
2 him that night at 9pm and I said I would.

3 667 Q. Okay. Now there's two things I just want to ask you
4 about, there is a dispute of fact in relation to
5 whether the chief superintendent was in full ceremonial 15:57
6 uniform, is that right?

7 A. Again, no, he wasn't in a full ceremonial uniform,
8 meaning the Sam Browne belt. I think there is a
9 confusion in relation to that. He did not have a Sam
10 Browne belt. I saw Chief Superintendent Dillane only 15:57
11 once with a Sam Browne belt on him and that was at the
12 Kent memorial in 2016 in Castlelyons. So it wasn't.
13 What I actually thought he had on was a blue shirt,
14 what I would say half blue, and a blue anorak. Maybe
15 he had a garda jumper. But we certainly weren't -- 15:57
16 what I class as full uniform is, you know, is full
17 battle dress, there was no Sam Browne.

18 668 Q. And is that a categorical position? I think you say in
19 your interview that, I'm almost a hundred percent sure
20 to the best of my recollection? 15:57

21 A. That was an error on my part, Chairman. I meant I was
22 sure that he was in full uniform, meaning had he --
23 what attire had he, but he wasn't in full battle dress,
24 being the Sam Browne. And I'm 110% sure Mr. Dillane
25 did not have a Sam Browne belt on him. Once is all I 15:58
26 saw that man in a Sam Browne belt, and I remembered it.

27 669 Q. Okay. Now, it's also part of Mr. Barry's position to
28 the tribunal that he saw this as an inspection that
29 night, what do you have to say about that?

1 A. Again, it wasn't an inspection. Mitchelstown Garda
2 Station, I suppose to explain it, it's not open at
3 nighttime, Mr. Dillane had got documents from Dublin
4 and wanted to discuss issues with Mr. Barry and the
5 only time he could meet Mr. Barry was when the units 15:58
6 would be starting at nine. If it was ten past nine or
7 if he was a quarter past nine, they could be gone to a
8 call, it might be an hour before they come back. He
9 wouldn't have any access to the garda station. And I
10 think that would be the normal time, they'd be there 15:58
11 when they begin to work and they'd walk in the door
12 with him. There was no inspection. He had documents,
13 he had to meet Mr. Barry.

14 670 Q. Now, Mr. Barry describes it as in effect an ambush, and
15 that was the language he used on -- 15:59

16 A. It wasn't.

17 671 Q. -- Day 176?

18 A. It wasn't an ambush. Mr. Dillane had documents to give
19 to Mr. Barry and the only way Mr. Dillane saw he would
20 do that was to meet Mr. Barry in Mitchelstown Garda 15:59
21 station and he asked me to go with him. It was no
22 ambush. We got out of the car and we spoke. There was
23 no ambush or there was no ceremonial uniform or full
24 battle dress with the Sam Browne.

25 672 Q. Now, another dispute of fact on the issues is one of 15:59
26 your notes, now I think you say in your documentation
27 to the tribunal you did not make a notebook entry of
28 this incident, is that right?

29 A. I didn't. I didn't think I'd be up here nine years

1 later either, probably would have had if I did.

2 673 Q. would it be standard that you would make a note?

3 A. It wouldn't have been normal to take notes, maybe
4 officers, supers or chiefs would take notes wherever
5 they go, I saw myself as being more operational, 15:59
6 working with the lads and the girls in the force. I
7 didn't take notes in any event.

8 674 Q. Now, Chief Superintendent Dillane did make a note of
9 the conversation that night, I don't know if you have
10 seen it in the papers, it's at page 2078. We just 16:00
11 won't open that for the moment. An issue has arisen in
12 relation to something that you said in your reply to
13 the investigators. I will just read it out to you,
14 it's at page 5317. You said:
15
16 "To my recollection Sergeant Barry said, I'm going
17 nowhere, the super will have to go."
18 A. That's correct. That was said.

19 675 Q. "The meeting didn't last long, ten to 15 minutes max."

20 A. That was said that night. 16:00

21 676 Q. Now, I think under cross-examination Chief
22 Superintendent Dillane, on Day 185, page 95, his
23 recollection was that Mr. Barry said simply, I'm going
24 nowhere, that he didn't say that it's the super who has
25 to go. So what do you say to that? Do you stand by 16:00
26 your recollection?

27 A. I do. As Mr. Barry got up from the seat, he said to
28 the chief superintendent, I'm going nowhere, and he
29 said going out the door, you can move the super, or,

1 the super moves. And he was turning around towards the
2 door when he said it. And I was alongside him. And
3 I'm 110% that was said that night. Whether Chief
4 Superintendent Dillane heard the full extent of it,
5 both things were said. I'm going nowhere, you can move 16:01
6 the super, or, the super has to move.

7 677 Q. Mr. Barry also said when he was being cross-examined by
8 Mr. Murphy on Day 178, that he did not mention Mallow
9 or that he would consider transferring if expenses were
10 covered during this exchange, do you accept that that's 16:01
11 correct?

12 A. Sorry, I missed that.

13 678 Q. Mr. Barry said that he did not mention Mallow or that
14 he would consider transferring if expenses were
15 covered. Do you remember any of that? Are you in a 16:01
16 position to assist the Tribunal any further as to the
17 transfer discussion that took place?

18 A. Mr. Dillane was offering a transfer to him and there
19 was a thing about own expense or public expense,
20 because if it's public expense you get your expenses. 16:02
21 There was a mention. Mr. Dillane did say to him that
22 night, this thing cannot go on, you're not coming to
23 Fermoy in the morning, you're not coming to Fermoy in
24 the evening for parading times, you won't answer the
25 phone to Mr. Comyns, and he was trying to facilitate 16:02
26 him with another station.

27 679 Q. Now, you may not be able to assist the tribunal in
28 relation to it, it's just not in your statement or
29 interview, do you remember stations being offered to

1 Mr. Barry?

2 A. There was stations being offered.

3 680 Q. Do you remember what they were?

4 A. I can't. There was stations being offered.

5 681 Q. Okay. 16:02

6 A. But there was stations being offered. I remember

7 Mr. Dillane saying, I cannot leave this go on. And he

8 was trying to get Mr. Barry to offer to go to another

9 station.

10 682 Q. One thing Mr. Barry said in reply, in 16:02

11 cross-examination, he took issue with what he said was

12 the procedural unfairness of this meeting. Now, as his

13 inspector, can you assist the tribunal in relation to

14 that? what's your view on that position?

15 A. As I said, I can't see what was unfair about it. 16:03

16 Mr. Dillane was in Dublin. It was taking up a lot of

17 our time. Mr. Dillane was in Dublin, he got sent

18 instructions from Dublin, the CMO, and he had to relay

19 them to Mr. Barry. And the only way he could do that

20 was he checked to see if Mr. Barry was working on 16:03

21 nights, the following night or whatever and he decided

22 to go there. I can't see what's unfair about that.

23 How is he to relay the message? And in fairness to

24 Mr. Dillane, I was there that night, I was sitting

25 nearest to the door in the sergeant's office and he 16:03

26 kept appealing to Mr. Barry, this cannot go on, not

27 complying with Superintendent Comyns's instructions,

28 and Mr. Barry said he was going speaking to his

29 representative and that was the end of the meeting.

1 And they left in a cordial way, we all went our ways.
2 683 Q. Now, I should say, inspector and Chairman, that there
3 is three more issues where the inspector has some
4 involvement and I see that it is four o'clock. I am
5 happy to finish it on Thursday morning or we can keep 16:04
6 going?
7 CHAIRMAN: I think you have a problem? I don't want to
8 limit you, it's not the sort of thing that we will
9 finish in a few minutes.
10 MR. COSTELLOE: Absolutely not, Chairman. 16:04
11 CHAIRMAN: Okay. Thank you very much. We can't sit
12 tomorrow anyway because of things I have to do. So we
13 will assemble on Thursday morning. I hope that is not
14 too inconvenient for you.
15 THE WITNESS: No, Chairman, thanks, no. Thank you, 16:04
16 Chairman.
17 CHAIRMAN: So be it. Thank you.
18
19 THE HEARING ADJOURNED UNTIL THURSDAY, 16TH JUNE 2022 AT
20 11 A. M. 16:41
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28
29

'12 [1] - 18:2 '14 [2] - 42:14, 137:27 '15 [4] - 96:19, 128:13, 128:21, 128:25 '87 [1] - 137:13 '94 [1] - 137:13	1207 [1] - 49:12 1210 [1] - 51:19 1211 [1] - 51:25 1214 [1] - 52:10 122 [1] - 4:7 1246 [1] - 30:23 12th [14] - 25:28, 26:12, 35:3, 50:19, 50:22, 65:9, 77:8, 88:11, 88:15, 88:16, 115:12, 115:13, 124:19, 130:24 1308 [1] - 136:4 135 [1] - 4:11 139/10 [11] - 142:3, 145:26, 146:8, 148:4, 148:6, 148:26, 150:12, 150:14, 154:29, 155:4, 156:6 13th [3] - 36:18, 93:24, 93:25 14 [8] - 14:2, 14:27, 26:28, 28:22, 68:13, 112:21, 112:24, 150:22 14(5) [17] - 35:19, 35:24, 37:7, 39:3, 41:11, 53:8, 55:22, 58:10, 88:5, 100:12, 101:20, 102:11, 102:14, 102:24, 103:2, 104:8, 106:8 14(5) [5] - 45:5, 47:1, 83:28, 100:22, 101:18 14(7) [1] - 82:19 14/1/2013 [1] - 10:5 145 [1] - 150:22 149 [1] - 2:14 14TH [2] - 1:17, 5:1 14th [4] - 26:8, 26:25, 30:18, 143:12 15 [3] - 173:14, 176:17, 182:19 15th [12] - 30:19, 42:7, 42:11, 42:12, 42:14, 42:18, 42:19, 42:20, 90:25, 91:11, 97:29, 105:6 16 [3] - 1:4, 140:14, 140:18 16TH [1] - 185:19 16th [1] - 84:21 17 [1] - 1:8 17/11 [1] - 60:21 175 [2] - 150:3, 150:22 176 [3] - 161:13, 163:11, 181:17 177 [1] - 51:21 178 [2] - 163:11,	183:8 179 [3] - 40:2, 58:1, 66:4 17:25 [1] - 64:27 17:40 [1] - 64:29 17th [5] - 19:28, 21:29, 60:22, 127:24, 128:7 18/2/2013 [1] - 31:6 180 [2] - 162:25, 166:22 181 [3] - 5:24, 118:14, 133:25 182 [1] - 165:12 183 [1] - 148:12 185 [1] - 182:22 186 [1] - 1:17 18th [14] - 8:13, 13:10, 13:22, 13:24, 15:12, 17:26, 18:3, 19:28, 38:18, 71:19, 72:29, 76:6, 76:8, 102:12 1921 [1] - 1:8 1987 [2] - 136:14, 136:27 1990 [1] - 136:17 1994 [1] - 136:28 1999 [2] - 136:21, 137:4 19th [6] - 43:26, 44:4, 44:18, 46:7, 91:16, 98:2 1st [3] - 9:15, 31:9, 31:19	109:12, 109:24 2012 [35] - 7:26, 8:24, 8:26, 10:15, 14:14, 15:6, 17:29, 34:6, 62:17, 73:9, 73:10, 73:20, 73:22, 74:25, 75:24, 76:13, 140:28, 141:10, 141:11, 141:18, 141:27, 142:1, 142:12, 142:20, 145:24, 147:4, 149:1, 149:5, 150:13, 152:4, 154:24, 155:21, 155:22, 156:9 2013 [109] - 6:26, 8:13, 9:11, 12:1, 13:11, 15:8, 17:26, 18:3, 19:23, 21:29, 31:19, 32:13, 34:11, 34:17, 34:24, 35:18, 36:13, 36:18, 36:26, 39:8, 39:17, 41:28, 43:13, 44:26, 45:8, 50:19, 50:23, 71:19, 72:29, 73:14, 75:17, 75:28, 77:8, 77:13, 77:22, 80:7, 80:11, 80:14, 81:13, 81:17, 81:21, 81:24, 81:28, 82:25, 83:5, 83:18, 84:22, 85:26, 86:17, 88:9, 88:26, 88:28, 90:19, 90:21, 91:24, 91:27, 93:1, 93:2, 93:16, 93:24, 94:8, 94:11, 94:16, 94:17, 96:16, 96:28, 97:2, 97:11, 97:27, 98:24, 99:21, 100:26, 101:22, 101:29, 102:19, 103:16, 103:27, 104:15, 105:20, 115:3, 125:19, 125:27, 126:12, 126:13, 127:14, 137:26, 142:18, 142:29, 143:1, 143:9, 143:12, 143:16, 143:27, 144:3, 156:17, 156:20, 157:10, 159:8, 159:9, 159:16, 163:25, 164:14, 165:8, 167:7, 172:22, 175:5, 175:17, 178:10 2013" [2] - 170:15, 179:14 2014 [42] - 1:2, 41:23, 42:2, 42:12, 42:13, 43:14, 43:18,	43:27, 44:4, 44:18, 48:26, 51:19, 52:21, 53:21, 56:10, 57:10, 57:11, 58:16, 58:18, 58:26, 59:18, 59:21, 59:28, 81:14, 87:27, 89:19, 89:24, 90:11, 90:25, 96:19, 96:24, 97:4, 97:11, 99:21, 104:25, 105:7, 105:24, 107:23, 108:7, 108:22, 126:14 2015 [23] - 24:7, 57:18, 58:17, 59:1, 59:23, 60:8, 60:10, 60:14, 60:23, 60:24, 61:11, 61:24, 62:6, 66:2, 80:18, 108:23, 108:24, 115:18, 127:20, 127:26, 127:27, 128:19, 134:24 2016 [12] - 24:9, 115:12, 115:13, 124:17, 124:19, 129:23, 130:10, 130:17, 130:25, 132:14, 132:17, 180:12 2017 [2] - 1:4, 1:8 2018 [1] - 1:8 2019 [2] - 6:21, 134:8 2020 [4] - 126:22, 126:25, 126:27, 133:22 2022 [3] - 1:17, 5:2, 185:19 2024 [1] - 45:6 2078 [1] - 182:10 20th [17] - 45:11, 49:13, 49:16, 83:2, 89:26, 91:9, 96:24, 97:4, 98:2, 98:3, 104:25, 105:24, 107:23, 126:13, 132:13, 132:14, 132:16 21 [1] - 3:10 21st [11] - 7:25, 14:14, 38:22, 38:23, 80:14, 80:16, 81:16, 81:21, 102:18, 115:3, 115:5 22nd [1] - 32:8 23 [1] - 148:12 23rd [11] - 39:17, 39:19, 39:20, 83:5, 90:18, 90:20, 90:24, 91:5, 102:15, 104:15, 106:11
1				
1 [3] - 51:24, 167:12, 168:13 1-8 [3] - 24:2, 32:19, 122:27 10 [6] - 51:24, 63:19, 141:1, 141:8, 148:13, 149:25 10.30 [1] - 176:12 10/9/2012 [1] - 152:10 104 [1] - 65:15 1062 [3] - 26:11, 77:11 1085 [1] - 32:17 1086 [2] - 28:19 1088 [1] - 84:18 1089 [1] - 83:12 109 [2] - 132:11, 132:15 1093 [2] - 33:19, 33:20 10th [8] - 83:18, 84:14, 149:1, 151:4, 151:6, 152:4, 154:17, 155:15 11 [1] - 185:20 110% [2] - 180:24, 183:3 1101 [2] - 36:12, 100:25 1102 [1] - 101:1 1106 [3] - 37:18, 37:22, 101:28 1108 [2] - 35:23, 36:6 1111 [2] - 38:22, 102:17 1117 [1] - 42:16 1119 [1] - 43:29 1178 [1] - 62:12 1180 [1] - 63:4 1181 [1] - 63:4 11th [5] - 15:8, 15:11, 23:18, 76:7, 111:21 12 [1] - 58:3	1207 [1] - 49:12 1210 [1] - 51:19 1211 [1] - 51:25 1214 [1] - 52:10 122 [1] - 4:7 1246 [1] - 30:23 12th [14] - 25:28, 26:12, 35:3, 50:19, 50:22, 65:9, 77:8, 88:11, 88:15, 88:16, 115:12, 115:13, 124:19, 130:24 1308 [1] - 136:4 135 [1] - 4:11 139/10 [11] - 142:3, 145:26, 146:8, 148:4, 148:6, 148:26, 150:12, 150:14, 154:29, 155:4, 156:6 13th [3] - 36:18, 93:24, 93:25 14 [8] - 14:2, 14:27, 26:28, 28:22, 68:13, 112:21, 112:24, 150:22 14(5) [17] - 35:19, 35:24, 37:7, 39:3, 41:11, 53:8, 55:22, 58:10, 88:5, 100:12, 101:20, 102:11, 102:14, 102:24, 103:2, 104:8, 106:8 14(5) [5] - 45:5, 47:1, 83:28, 100:22, 101:18 14(7) [1] - 82:19 14/1/2013 [1] - 10:5 145 [1] - 150:22 149 [1] - 2:14 14TH [2] - 1:17, 5:1 14th [4] - 26:8, 26:25, 30:18, 143:12 15 [3] - 173:14, 176:17, 182:19 15th [12] - 30:19, 42:7, 42:11, 42:12, 42:14, 42:18, 42:19, 42:20, 90:25, 91:11, 97:29, 105:6 16 [3] - 1:4, 140:14, 140:18 16TH [1] - 185:19 16th [1] - 84:21 17 [1] - 1:8 17/11 [1] - 60:21 175 [2] - 150:3, 150:22 176 [3] - 161:13, 163:11, 181:17 177 [1] - 51:21 178 [2] - 163:11,	183:8 179 [3] - 40:2, 58:1, 66:4 17:25 [1] - 64:27 17:40 [1] - 64:29 17th [5] - 19:28, 21:29, 60:22, 127:24, 128:7 18/2/2013 [1] - 31:6 180 [2] - 162:25, 166:22 181 [3] - 5:24, 118:14, 133:25 182 [1] - 165:12 183 [1] - 148:12 185 [1] - 182:22 186 [1] - 1:17 18th [14] - 8:13, 13:10, 13:22, 13:24, 15:12, 17:26, 18:3, 19:28, 38:18, 71:19, 72:29, 76:6, 76:8, 102:12 1921 [1] - 1:8 1987 [2] - 136:14, 136:27 1990 [1] - 136:17 1994 [1] - 136:28 1999 [2] - 136:21, 137:4 19th [6] - 43:26, 44:4, 44:18, 46:7, 91:16, 98:2 1st [3] - 9:15, 31:9, 31:19	109:12, 109:24 2012 [35] - 7:26, 8:24, 8:26, 10:15, 14:14, 15:6, 17:29, 34:6, 62:17, 73:9, 73:10, 73:20, 73:22, 74:25, 75:24, 76:13, 140:28, 141:10, 141:11, 141:18, 141:27, 142:1, 142:12, 142:20, 145:24, 147:4, 149:1, 149:5, 150:13, 152:4, 154:24, 155:21, 155:22, 156:9 2013 [109] - 6:26, 8:13, 9:11, 12:1, 13:11, 15:8, 17:26, 18:3, 19:23, 21:29, 31:19, 32:13, 34:11, 34:17, 34:24, 35:18, 36:13, 36:18, 36:26, 39:8, 39:17, 41:28, 43:13, 44:26, 45:8, 50:19, 50:23, 71:19, 72:29, 73:14, 75:17, 75:28, 77:8, 77:13, 77:22, 80:7, 80:11, 80:14, 81:13, 81:17, 81:21, 81:24, 81:28, 82:25, 83:5, 83:18, 84:22, 85:26, 86:17, 88:9, 88:26, 88:28, 90:19, 90:21, 91:24, 91:27, 93:1, 93:2, 93:16, 93:24, 94:8, 94:11, 94:16, 94:17, 96:16, 96:28, 97:2, 97:11, 97:27, 98:24, 99:21, 100:26, 101:22, 101:29, 102:19, 103:16, 103:27, 104:15, 105:20, 115:3, 125:19, 125:27, 126:12, 126:13, 127:14, 137:26, 142:18, 142:29, 143:1, 143:9, 143:12, 143:16, 143:27, 144:3, 156:17, 156:20, 157:10, 159:8, 159:9, 159:16, 163:25, 164:14, 165:8, 167:7, 172:22, 175:5, 175:17, 178:10 2013" [2] - 170:15, 179:14 2014 [42] - 1:2, 41:23, 42:2, 42:12, 42:13, 43:14, 43:18,	43:27, 44:4, 44:18, 48:26, 51:19, 52:21, 53:21, 56:10, 57:10, 57:11, 58:16, 58:18, 58:26, 59:18, 59:21, 59:28, 81:14, 87:27, 89:19, 89:24, 90:11, 90:25, 96:19, 96:24, 97:4, 97:11, 99:21, 104:25, 105:7, 105:24, 107:23, 108:7, 108:22, 126:14 2015 [23] - 24:7, 57:18, 58:17, 59:1, 59:23, 60:8, 60:10, 60:14, 60:23, 60:24, 61:11, 61:24, 62:6, 66:2, 80:18, 108:23, 108:24, 115:18, 127:20, 127:26, 127:27, 128:19, 134:24 2016 [12] - 24:9, 115:12, 115:13, 124:17, 124:19, 129:23, 130:10, 130:17, 130:25, 132:14, 132:17, 180:12 2017 [2] - 1:4, 1:8 2018 [1] - 1:8 2019 [2] - 6:21, 134:8 2020 [4] - 126:22, 126:25, 126:27, 133:22 2022 [3] - 1:17, 5:2, 185:19 2024 [1] - 45:6 2078 [1] - 182:10 20th [17] - 45:11, 49:13, 49:16, 83:2, 89:26, 91:9, 96:24, 97:4, 98:2, 98:3, 104:25, 105:24, 107:23, 126:13, 132:13, 132:14, 132:16 21 [1] - 3:10 21st [11] - 7:25, 14:14, 38:22, 38:23, 80:14, 80:16, 81:16, 81:21, 102:18, 115:3, 115:5 22nd [1] - 32:8 23 [1] - 148:12 23rd [11] - 39:17, 39:19, 39:20, 83:5, 90:18, 90:20, 90:24, 91:5, 102:15, 104:15, 106:11
		2		
		2 [13] - 3:10, 110:17, 110:20, 111:2, 111:7, 111:10, 111:15, 111:17, 112:25, 113:4, 113:17, 167:12, 168:25 20 [1] - 141:6 20-something [1] - 178:28 2000 [3] - 136:25, 137:14, 140:14 2007 [11] - 14:3, 26:29, 27:14, 39:3, 41:12, 50:17, 137:17, 137:24, 140:14, 140:17 2010 [7] - 6:18, 138:6, 138:8, 140:11, 140:23, 140:24, 141:15 2011 [3] - 53:24,		

<p>24th [1] - 93:1 25th [5] - 6:17, 42:20, 64:16, 94:11, 96:27 26 [1] - 178:10 2673 [1] - 92:26 2681 [2] - 40:10 2686 [1] - 53:21 26th [6] - 19:23, 24:28, 69:9, 80:16, 81:24, 81:28 27/4/2016 [1] - 64:20 2729 [1] - 58:16 27th [2] - 118:14, 124:17 28 [17] - 13:24, 17:17, 18:6, 19:26, 19:27, 71:7, 71:15, 71:24, 72:13, 73:17, 73:18, 73:29, 74:6, 75:5, 77:2, 122:26, 137:1 28-day [3] - 14:11, 74:22, 78:6 2823 [2] - 57:4, 60:14 28th [8] - 60:13, 60:14, 80:17, 127:20, 167:8, 170:15, 172:22, 175:17 29th [13] - 62:5, 77:13, 77:22, 77:24, 94:16, 159:8, 159:16, 162:29, 163:17, 163:18, 163:28, 164:4, 164:18 2nd [11] - 8:25, 15:6, 17:29, 18:1, 43:18, 43:24, 58:16, 73:10, 74:24, 75:24, 141:27</p>	<p>94:16, 101:28 32 [1] - 3:4 3278 [1] - 152:6 34 [1] - 107:29 3498 [1] - 15:17 35 [2] - 151:21, 170:25 3506 [1] - 15:20 3519 [3] - 16:2, 16:5, 68:26 3523 [1] - 17:3 3525 [2] - 18:17, 74:29 3532 [1] - 70:28 36 [2] - 6:13, 134:6 3C [1] - 145:18 3E [2] - 159:1, 159:4 3F [1] - 164:7 3G [1] - 179:10 3rd [2] - 126:12, 164:22</p>	<p>5333 [1] - 154:18 5335 [2] - 159:15, 170:2 5345 [1] - 167:11 5353 [1] - 175:6 5366 [1] - 145:28 5368 [1] - 149:1 5374 [1] - 156:19 5383 [1] - 60:4 5667 [1] - 5:23 5671 [2] - 176:24, 176:26 5682 [1] - 19:24 5684 [2] - 20:19, 20:23 57-58 [1] - 161:14 5th [7] - 62:11, 155:22, 164:14, 165:14, 174:3, 174:4, 175:5</p>	<p style="text-align: center;">9</p> <p>9 [2] - 14:13, 16:21 929 [1] - 5:22 932 [1] - 91:25 947 [2] - 7:3, 7:4 949 [1] - 8:16 95 [1] - 182:22 950 [1] - 12:13 951 [2] - 14:26, 14:28 954 [1] - 11:19 955 [1] - 11:19 957 [1] - 10:3 96 [1] - 65:15 962 [1] - 9:16 9pm [2] - 159:8, 180:2 9th [25] - 8:23, 10:15, 33:18, 34:11, 35:5, 35:18, 36:13, 36:25, 44:26, 51:18, 52:13, 52:24, 52:25, 64:13, 93:16, 93:18, 93:27, 100:25, 145:24, 146:3, 156:20, 159:9, 163:25, 164:3, 179:14</p>	<p>178:25, 185:10 abuse [1] - 15:5 accept [43] - 33:29, 34:2, 41:20, 41:25, 43:5, 43:8, 46:26, 50:26, 51:22, 52:20, 53:11, 56:13, 60:3, 60:7, 61:22, 69:29, 70:16, 76:4, 76:5, 76:11, 79:25, 80:24, 80:26, 104:9, 106:20, 106:22, 107:18, 107:20, 108:24, 112:11, 117:20, 117:26, 156:1, 156:15, 157:15, 161:19, 165:29, 167:3, 168:6, 175:29, 176:2, 183:10 acceptable [1] - 18:25 accepted [6] - 40:1, 108:15, 161:4, 162:25, 166:22, 174:23 accepts [1] - 161:3 access [2] - 37:28, 181:9 accidentally [4] - 159:29, 161:9, 163:2, 163:29 accordance [4] - 15:25, 31:27, 146:8, 147:9 account [2] - 40:24, 174:24 accounted [1] - 115:14 accounts [1] - 117:19 accurate [2] - 149:22, 174:24 accuses [1] - 133:14 achieve [1] - 122:27 achieved [1] - 118:7 acknowledging [2] - 56:7, 56:19 Act [4] - 53:24, 55:24, 109:11, 109:24 act [3] - 92:2, 92:4, 98:18 ACT [2] - 1:2, 1:7 acting [7] - 118:21, 138:14, 138:16, 138:23, 138:28, 139:2, 139:4 action [4] - 1:26, 91:13, 124:11, 130:7 actions [3] - 64:14, 76:26, 76:27</p>
<p style="text-align: center;">3</p> <p>3 [7] - 110:26, 111:1, 111:4, 113:27, 114:2, 167:12, 168:29 305 [1] - 22:22 30th [15] - 32:12, 32:14, 32:15, 58:26, 75:27, 80:7, 80:9, 89:23, 89:25, 89:26, 90:10, 91:7, 123:3, 127:14, 155:21 31 [2] - 58:2, 107:28 3106 [1] - 117:7 3120 [1] - 64:23 3133 [2] - 64:23 3150 [1] - 40:29 3151 [1] - 41:4 31st [4] - 37:18, 39:8,</p>	<p style="text-align: center;">4</p> <p>4 [2] - 2:27, 169:14 4/4/13 [1] - 170:15 4/4/2013 [4] - 172:22, 175:9, 175:12, 175:16 4082 [1] - 143:13 46 [1] - 133:11 4771 [1] - 151:6 4773 [1] - 174:4 48 [1] - 133:17 4pm [1] - 147:7 4th [25] - 6:21, 9:6, 9:11, 43:13, 93:1, 126:27, 127:5, 133:22, 134:7, 141:26, 142:1, 147:3, 149:5, 150:13, 154:24, 156:9, 164:27, 164:29, 165:7, 165:13, 165:25, 166:16, 167:7, 167:10, 176:9</p>	<p style="text-align: center;">6</p> <p>6 [1] - 67:23 654 [1] - 23:7 67 [1] - 4:6 6A [6] - 5:28, 6:1, 67:19, 114:14, 118:17, 118:27 6B [2] - 5:25, 133:25 6F [1] - 133:25 6th [5] - 24:28, 78:3, 89:25, 91:4, 91:6</p>	<p style="text-align: center;">A</p> <p>A.M [1] - 185:20 A/C [13] - 31:10, 44:21, 58:9, 76:13, 88:1, 89:4, 97:24, 100:20, 100:26, 104:14, 105:6, 111:14, 111:15 abandon [1] - 133:25 abandoned [3] - 118:15, 119:1, 120:1 Abbeyleix [1] - 125:27 abeyance [2] - 62:7, 62:25 ability [4] - 11:1, 122:29, 124:8, 124:16 able [8] - 44:19, 48:1, 55:21, 55:24, 85:29, 89:11, 106:26, 183:27 above-named [1] - 1:25 absence [1] - 22:14 absent [2] - 139:6, 139:7 absolutely [12] - 64:3, 74:15, 80:4, 98:6, 106:22, 108:2, 112:12, 114:28, 120:8, 120:11,</p>	
<p style="text-align: center;">5</p> <p>5 [3] - 4:5, 35:25, 37:25 5.05 [1] - 144:14 5/4/2013 [1] - 175:10 51 [1] - 2:26 5304 [2] - 136:6, 136:8 5314 [1] - 139:28 5317 [1] - 182:14 5326 [1] - 173:4</p>	<p style="text-align: center;">7</p> <p>7 [2] - 1:8, 3:5 796 [1] - 56:5 797 [3] - 56:5, 56:7, 56:9 7pm [1] - 44:6 7th [3] - 6:26, 7:1, 155:22</p>	<p style="text-align: center;">8</p> <p>8 [4] - 2:14, 2:22, 124:15, 131:27 8.2 [1] - 16:6 8.30 [1] - 160:15 8.5 [2] - 18:23, 25:29 8.6 [1] - 77:29 8/1/2013 [1] - 156:27 847 [1] - 62:10 8th [5] - 31:28, 40:10, 126:13, 156:17, 157:15</p>		

<p>acutely [4] - 16:20, 30:28, 59:6, 65:6</p> <p>add [3] - 129:15, 129:21, 169:13</p> <p>addition [2] - 25:4, 119:8</p> <p>additional [12] - 5:22, 20:3, 30:10, 30:16, 58:27, 63:1, 63:25, 64:4, 64:5, 107:28, 116:21, 129:16</p> <p>address [1] - 20:3</p> <p>addressed [2] - 36:25, 102:10</p> <p>adhere [1] - 21:27</p> <p>ADJOURNED [2] - 92:15, 185:19</p> <p>adjudication [3] - 37:9, 100:17, 127:13</p> <p>admiration [1] - 152:1</p> <p>adopting [1] - 117:18</p> <p>ADRIAN [1] - 2:13</p> <p>adult [4] - 159:24, 159:26, 160:13, 176:14</p> <p>advance [1] - 138:24</p> <p>advanced [2] - 43:8, 151:15</p> <p>advancing [1] - 67:17</p> <p>advice [5] - 43:10, 43:12, 45:20, 129:24, 162:13</p> <p>advices [6] - 9:5, 35:11, 35:13, 35:16, 37:10, 44:23</p> <p>advise [4] - 41:7, 151:20, 151:22, 162:20</p> <p>advised [7] - 44:7, 44:18, 130:3, 151:14, 151:15, 156:28, 172:24</p> <p>advising [2] - 26:21, 162:17</p> <p>Affairs [1] - 33:7</p> <p>afford [1] - 85:12</p> <p>afternoon [5] - 92:19, 92:20, 135:23, 136:2, 136:3</p> <p>agenda [1] - 25:12</p> <p>ago [6] - 10:16, 93:11, 105:29, 107:9, 147:3, 162:23</p> <p>agree [29] - 10:18, 10:26, 10:27, 31:7, 34:28, 39:25, 58:5, 63:29, 65:5, 69:25,</p>	<p>71:29, 72:16, 72:23, 74:5, 74:20, 75:3, 77:5, 80:1, 102:4, 105:18, 112:13, 113:10, 115:28, 117:16, 131:19, 158:20, 166:29, 173:20, 175:27</p> <p>agreed [6] - 5:17, 9:20, 26:5, 32:3, 44:24, 99:23</p> <p>agrees [1] - 30:20</p> <p>AGSI [1] - 45:15</p> <p>ahead [4] - 90:17, 90:24, 99:27</p> <p>air [1] - 144:7</p> <p>albeit [2] - 172:22, 175:16</p> <p>alerted [1] - 133:1</p> <p>allegation [30] - 11:7, 14:15, 66:9, 79:26, 80:2, 111:25, 112:3, 112:8, 112:11, 112:16, 112:20, 114:11, 114:22, 119:11, 120:6, 122:15, 123:16, 132:21, 133:2, 133:8, 133:17, 133:18, 133:25, 134:21, 145:18, 159:1, 159:2, 164:8, 179:10</p> <p>allegations [13] - 24:2, 65:16, 111:24, 111:29, 118:15, 122:27, 125:12, 133:21, 134:3, 134:4, 134:9, 134:11, 134:24</p> <p>allege [1] - 119:5</p> <p>alleged [11] - 7:8, 15:3, 15:4, 45:22, 63:12, 63:13, 79:25, 111:20, 112:29, 118:25, 156:16</p> <p>alleges [1] - 6:4</p> <p>allocated [3] - 6:16, 89:7, 125:20</p> <p>allocation [1] - 86:14</p> <p>allow [4] - 44:24, 60:29, 63:25, 130:8</p> <p>allowances [1] - 11:3</p> <p>allowing [2] - 69:22, 124:12</p> <p>alluded [1] - 50:22</p> <p>alluding [1] - 69:12</p> <p>almost [3] - 10:17, 43:2, 180:19</p> <p>alongside [1] - 183:2</p> <p>altogether [1] - 107:29</p>	<p>ambitious [5] - 14:12, 59:16, 74:6, 74:8, 122:26</p> <p>ambush [4] - 181:14, 181:18, 181:22, 181:23</p> <p>amended [1] - 170:14</p> <p>AMENDED [1] - 1:8</p> <p>amendment [3] - 30:16, 167:12, 168:25</p> <p>amount [9] - 67:19, 70:27, 75:2, 95:24, 108:10, 109:2, 114:7, 117:25, 117:26</p> <p>amounts [1] - 16:10</p> <p>AN [1] - 2:16</p> <p>analyse [3] - 81:3, 110:5, 110:8</p> <p>analysis [3] - 56:27, 56:29, 80:25</p> <p>AND [4] - 1:2, 1:3, 1:7, 92:15</p> <p>ANDREW [1] - 3:3</p> <p>annoyance [1] - 178:1</p> <p>annoyed [3] - 29:18, 46:21, 177:28</p> <p>annual [5] - 35:6, 88:10, 88:11, 88:16, 138:21</p> <p>anorak [3] - 160:4, 160:11, 180:14</p> <p>answer [5] - 66:21, 89:2, 102:10, 156:6, 183:24</p> <p>answered [1] - 66:6</p> <p>answers [1] - 66:6</p> <p>ANTHONY [3] - 3:1, 4:9, 135:26</p> <p>Anthony [2] - 135:23, 174:7</p> <p>anticipated [2] - 51:4, 59:14</p> <p>anxiety [3] - 11:24, 11:26, 157:11</p> <p>anxious [2] - 23:19, 44:15</p> <p>anyway [2] - 178:19, 185:12</p> <p>apart [1] - 105:22</p> <p>apologised [1] - 49:26</p> <p>apology [1] - 133:28</p> <p>appeal [14] - 35:1, 35:10, 36:19, 37:10, 37:26, 37:27, 49:26, 88:13, 88:15, 101:5, 101:14, 102:6, 102:26, 129:27</p>	<p>APPEAL [2] - 1:12, 2:3</p> <p>appealing [2] - 100:4, 184:26</p> <p>appear [2] - 67:29, 94:8</p> <p>APPEARANCES [1] - 2:1</p> <p>application [4] - 18:19, 119:22, 119:23, 122:3</p> <p>applications [3] - 53:23, 135:13</p> <p>applied [3] - 55:9, 55:13, 55:23</p> <p>applies [2] - 18:17, 52:2</p> <p>appoint [4] - 14:2, 42:2, 48:11, 90:6</p> <p>appointed [73] - 7:19, 8:23, 8:29, 10:13, 16:17, 16:23, 16:29, 17:23, 19:13, 19:17, 22:24, 22:29, 23:11, 26:28, 27:4, 27:24, 27:26, 30:4, 30:5, 31:10, 36:8, 42:6, 47:15, 47:18, 50:28, 65:25, 69:5, 69:10, 69:16, 73:3, 73:12, 73:14, 74:11, 74:17, 76:6, 76:7, 76:14, 76:17, 76:28, 77:7, 77:17, 80:11, 81:18, 81:21, 81:23, 82:9, 82:19, 83:7, 87:27, 87:28, 89:18, 89:27, 90:10, 91:7, 99:11, 103:16, 103:17, 110:16, 110:25, 111:14, 111:17, 112:21, 112:24, 122:20, 142:3, 145:25, 147:9, 148:6, 157:29, 158:11</p> <p>appointing [20] - 32:26, 35:27, 36:7, 38:19, 42:26, 43:22, 43:25, 44:17, 46:8, 58:18, 65:10, 67:3, 90:2, 90:27, 91:15, 111:14, 113:26, 127:14, 130:12, 130:24</p> <p>appointment [45] - 8:17, 13:10, 14:25, 14:26, 16:19, 18:14, 19:9, 22:21, 24:20, 28:20, 28:22, 29:24, 31:6, 39:4, 41:12,</p>	<p>44:10, 44:14, 44:16, 45:13, 51:16, 63:2, 63:25, 64:4, 64:5, 69:9, 71:16, 71:19, 71:25, 72:20, 80:13, 89:22, 90:12, 101:19, 102:24, 103:27, 104:1, 105:5, 111:21, 113:9, 123:4, 142:2, 146:19, 147:4, 156:27</p> <p>appointments [3] - 19:11, 20:26, 23:2</p> <p>appoints [2] - 12:17</p> <p>appreciate [7] - 27:9, 40:21, 50:20, 52:28, 75:16, 78:10, 102:21</p> <p>approach [2] - 52:2, 59:20</p> <p>approaches [1] - 122:23</p> <p>appropriate [12] - 15:26, 35:9, 39:13, 72:8, 88:27, 90:6, 104:5, 105:3, 106:6, 113:16, 119:5, 120:20</p> <p>appropriateness [4] - 102:2, 102:7, 129:24, 178:4</p> <p>April [38] - 31:9, 31:19, 31:29, 43:18, 43:23, 43:24, 51:19, 52:13, 52:24, 52:25, 77:28, 94:8, 94:11, 96:27, 105:20, 124:17, 125:27, 126:12, 126:13, 130:17, 159:9, 163:25, 164:14, 164:22, 164:27, 164:29, 165:8, 165:13, 165:14, 165:25, 166:16, 167:7, 167:11, 174:3, 174:4, 175:5, 176:9, 179:14</p> <p>area [3] - 37:8, 73:23, 82:11</p> <p>argument's [1] - 171:11</p> <p>arguments [1] - 120:15</p> <p>arise [2] - 22:16, 45:24</p> <p>arisen [3] - 35:18, 36:5, 182:11</p> <p>arises [2] - 93:17, 135:10</p> <p>arising [5] - 19:26, 38:5, 81:9, 90:22, 116:1</p>
---	---	---	--	---

<p>arm [1] - 53:14 arms [3] - 65:25, 65:26, 122:22 arose [11] - 25:11, 51:5, 55:5, 81:15, 82:17, 89:6, 89:21, 100:1, 100:3, 178:18 ARRAN [1] - 3:4 arrangement [1] - 91:10 arrangements [2] - 91:8, 94:22 arrive [2] - 140:23, 161:28 arrived [7] - 143:6, 163:13, 165:7, 170:24, 171:21, 176:12, 179:20 AS [7] - 1:8, 5:1, 5:11, 67:7, 92:15, 122:12, 135:27 aspect [37] - 13:15, 14:16, 16:22, 20:10, 23:3, 27:26, 27:28, 28:12, 35:29, 37:8, 38:8, 46:5, 47:19, 48:10, 61:1, 61:27, 61:28, 61:29, 63:11, 66:1, 66:15, 69:6, 69:11, 81:1, 81:6, 82:23, 100:14, 100:19, 101:24, 102:26, 115:5, 123:15, 123:19, 124:10, 129:14, 130:1, 130:4 aspects [4] - 28:14, 55:4, 119:29, 122:23 aspiration [1] - 28:5 aspirational [1] - 28:7 assault [1] - 63:13 assemble [1] - 185:13 assertion [2] - 110:2, 115:28 assigned [1] - 86:11 assist [10] - 8:6, 27:5, 55:20, 84:3, 126:15, 154:9, 166:9, 183:16, 183:27, 184:13 Assistance [5] - 152:5, 152:7, 152:15, 157:19, 157:26 assistance [2] - 85:27, 89:15 Assistant [10] - 6:28, 7:7, 29:13, 29:25, 33:12, 34:28, 35:22,</p>	<p>36:17, 37:16, 42:10 assistant [21] - 7:4, 7:23, 8:1, 8:7, 8:19, 8:22, 10:4, 10:13, 11:16, 12:6, 35:15, 39:17, 41:8, 43:19, 44:6, 62:28, 83:19, 84:9, 85:12, 88:20, 146:9 associated [1] - 20:4 assume [2] - 11:7, 157:19 assumed [1] - 119:18 assure [1] - 148:22 AT [1] - 185:19 attached [8] - 14:25, 86:4, 87:14, 89:12, 110:29, 111:5, 159:27, 175:21 attaches [2] - 146:5, 146:22 attempts [1] - 106:1 attend [7] - 159:6, 162:24, 162:27, 162:28, 169:7, 171:1, 180:1 attendees [3] - 152:21, 152:22, 152:23 attention [7] - 12:27, 32:27, 39:2, 71:4, 84:9, 146:10, 157:25 attire [1] - 180:23 attitude [1] - 142:25 attitudes [1] - 143:26 attributes [2] - 162:6, 163:26 August [42] - 33:18, 34:11, 34:17, 34:24, 35:3, 36:18, 48:21, 60:10, 60:13, 60:14, 61:11, 61:24, 80:18, 87:1, 87:17, 87:20, 87:21, 88:15, 88:16, 88:17, 88:26, 89:3, 89:21, 93:2, 93:16, 93:18, 93:24, 98:24, 99:21, 106:5, 115:17, 127:20, 133:13, 140:28, 141:9, 141:11, 141:18, 141:27, 142:12, 142:20, 145:24, 146:3 authorities [3] - 31:18, 123:27, 130:6 authority [1] - 44:22 available [6] - 54:27, 73:28, 82:16, 95:24, 106:28, 138:25</p>	<p>avenue [1] - 108:21 avenues [3] - 29:15, 56:24, 63:26 avoiding [1] - 119:25 await [1] - 130:29 awaited [1] - 77:29 awaiting [1] - 60:20 aware [53] - 8:24, 8:27, 10:13, 13:11, 14:13, 16:20, 19:3, 21:8, 28:9, 30:29, 31:2, 33:1, 36:16, 36:18, 38:7, 59:6, 62:24, 65:6, 71:23, 71:27, 74:9, 78:29, 79:3, 79:8, 79:9, 83:7, 89:21, 107:12, 118:13, 126:19, 126:21, 127:3, 133:20, 133:22, 134:8, 138:27, 142:6, 142:10, 144:5, 144:23, 144:24, 144:26, 145:19, 146:24, 146:29, 147:2, 148:5, 148:17, 148:21, 161:27, 163:29, 174:19</p>	<p>61:3, 61:18, 62:24, 63:9, 63:12, 64:6, 65:13, 66:3, 66:4, 66:13, 66:17, 67:12, 67:15, 70:17, 77:9, 77:27, 78:1, 78:27, 79:4, 79:8, 79:18, 79:27, 89:26, 91:9, 91:16, 96:23, 97:4, 97:28, 104:26, 105:11, 108:23, 119:2, 119:7, 119:12, 123:8, 123:29, 125:9, 125:29, 126:3, 126:6, 126:18, 126:20, 126:22, 126:26, 127:4, 127:6, 128:11, 128:22, 129:1, 130:5, 130:6, 132:12, 133:12, 133:27, 136:17, 136:23, 137:8, 137:10, 137:13, 137:18, 139:23, 139:25, 140:2, 140:10, 140:13, 141:1, 141:17, 141:23, 141:27, 142:2, 142:4, 142:22, 143:7, 143:11, 143:14, 143:28, 144:13, 144:27, 145:14, 147:4, 147:13, 147:17, 147:26, 148:7, 148:15, 148:23, 148:26, 149:15, 150:3, 150:8, 150:9, 150:13, 151:1, 151:3, 153:9, 154:1, 154:4, 154:10, 155:12, 155:15, 155:18, 155:25, 155:26, 156:27, 157:2, 157:7, 157:22, 157:29, 158:8, 158:24, 159:9, 159:29, 160:11, 160:28, 161:9, 162:1, 162:16, 162:25, 163:2, 163:4, 163:7, 163:9, 163:19, 164:1, 164:18, 166:22, 167:22, 170:22, 170:23, 175:11, 178:18, 179:13, 179:20, 179:29, 181:4, 181:5, 181:13, 181:14, 181:19, 181:20, 182:16, 182:23, 182:27, 183:7, 183:13, 184:1,</p>	<p>184:8, 184:10, 184:19, 184:20, 184:26, 184:28 BARRY [1] - 2:10 Barry's [27] - 9:4, 12:18, 12:21, 14:13, 16:26, 24:4, 27:16, 34:15, 37:26, 38:7, 41:24, 58:1, 59:26, 63:27, 100:4, 120:9, 120:16, 123:20, 134:25, 146:7, 154:22, 156:1, 156:7, 160:26, 164:13, 164:28, 180:27 based [2] - 43:12, 139:11 basis [7] - 59:8, 89:15, 106:27, 151:13, 151:17, 154:7, 157:22 battle [3] - 180:17, 180:23, 181:24 bear [2] - 26:18, 103:6 bearing [2] - 41:12, 106:22 became [10] - 14:7, 24:9, 36:16, 71:23, 71:27, 82:29, 92:22, 133:22, 134:8, 134:14 become [4] - 36:18, 74:9, 127:3, 139:3 BEEN [2] - 5:10, 135:26 beg [1] - 87:11 begin [1] - 181:11 beginning [6] - 43:14, 114:21, 136:12, 145:21, 167:15, 167:28 behalf [4] - 83:14, 118:21, 143:11, 152:29 behaviour [2] - 10:25, 11:7 below [1] - 168:21 belt [5] - 180:8, 180:10, 180:11, 180:25, 180:26 best [7] - 119:27, 122:28, 124:8, 124:16, 143:6, 158:24, 180:20 between [15] - 37:16, 70:16, 72:18, 76:20, 79:24, 87:6, 97:1, 97:11, 99:21, 105:2, 108:3, 139:23, 139:25, 141:16, 159:8</p>
B		<p>background [6] - 21:1, 30:29, 36:14, 41:2, 78:29, 145:13 backseat [1] - 123:23 backyard [2] - 138:26, 140:20 balance [1] - 67:22 bank [2] - 159:25, 164:5 bar [2] - 85:9, 118:17 barring [1] - 39:4 Barry [206] - 5:25, 6:4, 7:10, 7:27, 8:25, 8:28, 9:12, 9:19, 10:6, 10:10, 11:20, 13:12, 16:4, 18:20, 20:20, 21:3, 21:24, 21:25, 21:26, 22:13, 22:23, 23:23, 26:6, 26:21, 28:18, 28:20, 29:5, 29:10, 29:18, 29:26, 31:1, 31:2, 31:28, 32:10, 36:20, 37:28, 39:22, 40:1, 40:4, 40:9, 44:2, 44:8, 44:15, 45:12, 45:29, 46:9, 49:14, 51:20, 54:13, 55:2, 59:29,</p>	<p>61:3, 61:18, 62:24, 63:9, 63:12, 64:6, 65:13, 66:3, 66:4, 66:13, 66:17, 67:12, 67:15, 70:17, 77:9, 77:27, 78:1, 78:27, 79:4, 79:8, 79:18, 79:27, 89:26, 91:9, 91:16, 96:23, 97:4, 97:28, 104:26, 105:11, 108:23, 119:2, 119:7, 119:12, 123:8, 123:29, 125:9, 125:29, 126:3, 126:6, 126:18, 126:20, 126:22, 126:26, 127:4, 127:6, 128:11, 128:22, 129:1, 130:5, 130:6, 132:12, 133:12, 133:27, 136:17, 136:23, 137:8, 137:10, 137:13, 137:18, 139:23, 139:25, 140:2, 140:10, 140:13, 141:1, 141:17, 141:23, 141:27, 142:2, 142:4, 142:22, 143:7, 143:11, 143:14, 143:28, 144:13, 144:27, 145:14, 147:4, 147:13, 147:17, 147:26, 148:7, 148:15, 148:23, 148:26, 149:15, 150:3, 150:8, 150:9, 150:13, 151:1, 151:3, 153:9, 154:1, 154:4, 154:10, 155:12, 155:15, 155:18, 155:25, 155:26, 156:27, 157:2, 157:7, 157:22, 157:29, 158:8, 158:24, 159:9, 159:29, 160:11, 160:28, 161:9, 162:1, 162:16, 162:25, 163:2, 163:4, 163:7, 163:9, 163:19, 164:1, 164:18, 166:22, 167:22, 170:22, 170:23, 175:11, 178:18, 179:13, 179:20, 179:29, 181:4, 181:5, 181:13, 181:14, 181:19, 181:20, 182:16, 182:23, 182:27, 183:7, 183:13, 184:1,</p>	

<p>beyond [2] - 86:15, 117:16</p> <p>biased [1] - 132:24</p> <p>billing [8] - 55:10, 55:25, 55:26, 55:28, 56:26, 110:3, 110:6</p> <p>biro [3] - 167:8, 170:14, 171:9</p> <p>bit [11] - 13:28, 37:1, 44:1, 75:13, 84:20, 140:1, 145:12, 153:11, 172:9, 174:16, 176:27</p> <p>BL [9] - 2:7, 2:11, 2:11, 2:18, 2:18, 2:19, 2:24, 3:2, 3:7</p> <p>black [3] - 15:21, 16:7, 39:12</p> <p>blame [1] - 73:23</p> <p>blank [1] - 171:10</p> <p>blanket [1] - 108:6</p> <p>bleeding [1] - 99:13</p> <p>blue [3] - 180:13, 180:14</p> <p>blunt [1] - 150:21</p> <p>board [3] - 22:9, 42:3, 53:28</p> <p>bolts [1] - 68:7</p> <p>bona [2] - 168:7, 168:9</p> <p>book [2] - 5:22, 20:11</p> <p>boss [1] - 139:17</p> <p>bottom [5] - 10:9, 30:24, 51:25, 63:8, 84:18</p> <p>box [2] - 15:21, 16:7</p> <p>breach [16] - 65:1, 110:26, 111:1, 111:2, 111:4, 112:14, 112:29, 113:8, 113:12, 113:13, 113:17, 113:23, 113:27, 114:7, 114:8</p> <p>breaches [3] - 64:28, 110:22, 111:20</p> <p>breadth [1] - 122:17</p> <p>break [1] - 64:28</p> <p>Breffni [1] - 135:5</p> <p>BREFFNI [1] - 3:7</p> <p>Brian [2] - 53:28, 92:5</p> <p>brief [4] - 65:14, 136:4, 136:7, 136:8</p> <p>briefing [2] - 124:28, 125:4</p> <p>briefly [6] - 15:14, 19:10, 26:19, 34:14, 133:11, 147:3</p> <p>bring [14] - 23:19,</p>	<p>31:8, 39:2, 48:1, 57:17, 62:20, 70:29, 75:1, 91:26, 105:11, 151:5, 152:6, 153:1, 153:27</p> <p>bringing [2] - 86:5, 157:24</p> <p>brings [1] - 50:7</p> <p>broad [2] - 94:20, 149:11</p> <p>broadly [1] - 126:11</p> <p>brought [10] - 29:13, 38:9, 41:22, 92:4, 103:6, 108:24, 130:2, 154:14, 165:4, 172:6</p> <p>browne [8] - 180:8, 180:10, 180:11, 180:17, 180:24, 180:25, 180:26, 181:24</p> <p>building [8] - 41:24, 147:23, 150:20, 155:10, 158:27, 172:8, 172:16, 179:5</p> <p>bulk [1] - 118:14</p> <p>bullet [1] - 21:18</p> <p>bullying [75] - 7:9, 12:20, 12:29, 13:15, 14:10, 15:23, 16:19, 16:21, 16:25, 17:1, 17:5, 19:14, 20:4, 20:14, 20:16, 21:2, 21:28, 22:26, 24:1, 25:18, 27:12, 27:27, 28:28, 29:27, 30:5, 32:5, 32:12, 32:22, 35:1, 36:15, 37:9, 38:8, 39:23, 41:2, 45:7, 45:22, 47:13, 47:17, 47:21, 48:6, 49:21, 49:25, 50:5, 50:10, 51:1, 52:9, 66:15, 68:11, 68:23, 68:27, 69:2, 69:8, 69:20, 69:21, 69:26, 70:22, 75:15, 75:22, 76:10, 76:23, 76:25, 77:7, 79:12, 80:6, 80:8, 100:5, 100:17, 102:9, 102:27, 103:24, 122:24, 127:13, 141:25, 142:13</p> <p>bumped [3] - 159:29, 161:9, 163:2</p> <p>BURKE [1] - 2:20</p> <p>business [1] - 51:3</p> <p>busy [1] - 124:5</p> <p>BY [17] - 1:3, 1:6, 2:8, 2:12, 2:20, 2:25,</p>	<p>3:3, 3:8, 4:5, 4:6, 4:7, 4:11, 5:11, 67:7, 122:11, 135:27</p> <p>bye [1] - 148:27</p>	<p>6:3</p> <p>caused [7] - 53:8, 79:11, 98:1, 98:21, 105:7, 139:26, 162:24</p> <p>causing [5] - 11:8, 97:25, 157:10, 159:6, 164:12</p> <p>cautions [4] - 159:25, 159:26, 160:13, 176:14</p> <p>cease [1] - 87:19</p> <p>ceased [2] - 92:2, 92:4</p> <p>centrally [1] - 145:21</p> <p>Centre [2] - 170:8, 175:10</p> <p>ceremonial [3] - 180:5, 180:7, 181:23</p> <p>cert [6] - 161:4, 162:9, 163:5, 165:13, 165:15, 166:11</p> <p>CERTAIN [1] - 1:2</p> <p>certain [13] - 51:7, 54:8, 68:5, 69:17, 75:18, 78:29, 79:22, 81:9, 82:25, 86:11, 89:7, 100:26, 108:3</p> <p>certainly [21] - 50:27, 51:16, 66:17, 69:16, 69:19, 86:20, 87:9, 98:8, 118:29, 122:29, 128:28, 131:9, 142:20, 146:19, 162:17, 162:20, 165:24, 177:24, 178:19, 180:15</p> <p>certainty [1] - 29:7</p> <p>certificate [73] - 20:28, 159:10, 160:27, 160:29, 161:2, 161:17, 161:22, 161:26, 161:28, 162:4, 162:19, 162:21, 164:19, 164:22, 164:23, 165:7, 165:21, 165:23, 165:25, 166:4, 166:5, 166:7, 166:27, 167:7, 167:10, 167:16, 167:21, 168:2, 168:11, 169:6, 169:15, 170:9, 170:18, 170:22, 170:24, 170:25, 170:27, 171:3, 171:4, 171:8, 171:10, 171:20, 171:25, 171:26, 172:1, 172:2, 172:6, 172:7, 172:15,</p>	<p>172:17, 172:25, 172:29, 173:1, 173:16, 173:21, 173:22, 173:23, 173:24, 173:25, 174:1, 175:11, 175:14, 175:15, 175:22, 175:25, 175:29, 176:3, 176:16, 177:11, 178:8, 178:11, 179:3</p> <p>certified [1] - 79:6</p> <p>certify [1] - 1:23</p> <p>certifying [1] - 79:14</p> <p>chair [4] - 93:5, 117:28, 125:28, 133:3</p> <p>chaired [1] - 152:24</p> <p>Chairman [77] - 5:4, 5:21, 5:23, 13:6, 13:9, 16:17, 17:4, 27:21, 27:23, 28:3, 29:17, 37:1, 50:25, 61:10, 61:22, 65:21, 66:4, 67:1, 71:13, 90:15, 92:8, 114:17, 114:28, 115:28, 118:11, 118:14, 119:14, 119:28, 121:27, 122:14, 122:16, 122:20, 123:25, 125:18, 126:27, 127:7, 127:11, 127:16, 127:21, 128:17, 130:2, 130:15, 130:19, 130:22, 130:26, 133:6, 133:10, 133:29, 134:3, 134:6, 135:5, 135:10, 135:17, 135:22, 136:2, 136:3, 136:9, 136:15, 139:3, 139:29, 147:17, 152:14, 153:11, 161:7, 161:9, 168:6, 170:18, 171:16, 178:17, 178:26, 178:29, 179:8, 180:21, 185:2, 185:10, 185:15, 185:16</p> <p>CHAIRMAN [63] - 1:11, 5:5, 5:8, 5:13, 42:17, 42:19, 66:25, 67:2, 67:5, 92:10, 92:13, 92:18, 114:10, 114:14, 114:19, 114:24, 114:26, 118:3, 118:10, 118:16, 118:19,</p>
--	--	---	---	--

<p>118:23, 118:26, 119:3, 119:15, 120:2, 120:10, 120:12, 121:6, 121:12, 121:14, 121:16, 121:26, 121:28, 122:3, 122:7, 122:9, 127:2, 127:8, 131:6, 131:11, 131:17, 131:20, 131:22, 131:25, 131:28, 132:4, 132:7, 135:2, 135:4, 135:8, 135:12, 135:18, 135:24, 135:29, 136:8, 136:10, 178:25, 178:27, 179:6, 185:7, 185:11, 185:17</p> <p>chairman [1] - 5:6 challenging [1] - 119:20</p> <p>CHAMBERS [1] - 3:9 chance [1] - 108:19 change [1] - 143:26 changed [11] - 142:25, 142:26, 167:8, 168:3, 168:21, 168:28, 169:2, 171:8, 173:17, 173:25, 173:28</p> <p>changing [1] - 171:10</p> <p>characterisation [3] - 70:4, 113:11, 116:20 characterised [4] - 99:19, 111:19, 112:14, 113:6</p> <p>charge [3] - 136:23, 137:5, 137:16</p> <p>Charville [2] - 159:25, 159:26</p> <p>chase [1] - 104:13 check [11] - 40:3, 44:18, 107:3, 167:5, 169:15, 170:8, 170:17, 171:3, 171:24, 171:29, 174:8</p> <p>checked [2] - 107:11, 184:20</p> <p>checking [3] - 171:4, 171:5, 176:16</p> <p>cherry [1] - 15:18 cherry-pick [1] - 15:18</p> <p>Chief [39] - 5:7, 6:3, 33:6, 40:21, 42:29, 43:10, 44:20, 49:23, 67:10, 82:29, 83:26, 84:1, 85:5, 92:19, 114:11, 118:17,</p>	<p>119:11, 132:10, 132:22, 144:16, 144:21, 145:1, 145:8, 154:20, 159:3, 164:9, 165:10, 165:27, 166:5, 166:26, 170:6, 171:19, 172:25, 179:11, 179:18, 180:10, 182:8, 182:21, 183:3</p> <p>CHIEF [1] - 2:21 chief [53] - 5:13, 5:16, 5:18, 5:21, 5:26, 6:1, 6:7, 6:17, 6:24, 11:22, 23:8, 26:19, 28:6, 32:18, 32:22, 36:12, 43:5, 60:23, 63:29, 65:12, 66:19, 72:19, 83:13, 85:1, 85:25, 85:28, 122:15, 124:20, 130:27, 134:1, 134:4, 135:11, 135:14, 143:3, 152:24, 155:10, 156:20, 157:12, 158:26, 163:22, 164:24, 165:4, 165:19, 166:13, 167:6, 169:14, 170:27, 171:2, 172:7, 174:22, 178:29, 180:5, 182:28</p> <p>chiefs [1] - 182:4 chose [1] - 119:21 chosen [2] - 17:7, 120:6</p> <p>chosen [1] - 71:3 Chris [1] - 132:16 Christmas [1] - 91:5 chronological [2] - 91:20, 136:26</p> <p>chronologically [1] - 136:16</p> <p>CIARA [1] - 2:8 circumstances [7] - 16:17, 30:27, 66:13, 69:2, 74:1, 131:7, 142:25</p> <p>cite [1] - 101:21 cited [5] - 101:23, 104:10, 106:4, 106:9, 106:26</p> <p>citing [1] - 149:12 civil [4] - 64:12, 64:14, 130:4, 130:7</p> <p>CK1 [1] - 7:2 claim [1] - 35:2 clarification [6] - 25:23, 39:27, 40:28, 41:8, 45:5, 119:29</p>	<p>clarified [6] - 55:22, 97:26, 118:13, 118:28, 137:7, 173:29</p> <p>clarify [8] - 40:22, 98:13, 98:17, 99:2, 99:16, 118:3, 156:11, 172:14</p> <p>clarity [21] - 44:9, 44:16, 88:1, 88:6, 90:8, 90:15, 90:18, 90:22, 97:6, 98:1, 99:11, 99:26, 100:19, 101:25, 102:15, 103:3, 103:6, 105:9, 106:10</p> <p>class [1] - 180:16 classified [2] - 11:1, 157:11</p> <p>clear [25] - 18:26, 29:21, 29:29, 30:1, 30:6, 49:7, 49:23, 49:27, 56:28, 61:15, 64:1, 67:12, 67:15, 68:8, 70:13, 72:17, 75:4, 79:1, 88:19, 103:11, 138:19, 138:20, 169:18, 171:16</p> <p>clearance [4] - 58:12, 90:24, 98:3, 99:27</p> <p>clearest [1] - 139:8 clearly [4] - 7:20, 8:12, 51:6, 112:2</p> <p>client [2] - 120:18, 143:21</p> <p>client's [2] - 118:21, 118:22</p> <p>Clifford [4] - 141:29, 146:24, 146:25, 150:9</p> <p>clock [6] - 13:8, 13:16, 13:20, 17:23, 71:20, 76:9</p> <p>Clonmel [1] - 42:3 close [2] - 104:28, 105:2</p> <p>CMO [3] - 20:26, 146:10, 184:18</p> <p>CODY [1] - 2:12 cognisant [1] - 22:9 coincided [1] - 87:29 collate [1] - 57:7</p> <p>colleague [2] - 30:24, 40:11</p> <p>colleagues [1] - 57:20</p> <p>collision [1] - 144:11 combined [1] - 31:8 comfort [2] - 51:23, 119:15</p>	<p>coming [10] - 9:24, 14:21, 40:9, 92:8, 135:15, 139:15, 141:6, 173:6, 183:22, 183:23</p> <p>commence [2] - 16:23, 118:11</p> <p>commenced [8] - 17:2, 18:4, 71:20, 80:12, 84:25, 103:20, 115:2, 115:9</p> <p>commencement [1] - 163:12</p> <p>commences [2] - 71:16, 132:16</p> <p>comment [4] - 69:16, 121:19, 156:5, 158:23</p> <p>comments [1] - 167:16</p> <p>Commission [1] - 31:21</p> <p>Commissioner [11] - 6:28, 7:7, 29:13, 29:25, 33:13, 34:29, 35:22, 36:17, 37:16, 40:25, 42:10</p> <p>COMMISSIONER [1] - 2:16</p> <p>commissioner [21] - 7:5, 7:23, 8:1, 8:8, 8:19, 8:23, 10:4, 10:14, 11:17, 12:7, 35:15, 39:18, 41:8, 43:19, 44:6, 62:28, 83:19, 84:9, 85:12, 88:20, 146:10</p> <p>Committee [5] - 152:5, 152:8, 152:15, 157:19, 157:26</p> <p>communicating [1] - 140:2</p> <p>Communications [2] - 53:24, 109:11</p> <p>communications [1] - 34:18</p> <p>COMPANY [1] - 3:3 compilation [1] - 20:14</p> <p>complain [1] - 40:25 complainant [9] - 7:10, 12:10, 17:13, 18:27, 26:2, 72:5, 75:7, 123:7, 128:1</p> <p>complained [4] - 17:13, 18:27, 70:17, 75:7</p> <p>complaining [4] - 41:28, 42:1, 52:11, 60:5</p> <p>complaint [73] - 7:9,</p>	<p>7:11, 8:25, 8:28, 12:18, 12:21, 14:13, 14:21, 16:10, 17:18, 17:25, 17:26, 18:6, 18:8, 18:12, 19:14, 20:4, 21:2, 24:5, 29:21, 29:24, 30:15, 31:20, 32:12, 34:7, 48:6, 49:21, 49:22, 49:23, 49:25, 53:2, 55:4, 63:9, 63:11, 63:26, 63:27, 67:17, 67:19, 68:24, 68:29, 69:3, 71:8, 72:18, 72:26, 72:28, 73:2, 73:6, 73:18, 73:22, 73:27, 73:29, 74:23, 75:22, 75:23, 76:3, 76:13, 76:15, 76:21, 76:24, 76:25, 81:2, 123:20, 133:16, 141:24, 142:7, 142:13, 142:14, 150:5, 150:7, 150:25, 160:8</p> <p>complaints [9] - 14:19, 16:26, 25:22, 32:20, 41:24, 53:6, 67:22, 73:24, 134:25</p> <p>complete [11] - 6:5, 20:27, 48:10, 78:11, 84:25, 85:13, 107:24, 108:10, 114:21, 115:21, 115:24</p> <p>complete.. [1] - 43:3 completed [8] - 36:10, 47:18, 62:17, 63:12, 77:22, 77:23, 77:24, 127:12</p> <p>completely [1] - 149:23</p> <p>completeness [1] - 101:27</p> <p>completion [4] - 59:9, 85:5, 86:1, 86:2</p> <p>complex [4] - 27:9, 50:8, 108:13, 122:21</p> <p>complexity [1] - 122:18</p> <p>complied [1] - 155:3 complimented [1] - 134:19</p> <p>comply [1] - 125:7 complying [1] - 184:27</p> <p>component [1] - 14:17</p> <p>comprehensive [2] - 6:12, 108:1</p> <p>comprehensively [1]</p>
--	--	--	--	---

<p>- 108:17 compromise [2] - 22:1, 38:6 compromised [3] - 43:1, 100:9, 101:14 compromising [2] - 49:4, 59:9 Comyns [75] - 7:12, 9:13, 10:25, 11:8, 15:3, 23:7, 25:18, 26:2, 26:5, 28:27, 32:5, 45:24, 48:16, 51:29, 54:13, 55:29, 56:1, 57:11, 58:20, 61:13, 61:18, 62:1, 62:5, 63:6, 64:27, 78:27, 79:27, 112:3, 115:4, 116:16, 117:22, 123:29, 128:10, 130:17, 138:5, 138:7, 138:11, 138:17, 138:24, 139:24, 139:26, 140:11, 140:22, 140:28, 141:17, 141:24, 144:6, 145:25, 146:13, 146:16, 146:21, 148:17, 148:22, 148:29, 149:20, 150:6, 150:17, 152:25, 154:20, 155:7, 159:3, 162:26, 164:9, 165:12, 165:18, 165:21, 165:26, 165:28, 166:3, 166:10, 166:23, 166:26, 179:2, 179:11, 183:25 COMYNS [1] - 2:24 comyns [1] - 148:21 Comyns' [1] - 138:29 Comyns's [1] - 184:27 concentrate [1] - 47:19 concern [4] - 35:19, 101:17, 102:24, 128:14 concerned [14] - 13:12, 36:6, 45:20, 48:7, 56:4, 100:7, 100:11, 100:16, 102:28, 124:2, 130:28, 152:19, 155:2, 155:3 concerning [1] - 44:9 concerns [3] - 56:8, 125:11, 178:4</p>	<p>conciseness [1] - 107:11 conclude [2] - 80:22, 86:12 concluded [11] - 49:1, 58:26, 64:25, 70:8, 75:27, 76:2, 80:17, 94:25, 115:8, 115:11, 116:11 concludes [1] - 64:26 concluding [1] - 52:29 conclusion [6] - 23:20, 48:2, 62:20, 65:4, 114:5, 124:17 condemned [1] - 114:16 conditions [7] - 162:8, 162:16, 162:18, 162:19, 162:21, 175:21, 175:29 conduct [18] - 7:8, 12:29, 15:3, 25:9, 47:16, 50:21, 50:27, 65:25, 69:6, 69:11, 69:23, 82:14, 89:14, 103:17, 110:16, 110:25, 112:25, 122:27 conducted [13] - 17:10, 45:21, 51:8, 51:16, 65:22, 68:10, 72:9, 108:28, 110:13, 124:7, 125:3, 130:16, 132:26 conducting [2] - 68:18, 132:24 conference [1] - 179:28 confidentiality [5] - 17:11, 125:16, 172:14, 175:13, 178:14 confine [1] - 22:25 confining [1] - 22:24 confirm [3] - 30:9, 67:24, 82:5 confirmation [1] - 117:11 confirmed [2] - 67:16, 173:18 confirming [1] - 116:23 conflict [1] - 47:7 conflicts [1] - 72:7 confronting [1] - 179:12 confusion [1] - 180:9</p>	<p>CONLON [1] - 2:25 connection [11] - 34:5, 34:9, 34:19, 34:23, 48:16, 57:27, 94:16, 94:21, 94:23, 97:2, 106:2 connotations [1] - 129:29 conscience [1] - 132:26 conscious [3] - 14:10, 21:17, 44:13 consent [5] - 30:9, 77:18, 113:26, 116:25, 117:3 consented [1] - 77:16 consequence [2] - 51:5, 103:1 consider [6] - 52:23, 64:28, 97:18, 130:8, 183:9, 183:14 considerable [5] - 10:28, 80:25, 81:4, 157:10, 157:16 consideration [2] - 102:1, 137:28 considered [3] - 78:21, 85:4, 106:6 constituted [3] - 113:7, 113:12, 113:29 consult [1] - 46:26 contact [4] - 23:22, 48:24, 49:2, 94:15 contacted [1] - 12:3 content [7] - 30:14, 36:21, 50:26, 101:3, 156:28, 173:1, 175:25 contention [1] - 58:1 contents [5] - 100:7, 172:15, 173:22, 173:24, 176:3 context [26] - 9:26, 16:4, 16:26, 17:22, 23:9, 23:10, 24:20, 45:3, 47:14, 50:2, 50:29, 53:11, 55:7, 55:15, 65:24, 77:2, 80:28, 81:3, 86:23, 95:14, 95:19, 106:27, 113:24, 115:9, 124:12, 130:14 continuance [2] - 102:29, 129:25 continue [23] - 19:13, 23:1, 31:27, 36:26, 37:6, 38:4, 38:29, 39:13, 39:28, 43:20, 44:23, 44:24, 62:19, 69:4, 89:8,</p>	<p>89:28, 96:6, 98:18, 101:7, 104:17, 105:3, 106:7, 107:22 continued [5] - 25:3, 74:13, 82:27, 85:24, 88:22 continues [4] - 13:27, 40:16, 43:15, 59:7 continuing [15] - 41:7, 43:1, 46:4, 46:10, 46:12, 46:18, 47:20, 85:10, 98:16, 98:29, 102:2, 105:10, 128:15, 129:14, 134:24 contrary [3] - 50:18, 51:12, 63:21 control [4] - 78:15, 86:7, 89:11, 134:17 convenient [1] - 92:10 conversation [13] - 8:5, 8:9, 21:3, 21:13, 49:29, 50:2, 126:13, 146:15, 161:13, 161:15, 166:2, 174:24, 182:9 conversations [4] - 146:12, 165:16, 165:20, 166:10 Conway [1] - 152:27 cooperate [1] - 158:25 cooperating [1] - 48:17 cooperation [3] - 34:8, 54:8, 157:12 cooperative [1] - 58:21 copied [6] - 42:24, 90:25, 90:26, 91:12, 98:1, 133:4 cordial [2] - 143:29, 185:1 cordially [1] - 49:1 Cork [2] - 156:21, 164:25 CORMAC [1] - 2:20 corner [1] - 167:12 correct [251] - 6:15, 6:19, 6:23, 6:29, 7:22, 7:28, 8:4, 8:15, 8:20, 9:8, 9:14, 9:23, 10:2, 12:12, 12:23, 13:23, 13:25, 14:1, 14:5, 14:9, 14:16, 15:9, 16:1, 18:13, 19:5, 19:16, 19:21, 20:1, 20:6, 20:18, 22:6,</p>	<p>22:19, 22:28, 23:5, 24:11, 25:6, 25:25, 25:27, 26:4, 26:9, 26:15, 26:24, 27:3, 27:6, 30:13, 30:22, 31:25, 32:2, 32:9, 32:21, 32:29, 33:4, 33:10, 33:17, 33:28, 34:10, 34:13, 35:7, 35:21, 37:21, 38:16, 38:26, 40:8, 42:5, 42:25, 43:16, 44:28, 45:14, 45:16, 45:17, 46:11, 46:20, 48:22, 48:27, 49:9, 49:29, 50:1, 50:12, 53:6, 53:20, 53:26, 54:1, 54:4, 54:7, 54:11, 54:24, 55:1, 56:21, 57:2, 57:9, 57:13, 57:16, 57:19, 57:25, 57:29, 59:3, 60:2, 60:19, 61:21, 62:9, 62:23, 63:3, 64:11, 64:13, 64:18, 64:21, 65:3, 65:11, 68:8, 68:14, 68:15, 68:20, 70:19, 70:20, 71:12, 71:29, 72:15, 72:27, 75:25, 75:29, 77:10, 77:15, 78:15, 78:28, 79:8, 79:15, 79:16, 79:19, 79:20, 79:29, 80:9, 80:20, 81:22, 81:27, 82:4, 82:9, 83:2, 83:17, 83:21, 84:7, 84:28, 85:3, 85:15, 86:13, 86:16, 88:23, 89:20, 90:13, 91:29, 93:5, 94:5, 94:10, 94:13, 94:18, 94:24, 94:28, 95:6, 95:11, 96:18, 96:21, 96:25, 96:29, 99:24, 100:5, 100:6, 101:12, 101:16, 101:19, 103:13, 103:19, 104:2, 104:16, 104:19, 104:23, 104:27, 105:20, 105:21, 109:13, 109:17, 109:21, 109:25, 110:19, 110:23, 110:28, 111:3, 112:1, 112:10, 112:23, 112:26, 113:5, 113:9, 114:28, 115:1, 115:13, 115:19, 116:18, 116:27, 117:15, 125:22, 125:25,</p>
--	--	--	--	---

<p>125:28, 126:17, 126:25, 127:16, 127:21, 128:4, 128:12, 128:17, 129:3, 129:6, 129:9, 130:15, 130:19, 130:22, 130:26, 131:18, 131:21, 136:15, 136:18, 137:1, 137:6, 137:10, 137:18, 138:7, 138:11, 139:3, 139:9, 139:15, 141:22, 145:23, 146:27, 147:6, 147:17, 149:4, 154:23, 157:2, 164:20, 166:17, 166:21, 166:25, 170:16, 172:15, 172:21, 172:27, 173:19, 179:21, 179:25, 182:18, 183:11</p> <p>corrected [2] - 55:10, 55:25</p> <p>correctly [9] - 13:12, 16:22, 81:1, 86:9, 90:9, 91:7, 93:14, 100:2, 117:4</p> <p>correctness [1] - 116:23</p> <p>corresponded [1] - 129:7</p> <p>correspondence [22] - 9:29, 10:16, 22:26, 23:5, 25:17, 25:21, 36:17, 37:15, 50:27, 83:10, 88:3, 89:3, 90:25, 90:27, 102:23, 103:8, 103:12, 104:12, 126:3, 126:27, 130:11, 133:4</p> <p>corresponding [2] - 28:27, 129:11</p> <p>corresponds [1] - 33:12</p> <p>corroboration [1] - 58:22</p> <p>COSTELLO [1] - 3:3</p> <p>Costello [1] - 143:11</p> <p>COSTELLOE [2] - 2:10, 185:10</p> <p>counsel [13] - 5:25, 6:9, 25:20, 67:26, 92:20, 117:28, 120:16, 120:24, 124:25, 125:22, 125:25, 128:27, 133:26</p> <p>counted [1] - 126:10</p>	<p>country [2] - 159:29, 160:7</p> <p>couple [11] - 9:2, 15:19, 18:5, 29:9, 40:29, 93:18, 102:13, 147:26, 153:12, 153:22</p> <p>course [46] - 18:22, 63:29, 65:18, 68:1, 70:14, 73:7, 75:19, 79:9, 81:10, 81:12, 81:29, 82:25, 83:11, 91:23, 91:27, 92:25, 93:3, 93:29, 95:2, 95:10, 103:26, 104:1, 105:15, 105:23, 106:18, 107:7, 107:12, 111:25, 112:4, 114:4, 116:10, 117:9, 117:13, 118:23, 120:14, 122:4, 122:5, 124:11, 125:19, 126:4, 132:23, 133:24, 157:20, 176:5, 176:25, 178:8</p> <p>court [3] - 140:6, 144:10, 176:11</p> <p>COURT [2] - 1:12, 2:3</p> <p>cover [2] - 36:25, 133:18</p> <p>covered [5] - 66:1, 67:14, 138:2, 183:10, 183:15</p> <p>covering [3] - 57:4, 60:15, 60:16</p> <p>create [1] - 27:13</p> <p>created [1] - 150:11</p> <p>crime [1] - 16:10</p> <p>criminal [80] - 11:7, 12:20, 14:22, 15:25, 16:11, 16:15, 16:20, 16:22, 16:24, 16:27, 20:10, 23:3, 24:12, 24:21, 24:22, 27:25, 29:3, 32:28, 36:27, 38:5, 40:15, 40:23, 41:6, 42:9, 43:20, 45:19, 50:6, 51:1, 52:7, 53:18, 54:3, 60:29, 61:19, 61:28, 65:7, 66:16, 68:12, 68:29, 69:6, 69:11, 69:18, 69:24, 69:27, 70:3, 70:7, 70:10, 79:21, 79:26, 81:10, 82:2, 82:7, 82:20, 85:10, 97:10, 98:23, 100:9, 101:8, 102:8,</p>	<p>103:25, 105:15, 105:23, 109:8, 112:9, 113:2, 115:5, 115:8, 115:15, 115:17, 116:1, 116:2, 116:4, 116:12, 117:3, 123:15, 124:13, 127:18, 131:1, 131:6, 131:13, 134:9</p> <p>criminal/discipline [7] - 43:2, 43:7, 46:5, 47:19, 47:23, 48:10, 103:1</p> <p>critical [1] - 81:4</p> <p>criticism [2] - 118:24, 119:19</p> <p>CROSS [4] - 4:6, 4:7, 67:7, 122:11</p> <p>cross [10] - 27:17, 40:2, 103:21, 119:9, 142:24, 148:11, 163:11, 182:21, 183:7, 184:11</p> <p>cross-examination [6] - 27:17, 103:21, 119:9, 163:11, 182:21, 184:11</p> <p>cross-examined [3] - 40:2, 148:11, 183:7</p> <p>CROSS-EXAMINED [4] - 4:6, 4:7, 67:7, 122:11</p> <p>crossed [1] - 167:7</p> <p>culminates [1] - 60:10</p> <p>cult [1] - 10:27</p> <p>current [2] - 52:16, 52:28</p> <p>cut [2] - 11:4, 104:13</p> <p>cutting [1] - 159:28</p>	<p>18:4, 18:8, 23:6, 31:21, 33:25, 42:17, 45:9, 50:16, 52:29, 64:7, 71:18, 71:20, 73:18, 74:12, 74:13, 74:23, 83:3, 89:22, 93:13, 93:15, 93:23, 93:25, 93:26, 94:6, 131:8, 145:4, 145:27, 146:3, 146:13, 152:4, 155:11, 159:8, 159:16, 159:19, 159:21, 162:29, 168:3, 168:21, 168:28, 169:3, 170:14, 173:17, 173:24, 173:28, 174:9, 174:14, 174:19</p> <p>dated [11] - 10:14, 15:11, 26:11, 26:12, 36:18, 83:18, 126:27, 156:20, 167:7, 172:22, 175:16</p> <p>dates [7] - 90:9, 94:6, 94:8, 126:12, 127:10, 155:21, 171:8</p> <p>David [1] - 67:11</p> <p>DAVID [1] - 2:11</p> <p>DAY [1] - 1:17</p> <p>day-to-day [1] - 106:27</p> <p>days [31] - 11:20, 13:24, 17:18, 18:6, 19:27, 19:28, 26:13, 28:17, 35:3, 40:29, 63:18, 71:8, 71:15, 71:25, 72:14, 73:17, 73:18, 73:29, 74:6, 75:6, 77:3, 86:1, 86:11, 89:7, 93:19, 102:13, 122:26, 140:6, 153:12, 153:22</p> <p>deal [11] - 31:10, 49:24, 50:3, 74:9, 74:17, 76:14, 77:1, 81:14, 99:28, 127:29, 175:19</p> <p>dealing [10] - 40:24, 48:14, 57:22, 57:26, 69:7, 75:3, 76:21, 106:25, 122:14, 123:28</p> <p>deals [2] - 18:18, 72:7</p> <p>dealt [14] - 13:13, 15:24, 16:24, 28:15, 51:1, 56:15, 58:5, 61:1, 74:10, 74:16, 124:1, 124:2, 125:14, 134:17</p>	<p>Dear [1] - 132:16</p> <p>DEBORAH [1] - 2:12</p> <p>DECEMBER [1] - 1:8</p> <p>December [18] - 39:19, 39:20, 40:10, 41:28, 90:18, 90:21, 90:24, 91:6, 97:27, 102:16, 104:15, 106:11, 108:22, 126:14, 128:21, 128:25, 152:4, 155:22</p> <p>decide [3] - 90:17, 103:29, 121:29</p> <p>decided [10] - 102:8, 103:28, 110:15, 111:7, 111:10, 111:12, 111:15, 111:18, 171:3, 184:21</p> <p>deciding [5] - 23:11, 35:27, 100:13, 102:7, 124:23</p> <p>decision [11] - 46:23, 48:4, 50:6, 68:23, 69:1, 78:22, 98:20, 99:4, 121:16, 129:2, 153:29</p> <p>decision-making [3] - 48:4, 50:6, 78:22</p> <p>decisions [1] - 102:27</p> <p>declined [7] - 147:13, 149:8, 149:20, 151:1, 153:25, 154:13, 175:22</p> <p>dedicated [2] - 95:29, 134:6</p> <p>deemed [2] - 170:29, 171:13</p> <p>definitely [2] - 52:25, 176:2</p> <p>definitive [1] - 89:2</p> <p>degree [4] - 29:6, 100:11, 100:20, 107:10</p> <p>delay [34] - 11:6, 11:27, 16:5, 16:27, 19:1, 24:5, 29:12, 29:19, 31:9, 40:24, 41:25, 41:28, 42:1, 53:12, 55:4, 56:2, 56:4, 56:8, 58:11, 60:1, 62:18, 63:7, 64:8, 65:17, 65:23, 66:8, 68:1, 108:25, 118:25, 118:27, 119:2, 122:15, 157:8</p> <p>delayed [2] - 52:18, 123:12</p> <p>delaying [3] -</p>
D				
<p>D/Inspector [4] - 20:7, 48:11, 48:17</p> <p>D/sergeant [1] - 20:11</p> <p>DALY [1] - 2:11</p> <p>dash [1] - 160:10</p> <p>Data [3] - 53:24, 55:24, 109:11</p> <p>data [16] - 54:26, 54:27, 55:9, 55:13, 55:23, 56:25, 59:24, 81:4, 107:27, 108:14, 108:16, 110:5, 110:8, 124:26, 124:27</p> <p>date [53] - 7:29, 11:27, 12:11, 15:13,</p>				

<p>119:13, 120:18, 132:24</p> <p>delays [1] - 70:18</p> <p>deliberate [1] - 133:18</p> <p>deliberately [6] - 119:1, 119:6, 119:12, 120:17, 132:23, 133:15</p> <p>deliberations [1] - 128:2</p> <p>delighted [1] - 163:3</p> <p>deliver [1] - 155:19</p> <p>delivered [2] - 155:17, 155:18</p> <p>delivering [3] - 155:24, 156:14, 175:2</p> <p>deny [1] - 134:12</p> <p>department [1] - 132:13</p> <p>depth [1] - 22:13</p> <p>describe [2] - 80:13, 143:28</p> <p>describes [2] - 176:6, 181:14</p> <p>description [1] - 43:6</p> <p>designated [4] - 11:28, 25:1, 25:6, 25:7</p> <p>desk [2] - 32:24, 32:25</p> <p>despite [4] - 44:8, 63:20, 124:4, 157:11</p> <p>detail [6] - 44:2, 75:21, 70:26, 70:27, 75:2, 173:9</p> <p>detailed [3] - 7:26, 23:15, 51:22</p> <p>details [9] - 7:13, 15:3, 28:22, 55:25, 94:19, 110:3, 125:1, 165:9, 179:15</p> <p>detective [28] - 16:23, 30:3, 50:29, 69:5, 69:22, 81:15, 81:19, 82:1, 82:12, 82:16, 82:21, 82:26, 82:28, 83:27, 84:10, 89:12, 92:1, 92:22, 95:16, 95:28, 96:2, 97:12, 105:25, 106:24, 107:16, 107:19, 125:24, 152:28</p> <p>Detective [20] - 19:17, 19:18, 19:19, 27:4, 27:24, 29:2, 47:15, 55:17, 69:10, 69:15, 69:17, 81:20,</p>	<p>81:25, 82:15, 87:26, 98:25, 98:27, 98:28, 99:7, 125:26</p> <p>determination [3] - 52:7, 100:4, 124:17</p> <p>determined [1] - 124:13</p> <p>developments [1] - 41:15</p> <p>devoid [1] - 132:25</p> <p>DIARMAID [1] - 2:6</p> <p>dictates [1] - 77:2</p> <p>difference [2] - 52:1, 110:4</p> <p>different [11] - 23:9, 23:22, 61:20, 75:13, 94:4, 103:17, 109:29, 110:29, 122:23, 174:16</p> <p>difficult [3] - 107:10, 119:21, 122:26</p> <p>difficulties [11] - 34:8, 51:4, 87:9, 87:12, 90:5, 139:26, 140:6, 140:27, 141:9, 141:11</p> <p>difficulty [9] - 39:1, 46:4, 52:4, 89:16, 98:21, 104:21, 168:14, 168:16</p> <p>diligent [1] - 65:22</p> <p>diligently [1] - 134:13</p> <p>Dillane [30] - 144:17, 144:21, 145:1, 145:8, 154:20, 159:4, 164:10, 164:24, 165:11, 165:27, 166:6, 166:27, 170:6, 171:19, 172:25, 179:12, 180:10, 180:24, 181:3, 181:18, 181:19, 182:8, 182:22, 183:4, 183:18, 183:21, 184:7, 184:16, 184:17, 184:24</p> <p>Dillane's [1] - 179:19</p> <p>direct [9] - 27:16, 69:4, 143:15, 143:22, 143:25, 150:3, 154:7, 161:12, 163:10</p> <p>directed [10] - 36:27, 83:27, 101:8, 131:4, 144:16, 167:2, 167:5, 170:17, 171:28, 171:29</p> <p>directing [4] - 127:23, 162:26, 162:27, 166:23</p>	<p>direction [1] - 113:20</p> <p>directions [9] - 60:20, 62:4, 62:7, 113:16, 113:24, 127:22, 128:6, 128:9, 128:18</p> <p>directive [3] - 145:26, 147:10, 154:29</p> <p>Directive [1] - 146:8</p> <p>directly [4] - 40:25, 66:4, 90:26, 104:8</p> <p>DIRECTLY [4] - 4:5, 4:11, 5:11, 135:27</p> <p>DIRECTLY-EXAMINED [4] - 4:5, 4:11, 5:11, 135:27</p> <p>Director [1] - 60:11</p> <p>disagree [4] - 74:19, 77:5, 108:12, 110:2</p> <p>disappointed [2] - 34:3, 95:8</p> <p>disappointment [1] - 97:17</p> <p>disciplinary [44] - 15:25, 38:4, 40:23, 41:6, 42:6, 52:1, 60:27, 61:19, 62:19, 62:29, 64:29, 68:13, 69:28, 70:2, 70:6, 100:10, 110:11, 110:12, 110:17, 110:18, 110:21, 111:23, 111:28, 113:3, 113:6, 113:12, 114:4, 115:1, 115:2, 115:11, 115:21, 115:26, 116:2, 116:11, 116:25, 117:9, 117:13, 127:28, 128:16, 129:4, 129:25, 130:14, 130:29, 132:1</p> <p>Discipline [2] - 14:3, 26:29</p> <p>discipline [66] - 14:16, 14:27, 20:8, 20:10, 23:4, 23:10, 23:12, 23:24, 23:26, 24:6, 24:13, 24:15, 24:17, 24:21, 24:23, 27:14, 27:25, 28:10, 32:28, 35:20, 36:9, 39:3, 39:5, 41:11, 41:13, 42:9, 45:19, 50:17, 61:2, 61:13, 61:16, 61:27, 61:29, 62:2, 62:6, 63:18, 65:8, 66:16, 70:11, 76:7, 76:8, 82:20,</p>	<p>98:23, 100:12, 110:22, 111:20, 112:15, 113:1, 113:8, 113:13, 113:14, 113:18, 113:27, 115:6, 115:9, 116:6, 118:5, 124:10, 124:14, 124:15, 128:22, 129:14, 131:7, 131:14, 149:27, 151:24</p> <p>discipline/criminal [2] - 41:10, 43:11</p> <p>disciplined [3] - 151:23, 151:24, 151:26</p> <p>disclose [1] - 155:6</p> <p>disclosure [3] - 126:20, 126:23, 127:4</p> <p>DISCLOSURES [2] - 1:1, 1:2</p> <p>disclosures [1] - 144:26</p> <p>discredit [1] - 6:4</p> <p>discredited [1] - 119:2</p> <p>discrediting [2] - 164:8, 179:11</p> <p>discuss [21] - 147:13, 147:20, 148:23, 149:8, 149:14, 149:16, 149:20, 150:15, 151:1, 153:6, 153:13, 153:23, 153:25, 154:13, 154:26, 172:13, 175:13, 175:14, 175:22, 181:4</p> <p>discussed [11] - 71:3, 90:11, 105:14, 146:20, 148:13, 153:14, 153:19, 154:4, 154:10, 154:12, 162:16</p> <p>discussing [3] - 148:7, 150:17, 156:9</p> <p>discussion [9] - 21:9, 144:18, 144:19, 145:3, 147:25, 153:20, 161:29, 166:6, 183:17</p> <p>discussions [1] - 165:10</p> <p>dismissal [1] - 111:6</p> <p>dismissed [1] - 88:23</p> <p>dispute [2] - 180:4, 181:25</p> <p>disquiet [1] - 105:7</p> <p>distance [2] - 70:16,</p>	<p>79:23</p> <p>distinct [1] - 52:1</p> <p>distinction [3] - 72:17, 72:21, 78:12</p> <p>district [29] - 7:11, 25:14, 63:14, 72:3, 72:19, 136:28, 136:29, 137:2, 137:3, 138:3, 138:5, 138:6, 138:14, 138:16, 138:23, 139:2, 139:4, 140:3, 140:4, 140:18, 144:7, 148:3, 148:18, 148:19, 148:20, 155:8, 164:29</p> <p>disturbed [1] - 134:11</p> <p>disturbing [2] - 134:22, 134:26</p> <p>division [11] - 25:2, 25:8, 55:19, 82:12, 86:6, 86:7, 87:14, 89:13, 96:5, 125:21, 158:19</p> <p>DIVISION [1] - 1:11</p> <p>divisional [6] - 17:18, 18:7, 71:8, 72:18, 72:26, 73:7</p> <p>doctor [11] - 151:28, 166:28, 167:21, 168:10, 169:16, 171:1, 171:18, 172:11, 174:25, 179:2</p> <p>doctor's [6] - 168:2, 169:24, 170:13, 174:2, 176:13, 177:19</p> <p>doctors [1] - 167:18</p> <p>document [19] - 12:29, 15:15, 15:16, 15:18, 36:21, 37:28, 42:15, 77:11, 92:27, 92:28, 93:16, 93:28, 94:14, 101:3, 101:15, 117:6, 125:4, 146:19, 168:15</p> <p>documentation [23] - 18:3, 23:14, 27:24, 37:4, 58:8, 77:28, 78:4, 87:29, 88:7, 88:8, 88:14, 88:15, 104:3, 116:3, 127:6, 133:23, 134:10, 140:5, 150:2, 155:17, 163:21, 165:9, 181:26</p> <p>documents [13] - 96:12, 106:9, 124:28, 126:21, 126:26, 132:9, 155:19, 155:24, 156:14, 175:2, 181:3, 181:12,</p>
--	--	---	--	--

<p>181:18 DONAL [1] - 2:18 done [22] - 7:24, 11:12, 58:3, 70:1, 81:7, 92:25, 93:3, 95:2, 95:16, 95:20, 95:22, 97:25, 108:4, 108:11, 109:10, 116:10, 118:5, 120:29, 124:3, 125:1, 144:29, 169:17 door [5] - 148:18, 181:11, 182:29, 183:2, 184:25 doubt [3] - 139:26, 141:13, 148:14 down [45] - 5:13, 7:18, 9:1, 9:2, 10:9, 12:24, 13:28, 14:29, 15:21, 17:8, 20:24, 23:13, 28:21, 29:9, 30:26, 31:4, 32:10, 34:27, 40:11, 40:12, 42:19, 49:16, 49:18, 60:16, 64:24, 70:29, 94:2, 100:29, 109:28, 132:17, 135:29, 146:2, 151:6, 152:7, 153:3, 160:6, 168:4, 168:14, 168:18, 169:20, 169:23, 172:9, 172:10, 174:5, 176:26 DPP [18] - 52:8, 57:4, 59:15, 60:20, 61:11, 62:4, 62:7, 80:18, 112:18, 113:15, 113:24, 127:19, 127:23, 128:8, 128:29, 131:4, 132:4, 134:18 DPP's [4] - 56:28, 60:25, 128:2, 128:18 Dr [23] - 164:14, 166:8, 170:7, 172:5, 172:17, 173:10, 173:14, 173:17, 173:27, 174:17, 175:5, 175:9, 175:12, 175:15, 176:6, 176:10, 176:18, 176:21, 176:25, 177:18, 177:22, 178:13, 178:15 draw [3] - 78:12, 119:4, 120:19 drawn [5] - 12:27, 25:2, 71:4, 72:17, 72:21 dress [3] - 180:17,</p>	<p>180:23, 181:24 dressed [1] - 176:14 dropped [1] - 114:20 Dublin [7] - 137:12, 160:6, 181:3, 184:16, 184:17, 184:18 DUBLIN [6] - 1:16, 2:14, 2:22, 2:27, 3:5, 3:10 due [9] - 10:24, 10:28, 11:26, 17:12, 18:22, 49:22, 120:14, 122:4, 176:25 during [37] - 24:26, 25:16, 25:26, 25:28, 43:29, 44:14, 45:1, 53:16, 59:26, 68:1, 75:18, 81:9, 81:12, 81:29, 87:5, 92:25, 93:3, 93:8, 93:29, 95:2, 95:9, 105:15, 105:23, 105:26, 106:17, 114:3, 116:10, 117:8, 117:13, 123:29, 124:7, 126:8, 146:17, 148:13, 150:3, 176:5, 183:10 duties [1] - 162:20 duty [6] - 63:20, 138:19, 150:11, 152:17, 152:18, 163:13 dwel [1] - 8:21 DÁIL [1] - 1:3</p>	<p>6:25, 8:13, 8:18, 12:7, 12:10, 14:7, 14:8, 14:20, 15:1, 15:17, 16:14, 16:28, 18:14, 23:24, 24:6, 24:9, 24:17, 25:16, 25:21, 27:19, 32:23, 33:12, 33:26, 34:27, 38:14, 39:11, 39:24, 40:4, 40:6, 41:23, 42:8, 43:22, 44:3, 44:25, 44:28, 45:9, 50:11, 57:18, 59:1, 60:27, 64:1, 65:5, 68:18, 70:6, 99:20, 99:23, 111:25, 112:4, 117:12, 138:1, 149:11, 158:22, 167:5 effectiveness [1] - 149:9 effort [6] - 59:8, 85:27, 108:20, 124:4, 156:8 efforts [5] - 55:19, 86:24, 98:12, 105:10, 107:1 EGAN [1] - 2:19 eight [8] - 14:19, 25:22, 48:7, 76:1, 76:24, 76:29, 159:20, 159:24 either [6] - 7:14, 78:26, 98:19, 135:7, 160:10, 182:1 elapsed [2] - 104:29, 105:2 elements [2] - 65:6, 65:23 elsewhere [1] - 125:21 emphasis [2] - 26:16, 27:17 Employee [5] - 152:5, 152:7, 152:15, 157:19, 157:25 en [1] - 139:18 encloses [1] - 12:16 encounter [1] - 163:27 encouraging [1] - 151:26 END [3] - 66:23, 118:1, 134:29 end [21] - 23:16, 24:7, 30:25, 40:19, 46:27, 48:10, 48:28, 52:26, 58:17, 64:6, 64:24, 64:26, 97:26, 106:10, 111:23, 114:21, 115:17,</p>	<p>121:20, 132:7, 168:19, 184:29 endeavour [4] - 49:3, 56:14, 86:25, 87:5 ends [1] - 115:17 engaged [1] - 25:21 enquiries [17] - 7:25, 16:24, 47:16, 64:26, 82:2, 82:7, 83:28, 85:24, 86:10, 87:5, 91:17, 97:25, 99:5, 106:1, 164:13, 178:5, 178:6 enquiry [2] - 57:15, 58:9 ensure [7] - 28:11, 28:14, 30:11, 35:27, 56:14, 59:9, 125:13 enter [6] - 169:8, 171:1, 171:23, 172:4, 172:16 entered [1] - 130:11 entertain [1] - 119:22 entirely [3] - 61:20, 114:17, 127:2 entirety [1] - 129:21 entitled [3] - 78:18, 78:19, 129:17 entry [1] - 181:27 environment [1] - 27:13 envisage [4] - 72:25, 73:1, 73:26, 74:22 epaulettes [1] - 160:9 EQUALITY [1] - 1:7 error [3] - 42:21, 136:19, 180:21 escalate [2] - 113:25, 114:2 essence [3] - 8:5, 8:9, 52:4 essential [2] - 75:6, 81:5 essentially [14] - 37:24, 71:13, 71:16, 77:18, 84:22, 89:6, 90:3, 94:19, 101:29, 115:20, 116:15, 116:28, 118:7, 171:4 establish [1] - 53:13 ESTABLISHED [1] - 1:6 established [1] - 34:19 evening [15] - 44:21, 148:19, 159:20, 159:22, 160:1, 160:12, 160:16, 160:21, 161:10,</p>	<p>162:17, 163:3, 165:22, 166:14, 171:22, 183:24 event [9] - 13:20, 78:23, 89:18, 104:7, 133:14, 140:24, 147:1, 165:6, 182:7 eventually [1] - 109:28 evidence [41] - 18:11, 19:27, 27:16, 28:3, 29:26, 34:15, 44:1, 47:8, 51:22, 57:24, 58:2, 59:26, 67:14, 67:16, 68:9, 68:18, 69:4, 70:4, 79:2, 87:24, 90:14, 95:7, 96:11, 99:1, 99:20, 109:1, 114:1, 114:6, 120:21, 128:21, 143:26, 154:8, 155:2, 160:19, 161:5, 161:7, 161:12, 165:12, 167:1, 169:18, 178:17 EVIDENCE [1] - 1:7 evident [2] - 37:27, 60:18 exact [3] - 100:23, 141:12, 145:27 exactly [14] - 8:27, 31:9, 50:19, 68:21, 69:14, 76:19, 82:24, 106:17, 107:11, 140:26, 145:7, 150:5, 153:16, 154:9 examination [8] - 27:17, 103:21, 119:9, 150:3, 163:10, 163:11, 182:21, 184:11 EXAMINATION [3] - 66:23, 118:1, 134:29 EXAMINED [8] - 4:5, 4:6, 4:7, 4:11, 5:11, 67:7, 122:11, 135:27 examined [4] - 40:2, 108:15, 148:11, 183:7 examining [1] - 37:27 example [3] - 20:26, 53:22, 98:24 excellent [1] - 125:1 exception [1] - 117:6 exchange [4] - 104:11, 112:7, 116:12, 183:10 exchanges [1] - 108:3 exclusion [1] - 39:7</p>
E		<p>e-mail [11] - 10:6, 11:16, 11:18, 12:3, 40:13, 40:18, 83:13, 83:18, 83:22, 85:18, 85:20 e-mails [6] - 9:29, 10:4, 12:17, 30:23, 30:24, 88:19 earliest [2] - 23:27, 58:12 early [8] - 12:1, 24:26, 77:28, 85:14, 103:26, 103:29, 124:18, 137:14 earnestly [1] - 59:14 ease [3] - 5:17, 35:24, 89:13 effect [6] - 62:16, 68:9, 134:3, 156:4, 177:13, 181:14 effectively [54] - 6:7,</p>	<p>125:21 elsewhere [1] - 125:21 emphasis [2] - 26:16, 27:17 Employee [5] - 152:5, 152:7, 152:15, 157:19, 157:25 en [1] - 139:18 encloses [1] - 12:16 encounter [1] - 163:27 encouraging [1] - 151:26 END [3] - 66:23, 118:1, 134:29 end [21] - 23:16, 24:7, 30:25, 40:19, 46:27, 48:10, 48:28, 52:26, 58:17, 64:6, 64:24, 64:26, 97:26, 106:10, 111:23, 114:21, 115:17,</p>	<p>121:20, 132:7, 168:19, 184:29 endeavour [4] - 49:3, 56:14, 86:25, 87:5 ends [1] - 115:17 engaged [1] - 25:21 enquiries [17] - 7:25, 16:24, 47:16, 64:26, 82:2, 82:7, 83:28, 85:24, 86:10, 87:5, 91:17, 97:25, 99:5, 106:1, 164:13, 178:5, 178:6 enquiry [2] - 57:15, 58:9 ensure [7] - 28:11, 28:14, 30:11, 35:27, 56:14, 59:9, 125:13 enter [6] - 169:8, 171:1, 171:23, 172:4, 172:16 entered [1] - 130:11 entertain [1] - 119:22 entirely [3] - 61:20, 114:17, 127:2 entirety [1] - 129:21 entitled [3] - 78:18, 78:19, 129:17 entry [1] - 181:27 environment [1] - 27:13 envisage [4] - 72:25, 73:1, 73:26, 74:22 epaulettes [1] - 160:9 EQUALITY [1] - 1:7 error [3] - 42:21, 136:19, 180:21 escalate [2] - 113:25, 114:2 essence [3] - 8:5, 8:9, 52:4 essential [2] - 75:6, 81:5 essentially [14] - 37:24, 71:13, 71:16, 77:18, 84:22, 89:6, 90:3, 94:19, 101:29, 115:20, 116:15, 116:28, 118:7, 171:4 establish [1] - 53:13 ESTABLISHED [1] - 1:6 established [1] - 34:19 evening [15] - 44:21, 148:19, 159:20, 159:22, 160:1, 160:12, 160:16, 160:21, 161:10,</p>

<p>excuse [2] - 88:15, 91:2</p> <p>exhausted [1] - 108:21</p> <p>exhibits [3] - 20:3, 108:1, 130:21</p> <p>expect [1] - 154:27</p> <p>expectation [1] - 95:21</p> <p>expected [2] - 95:12, 168:20</p> <p>expecting [2] - 46:28, 91:14</p> <p>expedite [2] - 22:2, 49:3</p> <p>expedition [1] - 23:20</p> <p>expeditious [4] - 13:29, 50:18, 51:12, 134:17</p> <p>expeditiously [5] - 26:23, 28:12, 28:16, 56:15, 58:6</p> <p>expense [3] - 183:19, 183:20</p> <p>expenses [3] - 183:9, 183:14, 183:20</p> <p>experience [1] - 72:8</p> <p>experiencing [1] - 44:12</p> <p>expire [1] - 21:29</p> <p>explain [7] - 28:20, 112:19, 113:19, 120:8, 120:9, 128:23, 181:2</p> <p>explained [8] - 30:7, 45:18, 48:14, 50:2, 61:4, 61:5, 148:1, 148:6</p> <p>explanation [5] - 50:20, 63:20, 120:13, 120:28, 121:21</p> <p>explanations [1] - 121:18</p> <p>explore [1] - 63:26</p> <p>explored [1] - 56:24</p> <p>expressed [1] - 49:20</p> <p>expressing [1] - 34:16</p> <p>extension [25] - 9:12, 9:15, 10:7, 10:19, 10:26, 11:21, 12:9, 12:15, 18:19, 18:28, 21:16, 22:7, 22:18, 26:1, 26:6, 30:8, 30:20, 31:7, 31:8, 31:17, 31:26, 32:4, 75:9, 77:9, 77:13</p>	<p>extensions [5] - 18:18, 18:25, 75:3, 75:12, 78:24</p> <p>extensive [3] - 32:18, 56:29, 57:5</p> <p>extent [3] - 15:19, 94:29, 183:4</p> <p>extenuating [1] - 30:29</p> <p>extract [1] - 68:26</p> <p>extremely [1] - 134:26</p>	<p>36:13</p> <p>February [62] - 6:17, 6:26, 7:2, 8:13, 12:1, 13:11, 15:6, 15:8, 15:11, 17:26, 18:3, 19:23, 19:28, 24:28, 43:27, 44:4, 44:18, 45:6, 45:11, 48:26, 64:16, 69:10, 71:19, 72:29, 76:6, 77:8, 80:11, 80:14, 81:13, 81:14, 81:17, 81:21, 81:24, 81:28, 83:3, 89:27, 90:17, 91:10, 91:17, 96:24, 97:4, 97:11, 98:2, 98:3, 99:21, 103:16, 103:27, 104:25, 105:24, 107:23, 108:7, 108:24, 111:22, 115:3, 126:14, 143:12, 143:15, 143:27, 144:3, 157:10</p> <p>FEBRUARY [2] - 1:4, 1:8</p> <p>fed [2] - 123:9, 123:11</p> <p>fell [1] - 14:20</p> <p>felt [3] - 105:12, 113:16, 121:1</p> <p>Fermoy [34] - 7:12, 136:27, 137:1, 138:2, 138:5, 138:18, 138:27, 139:1, 139:12, 139:19, 139:20, 140:15, 140:18, 140:19, 140:22, 140:23, 144:7, 147:22, 147:28, 148:3, 148:8, 148:28, 150:19, 152:28, 154:27, 155:8, 158:28, 164:29, 165:7, 169:9, 176:11, 176:21, 183:23</p> <p>FERRY [1] - 2:24</p> <p>few [3] - 68:4, 158:13, 185:9</p> <p>fide [2] - 168:7, 168:9</p> <p>file [38] - 9:19, 20:14, 20:15, 32:11, 32:17, 32:18, 36:10, 39:23, 52:8, 56:28, 57:6, 59:14, 60:11, 60:14, 60:18, 60:24, 61:11, 62:2, 80:8, 80:18, 86:24, 87:8, 87:17,</p>	<p>96:4, 102:26, 112:17, 113:15, 123:3, 124:18, 126:2, 127:17, 127:18, 132:4, 146:9, 149:27, 150:11</p> <p>files [2] - 87:22, 134:18</p> <p>final [6] - 18:16, 65:9, 70:12, 71:5, 109:7, 130:23</p> <p>finalised [2] - 49:26, 62:18</p> <p>finalising [2] - 41:9, 41:18</p> <p>finally [2] - 7:29, 110:10</p> <p>finances [1] - 110:7</p> <p>financially [1] - 22:10</p> <p>findings [14] - 17:17, 36:28, 37:29, 45:21, 71:7, 72:13, 73:27, 75:26, 76:23, 77:26, 77:27, 78:7, 78:13, 101:9</p> <p>fine [2] - 84:19, 89:11</p> <p>finger [1] - 140:26</p> <p>fingerprint [4] - 56:27, 57:26, 96:13, 107:27</p> <p>fingerprinting [1] - 96:12</p> <p>fingerprints [1] - 60:9</p> <p>finish [4] - 65:12, 77:1, 185:5, 185:9</p> <p>finished [4] - 87:3, 123:6, 134:16, 135:15</p> <p>FINTAN [1] - 3:1</p> <p>firmly [3] - 36:26, 37:12, 101:7</p> <p>first [39] - 5:6, 9:10, 13:15, 15:15, 15:16, 16:28, 22:12, 44:3, 44:4, 44:25, 66:25, 68:8, 68:24, 68:26, 70:23, 81:12, 81:14, 83:12, 100:2, 102:22, 103:8, 104:7, 104:10, 105:15, 105:19, 106:5, 126:28, 132:10, 132:29, 133:20, 137:23, 143:7, 145:17, 150:6, 152:14, 158:17, 158:18, 159:26, 167:21</p> <p>fit [6] - 169:7,</p>	<p>170:29, 171:23, 172:4, 174:9, 179:4</p> <p>FITZGERALD [1] - 2:17</p> <p>five [6] - 33:26, 134:15, 138:13, 144:7, 144:13, 158:18</p> <p>flick [1] - 60:16</p> <p>flicking [1] - 9:1</p> <p>focus [3] - 69:19, 69:21, 81:11</p> <p>focuses [1] - 23:22</p> <p>follow [2] - 124:22, 133:7</p> <p>FOLLOWING [1] - 1:3</p> <p>following [15] - 1:24, 30:20, 34:21, 45:12, 72:24, 76:2, 85:7, 127:2, 136:24, 142:11, 142:17, 143:27, 157:8, 166:20, 184:21</p> <p>FOLLOWS [6] - 5:1, 5:11, 67:8, 92:16, 122:12, 135:27</p> <p>Fools [1] - 31:19</p> <p>FOR [9] - 1:6, 2:6, 2:9, 2:10, 2:16, 2:24, 3:1, 3:7, 92:15</p> <p>force [3] - 6:13, 136:27, 182:6</p> <p>foremost [1] - 125:11</p> <p>forged [2] - 170:21, 171:26</p> <p>forgery [3] - 167:27, 168:12, 171:15</p> <p>forgotten [1] - 120:24</p> <p>form [6] - 29:16, 66:18, 133:9, 141:28, 146:5, 146:22</p> <p>formal [7] - 31:20, 43:24, 87:18, 116:28, 117:18, 176:7, 177:10</p> <p>formally [5] - 7:19, 26:7, 115:2, 132:21, 133:25</p> <p>formed [2] - 13:14, 67:22</p> <p>FORMER [2] - 1:12, 2:3</p> <p>formula [1] - 67:2</p> <p>FORRISTAL [1] - 2:20</p> <p>forth [2] - 37:16, 124:24</p> <p>forthcoming [2] - 147:27, 148:26</p>
F				

<p>forward [4] - 36:20, 90:20, 104:21, 145:12</p> <p>forwarded [4] - 10:15, 127:13, 127:17, 127:18</p> <p>forwarding [1] - 146:9</p> <p>four [7] - 29:19, 126:8, 146:18, 158:18, 165:1, 176:22, 185:4</p> <p>frame [2] - 59:21, 127:11</p> <p>free [2] - 120:3, 135:18</p> <p>FREEMAN [1] - 3:3</p> <p>fresh [1] - 13:9</p> <p>Friday [4] - 138:26, 159:26, 164:3, 176:11</p> <p>friend [2] - 143:6, 158:25</p> <p>friends [6] - 143:7, 174:21, 174:22, 174:26, 174:27, 174:28</p> <p>front [2] - 27:6, 179:3</p> <p>fruition [1] - 55:8</p> <p>frustration [2] - 34:16, 44:12</p> <p>full [28] - 50:26, 86:19, 101:22, 146:9, 157:12, 159:7, 160:3, 160:5, 160:12, 161:18, 161:22, 162:25, 176:7, 176:13, 176:28, 177:14, 177:15, 177:17, 177:19, 177:21, 180:5, 180:7, 180:16, 180:22, 180:23, 181:23, 183:4</p> <p>fuller [1] - 20:29</p> <p>fully [11] - 8:2, 22:8, 22:9, 31:19, 38:6, 52:8, 56:13, 76:11, 86:20, 106:22, 107:20</p> <p>functionality [1] - 47:23</p> <p>fundamental [2] - 68:6, 107:14</p> <p>Funderland [1] - 164:25</p> <p>furtherance [2] - 30:10, 128:22</p>	<p>12:19, 12:27, 14:3, 15:5, 19:18, 25:20, 26:29, 27:11, 27:13, 31:21, 33:23, 33:25, 41:11, 42:3, 50:10, 50:16, 70:25, 73:25, 74:7, 81:20, 92:1, 94:12, 117:8, 122:25, 125:26, 126:15, 134:7, 136:13, 138:18, 138:27, 139:12, 139:17, 141:29, 146:25, 147:23, 147:28, 148:5, 148:8, 148:28, 150:8, 150:19, 151:21, 152:1, 154:27, 155:8, 159:7, 160:1, 160:3, 161:10, 162:24, 164:28, 165:7, 169:9, 177:10, 179:13, 179:18, 180:1, 181:1, 181:20</p> <p>GARDA [1] - 2:16</p> <p>garda [7] - 139:18, 141:3, 159:28, 160:4, 170:24, 180:15, 181:9</p> <p>gardaí [1] - 134:14</p> <p>gathering [2] - 108:29, 169:2</p> <p>Gavin [1] - 129:29</p> <p>general [6] - 105:18, 145:13, 162:3, 164:13, 166:19, 178:23</p> <p>generated [1] - 77:26</p> <p>generous [1] - 43:6</p> <p>genuinely [1] - 178:21</p> <p>GERAGHTY [1] - 2:26</p> <p>Gilmartin [4] - 19:18, 81:20, 92:1, 125:26</p> <p>girls [1] - 182:6</p> <p>gist [1] - 133:16</p> <p>given [23] - 11:6, 20:11, 31:18, 51:2, 70:5, 79:2, 80:1, 82:21, 85:27, 87:25, 90:26, 95:24, 98:4, 102:1, 116:24, 117:19, 125:16, 133:7, 133:9, 137:1, 141:1, 143:25, 154:16</p> <p>glad [1] - 161:29</p> <p>Glanmire [2] - 170:7, 175:9</p> <p>good-bye [1] - 148:27</p> <p>Gordon [2] - 135:5,</p>	<p>135:9</p> <p>GORDON [2] - 3:7, 135:5</p> <p>gordon [1] - 135:8</p> <p>governed [1] - 28:10</p> <p>governing [2] - 48:8, 52:2</p> <p>GP [3] - 151:4, 151:11, 166:24</p> <p>great [3] - 75:1, 107:10, 152:1</p> <p>ground [3] - 63:27, 158:22, 162:23</p> <p>grounding [1] - 53:14</p> <p>grounds [8] - 35:10, 36:20, 37:10, 37:27, 48:7, 85:9, 101:5, 102:6</p> <p>guard [2] - 176:15, 177:17</p> <p>guards [2] - 170:26, 178:10</p> <p>guidelines [1] - 102:28</p> <p>guilty [1] - 111:1</p> <p>Gwen [1] - 1:23</p> <p>GWEN [1] - 1:28</p>	<p>22:27, 24:1, 25:19, 27:11, 27:12, 27:28, 28:28, 29:27, 30:5, 32:5, 32:12, 32:23, 35:2, 36:16, 37:9, 38:8, 39:23, 41:3, 45:7, 45:23, 47:13, 47:17, 47:22, 48:6, 50:5, 50:11, 51:1, 52:9, 66:16, 68:11, 68:24, 68:27, 69:2, 69:8, 69:20, 69:22, 69:26, 70:22, 75:15, 75:22, 76:10, 76:24, 76:25, 77:7, 79:12, 79:13, 80:6, 80:9, 100:5, 100:17, 102:9, 102:28, 103:24, 122:24, 127:13, 141:25, 142:13</p> <p>hard [2] - 93:10, 134:13</p> <p>HARTY [1] - 2:24</p> <p>hassett [1] - 37:4</p> <p>HAVING [2] - 5:10, 135:26</p> <p>head [3] - 126:7, 160:25, 171:15</p> <p>headed [5] - 71:1, 71:2, 147:27, 148:28, 168:23</p> <p>headline [1] - 127:9</p> <p>headquarters [1] - 76:26</p> <p>hear [2] - 91:14, 119:3</p> <p>heard [3] - 34:15, 120:12, 183:4</p> <p>HEARING [4] - 1:16, 5:1, 92:15, 185:19</p> <p>hearings [2] - 5:24, 176:6</p> <p>heavily [1] - 124:26</p> <p>heavy [1] - 25:10</p> <p>HELD [1] - 1:16</p> <p>held [2] - 90:2, 152:16</p> <p>hello [1] - 135:9</p> <p>help [6] - 13:5, 85:29, 135:15, 145:16, 153:2, 166:1</p> <p>helping [1] - 57:7</p> <p>hence [2] - 38:9, 69:12</p> <p>Henry [1] - 94:12</p> <p>hereby [1] - 31:7</p> <p>herself [2] - 175:16, 176:6</p> <p>higher [1] - 72:5</p> <p>highest [1] - 81:7</p>	<p>highlighted [1] - 34:23</p> <p>highly [2] - 59:7, 177:9</p> <p>himself [1] - 8:2</p> <p>hmm [1] - 99:18</p> <p>hold [3] - 25:3, 51:14, 51:15</p> <p>holiday [2] - 159:25, 164:5</p> <p>home [3] - 160:22, 160:25, 179:17</p> <p>hoodie [1] - 160:10</p> <p>hope [6] - 28:5, 95:26, 106:18, 131:10, 174:28, 185:13</p> <p>hoping [3] - 95:15, 95:19, 96:4</p> <p>HORAN [1] - 2:18</p> <p>hour [1] - 181:8</p> <p>hours [1] - 144:8</p> <p>HOUSE [2] - 2:21, 3:4</p> <p>house [2] - 132:5, 179:22</p> <p>housekeeping [1] - 5:24</p> <p>HQ [12] - 142:3, 145:25, 146:8, 148:4, 148:5, 148:6, 148:26, 150:11, 150:14, 154:29, 155:3, 156:6</p> <p>HR [2] - 37:4, 44:19</p> <p>HRM [9] - 10:14, 11:20, 33:12, 42:26, 73:8, 75:24, 146:10, 150:12, 157:1</p> <p>huge [2] - 62:16, 70:27</p> <p>Human [1] - 157:12</p> <p>human [1] - 51:29</p> <p>humane [1] - 125:14</p> <p>hundred [3] - 144:1, 149:21, 180:19</p> <p>hurt [1] - 134:11</p>
<p>G</p>				
<p>gap [1] - 53:9</p> <p>Garda [60] - 11:13,</p>				
		<p>H</p> <p>half [19] - 10:27, 11:4, 11:29, 21:17, 22:8, 79:5, 84:29, 107:24, 115:29, 157:9, 159:20, 159:24, 161:18, 161:23, 161:29, 162:2, 163:8, 176:21, 180:14</p> <p>HALIDAY [1] - 3:4</p> <p>halt [1] - 64:9</p> <p>HANAHOE [1] - 3:9</p> <p>hand [2] - 109:29, 167:12</p> <p>handled [1] - 73:25</p> <p>hands [3] - 143:5, 165:25, 171:7</p> <p>happenstance [1] - 161:8</p> <p>happy [4] - 12:10, 67:1, 143:14, 185:5</p> <p>harassment [79] - 7:9, 12:19, 12:20, 12:28, 13:15, 14:11, 15:23, 15:24, 16:19, 16:21, 16:25, 17:1, 17:6, 19:14, 20:15, 20:16, 21:2, 21:28,</p>	<p>I</p> <p>i.e [1] - 48:15</p> <p>idea [2] - 106:2, 134:10</p> <p>identified [6] - 7:20, 8:12, 12:21, 16:22, 33:22, 34:17</p> <p>identity [1] - 94:3</p> <p>IELY [1] - 168:19</p> <p>ignore [1] - 141:6</p> <p>illness [3] - 10:29,</p>	

<p>11:27, 157:11 immediately [4] - 13:11, 26:7, 97:23, 97:27 impartial [1] - 45:25 impartiality [1] - 38:9 implications [1] - 123:17 importance [2] - 79:13, 79:18 important [8] - 18:29, 53:12, 53:13, 65:29, 75:6, 105:13, 123:21, 124:27 imposed [1] - 48:8 impracticable [1] - 144:9 impractical [3] - 144:14, 144:28, 145:10 impressions [1] - 103:7 improper [2] - 161:3, 163:4 IN [1] - 1:16 in-depth [1] - 22:13 inactive [1] - 51:27 inadvertently [1] - 123:12 inappropriate [2] - 164:12, 177:29 incident [1] - 181:28 inclined [1] - 21:16 include [5] - 157:3, 157:8, 157:17, 157:22, 158:8 included [1] - 157:23 including [3] - 33:23, 96:11, 123:27 inconvenient [1] - 185:14 incorrect [4] - 51:26, 151:19, 151:29, 152:2 indeed [8] - 14:23, 59:22, 66:1, 68:3, 108:21, 119:16, 124:1, 134:26 independent [1] - 157:28 INDEX [1] - 4:1 indicate [1] - 22:15 indicated [4] - 18:27, 29:12, 62:15, 93:12 indicating [1] - 35:15 indications [1] - 58:25 inferences [2] - 119:4, 120:20 influence [1] - 86:5 influenced [2] -</p>	<p>113:20, 113:24 information [7] - 22:13, 58:27, 148:27, 153:27, 154:15, 158:1, 158:5 informed [11] - 21:14, 29:15, 41:15, 48:5, 123:27, 149:19, 172:10, 172:13, 172:17, 175:12, 175:15 informing [2] - 46:22, 132:27 initial [4] - 8:28, 18:8, 47:10, 53:2 initialed [4] - 168:3, 171:9, 171:14, 173:25 initials [1] - 168:21 initiated [1] - 151:24 injured [2] - 132:27, 152:18 injury [2] - 79:7, 79:15 inordinate [11] - 6:5, 16:5, 16:27, 24:5, 53:11, 67:18, 108:10, 108:25, 114:20, 117:24, 117:26 inquiries [1] - 64:25 INQUIRY [2] - 1:1, 1:7 inquiry [2] - 126:29, 173:15 inside [1] - 148:18 insofar [2] - 80:5, 107:16 inspect [1] - 163:9 inspected [1] - 163:22 inspection [7] - 163:6, 163:9, 163:15, 163:26, 180:28, 181:1, 181:12 inspector [80] - 16:23, 25:15, 30:4, 42:2, 50:29, 59:27, 59:28, 69:5, 69:22, 72:21, 81:15, 81:19, 82:1, 82:12, 82:16, 82:21, 82:26, 82:28, 83:27, 84:3, 84:10, 87:27, 89:12, 89:23, 90:10, 91:3, 92:22, 95:17, 95:28, 96:2, 97:12, 105:25, 106:24, 107:17, 107:20, 125:24, 130:16, 135:23, 135:29, 136:3, 136:4, 136:5, 136:11,</p>	<p>137:16, 137:21, 137:22, 137:23, 137:24, 137:26, 137:29, 138:2, 140:17, 140:25, 143:22, 145:29, 149:3, 150:21, 151:13, 152:12, 152:25, 155:10, 159:12, 159:27, 162:14, 163:23, 164:12, 164:16, 166:9, 167:9, 169:10, 173:26, 174:7, 176:8, 177:13, 178:22, 184:13, 185:2, 185:3 Inspector [10] - 19:17, 27:4, 27:25, 29:2, 33:2, 47:15, 69:10, 69:15, 69:17, 87:26 INSPECTOR [2] - 4:9, 135:26 inspector's [1] - 60:3 instances [1] - 15:23 instantly [1] - 121:29 instead [1] - 55:11 instigated [1] - 130:7 instigation [1] - 48:9 instituted [1] - 64:12 instructed [4] - 166:19, 170:6, 171:16, 172:1 INSTRUCTED [6] - 2:8, 2:12, 2:20, 2:25, 3:3, 3:8 instruction [3] - 99:8, 101:22, 146:14 instructions [8] - 102:12, 118:22, 121:9, 154:19, 175:8, 178:23, 184:18, 184:27 INSTRUMENT [1] - 1:6 instrumental [1] - 54:2 intend [2] - 101:27, 108:6 intended [2] - 16:14, 49:24 intension [1] - 28:11 intention [5] - 28:14, 47:11, 48:9, 98:9, 103:23 interactions [1] - 173:9 interest [3] - 54:15, 56:26, 72:7</p>	<p>interfered [1] - 15:4 interfering [1] - 112:5 interim [4] - 43:21, 89:14, 96:9, 97:5 Internal [1] - 33:7 internal [2] - 110:6, 122:25 interpret [1] - 51:26 interpretation [2] - 72:1, 74:5 interpreted [3] - 74:12, 74:26, 100:18 interrogate [1] - 5:27 interrogating [1] - 119:8 interview [34] - 23:17, 51:28, 56:27, 57:24, 58:28, 61:18, 61:24, 61:25, 62:1, 64:8, 64:19, 64:22, 64:25, 94:12, 94:26, 95:2, 98:29, 117:22, 124:21, 125:3, 129:16, 130:16, 133:12, 136:6, 136:13, 139:10, 139:29, 142:22, 147:29, 154:17, 173:2, 179:16, 180:19, 183:29 interviewed [8] - 32:4, 33:24, 33:25, 57:12, 58:20, 94:4, 116:17, 136:5 interviewing [2] - 61:13, 130:13 interviews [4] - 59:24, 60:9, 99:1, 124:23 INTO [1] - 1:1 investigate [20] - 8:2, 12:18, 20:8, 49:20, 66:8, 75:22, 80:11, 98:17, 134:25, 142:3, 147:19, 147:23, 148:3, 148:9, 148:25, 150:19, 155:9, 156:6, 157:29, 158:28 investigated [11] - 28:12, 48:5, 51:8, 52:8, 81:2, 112:16, 112:17, 112:20, 118:7, 123:21, 146:8 investigating [12] - 24:22, 29:23, 29:24, 40:24, 69:23, 82:10, 100:9, 111:29, 113:11, 123:17, 123:18, 158:2</p>	<p>investigation [311] - 6:5, 7:8, 9:7, 10:29, 11:12, 13:1, 13:29, 14:18, 15:4, 15:15, 16:11, 16:18, 17:10, 18:4, 20:27, 21:21, 22:2, 23:1, 24:24, 25:1, 25:2, 25:5, 25:9, 26:22, 27:10, 28:1, 28:15, 29:3, 29:16, 29:20, 29:28, 30:2, 30:11, 33:9, 33:14, 36:27, 37:7, 38:4, 38:6, 38:8, 39:1, 39:7, 39:28, 40:15, 41:10, 42:9, 43:2, 43:7, 43:12, 43:20, 44:8, 45:19, 45:22, 46:4, 46:22, 47:11, 47:12, 49:3, 50:9, 50:16, 50:21, 50:28, 51:17, 51:27, 52:7, 52:16, 52:17, 52:29, 53:1, 53:7, 53:10, 53:15, 53:18, 53:29, 54:3, 54:17, 55:16, 55:18, 55:20, 56:9, 58:11, 59:7, 62:15, 62:20, 63:8, 63:13, 64:27, 65:1, 65:7, 65:8, 65:17, 65:23, 65:25, 65:26, 65:27, 66:5, 66:14, 68:11, 68:12, 68:13, 68:26, 69:6, 69:11, 69:12, 69:18, 69:20, 69:26, 69:27, 69:28, 70:1, 70:2, 70:3, 70:6, 70:8, 70:23, 72:9, 73:27, 74:14, 74:27, 75:5, 75:15, 75:19, 75:27, 76:2, 76:22, 77:7, 77:21, 77:23, 77:24, 78:10, 79:13, 79:17, 79:21, 80:3, 80:6, 80:8, 80:10, 80:12, 80:14, 80:17, 80:21, 80:26, 80:29, 81:7, 81:10, 81:13, 81:18, 81:29, 82:6, 82:14, 82:15, 82:23, 82:27, 83:22, 83:26, 84:4, 85:6, 85:11, 85:13, 85:28, 86:2, 86:3, 86:12, 86:15, 86:19, 86:23, 86:26, 87:10, 87:13, 87:18, 87:19, 88:2, 88:5, 88:22, 88:24, 88:25, 89:8, 89:14, 91:23, 91:27, 92:2, 92:5, 92:7,</p>
--	--	---	--	--

<p>92:25, 93:3, 93:9, 94:1, 95:3, 95:10, 95:13, 95:15, 95:22, 96:6, 96:11, 96:20, 96:23, 97:3, 97:7, 97:10, 97:13, 97:19, 98:11, 98:16, 98:22, 99:9, 100:5, 101:8, 102:3, 102:8, 102:9, 104:17, 104:22, 104:25, 105:4, 105:8, 105:12, 105:16, 105:23, 105:27, 106:7, 106:18, 106:21, 107:6, 107:14, 107:17, 107:21, 107:22, 107:26, 107:29, 108:1, 108:13, 108:16, 108:26, 109:8, 110:11, 110:13, 110:17, 110:20, 110:25, 111:8, 111:11, 111:16, 111:19, 112:6, 112:9, 112:25, 112:29, 113:2, 113:3, 113:6, 113:7, 114:4, 114:29, 115:1, 115:2, 115:11, 115:15, 115:17, 115:22, 115:27, 116:1, 116:2, 116:3, 116:4, 116:6, 116:7, 116:11, 116:12, 116:26, 117:3, 117:9, 117:14, 118:6, 119:13, 120:18, 122:21, 122:22, 122:29, 123:6, 123:24, 124:6, 124:28, 125:5, 125:9, 125:14, 125:15, 126:5, 126:8, 127:12, 129:15, 129:25, 130:8, 131:14, 131:15, 132:2, 132:24, 132:25, 132:27, 145:19, 154:21, 156:3, 156:16, 157:9, 157:13, 158:21</p> <p>investigations [27] - 14:7, 17:6, 21:27, 26:18, 28:24, 29:1, 41:6, 47:5, 47:9, 48:12, 52:2, 52:5, 67:18, 67:29, 68:1, 68:7, 68:10, 68:16, 68:19, 68:22, 70:19, 80:27, 84:25, 103:17, 115:10, 122:18, 124:6</p>	<p>investigations [1] - 27:18</p> <p>investigative [4] - 95:20, 97:9, 108:8, 123:6</p> <p>investigator [17] - 17:7, 17:17, 71:2, 71:7, 71:17, 71:25, 72:4, 72:13, 73:2, 73:13, 82:10, 82:18, 82:24, 98:19, 99:6, 139:12</p> <p>investigators [8] - 136:6, 139:11, 154:18, 173:3, 173:4, 178:3, 179:16, 182:13</p> <p>invoked [1] - 24:15</p> <p>involved [4] - 35:28, 100:14, 125:17, 145:21</p> <p>involvement [14] - 75:16, 75:18, 75:19, 77:6, 82:27, 86:12, 87:10, 87:12, 88:22, 89:8, 91:22, 128:15, 129:26, 185:4</p> <p>involves [1] - 110:20</p> <p>involving [2] - 122:22, 130:20</p> <p>issue [81] - 5:26, 5:27, 6:1, 8:18, 12:8, 13:4, 35:23, 36:5, 39:26, 43:15, 44:2, 44:25, 51:29, 52:1, 56:19, 67:19, 67:23, 83:10, 84:10, 84:14, 93:17, 98:20, 99:13, 100:2, 100:29, 102:23, 103:14, 103:15, 104:8, 114:18, 120:1, 129:27, 129:28, 141:16, 142:6, 143:8, 145:15, 145:17, 145:20, 145:22, 147:21, 147:27, 148:7, 149:19, 149:24, 149:28, 150:17, 155:6, 155:7, 155:20, 155:26, 156:10, 158:29, 159:1, 159:4, 159:12, 162:1, 162:23, 164:6, 164:7, 164:10, 164:17, 167:1, 167:23, 167:26, 168:9, 168:11, 170:14, 171:6, 171:25, 171:27, 173:4, 173:29,</p>	<p>178:13, 178:15, 179:9, 179:10, 182:11, 184:11</p> <p>issued [12] - 169:16, 171:5, 171:17, 172:2, 172:18, 172:29, 173:16, 173:18, 173:21, 173:23, 173:27, 175:16</p> <p>issues [35] - 5:25, 49:2, 56:1, 56:3, 67:20, 81:9, 81:15, 82:26, 88:9, 88:21, 89:20, 90:18, 90:22, 99:29, 100:26, 102:4, 102:5, 129:29, 130:12, 145:15, 147:13, 149:8, 149:16, 151:2, 153:25, 154:4, 154:6, 154:13, 157:7, 169:19, 175:28, 181:4, 181:25, 185:3</p> <p>item [1] - 14:13</p> <p>itself [2] - 123:2, 126:2</p>	<p>jotted [1] - 169:23</p> <p>journal [1] - 43:28</p> <p>Judge [2] - 104:23, 131:9</p> <p>judge [1] - 179:6</p> <p>judgment [1] - 120:6</p> <p>July [17] - 33:5, 33:6, 33:14, 33:15, 52:11, 52:21, 86:27, 87:6, 89:3, 93:1, 94:16, 94:17, 97:2, 133:12, 138:6, 140:11, 140:23</p> <p>jumped [1] - 58:17</p> <p>juniper [2] - 160:13, 180:15</p> <p>junction [2] - 34:1, 48:14</p> <p>JUNE [3] - 1:17, 5:1, 185:19</p> <p>June [1] - 85:26</p> <p>justice [6] - 65:18, 78:18, 111:26, 112:4, 125:10, 132:23</p> <p>Justice [2] - 132:13, 132:22</p> <p>JUSTICE [3] - 1:6, 1:11, 2:2</p> <p>justification [1] - 18:26</p> <p>justified [2] - 65:23, 95:27</p>	<p>KELLEHER [1] - 2:13</p> <p>Kent [1] - 180:12</p> <p>kept [2] - 25:12, 184:26</p> <p>kicked [1] - 23:24</p> <p>kids [1] - 164:26</p> <p>Kiely [24] - 164:14, 166:8, 168:5, 170:7, 172:5, 172:17, 173:10, 173:14, 173:17, 173:27, 174:17, 175:5, 175:9, 175:12, 175:15, 176:6, 176:10, 176:18, 176:21, 176:25, 177:18, 177:22, 178:13, 178:15</p> <p>Kildarby [1] - 160:24</p> <p>kilometres [2] - 140:15, 140:18</p> <p>kind [1] - 117:17</p> <p>kindly [2] - 5:17, 85:11</p> <p>knowing [1] - 106:17</p> <p>knowledge [11] - 18:1, 18:2, 54:23, 73:22, 85:21, 125:5, 134:22, 139:23, 141:20, 142:16, 144:3</p> <p>known [4] - 22:13, 61:3, 138:12, 160:28</p> <p>knows [2] - 163:8, 172:7</p>
		J		
		<p>Jack [1] - 6:28</p> <p>jacket [1] - 160:13</p> <p>James [3] - 19:19, 81:25, 92:6</p> <p>JAMES [1] - 2:14</p> <p>January [36] - 9:6, 9:11, 41:23, 42:2, 42:7, 42:11, 42:12, 42:14, 42:18, 42:19, 42:20, 43:13, 44:14, 64:13, 87:27, 89:19, 89:23, 89:25, 89:26, 90:10, 90:25, 91:4, 91:6, 91:8, 91:11, 97:29, 105:6, 132:14, 132:16, 137:4, 156:17, 156:20, 157:15</p> <p>job [3] - 139:19, 140:3, 168:23</p> <p>jobs [3] - 20:11, 33:22, 96:1</p> <p>jogging [1] - 126:15</p> <p>JOHN [3] - 2:17, 2:24, 3:7</p> <p>John [1] - 152:27</p> <p>joined [6] - 134:14, 136:13, 136:24, 137:21, 137:26, 138:7</p> <p>Joseph [1] - 137:22</p>		
		K		
		<p>KATE [1] - 2:19</p> <p>Kavanagh [20] - 9:3, 14:29, 15:17, 16:7, 26:12, 30:23, 71:1, 74:28, 83:12, 84:17, 84:29, 93:22, 94:1, 132:11, 132:17, 151:8, 153:3, 170:1, 176:27, 177:4</p> <p>KAVANAGH [1] - 2:5</p> <p>keen [1] - 120:4</p> <p>keep [9] - 10:21, 15:1, 16:7, 20:24, 40:12, 41:15, 151:7, 151:8, 185:5</p> <p>keeping [3] - 123:27, 125:29, 155:29</p> <p>KEHOE [4] - 4:3, 5:10, 67:7, 122:11</p> <p>Kehoe [14] - 5:7, 6:3, 40:22, 42:29, 43:11, 49:23, 67:10, 83:27, 92:19, 114:12, 118:18, 119:12, 132:10, 132:22</p>		
		L		
		<p>lads [1] - 182:6</p> <p>Landy [1] - 152:27</p> <p>language [7] - 18:5, 27:18, 37:13, 44:2, 141:12, 164:10, 181:15</p> <p>large [2] - 116:21, 116:22</p> <p>last [14] - 10:10, 12:25, 15:21, 21:21, 28:7, 50:26, 94:11, 96:27, 102:10, 118:14, 132:17, 143:19, 162:12, 182:19</p> <p>lastly [1] - 134:1</p> <p>late [6] - 24:7, 62:28, 141:1, 141:4, 141:7, 142:20</p> <p>latter [2] - 48:16, 59:27</p>		

<p>lawyers [1] - 85:16</p> <p>lead [5] - 82:10, 82:18, 82:24, 98:19, 99:5</p> <p>Leahy [50] - 19:18, 20:7, 27:5, 27:25, 29:2, 33:2, 33:16, 47:15, 48:11, 55:17, 69:10, 69:15, 69:17, 81:15, 81:20, 82:1, 82:21, 82:29, 83:1, 83:27, 84:1, 84:10, 84:24, 85:5, 85:10, 85:23, 86:10, 86:19, 86:22, 87:26, 88:29, 89:6, 89:12, 90:3, 92:23, 92:29, 93:29, 94:7, 94:15, 95:1, 95:9, 97:1, 97:12, 106:15, 106:23, 106:24, 107:4, 107:17, 107:20, 125:24</p> <p>Leahy's [2] - 82:26, 88:22</p> <p>least [5] - 58:3, 80:12, 132:13, 145:21, 172:7</p> <p>leave [18] - 10:24, 21:7, 21:8, 21:15, 35:6, 79:4, 79:6, 79:10, 79:14, 88:10, 88:12, 88:16, 91:5, 119:27, 138:21, 153:14, 184:7</p> <p>led [1] - 57:14</p> <p>left [14] - 55:18, 61:12, 61:16, 85:22, 92:21, 96:3, 104:14, 115:20, 137:3, 165:2, 167:12, 171:9, 185:1</p> <p>left-hand [1] - 167:12</p> <p>legal [5] - 90:2, 90:16, 90:18, 90:22, 124:1</p> <p>legible [1] - 170:13</p> <p>legislation [1] - 109:19</p> <p>legitimate [2] - 31:13, 31:15</p> <p>length [6] - 56:14, 67:28, 75:21, 78:16, 109:3, 109:4</p> <p>lengthy [2] - 21:13, 59:6</p> <p>less [10] - 110:21, 111:19, 112:14, 112:27, 112:28, 112:29, 113:8, 113:12, 113:17, 114:7</p>	<p>letter [53] - 8:17, 9:25, 9:26, 10:14, 12:13, 12:14, 14:6, 14:25, 23:6, 24:13, 24:16, 26:11, 26:16, 26:17, 36:14, 37:23, 42:17, 42:22, 42:24, 42:26, 50:22, 52:12, 52:13, 56:7, 58:14, 60:15, 61:17, 100:25, 101:28, 102:3, 102:5, 102:18, 104:14, 132:12, 133:1, 133:26, 143:10, 144:4, 144:5, 144:6, 144:9, 144:12, 144:15, 144:18, 144:23, 144:24, 144:25, 145:8, 145:28, 146:13, 174:8, 174:23</p> <p>letters [3] - 22:21, 49:11, 65:14</p> <p>level [5] - 34:3, 54:8, 60:17, 95:8, 97:17</p> <p>levied [1] - 133:21</p> <p>life [1] - 62:16</p> <p>light [8] - 58:26, 63:5, 84:1, 88:9, 120:20, 129:25, 160:11, 162:19</p> <p>likely [1] - 114:15</p> <p>limit [5] - 71:15, 71:24, 78:5, 78:7, 185:8</p> <p>limited [3] - 11:2, 86:11, 89:7</p> <p>limits [4] - 18:25, 19:1, 70:24, 75:11</p> <p>line [3] - 143:19, 150:22, 156:26</p> <p>lines [4] - 29:9, 57:15, 86:18, 172:3</p> <p>list [1] - 129:20</p> <p>listening [1] - 166:29</p> <p>Listowel [1] - 84:2</p> <p>lit [1] - 73:17</p> <p>LITTLE [1] - 2:22</p> <p>live [1] - 160:23</p> <p>local [2] - 158:10, 158:20</p> <p>locker [1] - 165:24</p> <p>lodged [3] - 35:1, 36:19, 73:19</p> <p>lodging [1] - 53:5</p> <p>long-term [1] - 153:6</p> <p>look [46] - 10:3, 11:17, 15:14, 15:20, 16:6, 17:6, 19:24, 22:22, 23:13, 25:23,</p>	<p>26:10, 28:18, 36:6, 41:3, 43:29, 44:1, 49:11, 53:21, 56:6, 57:21, 60:15, 62:3, 62:12, 63:4, 64:22, 70:23, 70:24, 70:28, 75:21, 83:9, 92:26, 100:24, 101:28, 102:17, 123:24, 132:9, 145:17, 167:10, 167:20, 168:19, 169:29, 172:9, 173:2, 174:2, 175:4, 176:19</p> <p>looked [6] - 25:29, 33:21, 37:19, 60:15, 78:6, 143:10</p> <p>looking [20] - 6:8, 9:15, 13:27, 13:28, 23:15, 23:18, 26:1, 33:2, 33:8, 33:13, 33:15, 40:4, 71:1, 120:28, 120:29, 121:17, 144:3, 164:22, 168:4, 177:20</p> <p>looks [2] - 33:11, 119:24</p> <p>loose [1] - 149:27</p> <p>Lordan [13] - 7:24, 9:1, 9:4, 10:18, 19:13, 20:2, 23:1, 27:26, 28:23, 30:5, 81:19, 91:29, 125:23</p> <p>loss [2] - 11:2, 149:23</p> <p>lost [2] - 91:2, 125:19</p> <p>love [1] - 126:3</p> <p>loyal [1] - 134:6</p> <p>LUNCH [1] - 92:15</p> <p>lunch [3] - 92:21, 104:12, 104:20</p> <p>luxury [1] - 25:7</p> <p>LYDIA [1] - 2:11</p>	<p>maintaining [2] - 49:15, 52:21</p> <p>MAIREAD [1] - 2:20</p> <p>majority [3] - 69:19, 117:1</p> <p>Mallow [7] - 144:10, 159:27, 159:28, 160:22, 160:23, 183:8, 183:13</p> <p>Malone [1] - 1:23</p> <p>MALONE [1] - 1:28</p> <p>man [6] - 143:5, 155:4, 171:23, 172:7, 179:4, 180:26</p> <p>Management [1] - 157:13</p> <p>management [3] - 143:22, 158:10, 158:20</p> <p>manner [4] - 50:21, 125:4, 125:15, 163:14</p> <p>manpower [1] - 69:19</p> <p>March [42] - 9:16, 19:29, 21:29, 23:19, 24:27, 24:28, 25:16, 25:26, 25:28, 26:8, 26:12, 26:26, 30:18, 30:19, 32:8, 49:13, 49:16, 50:19, 50:22, 53:21, 77:8, 77:13, 77:22, 77:24, 94:8, 105:20, 143:2, 143:9, 159:8, 159:16, 162:29, 163:17, 163:18, 163:28, 164:3, 164:4, 164:18, 167:8, 170:15, 172:22, 175:17</p> <p>Margaret [3] - 164:14, 170:7, 175:9</p> <p>MARK [1] - 2:24</p> <p>mark [1] - 168:1</p> <p>MARRINAN [1] - 2:7</p> <p>Martin [1] - 40:26</p> <p>Mary [3] - 19:18, 81:20, 92:1</p> <p>material [2] - 31:29, 57:7</p> <p>materials [1] - 91:25</p> <p>matter [61] - 11:29, 16:10, 22:15, 23:14, 23:19, 31:11, 31:19, 32:23, 32:28, 40:23, 43:27, 44:17, 44:22, 46:28, 58:25, 60:27, 61:12, 61:14, 61:15, 61:16, 61:19, 61:23, 61:29, 65:27, 66:3, 70:12, 78:17, 82:2,</p>	<p>82:7, 84:8, 84:25, 85:24, 85:29, 86:28, 91:12, 91:15, 96:1, 97:15, 97:20, 98:17, 99:28, 103:24, 103:28, 103:29, 106:28, 108:12, 110:12, 114:15, 118:12, 119:4, 119:22, 125:11, 130:5, 130:6, 130:9, 131:3, 131:4, 149:20, 173:10</p> <p>matters [42] - 16:24, 16:25, 19:26, 22:3, 24:22, 28:9, 38:5, 56:13, 56:15, 56:20, 60:1, 62:6, 62:17, 62:25, 67:23, 67:29, 68:6, 76:20, 78:21, 79:1, 79:3, 79:23, 86:3, 90:17, 90:23, 92:9, 96:15, 97:19, 97:21, 98:13, 98:14, 100:10, 103:25, 114:19, 123:28, 130:21, 130:27, 139:25, 172:14, 175:13</p> <p>MATTERS [1] - 1:3</p> <p>max [1] - 182:19</p> <p>McCarthy [1] - 137:25</p> <p>McCOURT [1] - 2:26</p> <p>MCGARRY [1] - 3:1</p> <p>McGrath [19] - 2:7, 5:11, 5:16, 42:18, 42:21, 67:4, 67:14, 70:26, 71:4, 95:8, 116:9, 128:21, 135:10, 135:22, 135:27, 136:3, 136:9, 136:11, 179:9</p> <p>MCGRATH [4] - 4:5, 4:11, 5:4, 5:6</p> <p>McGuinness [4] - 2:6, 2:18, 49:14, 51:20</p> <p>McLoughlin [2] - 33:7, 44:20</p> <p>ME [1] - 3:9</p> <p>mean [21] - 10:26, 27:21, 39:11, 51:6, 53:22, 60:3, 69:15, 98:6, 106:14, 106:18, 112:19, 114:26, 121:23, 138:20, 153:12, 153:22, 156:1, 169:1, 171:26, 172:28, 173:5</p>
M		<p>MADE [2] - 1:1, 1:6</p> <p>mail [11] - 10:6, 11:16, 11:18, 12:3, 40:13, 40:18, 83:13, 83:18, 83:22, 85:18, 85:20</p> <p>mails [6] - 9:29, 10:4, 12:17, 30:23, 30:24, 88:19</p> <p>maintain [1] - 18:29</p> <p>maintained [2] - 118:20, 118:24</p>		

<p>meaning [2] - 180:8, 180:22</p> <p>means [1] - 73:16</p> <p>meant [7] - 29:17, 101:24, 168:8, 169:16, 170:19, 180:21</p> <p>Medical [2] - 170:7, 175:10</p> <p>medical [36] - 20:28, 157:7, 157:12, 160:27, 161:2, 161:4, 161:26, 161:28, 162:19, 162:21, 163:5, 164:22, 165:6, 165:13, 165:15, 165:21, 167:10, 167:16, 167:21, 170:8, 170:18, 171:8, 171:29, 172:15, 172:25, 172:28, 174:8, 174:22, 175:10, 175:14, 175:22, 176:3, 176:16, 177:11, 178:7, 178:11</p> <p>meet [21] - 14:12, 26:7, 26:13, 26:25, 44:15, 46:8, 91:8, 94:22, 97:28, 105:10, 106:1, 126:1, 126:5, 126:6, 142:4, 154:24, 155:19, 155:27, 181:5, 181:13, 181:20</p> <p>meeting [41] - 7:1, 8:7, 13:18, 19:22, 19:24, 19:25, 20:22, 20:23, 28:17, 29:29, 30:1, 30:6, 30:18, 43:28, 49:1, 49:12, 49:18, 59:27, 81:28, 82:1, 91:16, 97:3, 126:4, 150:4, 151:1, 151:3, 152:5, 152:10, 153:12, 153:15, 153:17, 153:25, 153:27, 154:15, 156:12, 163:29, 174:3, 175:5, 182:19, 184:12, 184:29</p> <p>meetings [6] - 24:26, 152:16, 153:28, 155:23, 157:20, 157:21</p> <p>MEMBER [1] - 2:2</p> <p>member [5] - 86:19, 151:25, 153:1, 177:10, 178:7</p> <p>membered [1] - 153:6</p>	<p>members [19] - 17:1, 20:4, 33:23, 33:24, 81:17, 81:23, 82:17, 91:27, 98:15, 98:25, 124:2, 125:19, 148:4, 152:17, 152:20, 152:29, 153:6, 158:12</p> <p>memo [1] - 64:24</p> <p>memorial [1] - 180:12</p> <p>memory [1] - 126:16</p> <p>mention [7] - 20:28, 34:14, 53:27, 102:6, 183:8, 183:13, 183:21</p> <p>mentioned [7] - 19:10, 83:28, 125:6, 125:18, 125:23, 141:29, 153:17</p> <p>message [1] - 184:23</p> <p>met [33] - 6:27, 19:25, 24:28, 31:28, 45:12, 59:17, 77:27, 89:25, 89:26, 91:1, 91:2, 91:3, 91:6, 96:23, 98:3, 104:26, 126:7, 126:18, 142:1, 147:4, 147:17, 149:5, 151:13, 153:12, 155:4, 155:12, 155:15, 155:28, 156:8, 156:17, 156:26, 164:18</p> <p>methodology [2] - 124:21, 124:25</p> <p>MICHAEL [2] - 2:13, 2:24</p> <p>Michael [5] - 7:12, 10:25, 11:8, 23:7, 25:18</p> <p>midday [1] - 17:8</p> <p>middle [5] - 42:27, 56:10, 170:4, 173:5, 173:7</p> <p>middleman [2] - 174:21, 174:29</p> <p>midway [4] - 11:21, 31:4, 49:18, 151:9</p> <p>might [21] - 9:10, 49:11, 56:6, 61:10, 70:21, 71:28, 72:1, 79:22, 86:4, 92:26, 99:9, 101:14, 101:19, 107:16, 132:17, 133:11, 134:2, 136:25, 140:4, 140:23, 181:8</p> <p>mightn't [1] - 99:10</p> <p>mike [1] - 168:5</p> <p>mind [11] - 59:21,</p>	<p>84:20, 90:21, 93:22, 94:1, 94:3, 103:2, 103:9, 106:23, 125:8, 170:1</p> <p>minded [1] - 85:6</p> <p>mine [2] - 28:11, 158:25</p> <p>Minister [2] - 132:12, 132:21</p> <p>minister [1] - 65:13</p> <p>MINISTER [1] - 1:6</p> <p>minor [1] - 149:25</p> <p>minute [6] - 23:29, 24:1, 103:6, 105:5, 105:6, 123:22</p> <p>minutes [8] - 141:7, 147:26, 152:6, 173:14, 176:17, 176:22, 182:19, 185:9</p> <p>misconduct [2] - 112:17, 112:21</p> <p>missed [5] - 85:17, 111:27, 155:14, 165:17, 183:12</p> <p>mistakes [1] - 120:25</p> <p>Mitchelstown [24] - 7:11, 15:5, 126:14, 136:21, 137:4, 137:17, 137:29, 138:3, 139:13, 139:16, 140:14, 141:3, 144:11, 159:7, 160:1, 160:20, 160:24, 161:10, 162:24, 179:13, 179:18, 180:1, 181:1, 181:20</p> <p>mobile [2] - 54:6, 108:29</p> <p>modules [1] - 17:4</p> <p>moment [10] - 9:10, 10:28, 75:17, 75:20, 88:7, 142:5, 147:3, 156:5, 162:22, 182:11</p> <p>monitoring [1] - 56:23</p> <p>month [15] - 24:26, 40:5, 44:14, 49:13, 59:15, 78:3, 90:12, 95:18, 104:28, 105:2, 123:8, 136:24, 143:12, 143:27, 152:17</p> <p>months [19] - 10:16, 10:17, 29:19, 31:9, 39:24, 46:22, 53:2, 55:13, 58:3, 76:1, 76:24, 77:1, 80:22, 115:20, 115:24,</p>	<p>115:26, 116:6, 117:24, 123:4</p> <p>morality [1] - 132:25</p> <p>Morgan [1] - 152:27</p> <p>morning [26] - 5:4, 5:5, 5:6, 5:14, 5:15, 5:16, 5:27, 6:8, 58:7, 67:10, 87:25, 88:4, 91:18, 97:6, 97:22, 97:28, 98:4, 107:2, 122:21, 123:5, 138:29, 139:20, 166:20, 183:23, 185:5, 185:13</p> <p>most [4] - 111:24, 131:7, 148:4, 167:18</p> <p>move [16] - 9:9, 14:24, 17:3, 29:28, 57:10, 75:12, 92:9, 114:18, 132:8, 158:29, 172:9, 173:26, 179:9, 182:29, 183:5, 183:6</p> <p>moved [7] - 33:2, 95:27, 95:28, 98:25, 123:2, 129:23, 137:2</p> <p>moves [1] - 183:1</p> <p>moving [3] - 64:5, 130:10, 145:11</p> <p>MR [63] - 1:11, 2:2, 2:5, 2:6, 2:7, 2:10, 2:11, 2:13, 2:16, 2:17, 2:17, 2:18, 2:20, 2:24, 2:24, 2:25, 3:1, 3:2, 3:3, 3:7, 3:7, 3:8, 4:6, 4:7, 67:1, 67:7, 67:10, 92:12, 92:19, 114:13, 114:17, 114:23, 114:25, 114:28, 118:9, 118:11, 118:17, 118:20, 118:24, 118:27, 119:14, 119:28, 120:8, 120:11, 121:4, 121:11, 121:13, 121:15, 121:25, 121:27, 122:2, 122:6, 122:8, 122:11, 122:14, 127:9, 131:9, 131:16, 131:19, 132:8, 135:3, 135:5, 185:10</p> <p>MS [27] - 2:7, 2:8, 2:11, 2:12, 2:18, 2:19, 2:20, 4:3, 4:5, 4:11, 5:4, 5:6, 5:10, 5:11, 5:16, 42:18, 42:21, 67:4, 67:7, 122:11, 135:10, 135:22, 135:27, 136:3, 136:9,</p>	<p>136:11, 179:9</p> <p>Murphy [4] - 25:20, 57:3, 60:15, 183:8</p> <p>MURPHY [1] - 2:16</p> <p>must [5] - 39:2, 58:22, 120:5, 160:16, 171:13</p> <p>Myers [1] - 138:8</p> <p>MÍCHEÁL [1] - 2:17</p>
N				
<p>name [3] - 67:11, 153:10, 153:17</p> <p>named [1] - 1:25</p> <p>natural [2] - 78:18, 125:10</p> <p>nature [12] - 21:9, 29:22, 35:12, 49:22, 56:20, 98:14, 103:26, 116:19, 116:28, 134:9, 156:13, 166:1</p> <p>near [1] - 58:17</p> <p>nearest [1] - 184:25</p> <p>necessarily [3] - 93:10, 110:15, 116:5</p> <p>necessary [2] - 113:25, 122:1</p> <p>necessity [4] - 103:27, 124:20, 125:6, 128:24</p> <p>need [17] - 9:16, 25:11, 32:17, 33:11, 62:10, 70:27, 72:7, 75:1, 77:12, 80:5, 82:17, 89:1, 91:25, 120:10, 120:13, 150:22, 160:29</p> <p>needed [1] - 117:21</p> <p>needn't [1] - 133:18</p> <p>needs [1] - 72:13</p> <p>never [34] - 49:24, 123:21, 134:15, 137:2, 142:24, 151:23, 151:24, 151:25, 151:29, 152:2, 155:20, 158:22, 160:5, 160:7, 162:16, 163:22, 167:26, 168:2, 169:6, 170:25, 170:26, 171:6, 171:7, 171:12, 171:15, 171:25, 171:27, 174:27, 178:11, 178:12, 178:19, 178:21, 178:27</p> <p>new [9] - 58:27, 64:1, 64:3, 84:2, 92:4, 92:9,</p>				

<p>98:22, 117:12, 140:19 Newman [1] - 129:29 next [34] - 7:18, 9:9, 9:17, 10:21, 11:19, 14:28, 23:17, 26:26, 36:23, 37:25, 41:3, 44:29, 45:11, 50:7, 50:13, 51:25, 60:16, 63:16, 96:22, 97:2, 99:13, 101:1, 127:28, 135:22, 146:23, 158:29, 159:12, 160:24, 164:6, 175:4, 177:2, 177:4, 177:24, 179:9 night [12] - 162:28, 163:6, 163:23, 179:17, 180:2, 180:29, 182:9, 182:20, 183:3, 183:22, 184:21, 184:24 nights [1] - 184:21 nighttime [1] - 181:3 nine [12] - 93:11, 105:29, 107:9, 115:20, 117:23, 134:15, 160:18, 181:6, 181:7, 181:29 ninth [3] - 14:21, 34:6, 63:27 nobody [5] - 154:2, 161:10, 163:2, 169:27 Nolan [15] - 6:28, 7:8, 29:13, 29:25, 31:10, 33:13, 35:22, 37:16, 42:10, 44:21, 76:14, 100:27, 104:15, 111:14, 111:15 non [3] - 113:23, 149:9, 157:7 non-effectiveness [1] - 149:9 non-medical [1] - 157:7 non-serious [1] - 113:23 none [1] - 153:26 nonetheless [4] - 59:7, 69:1, 74:8, 87:16 normal [8] - 60:29, 70:10, 74:1, 143:29, 152:22, 157:20, 181:10, 182:3 normally [1] - 124:11 north [1] - 156:21 NORTHUMBERLAN D [1] - 2:26</p>	<p>note [21] - 7:1, 7:3, 7:5, 7:29, 9:19, 19:26, 20:23, 20:24, 21:18, 38:29, 44:4, 44:29, 45:11, 46:14, 91:24, 134:23, 151:4, 174:4, 174:18, 182:2, 182:8 notebook [1] - 181:27 noted [8] - 13:3, 20:25, 77:16, 119:13, 127:10, 152:3, 169:11, 169:19 notes [21] - 1:25, 13:18, 19:24, 21:12, 21:14, 26:10, 27:29, 28:17, 28:19, 43:28, 44:3, 47:29, 59:28, 60:3, 83:22, 176:9, 181:26, 182:3, 182:4, 182:7 nothing [10] - 40:5, 45:8, 99:23, 104:24, 122:3, 131:11, 135:10, 156:15, 161:3, 163:4 notice [5] - 23:27, 33:1, 114:14, 115:4, 129:13 noticed [2] - 119:10, 119:18 notification [2] - 43:25, 91:11 notified [7] - 43:19, 126:28, 128:5, 128:6, 128:8, 132:29, 133:9 notify [2] - 24:14 notifying [2] - 128:1, 133:27 notwithstanding [2] - 44:23, 45:6 November [19] - 7:26, 14:14, 38:18, 38:22, 38:24, 39:17, 60:22, 101:22, 102:13, 102:18, 106:10, 126:22, 126:25, 127:5, 127:24, 128:7, 128:19, 133:22, 155:22 nowhere [4] - 182:17, 182:24, 182:28, 183:5 number [36] - 9:28, 14:13, 16:21, 19:11, 24:11, 25:3, 33:22, 33:24, 37:25, 53:23, 54:6, 54:28, 58:21, 86:1, 86:11, 89:7,</p>	<p>96:10, 96:18, 96:26, 98:25, 108:14, 122:27, 124:6, 124:14, 126:6, 131:2, 143:18, 145:15, 155:12, 155:16, 167:6, 168:13, 168:25, 168:29, 169:13 numbers [2] - 54:6, 54:18 nuts [1] - 68:7 Nyland [1] - 128:14</p> <p style="text-align: center;">O</p> <p>O'Brien [9] - 19:19, 20:16, 20:17, 27:27, 30:25, 31:23, 40:13, 81:25, 83:14 O'BRIEN [2] - 3:2, 135:3 o'clock [7] - 92:9, 92:13, 144:11, 144:13, 160:18, 165:1, 185:4 O'Connor [2] - 137:22, 137:26 O'Driscoll [9] - 42:3, 59:27, 59:28, 87:28, 89:23, 90:10, 91:3, 92:6, 130:17 O'HIGGINS [15] - 2:17, 4:7, 118:11, 118:17, 118:20, 118:24, 118:27, 119:14, 122:12, 122:14, 127:9, 131:9, 131:16, 131:19, 132:8 O'Higgins [10] - 118:10, 119:3, 119:17, 119:26, 120:13, 120:16, 121:26, 122:9, 127:3, 131:7 O'Higgins's [1] - 121:18 O'MARA [1] - 2:26 O'Sullivan [6] - 135:23, 136:1, 143:23, 159:6, 164:12, 174:7 O'SULLIVAN [3] - 3:1, 4:9, 135:26 object [1] - 31:17 objection [2] - 18:28, 46:18 objections [1] - 75:8 objectively [1] -</p>	<p>17:11 obligation [2] - 17:27, 78:12 obliged [2] - 62:19, 122:2 observation [1] - 61:9 observed [1] - 119:10 observes [1] - 55:2 obtain [3] - 48:12, 99:1, 110:7 obtained [2] - 58:22, 99:26 obtaining [1] - 96:11 obvious [1] - 160:8 obviously [13] - 48:2, 74:15, 83:8, 98:24, 107:22, 111:4, 111:24, 121:23, 126:2, 153:14, 153:18, 153:22, 179:2 Obviously [1] - 139:24 occasion [4] - 102:22, 104:7, 141:2, 141:7 occasions [6] - 126:7, 134:19, 141:4, 155:12, 155:16, 158:11 occur [2] - 96:6, 99:4 occurred [1] - 91:21 occurring [1] - 21:5 October [28] - 8:24, 8:25, 10:15, 17:29, 18:1, 35:5, 35:18, 36:13, 36:26, 37:18, 39:8, 44:26, 58:16, 59:18, 62:11, 62:28, 73:9, 73:10, 73:20, 73:22, 74:10, 74:24, 75:24, 76:13, 100:26, 101:28, 128:13 odds [1] - 51:6 OF [11] - 1:1, 1:7, 1:11, 1:12, 2:3, 2:16, 66:23, 118:1, 134:29 offence [1] - 14:22 offences [1] - 12:20 offer [2] - 144:24, 184:8 offered [4] - 183:29, 184:2, 184:4, 184:6 offering [1] - 183:18 OFFICE [1] - 2:21 office [25] - 12:3, 17:19, 18:7, 56:29, 60:25, 71:9, 72:19, 72:27, 72:29, 73:7,</p>	<p>110:7, 137:18, 138:29, 140:9, 140:13, 140:19, 140:29, 148:18, 148:19, 163:7, 164:29, 165:3, 165:23, 176:29, 184:25 officer [44] - 7:11, 14:15, 16:17, 23:12, 23:27, 24:14, 25:14, 32:26, 35:27, 36:7, 38:19, 42:26, 43:23, 43:26, 44:17, 46:8, 58:18, 63:14, 65:10, 69:23, 72:19, 81:1, 82:11, 90:27, 91:15, 100:13, 111:14, 113:26, 123:17, 123:18, 127:14, 130:12, 130:24, 138:6, 138:14, 138:16, 138:23, 139:2, 139:4, 140:3, 152:27, 157:12, 174:22 officer. [1] - 35:28 officer/chief [1] - 72:3 officers [3] - 65:28, 157:26, 182:4 offices [1] - 93:27 official [1] - 23:14 often [1] - 107:8 Ombudsman [1] - 31:21 omitted [8] - 32:3, 39:8, 102:11, 102:14, 102:20, 102:21, 103:4, 106:8 ON [5] - 1:4, 1:8, 1:17, 5:1 once [6] - 18:26, 49:24, 55:23, 131:3, 180:11, 180:25 one [60] - 10:4, 16:7, 16:26, 18:19, 22:22, 24:3, 24:11, 24:27, 33:19, 44:4, 48:2, 50:4, 50:19, 55:3, 59:15, 64:2, 65:4, 66:6, 82:5, 85:16, 92:8, 94:11, 96:27, 103:28, 109:9, 111:24, 112:2, 112:5, 117:5, 117:6, 118:12, 123:8, 123:22, 123:23, 123:26, 132:9, 137:18, 140:29, 143:6,</p>
--	---	---	--	---

<p>145:17, 148:19, 149:2, 150:20, 152:21, 153:9, 155:9, 158:27, 162:12, 162:17, 162:22, 167:6, 169:24, 171:12, 178:12, 178:19, 178:21, 181:25, 184:10 ones [1] - 28:18 ongoing [5] - 56:13, 56:19, 56:23, 90:5, 98:14 onward [1] - 127:19 onwards [4] - 87:10, 87:13, 107:23, 108:8 open [26] - 7:3, 8:16, 9:16, 9:24, 9:25, 22:25, 26:19, 32:17, 33:11, 33:19, 35:23, 38:23, 42:16, 56:5, 62:10, 65:15, 77:12, 133:19, 139:28, 145:28, 149:2, 150:23, 156:19, 176:24, 181:2, 182:11 opened [12] - 8:21, 20:17, 25:19, 27:29, 48:20, 49:14, 51:20, 58:15, 68:28, 143:13, 143:18, 165:3 opening [1] - 170:1 operational [1] - 182:5 opinion [3] - 13:14, 90:28, 177:28 opportunity [5] - 23:27, 58:12, 121:3, 133:8, 133:10 opposed [4] - 17:29, 111:1, 113:13, 114:7 order [8] - 25:8, 30:16, 39:27, 47:21, 62:20, 82:13, 91:20, 96:19 ordinary [3] - 73:7, 79:9, 160:4 organisation [2] - 73:25, 76:20 original [1] - 43:12 originally [2] - 8:26, 76:14 OSMOND [1] - 2:21 OTHER [1] - 1:2 otherwise [4] - 30:9, 99:6, 161:18, 161:23 outcome [8] - 45:4, 79:12, 79:17, 128:2, 128:8, 128:28, 131:1, 153:29</p>	<p>outcomes [1] - 153:28 outline [13] - 6:10, 19:25, 21:4, 28:23, 37:22, 51:24, 56:22, 57:20, 57:22, 98:4, 122:17, 136:12 outlined [10] - 8:29, 18:25, 24:2, 29:4, 29:8, 97:5, 97:9, 97:22, 179:15, 179:26 outlines [1] - 33:26 outlining [3] - 30:27, 36:8, 58:19 outset [16] - 20:25, 22:15, 28:4, 47:16, 49:27, 50:28, 52:11, 58:7, 67:14, 69:21, 83:7, 140:9, 158:1, 160:19, 172:11, 172:13 outside [12] - 13:5, 55:9, 109:15, 125:21, 147:22, 147:23, 148:2, 148:8, 150:18, 154:26, 155:8, 158:28 outstanding [1] - 86:4 overall [5] - 75:14, 75:21, 76:1, 80:21, 106:20 overlapped [1] - 112:9 own [15] - 7:5, 25:13, 25:15, 77:6, 86:7, 90:21, 110:6, 123:27, 126:11, 163:28, 167:24, 169:28, 174:2, 179:22, 183:19</p>	<p>132:11, 132:15, 132:18, 133:11, 133:17, 136:4, 136:6, 139:28, 143:12, 145:28, 146:23, 148:12, 149:27, 150:22, 151:5, 152:6, 154:18, 159:15, 161:14, 173:7, 176:26, 182:10, 182:14, 182:22 PAGE [1] - 4:2 pains [1] - 125:13 paper [4] - 6:1, 145:15, 145:20, 159:4 papers [19] - 8:27, 9:17, 9:26, 9:28, 15:16, 33:6, 53:17, 55:2, 61:7, 64:2, 85:17, 85:18, 87:24, 100:4, 104:10, 138:4, 152:3, 155:11, 182:10 paperwork [3] - 123:26, 124:3, 150:12 parading [1] - 183:24 paragraph [29] - 7:18, 9:10, 9:17, 10:11, 11:22, 12:25, 16:6, 17:7, 18:23, 23:13, 25:29, 26:26, 28:7, 42:27, 49:17, 50:7, 50:14, 70:29, 71:2, 71:3, 72:2, 72:17, 72:22, 72:25, 83:23, 132:18, 170:4, 177:2, 177:4 paragraphs [1] - 9:2 parallel [24] - 16:18, 24:21, 24:24, 26:17, 27:10, 27:18, 27:21, 28:1, 28:4, 30:2, 47:9, 47:12, 50:9, 50:17, 50:28, 51:12, 51:16, 51:26, 52:6, 68:19, 68:21, 69:7, 69:12, 70:1 paraphrasing [1] - 46:2 parcel [2] - 99:7, 115:16 pardon [3] - 87:11, 105:1, 111:9 park [2] - 179:13, 179:18 parked [8] - 44:29, 45:2, 45:3, 45:18, 46:9, 46:21, 60:28, 70:7 PARLIAMENT [1] - 3:10</p>	<p>part [41] - 23:26, 24:4, 29:16, 31:14, 31:16, 37:25, 54:3, 59:27, 76:8, 78:21, 83:26, 84:3, 86:22, 86:25, 87:18, 88:5, 92:7, 97:18, 99:6, 99:9, 102:26, 107:14, 110:17, 110:20, 110:26, 111:1, 111:2, 111:4, 111:7, 111:10, 111:15, 111:17, 112:25, 113:4, 114:2, 115:16, 116:25, 117:3, 124:15, 180:21, 180:27 parted [1] - 148:27 participate [1] - 86:20 particular [15] - 7:29, 17:8, 31:3, 33:1, 54:28, 79:18, 83:10, 95:17, 99:11, 163:10, 164:17, 167:22, 167:23, 173:3, 178:24 particularly [3] - 124:26, 134:22, 134:23 parties [12] - 7:14, 48:15, 48:24, 54:21, 109:29, 125:9, 125:16, 128:8, 129:1, 129:8, 129:12, 129:13 parts [2] - 14:17, 116:7 party [2] - 45:24, 132:27 passage [1] - 126:1 passed [2] - 40:5, 171:7 PASSED [1] - 1:3 passing [1] - 139:18 past [5] - 159:20, 159:24, 176:21, 181:6, 181:7 Pat [3] - 10:18, 81:19, 137:24 path [1] - 109:28 patient [5] - 172:14, 174:20, 175:13, 177:24, 178:14 patients [1] - 177:20 PATRICK [2] - 2:7, 3:2 Patrick [1] - 19:13 Paul [25] - 7:10, 42:2, 44:8, 63:12, 67:12, 87:27, 123:20, 136:17, 137:8, 137:10, 137:11,</p>	<p>137:13, 142:22, 147:13, 148:15, 151:13, 153:9, 154:1, 155:12, 156:27, 174:22, 174:27, 174:28, 175:3, 175:11 PAUL [3] - 2:10, 3:1, 3:7 pause [1] - 94:2 pay [13] - 10:27, 11:4, 11:29, 21:17, 22:8, 79:5, 157:9, 161:18, 161:22, 161:23, 161:29, 162:2 pending [2] - 45:4, 62:7 people [9] - 24:14, 25:8, 82:13, 92:5, 120:14, 123:27, 132:7, 139:17, 152:18 per [2] - 27:28, 29:24 perceived [2] - 37:5, 37:6 percent [3] - 144:1, 149:21, 180:19 perhaps [6] - 68:29, 87:23, 98:21, 107:8, 133:19, 134:2 period [28] - 25:26, 40:5, 45:1, 51:17, 52:6, 53:16, 58:28, 74:22, 77:2, 79:4, 80:25, 81:4, 87:6, 97:5, 98:14, 99:16, 104:28, 105:2, 105:26, 115:25, 115:29, 116:8, 123:8, 124:7, 137:28, 138:10, 145:11 permission [1] - 85:11 PERRY [25] - 2:11, 4:6, 67:1, 67:7, 67:10, 92:12, 92:19, 114:13, 114:17, 114:23, 114:25, 114:28, 118:9, 119:28, 120:8, 120:11, 121:4, 121:11, 121:13, 121:15, 121:25, 121:27, 122:2, 122:6, 122:8 Perry [2] - 67:11, 121:8 perry [14] - 92:10, 92:18, 114:19, 118:4, 118:13, 118:20, 119:7, 119:8, 119:20, 119:21, 120:2, 120:12, 121:8, 121:10</p>
P				
<p>page [79] - 5:22, 5:23, 7:3, 9:9, 9:16, 10:9, 10:21, 11:19, 14:26, 14:29, 22:22, 23:16, 23:17, 26:10, 30:23, 30:26, 35:23, 36:6, 36:11, 36:23, 37:25, 38:22, 40:28, 41:4, 49:12, 50:13, 51:25, 52:10, 54:25, 56:5, 57:4, 58:2, 58:16, 60:4, 60:16, 62:10, 63:16, 64:23, 65:15, 68:26, 70:28, 74:28, 77:11, 83:12, 84:17, 84:18, 85:1, 91:25, 92:26, 100:24, 101:1, 102:17, 117:7,</p>				

<p>person [8] - 17:13, 18:27, 75:7, 78:16, 126:13, 157:29, 172:16, 177:18</p> <p>personal [2] - 30:27, 62:16</p> <p>personnel [3] - 47:18, 86:8, 91:23</p> <p>persons [5] - 33:23, 33:24, 54:9, 54:14, 56:26</p> <p>perspective [2] - 158:10, 158:21</p> <p>pertinent [1] - 58:28</p> <p>perversion [1] - 65:18</p> <p>perverted [2] - 112:3, 132:23</p> <p>perverting [1] - 111:25</p> <p>PETER [1] - 2:5</p> <p>phase [3] - 127:17, 127:18, 127:28</p> <p>phases [1] - 129:26</p> <p>phone [16] - 12:3, 20:21, 54:15, 54:18, 56:26, 57:23, 94:21, 96:11, 97:1, 99:1, 108:29, 109:12, 126:12, 144:12, 174:23, 183:25</p> <p>phoned [3] - 44:20, 163:14, 164:21</p> <p>phrased [2] - 131:10, 131:12</p> <p>physically [1] - 126:4</p> <p>pick [1] - 15:18</p> <p>picture [2] - 20:29, 75:14</p> <p>pieces [1] - 108:14</p> <p>place [10] - 19:12, 68:17, 68:22, 70:19, 82:26, 91:10, 93:8, 123:26, 139:16, 183:17</p> <p>placed [3] - 26:16, 46:29, 62:7</p> <p>plain [1] - 173:26</p> <p>plainly [1] - 17:24</p> <p>plan [1] - 153:29</p> <p>plural [1] - 122:18</p> <p>plus [2] - 33:12, 54:13</p> <p>point [33] - 15:10, 24:29, 29:18, 30:2, 32:25, 52:22, 53:5, 53:6, 76:17, 78:17, 79:5, 84:13, 85:16, 89:9, 90:20, 91:1, 94:26, 96:21, 100:23,</p>	<p>101:26, 104:21, 106:14, 106:23, 109:14, 109:22, 114:17, 115:14, 116:5, 118:8, 123:1, 123:6, 129:12, 130:2</p> <p>pointed [3] - 52:5, 53:13, 175:25</p> <p>points [2] - 21:18, 90:8</p> <p>policy [39] - 7:10, 11:13, 11:15, 12:19, 12:28, 13:5, 13:27, 14:20, 15:14, 15:16, 17:24, 18:16, 21:28, 25:29, 27:11, 31:28, 45:23, 48:6, 48:7, 50:10, 50:11, 51:29, 68:27, 70:25, 71:24, 73:16, 73:24, 73:26, 74:1, 74:5, 74:7, 74:21, 74:22, 75:2, 75:11, 77:2, 78:6, 122:25, 141:25</p> <p>portacabin [2] - 138:26, 140:20</p> <p>portfolios [4] - 25:4, 25:10, 25:15, 96:2</p> <p>portion [1] - 86:2</p> <p>position [36] - 39:14, 39:15, 44:19, 47:27, 49:16, 51:7, 51:11, 51:14, 52:20, 62:29, 86:17, 86:20, 88:5, 89:9, 92:29, 93:13, 98:13, 98:18, 99:2, 99:17, 100:3, 104:24, 119:24, 120:9, 121:14, 145:16, 154:8, 160:26, 161:5, 164:28, 166:18, 180:18, 180:27, 183:16, 184:14</p> <p>positions [1] - 6:21</p> <p>positive [1] - 27:13</p> <p>possibility [2] - 29:7, 74:15</p> <p>possible [7] - 23:16, 28:16, 51:28, 52:29, 56:16, 72:7, 81:6</p> <p>possibly [5] - 74:10, 74:19, 123:3, 126:10, 175:2</p> <p>post [2] - 165:23, 165:24</p> <p>practice [2] - 60:29, 70:10</p> <p>practitioner [4] - 162:4, 164:13, 166:20, 178:23</p>	<p>preceded [1] - 131:6</p> <p>precedence [5] - 16:12, 47:14, 70:10, 115:5, 131:14</p> <p>precedent [7] - 16:16, 16:20, 24:12, 47:22, 48:3, 50:4, 50:5</p> <p>precise [1] - 147:10</p> <p>precisely [1] - 138:20</p> <p>preempt [1] - 154:5</p> <p>prejudicial [2] - 36:28, 101:9</p> <p>preliminary [4] - 33:29, 70:12, 79:23, 110:11</p> <p>premature [1] - 41:19</p> <p>prematurely [1] - 22:3</p> <p>preparations [1] - 130:13</p> <p>prepared [2] - 149:14, 149:15</p> <p>preparing [3] - 97:15, 124:22, 125:1</p> <p>present [2] - 109:1, 176:28</p> <p>presented [3] - 90:4, 108:17, 134:18</p> <p>presently [1] - 48:18</p> <p>PRESIDENT [2] - 1:12, 2:3</p> <p>press [6] - 38:14, 38:19, 38:24, 39:16, 42:8, 64:16</p> <p>pressed [1] - 43:21</p> <p>pressing [3] - 41:22, 44:7, 46:8</p> <p>presume [1] - 93:6</p> <p>previous [8] - 48:21, 58:15, 95:18, 100:14, 100:18, 101:24, 103:12, 158:11</p> <p>previously [9] - 25:19, 35:13, 51:20, 55:14, 58:3, 61:17, 62:15, 143:12, 153:13</p> <p>principals [2] - 54:17, 54:19</p> <p>prioritisation [1] - 80:5</p> <p>prioritise [4] - 25:11, 68:23, 69:2, 103:24</p> <p>prioritised [3] - 59:8, 69:1, 89:27</p> <p>priority [1] - 97:20</p> <p>probative [1] - 7:24</p> <p>problem [7] - 34:17,</p>	<p>34:22, 35:17, 92:11, 153:1, 158:14, 185:7</p> <p>procedural [1] - 184:12</p> <p>procedures [9] - 12:19, 12:28, 15:26, 16:12, 27:11, 50:10, 78:18, 125:7, 125:10</p> <p>proceed [4] - 63:6, 64:14, 90:23, 121:26</p> <p>proceeded [2] - 31:26, 132:1</p> <p>proceeding [1] - 67:23</p> <p>proceedings [6] - 48:9, 63:1, 63:19, 64:12, 128:23, 151:25</p> <p>process [25] - 6:25, 12:2, 22:2, 28:23, 37:26, 48:4, 58:5, 65:5, 70:18, 72:24, 77:23, 77:24, 78:11, 78:22, 91:13, 95:20, 124:22, 128:1, 128:16, 129:5, 130:14, 130:20, 130:29, 131:1</p> <p>produced [1] - 144:9</p> <p>professional [1] - 62:16</p> <p>progress [18] - 28:24, 28:29, 29:4, 33:21, 34:3, 52:15, 52:23, 52:24, 52:25, 55:16, 94:26, 95:9, 95:13, 95:22, 96:19, 97:17, 97:19, 107:17</p> <p>progressed [5] - 45:4, 53:10, 58:11, 96:8, 104:12</p> <p>progressing [5] - 26:22, 40:16, 104:22, 107:6, 154:21</p> <p>promise [1] - 89:28</p> <p>promised [2] - 50:18, 51:13</p> <p>promoted [7] - 83:2, 83:3, 83:4, 84:2, 84:11, 137:25, 140:17</p> <p>promotion [2] - 125:20, 137:14</p> <p>promptly [1] - 133:16</p> <p>proper [2] - 53:14, 120:20</p> <p>properly [6] - 65:24, 99:10, 99:27, 114:10, 133:16</p> <p>proposal [2] - 143:14, 144:26</p>	<p>proposed [2] - 10:19, 10:26</p> <p>proposing [1] - 29:27</p> <p>proposition [7] - 80:24, 99:22, 105:19, 106:19, 108:6, 121:5, 156:2</p> <p>prosecution [3] - 127:23, 128:29, 131:4</p> <p>Prosecutions [1] - 60:12</p> <p>prospect [2] - 11:28, 157:9</p> <p>protagonists [2] - 124:21, 130:13</p> <p>PROTECTED [2] - 1:1, 1:2</p> <p>protected [3] - 126:20, 126:22, 127:4</p> <p>provide [4] - 11:1, 101:29, 119:28, 159:9</p> <p>provided [9] - 6:12, 11:18, 54:15, 54:18, 55:3, 92:24, 131:2, 131:25, 131:29</p> <p>providing [2] - 77:18, 133:27</p> <p>provision [3] - 12:27, 19:6, 75:2</p> <p>provisions [2] - 39:2, 41:10</p> <p>public [4] - 165:2, 165:23, 183:19, 183:20</p> <p>Public [1] - 60:11</p> <p>pull [1] - 25:8</p> <p>pulled [1] - 149:27</p> <p>PURCELL [1] - 3:8</p> <p>purpose [3] - 50:6, 129:11, 161:6</p> <p>purposefully [1] - 123:12</p> <p>purposes [3] - 6:24, 18:17, 105:28</p> <p>pursuant [1] - 68:13</p> <p>push [2] - 89:29, 90:17</p> <p>put [38] - 12:7, 19:12, 23:26, 25:22, 31:29, 32:10, 32:11, 35:15, 36:20, 62:25, 65:9, 108:6, 118:29, 119:11, 119:24, 120:4, 120:7, 120:16, 121:2, 121:5, 121:7, 121:22, 121:28, 123:23, 139:8, 140:11, 140:26, 143:14, 150:21,</p>
---	---	---	--	--

162:8, 162:18, 162:20, 167:19, 168:22, 174:9, 174:15, 174:19, 177:18 puts [1] - 27:17 putting [4] - 115:4, 119:20, 129:13, 141:18	119:17, 120:22, 123:29, 128:14, 129:28, 130:5, 130:6 raises [1] - 16:4 raising [4] - 56:1, 56:3, 84:8, 103:8 ran [1] - 158:15 rang [2] - 163:20, 164:25 rank [2] - 6:17, 72:5 ranks [1] - 6:20 rapid [2] - 65:4, 68:4 rarely [1] - 160:20 rationale [2] - 37:23, 37:24 reached [2] - 79:5, 114:5 reaching [1] - 76:21 read [10] - 17:27, 18:7, 72:1, 100:7, 100:8, 101:14, 159:2, 167:18, 174:21, 182:13 reading [3] - 18:11, 71:24, 176:1 ready [1] - 92:18 realise [2] - 104:2, 167:1 realised [2] - 101:22, 103:2 reality [4] - 24:18, 28:28, 41:25, 61:12 really [14] - 6:25, 8:5, 19:9, 37:25, 41:1, 42:7, 45:8, 52:4, 63:5, 75:13, 99:13, 124:27, 143:26, 154:8 really [1] - 178:5 reason [14] - 11:6, 23:28, 67:27, 77:18, 84:24, 93:6, 119:2, 121:4, 121:6, 139:21, 150:4, 167:19, 167:22, 171:2 reasonable [2] - 23:20, 40:2 reasonably [1] - 131:10 reasons [9] - 18:29, 37:19, 85:7, 85:8, 102:1, 124:14, 131:2, 158:26, 160:8 rebut [1] - 133:8 receipt [3] - 18:8, 18:12, 76:2 receive [4] - 85:19, 100:3, 104:3, 177:9 received [62] - 10:14, 13:8, 13:10, 14:9, 15:13, 17:18, 17:25,	17:26, 18:2, 18:6, 27:24, 31:6, 34:2, 35:3, 35:4, 35:12, 36:17, 37:3, 37:10, 40:18, 52:15, 54:12, 58:8, 71:8, 72:18, 72:26, 72:28, 73:2, 73:6, 73:8, 73:29, 74:12, 74:24, 75:23, 76:8, 76:13, 84:21, 85:19, 87:1, 88:1, 91:11, 93:14, 93:25, 93:26, 104:3, 104:14, 106:5, 111:21, 113:15, 113:20, 124:28, 126:21, 126:26, 127:6, 127:22, 128:6, 128:18, 128:28, 133:23, 133:26, 134:10, 154:19 receiving [3] - 44:9, 92:28, 102:12 recently [2] - 77:17, 133:13 reception [2] - 176:12, 176:28 receptionist [6] - 167:13, 168:29, 169:2, 176:15, 176:19, 177:16 recollect [1] - 150:29 recollection [13] - 117:1, 146:15, 159:17, 165:3, 165:6, 166:12, 166:25, 174:26, 174:29, 180:20, 182:16, 182:23, 182:26 record [5] - 18:29, 151:13, 151:17, 152:1, 162:13 recorded [1] - 151:11 records [13] - 53:19, 54:5, 54:9, 54:12, 54:15, 54:21, 57:1, 109:12, 109:18, 109:24, 109:27, 110:1, 174:2 red [1] - 132:7 reduced [2] - 11:29, 22:8 refer [4] - 5:18, 63:7, 101:17, 147:8 reference [7] - 7:20, 8:12, 26:17, 39:8, 60:4, 175:8, 176:3 referenced [1] - 147:3	referred [1] - 74:29 referring [11] - 28:2, 40:13, 49:17, 52:12, 82:28, 88:13, 101:5, 101:13, 102:18, 113:2, 117:5 reflected [2] - 21:10, 21:12 reflection [2] - 49:29, 50:1 reflects [1] - 59:20 refused [2] - 12:16, 18:20 regard [11] - 12:8, 13:4, 31:1, 41:16, 41:25, 43:13, 56:2, 60:26, 153:28, 154:20, 157:27 regarding [2] - 128:15, 130:12 regardless [2] - 110:5, 110:8 regards [1] - 171:15 Region [3] - 41:9, 44:7, 83:19 region [3] - 85:7, 85:12, 86:6 REGISTRAR [1] - 2:5 regular [1] - 157:22 regulation [1] - 113:27 Regulation [18] - 14:2, 14:27, 26:28, 28:22, 35:19, 39:3, 41:11, 63:19, 68:13, 83:28, 101:20, 102:24, 112:21, 112:24, 141:1, 141:8, 148:13, 149:25 Regulations [2] - 14:3, 26:29 regulations [27] - 14:28, 23:26, 23:28, 24:15, 27:14, 28:10, 35:20, 39:3, 39:5, 39:9, 41:11, 41:13, 42:6, 45:20, 50:17, 63:2, 100:12, 102:14, 110:18, 110:21, 110:24, 110:26, 111:16, 111:17, 124:15, 131:3, 131:22 reiterate [1] - 178:9 reject [1] - 161:19 related [15] - 11:1, 11:28, 141:29, 142:6, 145:19, 146:7, 146:26, 147:19, 149:13, 150:10, 154:22, 156:2, 156:7,	158:21, 175:21 relates [2] - 67:17, 163:25 relating [1] - 73:24 relation [139] - 6:10, 7:13, 8:7, 9:6, 10:7, 11:20, 14:6, 14:10, 17:5, 21:14, 22:10, 22:14, 22:18, 22:26, 24:1, 25:12, 25:18, 27:25, 27:27, 28:27, 29:3, 29:20, 32:5, 34:6, 34:16, 34:23, 34:29, 35:11, 35:29, 37:11, 40:15, 43:17, 44:16, 44:22, 45:5, 46:27, 46:29, 47:24, 49:10, 51:7, 51:18, 52:10, 52:22, 52:23, 53:5, 53:8, 53:9, 53:18, 54:2, 55:4, 55:16, 55:21, 55:27, 56:3, 57:23, 57:27, 59:23, 60:1, 60:5, 65:2, 65:16, 66:3, 69:18, 74:27, 75:14, 76:9, 76:27, 78:20, 82:8, 83:10, 85:24, 86:7, 86:8, 86:28, 88:2, 88:4, 89:2, 90:8, 91:12, 91:15, 95:20, 96:8, 96:15, 97:6, 97:21, 97:25, 98:4, 98:11, 98:21, 99:5, 99:25, 100:11, 100:19, 102:5, 102:29, 103:3, 105:7, 105:9, 105:12, 106:9, 108:12, 110:4, 112:5, 114:9, 123:1, 123:15, 123:19, 123:26, 124:22, 124:25, 125:8, 125:11, 127:27, 129:4, 130:1, 130:3, 131:3, 133:28, 144:2, 144:6, 145:22, 149:8, 150:29, 151:3, 154:1, 154:10, 154:29, 157:7, 158:24, 166:27, 171:12, 174:3, 175:10, 179:29, 180:4, 180:9, 182:12, 183:28, 184:13 relationship [3] - 139:22, 142:21, 143:28 relationships [1] - 145:14 relay [2] - 184:18,	
Q					
qualifications [1] - 82:13 qualified [1] - 69:23 quarter [1] - 181:7 QUAY [1] - 3:4 queried [3] - 42:29, 53:7, 175:21 queries [3] - 90:2, 90:16, 169:12 query [10] - 44:9, 45:4, 46:29, 53:8, 55:7, 55:21, 104:6, 169:5, 169:25, 177:11 querying [1] - 118:4 questioned [1] - 168:7 questioning [2] - 104:4, 121:20 questions [20] - 66:21, 67:25, 67:27, 68:5, 70:14, 70:22, 90:1, 100:22, 106:8, 118:12, 124:23, 132:5, 135:3, 135:7, 135:12, 135:13, 150:1, 159:13, 164:7 quick [1] - 49:11 quicker [1] - 109:10 quickly [6] - 19:11, 55:10, 55:24, 65:12, 102:12, 106:10 quilter [4] - 57:23, 124:1, 128:11, 135:6 QUILTER [1] - 3:7 quite [7] - 24:7, 29:18, 54:2, 54:23, 83:3, 96:18, 108:1 quote [1] - 162:5 quoted [1] - 148:4					
R					
raise [5] - 100:26, 100:29, 102:4, 102:23, 104:8 raised [11] - 44:25, 56:8, 84:9, 84:14,					

<p>184:23 released [1] - 89:17 relevance [1] - 126:1 relevant [3] - 70:25, 109:12, 109:27 relied [4] - 24:23, 105:27, 124:26, 125:2 relying [6] - 37:7, 39:9, 65:7, 97:14, 107:26, 116:3 remain [2] - 113:16, 151:14 remainder [1] - 94:14 remained [1] - 92:6 remaining [1] - 5:27 remark [1] - 95:7 remember [14] - 116:12, 131:23, 153:16, 161:23, 162:11, 165:16, 165:20, 177:8, 177:28, 179:26, 183:15, 183:29, 184:3, 184:6 remembered [1] - 180:26 remit [1] - 9:6 repeat [5] - 18:10, 34:20, 98:8, 128:26, 161:20 repeatedly [1] - 49:6 replaced [2] - 43:11, 137:24 replacement [7] - 33:3, 87:25, 88:28, 89:1, 89:18, 90:3, 90:6 replacing [1] - 138:8 reply [5] - 40:28, 51:18, 51:19, 182:12, 184:10 report [55] - 17:17, 18:1, 23:15, 33:5, 34:2, 35:4, 35:12, 35:14, 36:15, 41:3, 45:8, 51:22, 52:15, 52:16, 52:23, 52:24, 52:25, 57:4, 60:17, 65:9, 71:7, 72:13, 73:17, 86:27, 93:14, 96:7, 97:14, 97:16, 97:23, 97:24, 97:29, 100:21, 101:23, 105:27, 106:5, 123:7, 130:24, 147:18, 148:29, 149:2, 149:21, 150:9, 150:29, 154:17, 156:19, 156:26,</p>	<p>156:28, 157:1, 157:17, 158:7, 158:8, 175:4, 175:28, 176:1 reported [2] - 15:5, 146:24 reporting [1] - 78:7 reports [1] - 87:22 represent [1] - 67:11 representative [2] - 45:15, 184:29 request [19] - 9:20, 31:8, 54:14, 54:26, 54:28, 55:28, 63:25, 66:2, 77:12, 77:16, 108:23, 109:10, 109:14, 109:22, 118:13, 129:17, 159:9, 163:5 requested [4] - 38:29, 54:9, 77:8, 157:8 requesting [2] - 54:21, 109:29 requests [5] - 57:26, 57:27, 60:9, 78:24, 93:7 require [4] - 30:9, 58:27, 161:2, 161:25 required [1] - 30:8, 39:27, 50:9, 77:29, 80:28, 84:3, 94:20, 99:12, 108:14, 179:27 requires [1] - 27:10 requiring [1] - 122:22 resided [1] - 89:13 RESOLUTIONS [1] - 1:3 resolved [2] - 12:1, 31:19 Resource [1] - 157:13 resource [1] - 51:29 respect [18] - 5:26, 8:18, 17:12, 23:12, 28:29, 38:7, 41:9, 43:27, 54:28, 92:24, 93:17, 118:17, 124:29, 143:21, 145:18, 150:6, 157:24, 178:7 respectfully [1] - 131:19 respond [3] - 120:5, 133:8, 133:10 responding [1] - 121:18 response [13] - 10:6, 23:18, 24:3, 33:20, 40:21, 46:29, 63:5,</p>	<p>78:1, 84:21, 85:1, 85:18, 85:19, 139:24 responsibilities [2] - 25:4, 25:13 responsibility [6] - 82:23, 106:20, 107:3, 107:18, 107:21, 152:26 responsible [1] - 120:24 rest [2] - 57:17, 117:16 result [3] - 64:29, 79:11, 86:10 RESUMED [2] - 5:1, 92:15 retain [1] - 85:4 retained [1] - 109:19 Retention [2] - 53:24, 109:11 retired [8] - 5:7, 6:21, 67:11, 134:7, 152:19, 152:28, 152:29, 153:1 return [7] - 119:22, 130:20, 143:2, 143:21, 159:10, 174:10, 174:15 returned [15] - 12:5, 35:14, 55:20, 73:17, 73:28, 78:3, 86:24, 87:8, 87:22, 88:10, 107:1, 143:2, 156:18, 159:19, 159:21 returning [1] - 20:27 review [2] - 128:3, 129:2 reviewed [2] - 36:21, 101:3 revisit [1] - 70:14 rights [1] - 17:12 ring [4] - 144:13, 155:19, 155:25, 155:26 ROAD [1] - 2:26 road [1] - 160:25 ROBERT [1] - 3:8 role [11] - 57:7, 125:21, 148:1, 148:2, 155:29, 157:24, 157:27, 162:26, 162:27, 166:23, 178:22 roles [1] - 25:13 route [2] - 139:18, 160:22 rumble [1] - 43:15 run [4] - 16:18, 47:12, 74:23, 140:3 running [9] - 13:24, 17:29, 19:28, 24:21,</p>	<p>28:4, 47:4, 47:26, 52:6, 144:7 RYAN [2] - 1:11, 2:2</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>sake [1] - 171:11 Sam [8] - 180:8, 180:9, 180:11, 180:17, 180:24, 180:25, 180:26, 181:24 sanction [1] - 11:3 sanctions [2] - 110:29, 111:5 sand [1] - 158:15 sat [1] - 32:10 satisfactory [1] - 89:9 satisfied [6] - 29:12, 30:14, 30:15, 89:5, 90:21, 105:3 saw [32] - 12:9, 13:7, 13:16, 13:19, 14:17, 14:20, 14:21, 15:11, 16:21, 17:22, 28:4, 47:8, 53:22, 61:17, 68:28, 70:18, 88:8, 88:11, 88:17, 104:21, 139:17, 141:8, 141:9, 143:7, 162:18, 171:7, 180:10, 180:26, 180:28, 181:19, 182:5 SC [9] - 2:6, 2:7, 2:10, 2:16, 2:17, 2:17, 2:24, 3:1, 3:7 schedule [1] - 67:20 screen [1] - 91:26 scroll [8] - 9:3, 14:29, 30:26, 42:19, 84:29, 132:17, 152:7, 153:3 scrolling [5] - 12:24, 84:20, 93:22, 94:2, 151:7 SEAN [3] - 1:11, 2:2, 3:3 SEANAD [1] - 1:4 seat [1] - 182:27 second [13] - 16:6, 23:29, 49:17, 50:13, 53:14, 90:28, 123:18, 127:17, 141:2, 141:7, 156:26, 176:26, 179:7 section [6] - 18:16, 18:21, 77:29, 113:17, 124:15, 131:27 sections [1] - 15:20 secure [2] - 88:28,</p>	<p>89:1 securing [2] - 34:8, 109:23 see [69] - 9:2, 10:5, 11:22, 11:24, 12:25, 15:1, 26:11, 32:23, 33:20, 41:23, 42:15, 42:17, 44:19, 54:25, 72:2, 72:10, 75:8, 79:23, 80:24, 85:18, 92:8, 93:23, 94:6, 96:7, 107:6, 113:19, 121:14, 123:25, 126:11, 132:14, 133:14, 143:16, 144:25, 145:14, 146:23, 149:2, 150:8, 151:9, 152:8, 152:12, 152:21, 153:10, 155:29, 156:5, 157:24, 157:26, 160:26, 162:1, 163:3, 167:11, 167:17, 168:18, 169:4, 170:3, 170:11, 171:17, 174:12, 176:8, 176:19, 176:27, 176:29, 177:3, 178:13, 178:14, 184:15, 184:20, 184:22, 185:4 seeing [2] - 13:19, 129:27 seek [4] - 11:9, 85:7, 118:12 seeking [11] - 11:6, 31:7, 39:7, 53:19, 54:5, 55:10, 55:25, 62:25, 64:4, 85:4, 118:28 seeks [1] - 43:10 seem [6] - 23:23, 43:14, 47:7, 120:20, 175:19, 177:25 sees [1] - 163:15 seisin [5] - 86:23, 87:16, 88:25, 96:4, 105:26 select [1] - 72:3 selected [1] - 82:13 send [1] - 52:8 sending [2] - 12:2, 88:20 senior [7] - 14:15, 65:28, 69:23, 81:1, 82:10, 123:16, 123:18 sense [2] - 68:2, 69:25 sensitive [2] - 51:2, 125:15</p>
---	--	---	---	---

<p>sensitivity [1] - 17:11</p> <p>sent [19] - 12:14, 23:10, 23:29, 31:23, 32:25, 83:13, 83:14, 83:18, 93:27, 101:25, 102:11, 102:13, 113:15, 132:4, 133:1, 141:28, 148:25, 150:5, 184:17</p> <p>sentence [3] - 71:5, 71:14, 72:12</p> <p>sentiment [1] - 132:25</p> <p>separate [6] - 14:7, 36:25, 68:10, 68:17, 72:22, 175:27</p> <p>separately [3] - 11:15, 29:22, 175:19</p> <p>September [19] - 57:11, 58:26, 62:5, 88:9, 126:27, 141:26, 142:1, 142:20, 147:4, 149:1, 149:5, 150:13, 151:5, 151:7, 154:17, 154:24, 155:15, 155:21, 156:9</p> <p>sequence [1] - 68:4</p> <p>sequencing [1] - 130:27</p> <p>sequential [2] - 27:19, 47:21</p> <p>sergeant [100] - 6:4, 7:27, 8:28, 9:4, 9:19, 12:18, 12:21, 13:12, 14:13, 21:3, 22:12, 22:23, 23:23, 24:4, 26:21, 29:18, 29:26, 31:1, 31:2, 31:28, 36:20, 37:26, 37:28, 38:7, 39:22, 44:15, 45:12, 45:29, 54:13, 55:2, 59:29, 62:24, 63:27, 64:6, 66:3, 66:13, 66:17, 67:11, 67:15, 70:17, 77:9, 77:27, 78:1, 78:27, 79:3, 79:8, 79:18, 79:27, 89:26, 91:9, 91:16, 92:5, 96:23, 97:3, 97:28, 100:3, 104:26, 105:11, 108:22, 119:7, 120:9, 123:8, 123:28, 125:8, 125:29, 126:3, 126:6, 126:18, 126:19, 126:22, 126:26, 127:4, 127:6, 128:5, 128:22, 130:5, 130:6, 134:15, 134:25,</p>	<p>136:23, 137:5, 137:11, 137:15, 139:23, 139:25, 140:10, 141:23, 143:28, 145:14, 146:7, 153:9, 154:10, 157:7, 159:9, 164:13, 164:28, 170:29, 179:13, 179:29, 182:16</p> <p>Sergeant [29] - 7:10, 19:18, 19:19, 20:16, 20:17, 21:26, 27:27, 29:10, 30:25, 31:23, 40:13, 44:8, 53:28, 55:17, 57:6, 63:11, 81:24, 81:25, 82:15, 98:25, 98:27, 98:28, 99:7, 123:20, 124:29, 147:13, 154:1, 156:27, 175:11</p> <p>SERGEANT [1] - 2:10</p> <p>sergeant's [1] - 184:25</p> <p>series [3] - 70:21, 88:3, 123:28</p> <p>serious [35] - 14:14, 65:16, 65:27, 66:9, 79:26, 80:29, 110:22, 110:26, 111:5, 111:20, 111:24, 112:2, 112:11, 112:14, 112:16, 112:20, 112:28, 112:29, 113:8, 113:12, 113:13, 113:17, 113:23, 113:27, 114:6, 114:7, 123:16, 125:12, 133:20, 134:3, 134:4, 134:9</p> <p>seriously [1] - 15:24</p> <p>seriousness [4] - 80:1, 82:14, 95:14, 112:8</p> <p>serous [1] - 49:22</p> <p>service [2] - 134:7, 161:27</p> <p>Services [1] - 1:23</p> <p>SERVICES [1] - 1:28</p> <p>set [10] - 11:13, 41:1, 50:27, 63:26, 70:25, 77:27, 81:8, 85:8, 91:17, 99:1</p> <p>sets [2] - 93:29, 94:3</p> <p>seven [7] - 115:24, 137:12, 137:19, 140:10, 160:6, 163:7, 163:8</p>	<p>several [2] - 56:24, 57:14</p> <p>severe [2] - 11:24, 11:26</p> <p>sexual [12] - 7:9, 12:19, 12:28, 15:4, 15:23, 21:28, 27:12, 45:23, 49:21, 49:22, 49:25, 63:13</p> <p>shall [2] - 34:18, 35:27</p> <p>sham [1] - 132:26</p> <p>SHANE [2] - 2:10, 2:16</p> <p>shape [1] - 66:17</p> <p>shared [4] - 137:18, 140:9, 140:13, 163:7</p> <p>Sheeran [4] - 53:28, 57:6, 92:5, 124:29</p> <p>SHELLEY [1] - 2:18</p> <p>SHIP [1] - 2:22</p> <p>shirt [2] - 160:4, 180:13</p> <p>shook [1] - 143:5</p> <p>shortly [2] - 13:27, 128:7</p> <p>show [1] - 178:1</p> <p>showed [2] - 171:21, 176:10</p> <p>sic [1] - 45:6</p> <p>sick [18] - 10:24, 21:6, 21:8, 21:15, 31:2, 79:4, 79:6, 79:10, 79:14, 141:27, 141:28, 146:28, 153:6, 153:7, 153:13, 153:19, 154:12, 161:1</p> <p>sickness [2] - 22:14, 152:18</p> <p>side [1] - 123:23</p> <p>signature [21] - 167:12, 167:17, 167:18, 167:19, 167:20, 167:23, 167:25, 167:26, 167:29, 168:4, 168:5, 168:7, 168:12, 168:13, 168:15, 168:18, 170:13, 171:13, 171:14</p> <p>signed [1] - 15:8</p> <p>significant [4] - 25:3, 57:6, 96:18, 171:17</p> <p>similar [4] - 57:27, 151:15, 162:12, 178:6</p> <p>similarly [1] - 133:17</p> <p>simple [1] - 120:15</p> <p>simply [7] - 61:9, 90:16, 117:11, 119:25, 139:1,</p>	<p>155:29, 182:23</p> <p>sincerely [1] - 27:28</p> <p>SINÉAD [1] - 2:7</p> <p>SIO [1] - 85:7</p> <p>sit [4] - 5:13, 122:29, 135:29, 185:11</p> <p>sitting [1] - 184:24</p> <p>situation [17] - 15:29, 38:21, 41:26, 55:5, 55:23, 76:22, 85:22, 89:5, 96:26, 99:21, 99:22, 119:21, 119:25, 120:7, 121:29, 145:10, 178:18</p> <p>six [6] - 31:9, 39:24, 40:5, 80:22, 115:24, 144:8</p> <p>six-month [1] - 40:5</p> <p>skipping [1] - 7:18</p> <p>slight [1] - 64:8</p> <p>slightly [2] - 176:7, 177:8</p> <p>slow [1] - 34:27</p> <p>slowly [2] - 9:3, 12:24</p> <p>small [1] - 148:20</p> <p>SMITHFIELD [1] - 3:5</p> <p>SOLE [1] - 2:2</p> <p>solely [1] - 25:1</p> <p>solicitor [5] - 80:19, 127:19, 128:19, 144:16, 151:15</p> <p>Solicitor [1] - 143:11</p> <p>SOLICITOR [1] - 2:9</p> <p>SOLICITOR'S [1] - 2:21</p> <p>SOLICITORS [3] - 2:13, 3:3, 3:9</p> <p>someone [5] - 21:21, 79:10, 148:2, 151:29, 160:8</p> <p>sometimes [1] - 140:4</p> <p>somewhat [1] - 41:18</p> <p>somewhere [1] - 148:20</p> <p>soon [2] - 47:17, 143:5</p> <p>sorry [53] - 11:19, 14:28, 18:9, 34:20, 36:11, 36:12, 36:23, 41:27, 42:11, 42:21, 46:2, 51:10, 58:17, 61:15, 63:4, 71:1, 72:24, 76:7, 83:4, 88:13, 88:15, 88:17, 111:27, 111:28,</p>	<p>114:9, 114:19, 119:19, 120:10, 120:12, 121:7, 121:9, 127:2, 127:3, 127:5, 128:26, 129:9, 130:5, 131:9, 132:15, 133:13, 140:13, 142:17, 146:3, 155:14, 161:20, 163:20, 165:17, 169:10, 170:2, 179:8, 183:12</p> <p>sort [2] - 140:4, 185:8</p> <p>sorted [1] - 162:16</p> <p>sought [16] - 9:5, 35:11, 35:13, 36:19, 41:7, 43:13, 45:5, 62:6, 63:1, 85:11, 88:1, 90:27, 96:7, 99:25, 109:18, 129:24</p> <p>sound [1] - 106:19</p> <p>source [1] - 110:9</p> <p>Southeastern [3] - 41:8, 44:6, 83:19</p> <p>southern [1] - 85:12</p> <p>span [1] - 69:8</p> <p>speaking [5] - 22:12, 126:11, 128:25, 166:25, 184:28</p> <p>speaks [2] - 123:2, 126:2</p> <p>specific [4] - 36:20, 37:19, 102:1, 120:5</p> <p>specifically [4] - 131:23, 131:25, 131:28, 145:7</p> <p>speed [2] - 95:25, 105:11</p> <p>speedy [1] - 80:3</p> <p>spend [1] - 108:2</p> <p>spending [1] - 99:2</p> <p>spoken [4] - 37:4, 43:25, 48:17, 91:4</p> <p>spot [1] - 120:4</p> <p>SR1 [2] - 146:5, 146:22</p> <p>stage [47] - 7:25, 8:26, 12:8, 22:16, 22:17, 23:23, 24:18, 28:26, 30:28, 32:22, 34:1, 34:28, 38:17, 39:22, 39:26, 41:19, 43:6, 43:7, 44:12, 48:23, 48:24, 52:21, 53:27, 54:26, 55:27, 56:1, 56:10, 59:29, 60:5, 60:24, 60:26, 61:23, 62:2, 77:26, 85:14, 85:22, 86:5,</p>
--	---	---	--	---

<p>88:17, 90:16, 126:19, 127:29, 128:24, 129:10, 145:3, 146:29, 154:1, 166:16</p> <p>stages [2] - 123:25, 124:18</p> <p>stalled [1] - 39:25</p> <p>stamp [1] - 93:23</p> <p>stamped [2] - 93:20, 93:23</p> <p>stand [1] - 182:25</p> <p>standard [4] - 24:13, 24:16, 81:7, 182:2</p> <p>start [10] - 6:11, 6:25, 6:26, 24:6, 25:17, 44:3, 77:1, 114:3, 167:15, 167:28</p> <p>started [12] - 16:27, 21:21, 24:18, 24:19, 24:20, 53:18, 71:20, 71:25, 75:17, 76:9, 136:27, 137:7</p> <p>starting [9] - 11:23, 13:8, 13:16, 13:20, 15:12, 17:23, 88:27, 136:11, 181:6</p> <p>starts [2] - 72:2, 73:18</p> <p>State [3] - 80:19, 127:19, 128:18</p> <p>STATE [1] - 2:21</p> <p>statement [44] - 5:21, 5:23, 6:11, 6:12, 6:26, 7:2, 7:26, 9:5, 10:17, 15:10, 19:8, 24:25, 24:29, 30:15, 31:13, 31:15, 43:18, 47:25, 56:23, 56:25, 57:14, 57:20, 57:22, 62:27, 80:13, 91:24, 97:15, 105:28, 117:8, 117:13, 136:4, 147:7, 147:8, 151:27, 159:15, 160:2, 161:16, 164:21, 166:18, 169:29, 176:5, 176:24, 179:15, 183:28</p> <p>statements [33] - 20:3, 29:2, 33:26, 48:12, 58:22, 61:25, 61:26, 66:2, 93:12, 94:7, 96:14, 96:18, 96:26, 105:20, 107:28, 108:22, 116:15, 116:19, 116:22, 116:24, 116:29, 117:2, 117:17, 117:18, 117:21, 125:2,</p>	<p>129:15, 129:16, 129:18, 129:20</p> <p>stating [2] - 10:15, 174:8</p> <p>Station [22] - 42:3, 126:15, 138:18, 138:27, 139:12, 139:17, 147:23, 147:28, 148:9, 148:28, 150:19, 154:27, 159:7, 160:1, 161:10, 162:24, 165:7, 169:9, 179:14, 179:18, 180:1, 181:2</p> <p>station [10] - 15:5, 139:18, 140:19, 141:3, 143:3, 159:28, 181:9, 181:21, 183:26, 184:9</p> <p>stations [6] - 137:2, 141:6, 183:29, 184:2, 184:4, 184:6</p> <p>status [8] - 33:8, 33:14, 52:16, 56:3, 88:2, 96:7, 97:7, 97:26</p> <p>stay [10] - 46:14, 136:26, 151:20, 151:22, 151:27, 161:18, 161:23, 162:14, 162:15, 168:13</p> <p>stenographic [1] - 1:25</p> <p>stenography [1] - 1:23</p> <p>STENOGRAPHY [1] - 1:28</p> <p>step [5] - 75:20, 96:22, 97:2, 167:9</p> <p>step-by-step [1] - 167:9</p> <p>stepped [1] - 145:12</p> <p>steps [7] - 96:10, 96:15, 97:10, 97:13, 97:27, 108:8, 129:4</p> <p>still [15] - 19:9, 33:29, 38:20, 49:15, 56:9, 86:22, 86:23, 87:16, 88:25, 98:26, 98:27, 99:8, 110:8, 157:11, 174:28</p> <p>stop [3] - 9:10, 12:25, 130:7</p> <p>stopped [2] - 105:8, 155:1</p> <p>stopping [3] - 98:15, 98:28, 99:3</p> <p>stoutly [1] - 118:24</p> <p>straight [6] - 119:6,</p>	<p>120:17, 138:28, 139:20, 160:25, 165:19</p> <p>straightaway [1] - 23:24</p> <p>STREET [3] - 2:14, 2:22, 3:10</p> <p>strenuous [1] - 55:19</p> <p>stress [18] - 10:28, 11:26, 79:11, 142:1, 142:6, 145:19, 146:7, 146:26, 147:19, 149:13, 150:10, 154:22, 156:2, 156:7, 156:16, 157:10, 157:16, 158:21</p> <p>strict [1] - 48:8</p> <p>strong [1] - 37:13</p> <p>stuff [1] - 146:17</p> <p>sub [1] - 138:3</p> <p>sub-district [1] - 138:3</p> <p>subject [3] - 16:11, 28:9, 63:18</p> <p>submission [5] - 60:11, 78:2, 78:17, 80:18, 130:23</p> <p>submissions [6] - 78:2, 78:20, 120:15, 120:21, 122:4, 123:10</p> <p>submit [1] - 33:5</p> <p>submitted [12] - 36:10, 36:15, 39:23, 41:2, 45:7, 60:25, 61:11, 63:14, 123:3, 124:18, 146:9, 175:11</p> <p>subsection [1] - 35:25</p> <p>subsections [1] - 60:17</p> <p>subsequent [1] - 22:20</p> <p>subsequently [3] - 13:18, 18:21, 19:4</p> <p>substance [3] - 79:25, 92:27, 105:22</p> <p>substantial [1] - 138:9</p> <p>substantive [10] - 24:10, 48:15, 48:24, 53:17, 61:15, 61:16, 61:23, 61:28, 96:22, 104:24</p> <p>substantively [3] - 40:6, 45:8, 99:24</p> <p>successful [3] - 86:26, 107:2, 109:23</p> <p>succinctly [2] - 122:17, 134:2</p>	<p>suffering [3] - 11:23, 11:26, 150:10</p> <p>sufficient [1] - 114:1</p> <p>suggest [11] - 17:24, 43:14, 73:15, 76:29, 77:3, 103:7, 108:9, 109:9, 109:26, 173:20</p> <p>suggested [2] - 43:9, 123:22</p> <p>suggesting [1] - 73:20</p> <p>suggestion [4] - 117:23, 119:16, 121:2, 121:22</p> <p>suitable [3] - 17:7, 72:4, 73:2</p> <p>Suitable [1] - 71:2</p> <p>summarises [2] - 94:15, 105:19</p> <p>summary [2] - 70:8, 97:9</p> <p>SUNLIGHT [1] - 3:9</p> <p>super [9] - 137:25, 155:10, 158:27, 182:17, 182:24, 182:29, 183:1, 183:6</p> <p>Superintendent [156] - 5:7, 6:3, 7:12, 7:24, 9:1, 9:4, 9:13, 10:18, 10:25, 11:8, 15:3, 19:13, 20:2, 22:29, 23:7, 25:17, 26:2, 26:5, 27:26, 28:23, 28:27, 30:4, 32:4, 33:7, 33:16, 40:22, 42:29, 43:10, 44:20, 45:24, 48:15, 49:23, 51:28, 54:13, 55:29, 57:11, 57:23, 58:20, 61:13, 61:18, 62:1, 62:5, 63:6, 64:27, 67:10, 78:27, 79:27, 81:19, 83:1, 83:26, 84:1, 84:24, 85:5, 85:10, 85:23, 86:10, 86:18, 86:22, 87:26, 88:21, 88:28, 89:6, 90:3, 91:29, 92:6, 92:19, 92:22, 92:29, 93:28, 94:7, 94:15, 95:1, 95:9, 97:1, 106:15, 106:23, 107:4, 112:3, 114:12, 115:4, 116:16, 117:22, 118:18, 119:11, 123:29, 124:1, 125:23, 128:10, 128:11, 128:14, 130:17, 132:10, 132:22,</p>	<p>135:6, 138:5, 138:7, 138:8, 138:17, 138:24, 138:29, 139:24, 139:25, 140:10, 140:22, 140:28, 141:24, 144:6, 144:16, 144:21, 145:1, 145:8, 145:25, 146:12, 146:16, 146:21, 148:17, 148:22, 148:29, 149:19, 150:6, 150:17, 152:25, 154:19, 154:20, 155:7, 159:3, 162:26, 164:9, 165:10, 165:11, 165:18, 165:21, 165:26, 165:27, 165:28, 166:2, 166:6, 166:10, 166:23, 166:26, 170:6, 171:19, 172:25, 179:2, 179:11, 179:12, 179:19, 180:10, 182:8, 182:22, 183:4, 184:27</p> <p>superintendent [54] - 5:14, 5:16, 5:18, 5:26, 6:1, 6:7, 6:17, 6:24, 11:23, 23:8, 25:14, 25:22, 26:19, 28:6, 32:19, 32:22, 36:12, 43:5, 60:24, 61:24, 61:26, 63:29, 64:19, 65:13, 66:19, 72:3, 72:20, 83:13, 84:11, 85:2, 85:25, 85:28, 122:16, 124:20, 130:27, 134:1, 134:5, 135:11, 135:14, 138:28, 142:7, 142:15, 143:4, 144:13, 147:22, 148:11, 156:21, 163:22, 165:19, 166:13, 169:14, 179:1, 180:5, 182:28</p> <p>superintendent's [2] - 5:21, 140:29</p> <p>supers [1] - 182:4</p> <p>supervise [1] - 144:27</p> <p>supervision [1] - 143:15</p> <p>supplied [1] - 37:26</p> <p>suppose [23] - 17:21, 34:22, 39:22, 41:19, 41:23, 59:20, 68:4, 81:11, 114:11,</p>
--	--	--	---	--

<p>114:12, 140:2, 154:23, 156:11, 157:28, 158:2, 167:17, 171:19, 171:24, 172:3, 172:6, 178:9, 178:12, 181:2</p> <p>surely [2] - 103:26, 119:4</p> <p>surgery [2] - 174:7, 177:19</p> <p>surprise [1] - 49:20</p> <p>Susan [3] - 19:18, 81:24, 83:14</p> <p>suspect [1] - 56:26</p> <p>swept [1] - 177:24</p> <p>swiftly [2] - 13:13, 123:2</p> <p>SWORN [2] - 5:10, 135:26</p> <p>sympathetic [1] - 121:23</p> <p>SÍOCHÁNA [1] - 2:16</p> <p>Séan [1] - 143:11</p> <p>Síochána [16] - 14:3, 25:20, 26:29, 27:14, 31:21, 33:23, 33:25, 50:16, 73:26, 74:7, 134:7, 136:13, 148:5, 151:21, 152:2, 177:10</p>	<p>telephone [8] - 54:5, 54:9, 54:12, 54:26, 55:9, 55:13, 110:2, 124:27</p> <p>telephonic [2] - 53:19, 56:29</p> <p>ten [5] - 173:14, 176:17, 176:21, 181:6, 182:19</p> <p>tensions [4] - 139:27, 140:27, 141:13, 141:16</p> <p>term [1] - 153:6</p> <p>termed [1] - 110:21</p> <p>terms [53] - 7:20, 8:11, 68:16, 68:21, 68:28, 69:14, 70:2, 73:17, 74:21, 75:11, 75:26, 76:20, 77:6, 78:5, 78:7, 79:14, 80:10, 81:16, 84:10, 88:21, 89:22, 91:22, 92:28, 93:2, 93:8, 93:28, 95:1, 97:8, 100:2, 100:9, 104:13, 104:21, 106:14, 108:7, 108:29, 109:28, 110:14, 110:24, 112:7, 113:21, 114:29, 115:14, 116:10, 119:29, 124:20, 125:29, 126:4, 127:1, 127:9, 127:17, 130:23, 150:21, 162:23</p> <p>thanked [1] - 172:24</p> <p>that [1] - 139:27</p> <p>THE [16] - 1:2, 1:6, 1:7, 1:12, 2:3, 2:6, 2:9, 2:16, 5:1, 5:15, 92:15, 135:17, 135:20, 179:8, 185:15, 185:19</p> <p>themselves [2] - 25:10, 121:24</p> <p>THEN [2] - 92:15, 135:20</p> <p>therefore [14] - 10:18, 47:15, 47:20, 86:27, 92:4, 96:7, 100:16, 100:18, 101:21, 102:28, 103:4, 106:26, 115:8, 143:21</p> <p>thinking [2] - 47:16, 129:10</p> <p>third [4] - 23:13, 83:23, 137:11, 143:19</p> <p>thirds [1] - 43:3</p>	<p>thorough [4] - 65:22, 65:29, 66:1, 66:14</p> <p>thoroughly [6] - 17:10, 81:2, 81:5, 108:21, 108:28, 123:20</p> <p>thoroughness [4] - 22:2, 30:11, 49:4, 59:10</p> <p>three [30] - 10:16, 14:7, 14:17, 27:20, 65:2, 65:26, 66:8, 68:10, 103:17, 111:23, 111:28, 115:25, 115:26, 116:5, 116:6, 116:7, 122:22, 123:4, 123:9, 125:19, 126:8, 146:18, 149:28, 155:9, 167:16, 169:4, 169:11, 169:19, 176:22, 185:3</p> <p>throughout [3] - 70:14, 70:18, 91:23</p> <p>thrust [1] - 94:20</p> <p>Thursday [7] - 138:25, 165:8, 165:22, 165:26, 171:22, 185:5, 185:13</p> <p>THURSDAY [1] - 185:19</p> <p>tidy [2] - 86:3, 130:21</p> <p>tie [1] - 160:9</p> <p>timeframe [19] - 11:13, 13:5, 14:11, 14:12, 19:26, 21:27, 47:14, 48:8, 51:2, 59:16, 74:6, 74:8, 95:13, 122:26, 122:28, 140:8, 140:11, 148:14</p> <p>timeframes [2] - 17:5, 28:11</p> <p>timeline [10] - 80:10, 81:16, 97:21, 114:29, 123:1, 123:9, 123:24, 126:12, 127:29, 130:10</p> <p>timelines [1] - 12:29</p> <p>timely [1] - 79:17</p> <p>Tipperary [5] - 6:16, 25:3, 25:8, 82:12, 89:12</p> <p>today [3] - 18:17, 105:28, 143:5</p> <p>today's [1] - 11:27</p> <p>together [4] - 27:12, 32:11, 62:2, 148:10</p> <p>tomorrow [1] -</p>	<p>185:12</p> <p>took [55] - 7:26, 9:4, 26:10, 44:2, 51:14, 55:7, 58:10, 65:28, 67:18, 67:29, 68:17, 68:22, 70:26, 75:15, 75:16, 75:21, 76:1, 76:24, 76:28, 78:1, 80:21, 81:2, 81:3, 81:4, 82:15, 82:26, 97:13, 97:27, 99:4, 107:23, 108:9, 108:19, 108:23, 109:2, 109:3, 115:5, 115:23, 115:29, 116:5, 117:23, 123:18, 123:19, 124:3, 131:14, 137:16, 150:4, 150:9, 164:28, 165:19, 176:29, 183:17, 184:11</p> <p>top [7] - 26:12, 54:25, 84:29, 93:15, 126:7, 132:14, 167:11</p> <p>total [1] - 115:25</p> <p>totally [8] - 108:12, 134:12, 144:8, 144:14, 144:28, 145:10, 151:28</p> <p>touch [5] - 67:28, 70:13, 81:11, 100:24, 116:19</p> <p>touched [2] - 75:23, 116:9</p> <p>touching [1] - 23:14</p> <p>tour [1] - 163:12</p> <p>towards [2] - 142:26, 183:1</p> <p>town [1] - 160:24</p> <p>train [1] - 91:2</p> <p>trained [1] - 82:11</p> <p>training [1] - 72:8</p> <p>Tralee [3] - 85:25, 85:28, 86:5</p> <p>transcript [2] - 1:24, 161:14</p> <p>transfer [4] - 84:16, 96:4, 183:17, 183:18</p> <p>transferred [13] - 83:5, 84:2, 84:12, 84:13, 85:26, 91:28, 91:29, 92:1, 106:25, 106:29, 125:24, 125:27, 137:14</p> <p>transferring [2] - 183:9, 183:14</p> <p>translating [1] - 73:5</p> <p>transmission [1] - 127:19</p>	<p>tray [2] - 146:18, 165:2</p> <p>treated [2] - 12:2, 15:24</p> <p>treating [1] - 133:15</p> <p>tribunal [31] - 6:13, 27:29, 55:3, 67:16, 114:11, 114:16, 126:28, 127:7, 133:12, 133:23, 133:24, 136:5, 137:29, 143:4, 144:28, 145:16, 150:2, 154:9, 154:18, 155:5, 159:15, 163:21, 166:1, 166:18, 173:3, 177:15, 178:4, 180:28, 181:27, 183:27, 184:13</p> <p>TRIBUNAL [3] - 1:1, 2:6, 2:9</p> <p>Tribunal [1] - 183:16</p> <p>TRIBUNALS [1] - 1:7</p> <p>tried [2] - 109:10, 158:24</p> <p>trigger [1] - 25:29</p> <p>triggered [2] - 88:3, 138:20</p> <p>trivial [1] - 149:25</p> <p>trouble [1] - 132:1</p> <p>try [2] - 88:28, 153:2</p> <p>trying [10] - 78:12, 94:22, 98:29, 99:2, 99:16, 121:7, 140:4, 170:28, 183:25, 184:8</p> <p>Tuesday [1] - 144:10</p> <p>TUESDAY [2] - 1:17, 5:1</p> <p>turn [4] - 32:27, 79:21, 92:27, 110:10</p> <p>turning [2] - 149:12, 183:1</p> <p>two [31] - 10:17, 11:19, 22:21, 24:11, 26:13, 28:17, 28:24, 30:8, 31:7, 43:2, 53:1, 61:20, 63:18, 72:22, 77:13, 80:21, 81:23, 85:8, 92:13, 97:1, 104:28, 105:2, 109:19, 115:29, 132:9, 140:6, 144:11, 175:27, 180:3</p> <p>two-month [2] - 104:28, 105:2</p> <p>two-week [1] - 31:7</p> <p>Twomey [7] - 34:29, 36:18, 58:9, 88:1, 89:4, 97:24, 100:20</p>
T				
<p>table [2] - 12:7, 153:2</p> <p>tandem [2] - 47:5, 47:26</p> <p>target [4] - 6:3, 66:5, 66:13, 66:17</p> <p>targeted [2] - 119:1, 119:7</p> <p>targeting [6] - 66:9, 66:12, 133:15, 159:1, 164:8, 179:10</p> <p>task [1] - 20:2</p> <p>tasked [3] - 82:1, 82:6, 122:19</p> <p>team [22] - 19:22, 24:27, 25:1, 25:6, 25:7, 80:14, 81:18, 81:29, 82:6, 86:19, 86:26, 87:19, 88:5, 89:15, 95:16, 95:17, 97:19, 98:16, 98:22, 123:13, 125:20, 157:13</p> <p>teams [1] - 124:2</p> <p>technical [3] - 56:25, 59:24, 107:26</p> <p>tediously [1] - 109:5</p>				

<p>type ^[1] - 138:21 typed ^[1] - 28:18 typographical ^[1] - 136:19</p>	<p>184:22 unfairly ^[1] - 12:2 unfairness ^[1] - 184:12 unfortunate ^[1] - 55:6 unfortunately ^[1] - 51:3 unfounded ^[1] - 134:12 uniform ^[20] - 159:7, 160:3, 160:5, 160:7, 160:12, 162:25, 163:29, 176:8, 176:13, 176:28, 177:14, 177:16, 177:17, 177:19, 177:21, 180:6, 180:7, 180:16, 180:22, 181:23 unique ^[2] - 178:18, 178:24 unit ^[1] - 141:4 units ^[2] - 141:6, 181:5 unless ^[4] - 90:8, 139:20, 162:4, 162:19 unnecessary ^[1] - 67:13 unnerved ^[5] - 176:7, 177:8, 177:23, 177:25 unreported ^[1] - 129:28 UNTIL ^[1] - 185:19 unusual ^[1] - 177:9 up ^[53] - 8:16, 21:6, 38:23, 41:24, 50:7, 59:26, 65:12, 66:1, 71:2, 81:13, 84:17, 84:20, 84:29, 86:3, 90:2, 91:26, 93:13, 93:22, 99:1, 105:11, 105:23, 108:21, 108:24, 108:29, 111:6, 119:6, 120:17, 130:2, 130:21, 132:7, 132:15, 133:18, 133:19, 139:28, 148:24, 149:12, 149:21, 150:12, 151:5, 152:6, 153:18, 158:7, 164:28, 165:4, 168:24, 170:1, 170:3, 176:14, 179:2, 181:29, 182:27, 184:16 up-to-date ^[1] - 93:13 update ^[12] - 33:11, 33:13, 33:15, 33:19,</p>	<p>33:21, 34:26, 52:28, 58:19, 92:23, 93:2, 94:29, 95:18 updated ^[5] - 35:4, 62:29, 86:27, 125:29, 156:1 updates ^[1] - 33:8 updating ^[4] - 93:7, 155:23, 156:13, 156:14 uphold ^[1] - 32:19 uppermost ^[1] - 125:8 upsetting ^[1] - 134:21 useful ^[1] - 108:16 uses ^[1] - 18:5 utmost ^[3] - 17:11, 21:26, 125:16</p>	<p>voluntarily ^[1] - 109:29 voluntary ^[1] - 94:26</p>	<p>135:20 WITNESS ^[6] - 4:2, 5:15, 135:17, 135:20, 179:8, 185:15 witness ^[5] - 5:6, 118:29, 119:6, 120:17, 135:22 witnesses ^[10] - 48:12, 56:27, 58:28, 94:4, 96:14, 98:29, 116:23, 117:18, 125:3, 129:17 wonder ^[9] - 71:28, 71:29, 72:1, 74:28, 83:9, 92:26, 100:24, 105:18, 119:28 word ^[7] - 34:6, 41:18, 45:2, 45:3, 46:12, 60:28, 142:24 wording ^[2] - 159:2, 168:11 words ^[3] - 47:12, 86:3, 147:10 wore ^[1] - 160:7 work-related ^[12] - 141:29, 142:6, 145:19, 146:7, 146:26, 147:19, 149:13, 150:10, 154:22, 156:2, 156:7, 158:21 workload ^[2] - 25:10, 124:5 workplace ^[7] - 79:7, 79:11, 79:14, 169:8, 171:2, 171:24, 172:5 write ^[9] - 22:23, 35:22, 37:18, 58:14, 167:15, 168:25, 168:27, 168:29, 169:20 writes ^[4] - 40:9, 40:11, 40:12, 49:12 writing ^[16] - 11:20, 26:13, 26:21, 36:7, 58:18, 93:6, 167:13, 167:14, 167:24, 167:29, 168:17, 168:22, 169:3, 169:27, 169:28, 171:12 written ^[4] - 38:18, 128:29, 132:12, 168:14 wrote ^[13] - 62:5, 62:28, 64:6, 65:13, 93:1, 128:10, 128:11, 128:21, 151:28, 167:28, 168:17, 168:23</p>	
U			W		
<p>ultimately ^[4] - 94:25, 96:10, 111:23, 111:28 ultimatum ^[1] - 31:18 unacceptable ^[2] - 10:24, 11:9 unannounced ^[1] - 163:13 unavailable ^[1] - 139:5 unavoidable ^[2] - 55:7, 58:8 uncomfortable ^[1] - 38:20 UNDER ^[2] - 1:1, 1:7 under ^[67] - 7:10, 10:28, 12:18, 14:2, 14:20, 14:21, 14:27, 16:5, 21:27, 23:28, 24:22, 26:28, 27:11, 28:22, 35:19, 36:9, 36:19, 36:25, 39:4, 41:12, 42:6, 45:20, 46:5, 48:6, 50:10, 50:16, 53:23, 55:23, 58:10, 63:2, 63:19, 66:12, 76:7, 76:23, 77:29, 78:6, 82:19, 88:5, 100:22, 101:19, 102:24, 102:27, 109:11, 109:18, 109:24, 110:17, 110:26, 111:16, 111:17, 112:21, 112:24, 113:3, 122:24, 134:17, 137:28, 141:24, 142:3, 143:15, 143:22, 145:25, 148:6, 148:26, 150:11, 150:14, 157:16, 182:21 understood ^[6] - 16:16, 29:26, 47:4, 47:25, 71:14, 170:19 undertake ^[1] - 83:27 undertaken ^[1] - 116:3 undoubtedly ^[1] - 131:16 unfair ^[4] - 106:19, 121:19, 184:15,</p>		V			
	<p>valid ^[6] - 172:17, 172:26, 173:16, 173:18, 173:23, 175:15 validity ^[7] - 116:23, 170:8, 170:17, 171:29, 175:14, 175:28, 177:11 valuable ^[1] - 108:5 various ^[8] - 6:20, 60:8, 94:3, 108:8, 124:21, 129:1, 129:7, 129:11 verbal ^[1] - 149:26 verbatim ^[1] - 1:24 via ^[2] - 80:19, 128:18 victimised ^[2] - 119:12, 120:18 view ^[23] - 13:6, 27:19, 35:8, 36:26, 37:5, 37:12, 37:14, 38:6, 38:13, 39:29, 45:21, 51:15, 62:22, 85:9, 89:10, 89:20, 101:7, 113:20, 123:7, 145:2, 150:4, 184:14 viewed ^[1] - 35:14 views ^[5] - 34:29, 35:9, 36:19, 38:7, 61:10 visit ^[8] - 143:3, 166:24, 172:11, 176:7, 177:9, 177:10, 177:28, 178:23 vocal ^[1] - 59:29 vocally ^[1] - 60:5</p>				
			<p>wait ^[1] - 144:12 waiting ^[1] - 99:26 walk ^[1] - 181:11 Wall ^[1] - 117:8 WALSH ^[1] - 2:8 wants ^[3] - 119:7, 162:5, 162:8 Ward ^[2] - 94:12, 164:28 warning ^[1] - 149:26 warranted ^[1] - 80:2 WAS ^[4] - 5:10, 67:7, 122:11, 135:26 Watergrasshill ^[5] - 142:2, 147:6, 147:8, 155:4, 156:8 ways ^[2] - 148:28, 185:1 week ^[5] - 24:3, 31:7, 140:7, 148:13, 171:11 weekly ^[1] - 59:8 weeks ^[3] - 30:8, 77:13, 123:10 welfare ^[4] - 152:17, 152:19, 152:27, 157:26 whereby ^[1] - 64:9 whilst ^[1] - 156:12 White ^[8] - 19:19, 81:25, 82:16, 92:6, 98:26, 98:27, 98:28, 99:7 white ^[2] - 20:11, 39:12 whole ^[2] - 73:25, 76:21 wife ^[1] - 31:17 William ^[4] - 19:17, 27:5, 48:11, 81:19 willing ^[1] - 10:27 Willy ^[1] - 69:10 wiser ^[1] - 153:26 wish ^[8] - 26:25, 41:7, 52:15, 57:21, 62:17, 132:21, 147:20, 156:26 wished ^[3] - 78:20, 129:15, 148:2 wishes ^[1] - 143:21 withdrawal ^[1] - 133:28 withdrew ^[1] - 5:25 WITHDREW ^[1] -</p>		

Y

year^[14] - 46:27,
50:19, 57:17, 64:6,
81:12, 105:15,
105:19, 107:24,
133:13, 136:24,
142:12, 142:17,
177:23

years^[28] - 6:14,
27:20, 53:1, 66:8,
80:21, 93:11, 105:29,
107:9, 109:19,
115:26, 115:29,
116:1, 116:5, 134:6,
137:1, 137:13,
137:19, 138:13,
140:10, 149:28,
151:21, 160:6, 163:7,
163:8, 170:25,
178:10, 178:28,
181:29

yesterday^[1] - 12:3

your.^[1] - 34:21

yourself^[9] - 15:12,
20:8, 33:15, 47:8,
60:28, 98:8, 147:9,
160:19, 169:22

É

ÉIREANN^[2] - 1:3,
1:4